

File #: 2022-076

Property Owner: N/A

Applicant: Smith Hawks, PL

Agent / Contact: Barton W. Smith, Esq.
Jess M. Goodall, Esq.

Type of Application: LDC Text Amendment

Key: Stock Island

RE: N/A

Additional Information added to File 2022-076



VIA EMAIL

September 2, 2022

Emily Schemper, Sr. Director Planning & Environmental Resources
Comprehensive Planning Manager
Monroe County Planning & Environmental Resources Department
2798 Overseas Highway, Suite 400
Marathon, FL 33050
Email: Schemper-Emily@MonroeCounty-FL.Gov

RE: AMENDED AND RESTATED - PROPOSED TEXT AMENDMENT TO SECTION 130-164 OF THE MONROE COUNTY LAND DEVELOPMENT CODE

Dear Emily,

Please accept this correspondence as the Amended and Restated Background Letter providing information, and Data and Analysis in support of the proposed Text Amendment to the Monroe County Land Development Code (“LDC”) Application (“Application”) in accordance with LDC §102-158.

I. Text Amendment Background

a. Overview

The Text Amendment proposes to amend Sections 101-1, 138-47, and 130-164 of the Monroe County LDC to include a footnote providing that covered, enclosed boat racks not associated with retail sales of boats (“Boat Barns”), located within the Marine Industries (MI), Mixed Use (MU), and Destination Resort (DR) Land Use (Zoning) Districts on Stock Island (the “Amendment Areas”), are exempt from floor area for purposes of nonresidential intensity calculations.

b. Amendment Request

Considering the significant impacts of Hurricane Irma on upland-stored vessels, the proposed text amendment (the “Amendment”) seeks to encourage the construction of fully enclosed Boat Barns rather than three-sided, open boat storage racks within the MI, MU, and DR Land Use (Zoning) Districts on Stock Island. Further, the Amendment would allow the reconstruction of existing Boat Barns – which are non-conforming structures in many cases – within the Amendment Area in the event of damage or destruction requiring substantial improvement.

Additions to the relevant portions of Sections 101-1, 138-47, and 130-164 are set forth below in Blue and deletions are set forth in Red.

c. The Proposed Amendment

101-1. Definitions.

Floor area means the sum of the gross covered and enclosed habitable areas of a building or any other covered and enclosed structure, measured from the exterior walls or from the centerline of party walls. Additionally, for parcels located within the MU, MI, and DR zoning districts on Stock Island, covered, enclosed boat racks not associated with retail sales of boats are not considered nonresidential floor area.

Sec. 138-47. - Nonresidential Rate of Growth Ordinance (NROGO).

a. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nonresidential floor area means the sum of the total floor area for a nonresidential building or structure, as defined in Section 101-1. Additionally, covered and unenclosed boat racks with three or fewer sides not associated with retail sales of boats are not considered nonresidential floor area. Additionally, for parcels located within the MU, MI, and DR zoning districts on Stock Island, covered, enclosed boat racks not associated with retail sales of boats are not considered nonresidential floor area. Further, the term "nonresidential floor area" does not include space occupied by residential uses, including spaces occupied by a transient residential unit and an institutional-residential use as defined in Section 101-1.

Section 130-164

Maximum Nonresidential Land Use Intensity and Minimum Open Space		
Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio^(a)
Airport (AD)	0.10	0.20
Commercial 1 (C1)		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Light Industrial	0.30	0.20

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Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Commercial 2 (C2)		
Low Intensity Commercial Retail or Restaurant	0.50	0.20
Medium Intensity Commercial Retail or Restaurant	0.40	0.20
High Intensity Commercial Retail or Restaurant	0.35	0.20
Office	0.45	0.20

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio(a)
Light Industrial	0.40	0.20
Institutional	0.40	0.20
Public Buildings/Uses	0.35	0.20
Commercial Recreation	0.25	0.20
Commercial Fishing Area (CFA)(b)	0.40	0.20
Commercial Fishing Special District (CFSD)(b)(c)		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.30	0.20
Heavy Industrial	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Fishing Village (CFV)(b)	0.40	0.20
Conservation (CD)	0.05	0.90
Destination Resort (DR)(b)(g)		
Commercial uses associated/ required with a hotel	0.25	0.20
Marinas	0.25	0.20
Improved Subdivision (IS)	0	0.20
Improved Subdivision – Duplex (IS-D)	0	0.20
Industrial (I)		

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Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
Office	0.40	0.20
Restaurant	0.30	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.40	0.20
Heavy Industrial	0.25	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.40	0.20
Mainland Native Area (MN)	0.03 ^(d)	0.95 ^(e)
Maritime Industries (MI)^{(b)(f)(g)}		
Low Intensity Commercial Retail or Restaurant	0.40	0.20
Medium Intensity Commercial Retail or Restaurant	0.30	0.20
High Intensity Commercial Retail or Restaurant	0.30	0.20
Office	0.50	0.20
Commercial Fishing	0.45	0.20
Light Industrial	0.35	0.20
Heavy Industrial	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.60	0.20
Agriculture (Mariculture)	0.45	0.20
Military Facilities (MF)		
Military Uses	0.50	0.20
Low Intensity Commercial Retail or Restaurant	0.30	0.20
Medium Intensity Commercial Retail or Restaurant	0.30	0.20
High Intensity Commercial Retail or Restaurant	0.30	0.20
Office	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Airport Uses	0.50	0.20
Mixed Use (MU)^{(b)(g)}		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.30	0.20

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Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Native Area (NA)		
Public Buildings/Uses	0.20	0.95
Agriculture	0.20	0.95
Offshore Island (OS)		
	0	0.95
Park and Refuge (PR)		
	0.20	0.90
Preservation (P)		
	0	1.00
Recreational Vehicle (RV)^(b)		
Commercial Retail or Restaurant	<2,500SF ^(per 130-92)	0.20
Marina	0.25	0.20
Sparsely Settled Residential (SS)		
Public Buildings/Uses	0.20	0.80
Agriculture	0.20	0.80
Suburban Commercial (SC)^(b)		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Light Industrial	0.30	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Suburban Residential (SR)		
Low Intensity Commercial Retail or Restaurant	<2,500SF ^(per 130-94)	0.50
Medium Intensity Commercial Retail or Restaurant	<2,500SF ^(per 130-94)	0.50
Office	<2,500SF ^(per 130-94)	0.50
Institutional	0.25	0.50
Public Buildings/Uses	0.25	0.50
Commercial Recreation	0.25	0.50

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
Agriculture	0.25	0.50
Suburban Residential-Limited (SR-L)	0	0.50
Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
Urban Commercial (UC)^(b)		
Low Intensity Commercial Retail or Restaurant	0.45	0.20
Medium Intensity Commercial Retail or Restaurant	0.40	0.20
High Intensity Commercial Retail or Restaurant	0.35	0.20
Office	0.45	0.20
Institutional	0.40	0.20
Public Buildings/Uses	0.35	0.20
Commercial Recreation	0.40	0.20
Urban Residential (UR)	0	0.20
Urban Residential-Mobile Home (URM)	0	0.20
Urban Residential Mobile Home-Limited (URM-L)	0	0.20
<p>(a) Additional open space requirements may apply based on environmental protection criteria - see additional open space ratios in Chapter 118. In accordance with section 101-2(1), the most restrictive of these ratios applies.</p> <p>(b) For properties consisting of hammocks, pinelands or disturbed wetlands within the Mixed Use/Commercial and Mixed Use/ Commercial Fishing future land use categories, the maximum floor area ratio shall be 0.10.</p> <p>(c) Per Policy 101.5.25, within the CFSD-20 land use district (Little Torch Key), residential density shall be allowed in addition to the permitted nonresidential uses and intensity (i.e., density and intensity shall not be counted cumulatively).</p> <p>(d) Within the Mainland Native Area land use district, campground spaces and nonresidential buildings shall only be permitted for educational, research or sanitary purposes.</p> <p>(e) The minimum open space ratio for the MN zoning district is 0.95 for campground and nonresidential uses. For permanent residential uses within the MN zoning district, the minimum open space ratio is 0.99, as shown in the density table in Section 130-157.</p> <p>(f) A mixture of uses shall be maintained for parcels designated as MI zoning district that are within the MC future land use category. Working waterfront and water dependent uses, such as marina, fish house/market, boat repair, boat building, boat storage, or other similar uses, shall comprise a minimum of 35% of the upland area of the property, adjacent to the shoreline, pursuant to Policy 101.5.6 of the Comprehensive Plan.</p>		

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
(g) <u>Notwithstanding anything to the contrary elsewhere in this Land Development Code, for parcels located within the MU, MI, and DR zoning districts on Stock Island, covered, enclosed boat racks not associated with retail sales of boats are not considered nonresidential floor area.</u>		

d. Reason for Proposed Text Amendment

This text amendment Application amends Section 130-164 of the LDC with the purpose of allowing development of Boat Barns exempt from maximum floor area ratio. Currently, covered, unenclosed boat racks with three or fewer sides are exempt from floor area ratio calculation, but Boat Barns are not.

