



MEMORANDUM
MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT
We strive to be caring, professional and fair

To: Monroe County Development Review Committee and
Emily Schemper, AICP, CFM, Senior Director of Planning & Environmental Resources

From: Mayté Santamaria, Senior Planning Policy Advisor

Date: September 21, 2021

Subject: An ordinance by Monroe County Board of County Commissioners adopting amendments to the Monroe County Land Development Code Section 102-57 Nonconforming Structures and Section 131-1 Required Setbacks, and Section 131-3 Applicability of Required Setbacks, to facilitate the elevation (lifting up) of lawfully-existing residential dwelling units to or above base flood level to reduce the risk of future flood damage by providing standards, waivers or reductions to certain setback and open space requirements to allow for necessary improvements, including ingress and egress structures and structures for mechanical, plumbing and electrical systems, appliances and components (File 2021-131).

Meeting: date

I. REQUEST

As directed by the BOCC on July 21, 2021 (see agenda item K6), the Monroe County Planning & Environmental Resources Department is proposing amendments to the Monroe County Land Development Code Section 102-57 Nonconforming Structures and Section 31-1 Required Setbacks, to facilitate the elevation (lifting up) of lawfully-existing residential dwelling units by providing waivers or reductions to certain setback and open space requirements to allow necessary improvements to provide access (stairs, ramp, etc.) to a house elevated above base flood level to reduce the risk of future flood damage.

The associated Comprehensive Plan amendments are included within the County's proposed *Evaluation and Appraisal (EA) amendments*. The proposed text amendments to Section 102-57 Nonconforming Structures and Section 31-1 Required Setbacks, are necessary to be consistent with the proposed comprehensive plan amendments. Sections 163.3194 and 163.3201, F.S., require land development regulations to be consistent with and implement the Comprehensive Plan.

II. BACKGROUND INFORMATION

On September 10, 2017, Hurricane Irma made landfall near Cudjoe Key as a Category 4 Hurricane with maximum sustained winds of 130 mph and flooding occurred in various neighborhoods. Hurricane Irma caused significant damage throughout the Florida Keys, particularly to structures built prior to the upgraded Florida Building Code adopted after Hurricane Andrew, to non-elevated structures and to mobile homes.

To provide additional protection to residents that reside in mobile homes in flood hazard areas, reduce the repeated impacts by flooding, and enhance public health, safety and welfare, the County already adopted an amendment to eliminate the ability for a mobile home to be placed at an elevation below base flood elevation.

Further, the County has embarked on proactively assisting property owners with voluntary elevations through FEMA funded grant programs. In order to encourage participation in proactive flood mitigation projects, such as elevations, staff recommended to the BOCC to consider allowing owners to elevate their homes, in place (within the existing footprint of the house), without the need for variances to setbacks, etc. If a house was built before current code requirements for setbacks and open space, it is possible the house location on a site is currently nonconforming, and the current code requires that structures undergoing substantial improvement, where work equals or exceeds 50 percent of the structure's market value, be fully rebuilt to the current code (come into compliance with current requirements).

Additional amendments are needed to provide allowances within certain setback and open space requirements, to allow elevations and eliminate impediments to elevating lawfully-existing residential dwelling units, not including mobile homes, above base flood level to reduce future flood damage. This is particularly important, in light of the impacts of Hurricane Irma, the County's better understanding of the flood risks associated with structures below base flood elevation, the opportunity for property owners to reduce their insurance premiums by elevating homes, and the County's ongoing participation in numerous recovery, post disaster and resiliency programs. Further, as the County begins elevating roadways and improving drainage in low lying neighborhoods, it is important to encourage private property owners to elevate their homes.

Property owners may self-fund improvements to their homes to elevate above base flood levels and there may be additional funding opportunities with the County participating in several grant programs to provide for the mitigation of flood risks, such as:

- FEMA Hazard Mitigation Grant Program (HMGP) for mitigation measures
- Flood Mitigation Assistance (FMA) Grant Program to reduce or eliminate the long-term risk of flood damage
- Rebuild Florida Program to demo, repair, reconstruct and elevate primary homes

Considering these programs, and the County's current effort to utilize the FEMA Flood Mitigation Assistance (FMA) Grant Program (typically federal funding is available for up to 75 percent of the eligible activity costs) and similar funding opportunities, the County is taking steps to further facilitate reducing the risk of future damage, hardship, loss, or flood damage within the community.

Additionally, Monroe County Planning & Environmental Resources Department is proposing *Evaluation and Appraisal (EA) amendments* to the 2030 Comprehensive Plan to update the comprehensive plan to reflect changes in statutory and rule requirements; to update deadlines within the comprehensive plan, to eliminate accomplished or obsolete provisions, to make corrections to text and eliminate grammatical errors; and to amend provisions to reflect changes in local conditions and recent data, trends, issues and challenges.

The proposed *Evaluation and Appraisal (EA) amendments* include Comprehensive Plan policies to facilitate the elevation (lifting up) of lawfully-existing residential dwelling units by waiving or reducing certain setback and open space requirements, to allow necessary improvements to provide access (stairs, ramp, etc.) to a house elevated above base flood level to reduce the risk of future flood damage. These changes were directed by the BOCC on July 21, 2021 to help with rebuilding after storm and to utilize federal and state grant funding opportunities (see agenda item K6).

Staff is proposing a corresponding amendment to the Comprehensive Plan within its required *Evaluation and Appraisal (EA) amendments*. ***The subject of this staff report is the proposed amendment to the Land Development Code.***

Community Meeting and Public Participation

In accordance with LDC Section 102-159(b)(3), a Community Meeting was held on **October 14, 2021**, to provide for public input. There was ___ public in attendance.

Development Review Committee and Public Input

The Development Review Committee considered the proposed amendment at a regular meeting on _____ and received public input.

Planning Commission and Public Input

The Planning Commission considered the proposed amendment at a regular meeting on _____, provided for public input and recommended _____.

III. PROPOSED LAND DEVELOPMENT CODE TEXT AMENDMENTS

The proposed text is shown as follows: additions are in underlined, deletions are ~~stricken through~~.

Sec. 102-57. Nonconforming Structures.

- (a) **Authority to continue.** A nonconforming structure devoted to a use permitted in the land use (zoning) district in which it is located, or devoted to a nonconforming