The Amendment eliminates an artificial distinction with no significance to the floor area ratio scheme. There is no functional or operational difference between covered, unenclosed boat racks and Boat Barns. However, under the current LDC, Boat Barns count toward the maximum floor area ratio for a given parcel, while non-enclosed covered boat storage buildings do not. This incentivizes development and continued use of unenclosed boat storage and disincentivizes development and use of enclosed boat storage which is more secure from a security perspective and less susceptible to damage in a wind event and daily damage from the elements, including UV rays.

Simple physics dictates that a one, two, or three sided building has an increased risk of sustaining damage in a wind event as opposed to a four-sided, enclosed building. Because of the lack of enclosure, wind blowing into the unenclosed structure can create a “sail” effect, stressing the structural components of the building. An enclosed building presents no such opportunity. From a practical perspective, designs of enclosed boat storage buildings which are rated for hurricane-force winds are readily available, whereas three-and-fewer sided buildings are not typically designed to withstand high-intensity winds.

There is no public policy justification for the current disparate treatment of unenclosed boat racks and Boat Barns. Both enclosed and unenclosed boat racks are “constructed, installed or portable, the use of which requires a location on a parcel of land,” and as such meet the LDC definition of *structure*.

Figure 1, below, depicts an elevation and an aerial of an enclosed, four-sided structure intended for boat dry rack storage. This structure’s floor area counts toward a parcel’s maximum floor area ratio:

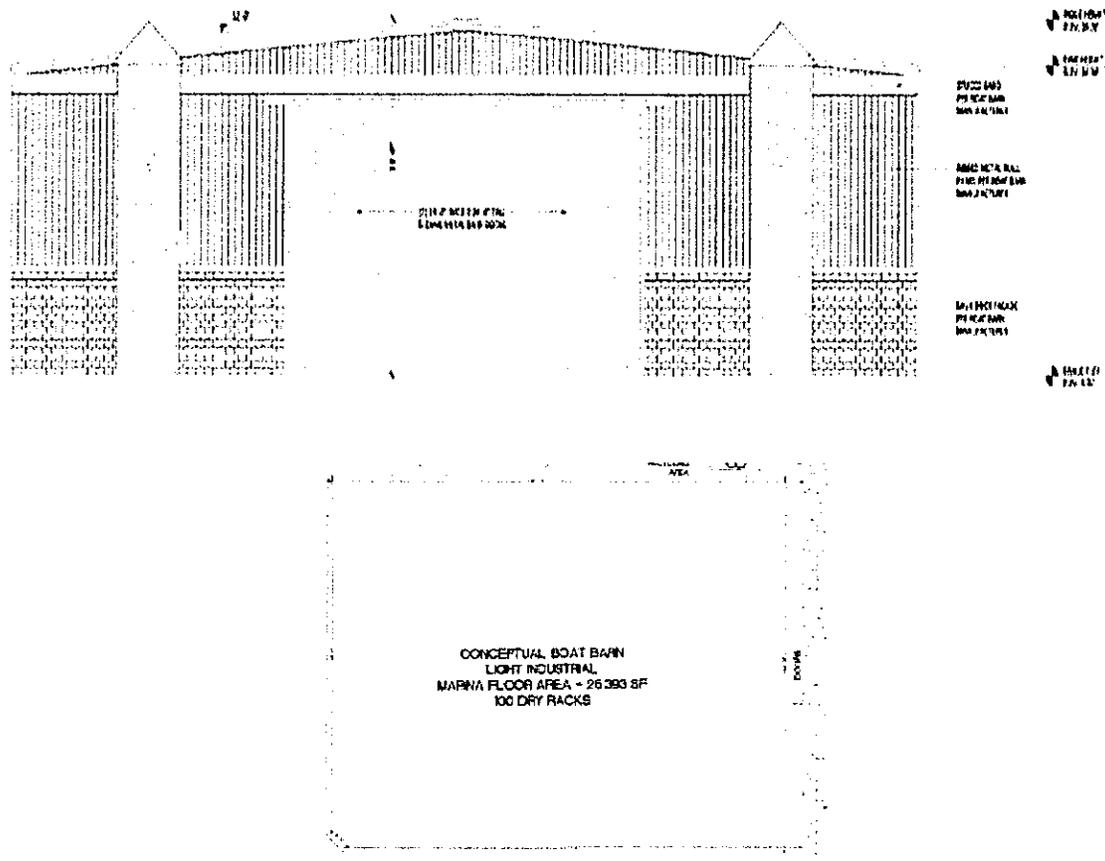
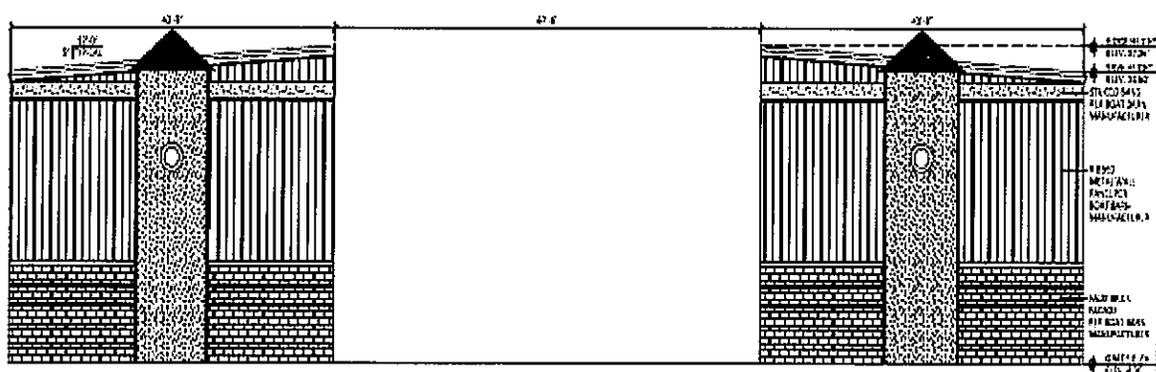


Figure 2, below, depicts an elevation and an aerial of the same structure “cut” in half, creating two three-sided, unenclosed structures. The floor area of these structures, provided they are utilized for boat storage use unrelated to retail sales, do not count toward a parcel’s maximum FAR:

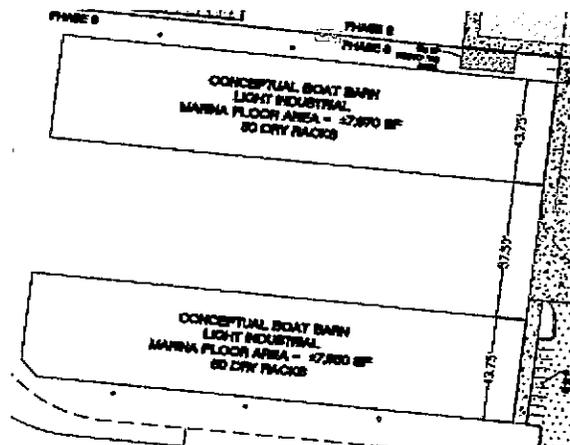


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The above Figures illustrate the issues faced under the current LDC and the practical need for the Amendment. The Amendment will not change the function of the LDC in any way but will allow developers and port operators to meet Florida Building LDC requirements more easily and economically for boat rack structures, while decreasing the risk to boats stored inside as addressed herein.

1. History and Nonconformity Issues

The current scheme of utilizing Boat Barn floor area in floor area ratio calculations is a relatively new development. Until a text amendment in 2014, LDC Section 138-47 provided, in pertinent part, that “[a]dditionally, boat barns, covered and unenclosed boat racks with three or fewer sides not associated with retail sales of boats which do not exceed 50 percent of the net buildable area of the lot/parcel are not considered nonresidential floor area.”

Monroe County consistently interpreted this Section to mean that fully enclosed Boat Barns which did not exceed 50 percent of the net buildable area of a site were not considered to possess floor area. *See* April 30, 2014 Memorandum re: Key West Harbour Yacht Club Conditional Use, P. 15, (“The total area of the boat barns does not exceed 50 percent of the net buildable area. Therefore, the floor area is not considered nonresidential floor area and not subject to FAR under the regulations at the time these boat barns were approved.”); *See also* January 21, 2014 Memorandum re: Oceanside Marina Conditional Use, P. 15, (“Pursuant to a recent text amendment...(adopted by ordinance no. 019-2013)), fully enclosed Boat Barns consist of nonresidential floor area and are thereby subject to a FAR. Prior to the text amendment, the floor area of the boat barn was not considered nonresidential floor area if its total floor area did not exceed 50% of the total land area on which it was situated...”).

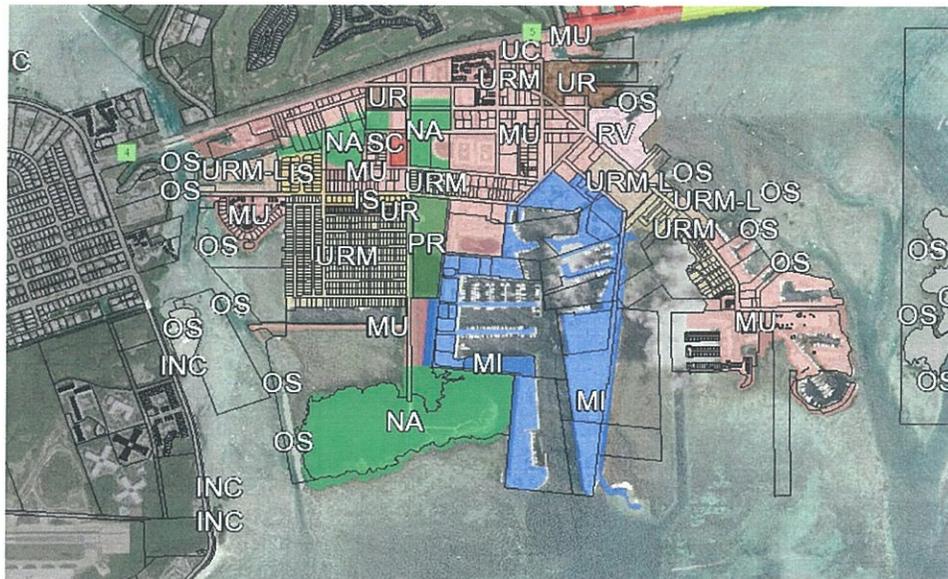
Ordinance 019-2013 amended the LDC to eliminate the FAR exemption for Boat Barns. Since the effectiveness of the text amendment, very few boat barns have been erected on Stock Island, including the three-sided boat rack structure at Hurricane Hole Marina (Parcel ID No. 00132640-000100), within the Mixed-Use zoning district.

The implementation of Ordinance 019-2013 through LDC Section 138-47 also has the unintended consequence of disallowing the redevelopment of Boat Barns which are currently non-conforming structures (including the Boat Barns at Oceanside Marina and Key West Harbour Yacht Club) because FAR calculations *including* the square footage of the Boat Barns would exceed 100% of the development capacity of the respective parcels.

Pursuant to LDC Section 101-1, a nonconforming structure is defined as “a structure which does not conform to a current provision or regulation provided in the Comprehensive Plan and/or this LDC.” Pursuant to LDC Section 102-57(e)(2)(b), “any nonconforming structure that is damaged or destroyed so as to require substantial improvement may be repaired or restored only if the structure conforms to the provisions of the land use (zoning) district in which it is located.” As such, in the event of damage or destruction of one or more of the non-conforming Boat Barns, the property owner would be required to develop three-sided, unenclosed storage facilities in order to obtain an equal amount of usable square footage. As depicted in Figures 1 and 2, above, there is no meaningful legal or functional distinction between three-sided, unenclosed boat rack structures and Boat Barns.

2. Geographic Limitation

The Amendment applies to the MI, MU, and DR districts located on Stock Island, as parcels zoned MI and MU constitute the bulk of waterward parcels capable of commercial development within the boundaries of Stock Island, and Key West Harbour Yacht Club recently amended their zoning designation from MU to Destination Resort (DR). The below aerial shows the current zoning districts for the Safe Harbor surrounding areas (zoned MI), and waterward marina properties including Oceanside Marina, Lejeune Airport Park, and Hurricane Hole Marina (zoned MU). It is important to note that the zoning for the parcel known as Key West Harbor Yacht Club has been amendment to Destination Resort (DR).



II. Consistency with the Monroe County Year 2030 Comprehensive Plan, the Florida Statutes, and Principles for Guiding Development

A. The Proposed Amendment implements and is consistent with the following Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan. Specifically, the amendment furthers:

Objective 101.4: Monroe County shall regulate nonresidential development to maintain a balance of land uses to serve the needs of the future population of Monroe County.

GOAL 217: The coastal area of Monroe County shall be managed to promote public access to the marine and coastal waters, to balance the protection of recreational and commercial working waterfront and commercial fishing uses and the preservation and protection of coastal and natural resources and the community character. [§163.3178(2)(g), F.S.]

GOAL 502: All existing and future residents and visitors of Monroe County shall be served with ports¹ in a manner that maximizes safety, convenience, economic benefit, environmental compatibility and consistency with other elements of the comprehensive plan.

Objective 502.1: Because of the Florida Keys' unique nature as an archipelago, Monroe County shall promote the preservation and enhancement of the existing ports and port related activities.

B. The Proposed Amendment is consistent with Florida Statutes

There are no provisions of the Florida Statutes inconsistent with the proposed Amendment.

C. The amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statutes. The Proposed Amendment specifically furthers the following Principles (Bolded):

For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions.

¹ "Port" is defined in the Comprehensive Plan as "a place alongside navigable water with facilities for the loading and unloading of vessels and cargo." Private marinas meet this definition.

- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (b) Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- (d) **Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.**
- (e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.
- (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.
- (g) Protecting the historical heritage of the Florida Keys.
- (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 - 1. The Florida Keys Aqueduct and water supply facilities;
 - 2. Sewage collection, treatment, and disposal facilities;
 - 3. Solid waste treatment, collection, and disposal facilities;
 - 4. Key West Naval Air Station and other military facilities;
 - 5. Transportation facilities;
 - 6. Federal parks, wildlife refuges, and marine sanctuaries;
 - 7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
 - 8. City electric service and the Florida Keys Electric Co-op; and
 - 9. Other utilities, as appropriate.
- (i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems.
- (j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.
- (k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.

- (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.
- (m) **Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post disaster reconstruction plan.**
- (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is consistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.

III. Changed Projections, Assumptions and New Issues

The Board of County Commissioners may consider an amendment if the change is based on one or more factors, including changed projections (e.g. regarding public service needs) from those on which the text was based, changed assumptions (e.g. regarding demographic trends), data errors, new issues, or recognition of a need for additional detail or comprehensiveness.

The proposed Amendment is based on a need for additional detail or comprehensiveness. The current LDC disparately treats enclosed Boat Barns and unenclosed, three-or-fewer sided boat storage racks with no meaningful distinction. The operational, concurrency, and environmental impacts are identical for enclosed Boat Barns as for three-sided, unenclosed boat racks. The Amendment encourages sound, attractive, and practical development of boat storage racks.

The proposed Amendment is based on changed projections as to the needs of the public. As Monroe County braces itself to deal with the increasingly-evident impacts of climate change, an approach which considers and encourages best practices for storm readiness and hardening is necessary.

According to the U.S. National Climate Assessment Report, "Climate Change Impacts" (the "NCA Report"), produced by an advisory committee chartered under the Federal Advisory Committee Act, for the Subcommittee on Global Change Research and at the request of the U.S. Government, "[t]here has been a substantial increase in most measures of Atlantic hurricane activity since the early 1980s...[citations omitted] These include measures of intensity, frequency, and duration as well as the number of strongest (category 4 and 5) storms." See NCA Report, P. 41. A copy of the NCA Report is attached hereto and incorporated herein as **Exhibit A**.

The Amendment will encourage storm-hardened and practical development of boat storage facilities. The recent wind-damage and water-damage impacts of Hurricane Irma and the projected increased intensity of Atlantic hurricanes mitigate for policies which encourage the protection of personal property (including boats) during storm events, and for investment by developers and port operators in infrastructure which provide peace of mind to visitors and tourists who may otherwise be wary to store boats in the Florida Keys for seasonal use as a result of hurricane impacts

The examples of damage to unenclosed boat storage racks as a result of Hurricane Irma are readily apparent up and down the Keys. A pertinent specific example is the Sea Center on Big Pine Key, Monroe County RE # 00244060-000000. The Sea Center sustained catastrophic damage to boats stored outside the enclosed Boat Barn, while not one boat located within the Boat Barn was damaged.

The Amendment will allow redevelopment of existing non-conforming Boat Barn facilities in the event of damage or destruction. There is no public policy distinction between the permissible reconstruction of enclosed Boat Barns in the event of damage or destruction, and the currently allowed (for non-conforming Boat Barns) reconstruction as one or more unenclosed structures.

Furthermore, despite the best efforts of law enforcement, marine-related theft is on the rise in the Florida Keys. Pursuant to the June 21, 2017 Keynoter Article, "Marine Related Thefts on Rise Throughout the Florida Keys" (the "Marine Theft Article"), the theft of at least three (3) outboard engines, one (1) outboard lower unit, and three separate incidents of fishing gear theft from boats occurred over a ten day span in June, 2017. A copy of the Marine Theft Article is attached hereto and incorporated herein as **Exhibit B**. One need only pick up a local newspaper any given week to find reports of the increased prevalence of marine-related theft.

The permissible development of enclosed Boat Racks without their square footage counting toward FAR encourages developers and port operators to provide an additional option for boat storage which provides increased security to both tourist and resident boat users. It is axiomatic that an enclosed, locked boat storage structure reduces the risk of marine-related (engine and engine parts, fishing equipment, electronic equipment) theft as compared to structures where boats are visible to the naked eye. While the Marine Theft Article simply provides that "[m]ost boat, motor, and fishing and diving equipment thefts can be easily prevented with minimum effort. At the end of the day, remove your gear from the boat and lock it up[.]," motors cannot be readily removed from boats and boats themselves are vulnerable to theft when stored anywhere other than enclosed storage under lock and key. The Amendment will encourage theft-deterrence in the marine sphere and allow port operators to provide in-demand storage more economically, explicitly furthering Goal 502 of the Comprehensive Plan that "[a]ll existing and future residents and visitors of Monroe County shall be served with ports in a manner that *maximizes safety, convenience, economic benefit, environmental compatibility and consistency with other elements of the comprehensive plan.*" (*Emphasis added*).

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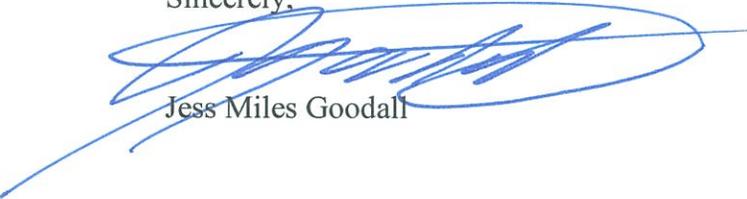
IV. No Adverse Community Change

There will be no adverse change to unincorporated Monroe County if the Amendment is approved. As discussed herein, there are no increased concurrency, environmental, or practical impacts associated with development and use of enclosed boat barns as opposed to unenclosed boat storage racks with three or fewer sides. All such development will be required to comply with level of service, concurrency, and performance standards as set forth in the LDC. The Amendment is geographically limited in scope.

V. Conclusion

Based on the foregoing, we request consideration and adoption of the Amendment. Thank you for your consideration and assistance, and please feel free to contact me with any questions.

Sincerely,



Jess Miles Goodall

Enclosures

BWS/JG/bg

Cc (*Electronically*):

Ilze Aguila, Planning Commission Supervisor (Aguila-Ilze@monroecounty-fl.gov)

End of Additional File 2022-076

Section(s) of Land Development Code Affected :

See attached supporting Background Letter providing information, and Data and Analysis.

Please describe the reason for the proposed text amendment (attach additional sheets if necessary):

See attached supporting Background Letter providing information, and Data and Analysis.

Please describe how the proposed amendment implements and is consistent with the Comprehensive Plan:

See attached supporting Background Letter providing information, and Data and Analysis.

Please describe how proposed amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statute:

See attached supporting Background Letter providing information, and Data and Analysis.

The Board of County Commissioners may consider an amendment if the change is based on one or more of the following factors. Please describe how one or more of the following factors shall be met (attach additional sheets if necessary):

- 1) **Changed projections (e.g. regarding public service needs) from those on which the text was based**
See attached supporting Background Letter providing information, and Data and Analysis.

- 2) **Changed assumptions (e.g. regarding demographic trends):**
See attached supporting Background Letter providing information, and Data and Analysis.

- 3) **Data errors, including errors in mapping, vegetative types and natural features:**
See attached supporting Background Letter providing information, and Data and Analysis.

- 4) **New issues:**
See attached supporting Background Letter providing information, and Data and Analysis.

- 5) **Recognition of a need for additional detail or comprehensiveness:**
See attached supporting Background Letter providing information, and Data and Analysis.

6) **Data updates:**

See attached supporting Background Letter providing information, and Data and Analysis.

In no event shall an amendment be approved which will result in an adverse community change of the planning area in which the proposed development is located or to any area in accordance with a Livable CommuniKeys master plan. Please describe how the text amendment would not result in an adverse community change (attach additional sheets if necessary):

See attached supporting Background Letter providing information, and Data and Analysis.

* * * * *

Applicants submitting an application for an amendment to the text of the Land Development Code shall participate in a concept meeting with the Planning and Environmental Resources Department, as indicated in Section 102-158(d)(3), to discuss the proposed amendment.

Scheduling. A concept meeting shall be scheduled by department staff once the application is determined to be complete.

As part of this concept meeting, department staff will identify whether or not the proposed text amendment will have a county-wide impact. If the proposal is determined to have a county-wide impact, a public meeting with the Board of County Commissioners (“**Impact Meeting**”) prior to the application proceeding to the DRC for review is required. The applicant shall coordinate with the Planning Director regarding the date and time of the Impact Meeting; however, all Impact Meetings shall be held in Marathon.

Notice of Meeting. The Impact Meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation.

Noticing and Advertising Costs. The applicant shall pay the cost of the public notice and advertising for the Impact Meeting and provide proof of proper notice to the Planning Director.

The Impact Meeting is not to be a public hearing (the BOCC will not vote on the proposal), but a public meeting during which the BOCC may offer their initial opinions and the public may have input on the proposed amendment.

PROOF OF PROPER NOTICING ON THE IMPACT MEETING WILL BE REQUIRED.

Applicants requesting a Land Development Code Text Amendment shall provide for public participation through a community meetings indicated in Code Section 102-159.

Scheduling. The applicant will coordinate with the Planning Director regarding the date, time and location of the proposed community meeting; however, all meetings are to be held on a weekday evening at least three (3) months prior to any of the public hearings.

Notice of Meeting. The community meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation, mailing of notice to surrounding property owners, and posting of the subject property.

Noticing and Advertising Costs. The applicant shall pay the cost of the public notice and advertising for the community meeting and provide proof of proper notice to the Planning Director.

The community meeting shall be facilitated by a representative from the Monroe County Planning & Environmental Resources Department and the applicant shall be present at the meeting.

PROOF OF PROPER NOTICING ON THE COMMUNITY MEETING WILL BE REQUIRED.

* * * * *

All of the following must be submitted in order to have a complete application submittal:
(Please check as you attach each required item to the application)

- Completed application form (unaltered and unbound)
- Correct fee (check or money order payable to *Monroe County Planning & Environmental Resources*)
- Existing text of Land Development Code section(s) affected
- Proposed amendment(s) to text of Land Development Code section(s). *Must be provided in strikethrough and underline format.*
- If a site specific amendment is proposed:
 - Proof of ownership (i.e., Warranty Deed)
 - Ownership Disclosure Form
 - Current Property Record Card(s) from the Monroe County Property Appraiser
 - Location map
 - Photograph(s) of site(s) from adjacent roadway(s)
 - Signed and Sealed Boundary Survey(s), prepared by a Florida registered surveyor – eight (8) sets (at a minimum, survey should include elevations; location and dimensions of all existing structures, paved areas and utility structures; all bodies of water on the site and adjacent to the site; total acreage by land use district; total acreage by habitat; and total upland area
 - A list of names and addresses of all real property owners within a 600 foot radius of the subject property(ies). This list should be compiled from the current tax rolls of the Monroe County Property Appraiser. In the event that a condominium development is within the 600 foot radius, each unit owner must be included

If applicable, the following must be submitted in order to have a complete application submittal:

- N/A** Notarized Agent Authorization Letter (note: authorization is needed from all owner(s) of the subject property)
- N/A** Copy of current Future Land Use Map (*required if application affects specific and defined area*)
- N/A** 600ft Radius report, prepared by the Monroe County Property Appraiser's Office (*required if application affects specific and defined area*)
- N/A** Traffic Study, prepared by a licensed traffic engineer (*required if application affects specific and defined area*)
- N/A** Transportation fee of \$5,000 to cover the cost of experts hired by the Department to review the traffic study – any unused funds deposited will be returned upon approval (*required if application affects specific and defined area*)

If deemed necessary to complete a full review of the application, within reason, the Planning & Environmental Resources Department reserves the right to request additional information.

Additional fees may apply pursuant to the approved fee schedule.

* * * * *

Has a previous application been submitted for this site(s) within the past two years? Yes No

Is there a pending code enforcement proceeding involving all or a portion of the parcel(s) proposed for development? Yes No Code Case file # _____ Describe the enforcement proceedings and if this application is being submitted to correct the violation: _____

The applicant/owner hereby acknowledges and agrees that any staff discussions or negotiations about conditions of approval are preliminary only, and are not final, nor are they the specific conditions or demands required to gain approval of the application, unless the conditions or demands are actually included in writing in the final development order or the final denial determination or order.

By signing this application, the owner of the subject property authorizes the Monroe County Planning & Environmental Resources staff to conduct all necessary site visits and inspections on the subject property.

I, the Applicant, certify that I am familiar with the information contained in this application, and that to the best of my knowledge such information is true, complete and accurate.

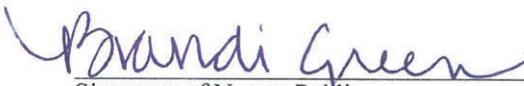
Signature of Applicant:  Date: 04/20/2022

STATE OF FLORIDA
COUNTY OF MONROE

Sworn to and subscribed before me this 20th day of APRIL, 20 22,

by means of physical presence or online notarization,

by JESS MILES GOODALL, who is personally known to me.
(PRINT NAME OF PERSON MAKING STATEMENT)


Signature of Notary Public

Brandi Green
Print, Type or Stamp Commissioned Name of Notary Public
My commission expires:



Send complete application package to:

Monroe County Planning & Environmental Resources Department
Marathon Government Center
2798 Overseas Highway, Suite 400
Marathon, FL 33050

SMITH/HAWKS
ATTORNEYS AT LAW

RECEIVED

MAY 02 2022

MONROE CO. PLANNING DEPT.

Barton Smith, Esq.
Jess Miles Goodall, Esq.
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Facsimile: (305) 296-8448
Email: Bart@SmithHawks.com
Jess@SmithHawks.com

VIA EMAIL

April 29, 2022

Emily Schemper, Sr. Director Planning & Environmental Resources
Comprehensive Planning Manager
Monroe County Planning & Environmental Resources Department
2798 Overseas Highway, Suite 400
Marathon, FL 33050
Email: Schemper-Emily@MonroeCounty-FL.Gov

Re: **Amended and Restated - Proposed Text Amendment to Section 130-164
of the Monroe County Land Development Code**

Dear Emily,

Please accept this correspondence as the Amended and Restated Background Letter providing information, and Data and Analysis in support of the proposed Text Amendment to the Monroe County Land Development Code (“LDC”) Application (“Application”) in accordance with LDC §102-158.

I. Text Amendment Background

a. Overview

The Text Amendment proposes to amend Section 130-164 of the Monroe County LDC to include a footnote providing that covered, enclosed boat racks not associated with retail sales of boats (“Boat Barns”), located within the Marine Industries (MI), Mixed Use (MU), and Destination Resort (DR) Land Use (Zoning) Districts on Stock Island (the “Amendment Areas”), are exempt from floor area for purposes of nonresidential intensity calculations.

b. Amendment Request

Considering the significant impacts of Hurricane Irma on upland-stored vessels, the proposed text amendment (the “Amendment”) seeks to encourage the construction of fully enclosed Boat Barns rather than three-sided, open boat storage racks within the MI, MU, and DR Land Use (Zoning) Districts on Stock Island. Further, the Amendment would allow the reconstruction of existing Boat Barns – which are non-conforming structures in many cases – within the Amendment Area in the event of damage or destruction requiring substantial improvement.

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Additions to the relevant portions of Section 130-164 are set forth below in [Blue](#) and deletions are set forth in ~~Red~~.

c. The Proposed Amendment

Maximum Nonresidential Land Use Intensity and Minimum Open Space		
Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio^(a)
Airport (AD)	0.10	0.20
Commercial 1 (C1)		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Light Industrial	0.30	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Commercial 2 (C2)		
Low Intensity Commercial Retail or Restaurant	0.50	0.20
Medium Intensity Commercial Retail or Restaurant	0.40	0.20
High Intensity Commercial Retail or Restaurant	0.35	0.20
Office	0.45	0.20

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio(a)
Light Industrial	0.40	0.20
Institutional	0.40	0.20
Public Buildings/Uses	0.35	0.20
Commercial Recreation	0.25	0.20
Commercial Fishing Area (CFA)^(b)	0.40	0.20
Commercial Fishing Special District (CFSD)^{(b)(c)}		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.30	0.20

Heavy Industrial	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Fishing Village (CFV)^(b)	0.40	0.20
Conservation (CD)	0.05	0.90
Destination Resort (DR)^{(b)(g)}		
Commercial uses associated/ required with a hotel	0.25	0.20
Marinas	0.25	0.20
Improved Subdivision (IS)	0	0.20
Improved Subdivision – Duplex (IS-D)	0	0.20
Industrial (I)		

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
Office	0.40	0.20
Restaurant	0.30	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.40	0.20
Heavy Industrial	0.25	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.40	0.20
Mainland Native Area (MN)	0.03 ^(d)	0.95 ^(e)
Maritime Industries (MI)^{(b)(f)(g)}		
Low Intensity Commercial Retail or Restaurant	0.40	0.20
Medium Intensity Commercial Retail or Restaurant	0.30	0.20
High Intensity Commercial Retail or Restaurant	0.30	0.20
Office	0.50	0.20
Commercial Fishing	0.45	0.20
Light Industrial	0.35	0.20
Heavy Industrial	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.60	0.20
Agriculture (Mariculture)	0.45	0.20
Military Facilities (MF)		
Military Uses	0.50	0.20

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio^(a)
Low Intensity Commercial Retail or Restaurant	0.30	0.20
Medium Intensity Commercial Retail or Restaurant	0.30	0.20
High Intensity Commercial Retail or Restaurant	0.30	0.20
Office	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Airport Uses	0.50	0.20
Mixed Use (MU)^{(b) (g)}		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.30	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Native Area (NA)		
Public Buildings/Uses	0.20	0.95
Agriculture	0.20	0.95
Offshore Island (OS)	0	0.95
Park and Refuge (PR)	0.20	0.90
Preservation (P)	0	1.00
Recreational Vehicle (RV)^(b)		
Commercial Retail or Restaurant	<2,500SF ^(per 130-92)	0.20
Marina	0.25	0.20
Sparsely Settled Residential (SS)		
Public Buildings/Uses	0.20	0.80
Agriculture	0.20	0.80
Suburban Commercial (SC)^(b)		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Light Industrial	0.30	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Suburban Residential (SR)		
Low Intensity Commercial Retail or Restaurant	<2,500SF ^(per 130-94)	0.50
Medium Intensity Commercial Retail or Restaurant	<2,500SF ^(per 130-94)	0.50
Office	<2,500SF ^(per 130-94)	0.50
Institutional	0.25	0.50
Public Buildings/Uses	0.25	0.50
Commercial Recreation	0.25	0.50
Agriculture	0.25	0.50
Suburban Residential-Limited (SR-L)	0	0.50

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
Urban Commercial (UC)^(b)		
Low Intensity Commercial Retail or Restaurant	0.45	0.20
Medium Intensity Commercial Retail or Restaurant	0.40	0.20
High Intensity Commercial Retail or Restaurant	0.35	0.20
Office	0.45	0.20
Institutional	0.40	0.20
Public Buildings/Uses	0.35	0.20
Commercial Recreation	0.40	0.20
Urban Residential (UR)	0	0.20
Urban Residential-Mobile Home (URM)	0	0.20
Urban Residential Mobile Home-Limited (URM-L)	0	0.20

(a) Additional open space requirements may apply based on environmental protection criteria - see additional open space ratios in Chapter 118. In accordance with section 101-2(1), the most restrictive of these ratios applies.

(b) For properties consisting of hammocks, pinelands or disturbed wetlands within the Mixed Use/Commercial and Mixed Use/ Commercial Fishing future land use

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio ^(a)
categories, the maximum floor area ratio shall be 0.10.		
(c) Per Policy 101.5.25, within the CFSD-20 land use district (Little Torch Key), residential density shall be allowed in addition to the permitted nonresidential uses and intensity (i.e., density and intensity shall not be counted cumulatively).		
(d) Within the Mainland Native Area land use district, campground spaces and nonresidential buildings shall only be permitted for educational, research or sanitary purposes.		
(e) The minimum open space ratio for the MN zoning district is 0.95 for campground and nonresidential uses. For permanent residential uses within the MN zoning district, the minimum open space ratio is 0.99, as shown in the density table in Section 130-157.		
(f) A mixture of uses shall be maintained for parcels designated as MI zoning district that are within the MC future land use category. Working waterfront and water dependent uses, such as marina, fish house/market, boat repair, boat building, boat storage, or other similar uses, shall comprise a minimum of 35% of the upland area of the property, adjacent to the shoreline, pursuant to Policy 101.5.6 of the Comprehensive Plan.		
(g) <u>Notwithstanding anything to the contrary elsewhere in this Land Development Code, for parcels located within the MU, MI, and DR zoning districts which are located on Stock Island, covered, enclosed boat racks not associated with retail sales of boats are not considered nonresidential floor area.</u>		

d. Reason for Proposed Text Amendment

This text amendment Application amends Section 130-164 of the LDC with the purpose of allowing development of Boat Barns exempt from maximum floor area ratio. Currently, covered, unenclosed boat racks with three or fewer sides are exempt from floor area ratio calculation, but Boat Barns are not.

The Amendment eliminates an artificial distinction with no significance to the floor area ratio scheme. There is no functional or operational difference between covered, unenclosed boat racks and Boat Barns. However, under the current LDC, Boat Barns count toward the maximum floor area ratio for a given parcel, while non-enclosed covered boat storage buildings do not. This incentivizes development and continued use of unenclosed boat storage and disincentivizes development and use of enclosed boat storage which is more secure from a security perspective and less susceptible to damage in a wind event and daily damage from the elements, including UV rays.

Simple physics dictates that a one, two, or three sided building has an increased risk of sustaining damage in a wind event as opposed to a four-sided, enclosed building. Because of the lack of enclosure, wind blowing into the unenclosed structure can create a “sail” effect, stressing the structural components of the building. An enclosed building presents no such opportunity. From a practical perspective, designs of enclosed boat storage buildings which are rated for

hurricane-force winds are readily available, whereas three-and-fewer sided buildings are not typically designed to withstand high-intensity winds.

There is no public policy justification for the current disparate treatment of unenclosed boat racks and Boat Barns. Both enclosed and unenclosed boat racks are “constructed, installed or portable, the use of which requires a location on a parcel of land,” and as such meet the LDC definition of *structure*.

Figure 1, below, depicts an elevation and an aerial of an enclosed, four-sided structure intended for boat dry rack storage. This structure’s floor area counts toward a parcel’s maximum floor area ratio:

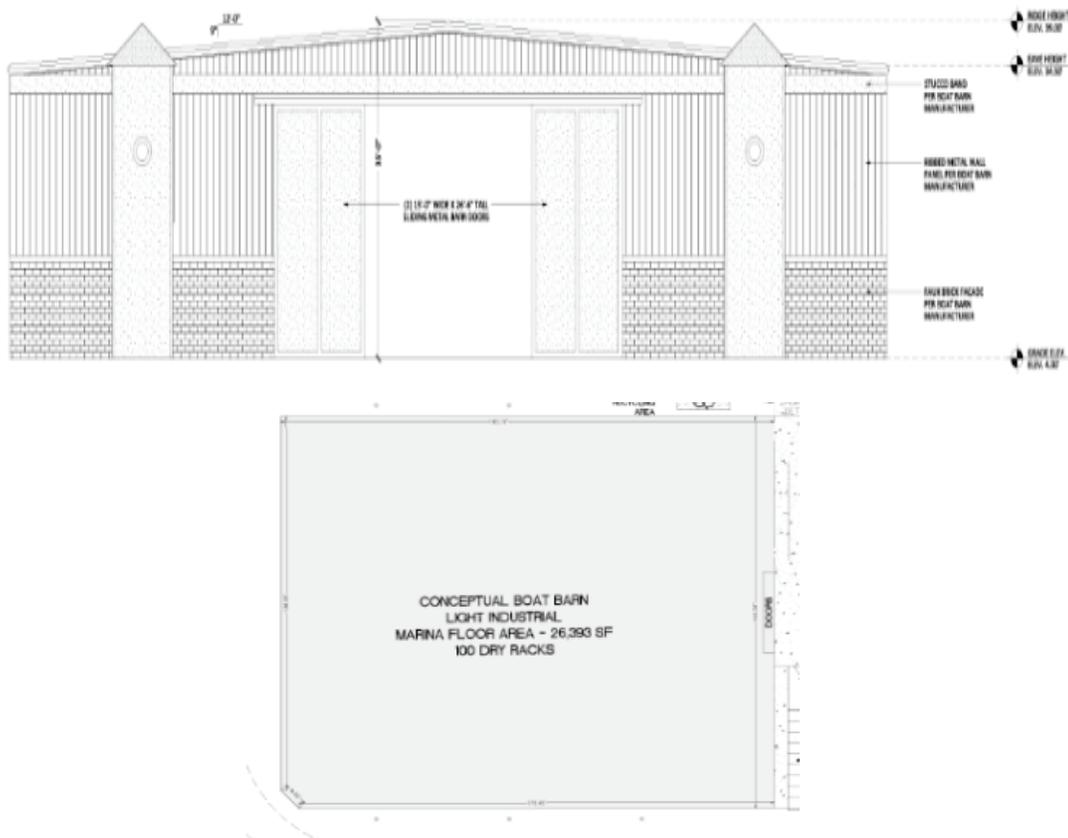
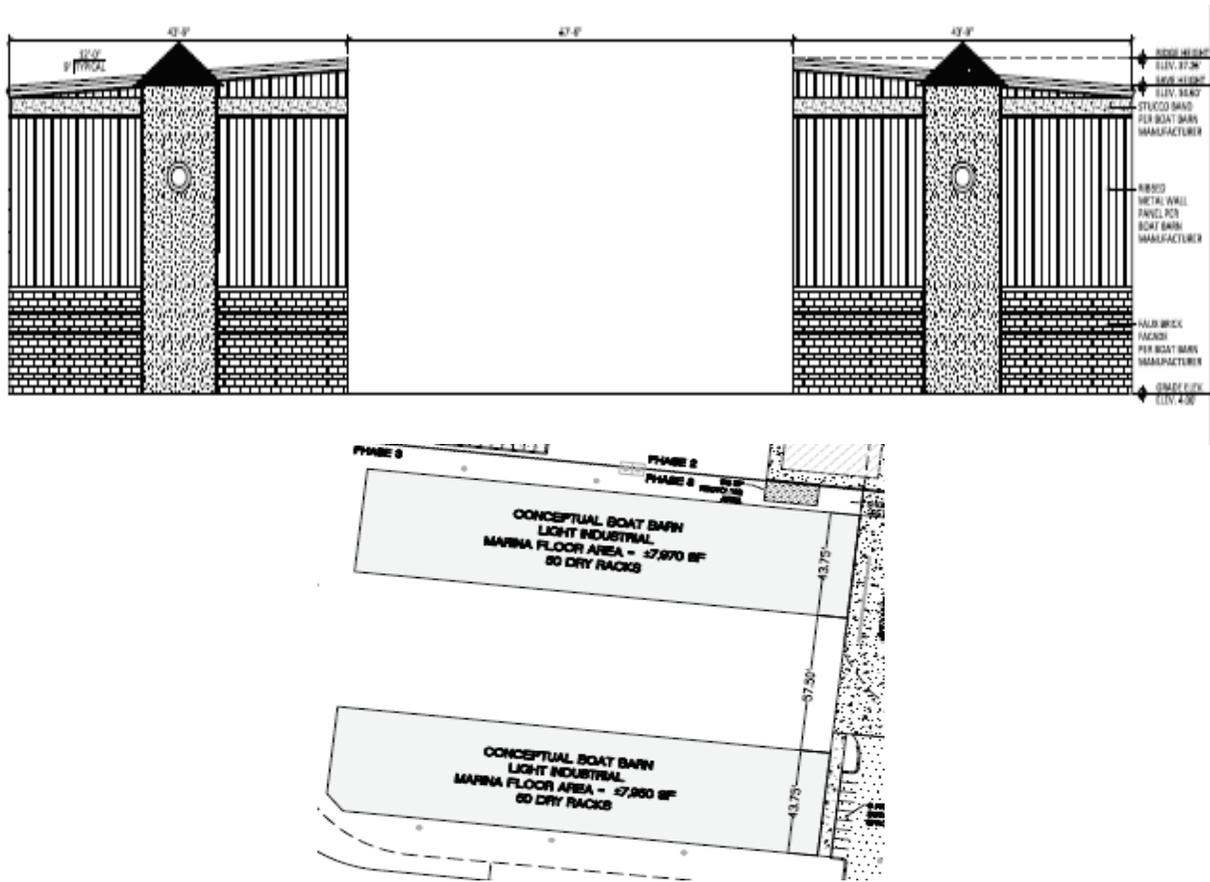


Figure 2, below, depicts an elevation and an aerial of the same structure “cut” in half, creating two three-sided, unenclosed structures. The floor area of these structures, provided they are utilized for boat storage use unrelated to retail sales, do not count toward a parcel’s maximum FAR:



The above Figures illustrate the issues faced under the current LDC and the practical need for the Amendment. The Amendment will not change the function of the LDC in any way but will allow developers and port operators to more easily and economically meet Florida Building LDC requirements for boat rack structures, while decreasing the risk to boats stored inside as addressed herein.

1. History and Nonconformity Issues

The current scheme of utilizing Boat Barn floor area in floor area ratio calculations is a relatively new development. Until a text amendment in 2014, LDC Section 138-47 provided, in pertinent part, that “[a]dditionally, boat barns, covered and unenclosed boat racks with three or fewer sides not associated with retail sales of boats which do not exceed 50 percent of the net buildable area of the lot/parcel are not considered nonresidential floor area.”

Monroe County consistently interpreted this Section to mean that fully enclosed Boat Barns which did not exceed 50 percent of the net buildable area of a site were not considered to possess floor area. See April 30, 2014 Memorandum re: Key West Harbour Yacht Club Conditional Use, P. 15, (“The total area of the boat barns does not exceed 50 percent of the net buildable area. Therefore, the floor area is not considered nonresidential floor area and not subject to FAR under the regulations at the time these boat barns were approved.”); See also

Emily Schemper, Senior Director

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January 21, 2014 Memorandum re: Oceanside Marina Conditional Use, P. 15, (“Pursuant to a recent text amendment...(adopted by ordinance no. 019-2013)), fully enclosed Boat Barns consist of nonresidential floor area and are thereby subject to a FAR. Prior to the text amendment, the floor area of the boat barn was not considered nonresidential floor area if its total floor area did not exceed 50% of the total land area on which it was situated...”).

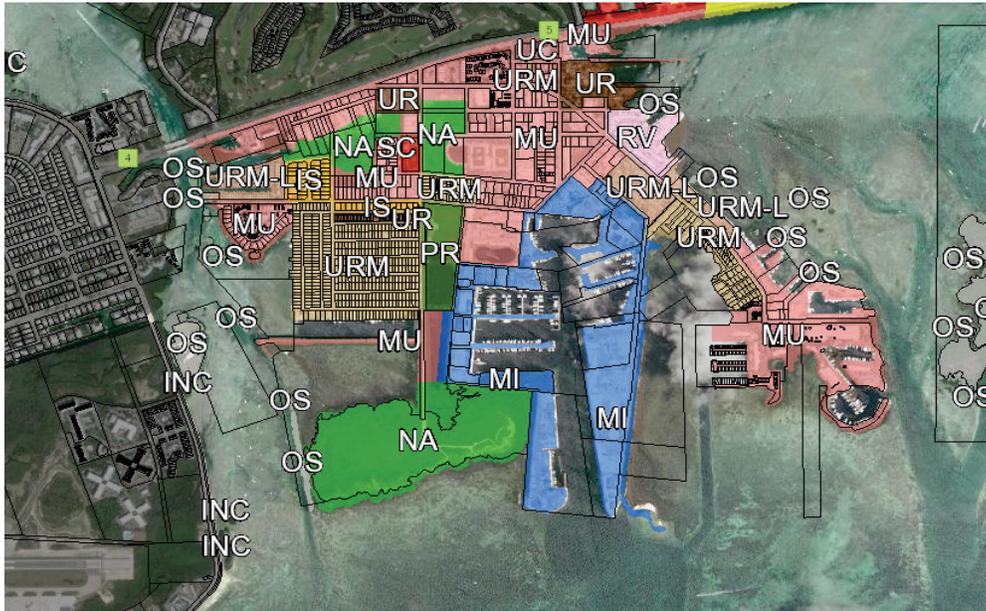
Ordinance 019-2013 amended the LDC to eliminate the FAR exemption for Boat Barns. Since the effectiveness of the text amendment, very few boat barns have been erected on Stock Island, including the three-sided boat rack structure at Hurricane Hole Marina (Parcel ID No. 00132640-000100), within the Mixed-Use zoning district.

The implementation of Ordinance 019-2013 through LDC Section 138-47 also has the unintended consequence of disallowing the redevelopment of Boat Barns which are currently non-conforming structures (including the Boat Barns at Oceanside Marina and Key West Harbour Yacht Club) because FAR calculations *including* the square footage of the Boat Barns would exceed 100% of the development capacity of the respective parcels.

Pursuant to LDC Section 101-1, a nonconforming structure is defined as “a structure which does not conform to a current provision or regulation provided in the Comprehensive Plan and/or this LDC.” Pursuant to LDC Section 102-57(e)(2)(b), “any nonconforming structure that is damaged or destroyed so as to require substantial improvement may be repaired or restored only if the structure conforms to the provisions of the land use (zoning) district in which it is located.” As such, in the event of damage or destruction of one or more of the non-conforming Boat Barns, the property owner would be required to develop three-sided, unenclosed storage facilities in order to obtain an equal amount of usable square footage. As depicted in Figures 1 and 2, above, there is no meaningful legal or functional distinction between three-sided, unenclosed boat rack structures and Boat Barns.

2. Geographic Limitation

The Amendment applies to the MI, MU, and DR districts located on Stock Island, as parcels zoned MI and MU constitute the bulk of waterward parcels capable of commercial development within the boundaries of Stock Island, and Key West Harbour Yacht Club recently amended their zoning designation from MU to Destination Resort (DR). The below aerial shows the current zoning districts for the Safe Harbor surrounding areas (zoned MI), and waterward marina properties including Oceanside Marina, Lejeune Airport Park, and Hurricane Hole Marina (zoned MU). It is important to note that the zoning for the parcel known as Key West Harbor Yacht Club has been amendment to Destination Resort (DR).



II. Consistency with the Monroe County Year 2030 Comprehensive Plan, the Florida Statutes, and Principles for Guiding Development

A. The Proposed Amendment implements and is consistent with the following Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan. Specifically, the amendment furthers:

Objective 101.4: Monroe County shall regulate nonresidential development to maintain a balance of land uses to serve the needs of the future population of Monroe County.

GOAL 217: The coastal area of Monroe County shall be managed to promote public access to the marine and coastal waters, to balance the protection of recreational and commercial working waterfront and commercial fishing uses and the preservation and protection of coastal and natural resources and the community character. [§163.3178(2)(g), F.S.]

GOAL 502: All existing and future residents and visitors of Monroe County shall be served with ports¹ in a manner that maximizes safety, convenience, economic benefit, environmental compatibility and consistency with other elements of the comprehensive plan.

Objective 502.1: Because of the Florida Keys’ unique nature as an archipelago, Monroe County shall promote the preservation and enhancement of the existing ports and port related activities.

¹ “Port” is defined in the Comprehensive Plan as “a place alongside navigable water with facilities for the loading and unloading of vessels and cargo.” Private marinas meet this definition.

B. The Proposed Amendment is consistent with Florida Statutes

There are no provisions of the Florida Statutes inconsistent with the proposed Amendment.

C. The amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statutes. The Proposed Amendment specifically furthers the following Principles (Bolded):

For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions.

- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (b) Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.**
- (e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.
- (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.
- (g) Protecting the historical heritage of the Florida Keys.
- (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 - 1. The Florida Keys Aqueduct and water supply facilities;
 - 2. Sewage collection, treatment, and disposal facilities;
 - 3. Solid waste treatment, collection, and disposal facilities;
 - 4. Key West Naval Air Station and other military facilities;
 - 5. Transportation facilities;
 - 6. Federal parks, wildlife refuges, and marine sanctuaries;

7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
 8. City electric service and the Florida Keys Electric Co-op; and
 9. Other utilities, as appropriate.
- (i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems.
 - (j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.
 - (k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.
 - (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.
 - (m) Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post disaster reconstruction plan.**
 - (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is consistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.

III. Changed Projections, Assumptions and New Issues

The Board of County Commissioners may consider an amendment if the change is based on one or more factors, including changed projections (e.g. regarding public service needs) from those on which the text was based, changed assumptions (e.g. regarding demographic trends), data errors, new issues, or recognition of a need for additional detail or comprehensiveness.

The proposed Amendment is based on a need for additional detail or comprehensiveness. The current LDC disparately treats enclosed Boat Barns and unenclosed, three-or-fewer sided boat storage racks with no meaningful distinction. The operational, concurrency, and environmental impacts are identical for enclosed Boat Barns as for three-sided, unenclosed boat racks. The Amendment encourages sound, attractive, and practical development of boat storage racks.

The proposed Amendment is based on changed projections as to the needs of the public. As Monroe County braces itself to deal with the increasingly-evident impacts of climate change, an approach which considers and encourages best practices for storm readiness and hardening is necessary.

According to the U.S. National Climate Assessment Report, “Climate Change Impacts” (the “NCA Report”), produced by an advisory committee chartered under the Federal Advisory Committee Act, for the Subcommittee on Global Change Research and at the request of the U.S. Government, “[t]here has been a substantial increase in most measures of Atlantic hurricane activity since the early 1980s...[citations omitted] These include measures of intensity, frequency, and duration as well as the number of strongest (category 4 and 5) storms.” See NCA Report, P. 41. A copy of the NCA Report is attached hereto and incorporated herein as **Exhibit A**.

The Amendment will encourage storm-hardened and practical development of boat storage facilities. The recent wind-damage and water-damage impacts of Hurricane Irma and the projected increased intensity of Atlantic hurricanes mitigate for policies which encourage the protection of personal property (including boats) during storm events, and for investment by developers and port operators in infrastructure which provide peace of mind to visitors and tourists who may otherwise be wary to store boats in the Florida Keys for seasonal use as a result of hurricane impacts.

The examples of damage to unenclosed boat storage racks as a result of Hurricane Irma are readily apparent up and down the Keys. A pertinent specific example is the Sea Center on Big Pine Key, Monroe County RE # 00244060-000000. The Sea Center sustained catastrophic damage to boats stored outside the enclosed Boat Barn, while not one boat located within the Boat Barn was damaged.

The Amendment will allow redevelopment of existing non-conforming Boat Barn facilities in the event of damage or destruction. There is no public policy distinction between the permissible reconstruction of enclosed Boat Barns in the event of damage or destruction, and the currently allowed (for non-conforming Boat Barns) reconstruction as one or more unenclosed structures.

Furthermore, despite the best efforts of law enforcement, marine-related theft is on the rise in the Florida Keys. Pursuant to the June 21, 2017 Keynoter Article, “Marine Related Thefts on Rise Throughout the Florida Keys” (the “Marine Theft Article”), the theft of at least three (3) outboard engines, one (1) outboard lower unit, and three separate incidents of fishing gear theft from boats occurred over a ten day span in June, 2017. A copy of the Marine Theft Article is attached hereto and incorporated herein as **Exhibit B**. One need only pick up a local newspaper any given week to find reports of the increased prevalence of marine-related theft.

The permissible development of enclosed Boat Racks without their square footage counting toward FAR encourages developers and port operators to provide an additional option for boat storage which provides increased security to both tourist and resident boat users. It is axiomatic that an enclosed, locked boat storage structure reduces the risk of marine-related

Emily Schemper, Senior Director

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(engine and engine parts, fishing equipment, electronic equipment) theft as compared to structures where boats are visible to the naked eye. While the Marine Theft Article simply provides that “[m]ost boat, motor, and fishing and diving equipment thefts can be easily prevented with minimum effort. At the end of the day, remove your gear from the boat and lock it up[,]” motors cannot be readily removed from boats and boats themselves are vulnerable to theft when stored anywhere other than enclosed storage under lock and key. The Amendment will encourage theft-deterrence in the marine sphere and allow port operators to more economically provide in-demand storage, explicitly furthering Goal 502 of the Comprehensive Plan that “[a]ll existing and future residents and visitors of Monroe County shall be served with ports in a manner that *maximizes safety, convenience, economic benefit*, environmental compatibility and consistency with other elements of the comprehensive plan.” (*Emphasis added*).

IV. No Adverse Community Change

There will be no adverse change to unincorporated Monroe County if the Amendment is approved. As discussed herein, there are no increased concurrency, environmental, or practical impacts associated with development and use of enclosed boat barns as opposed to unenclosed boat storage racks with three or fewer sides. All such development will be required to comply with level of service, concurrency, and performance standards as set forth in the LDC. The Amendment is geographically limited in scope.

V. Conclusion

Based on the foregoing, we request consideration and adoption of the Amendment. Thank you for your consideration and assistance, and please feel free to contact me with any questions.

Sincerely,


for Barton W. Smith

Enclosures

BWS/JG/bg

Cc (*Electronically*):

Ilze Aguila, Planning Commission Supervisor (Aguila-Ilze@monroecounty-fl.gov)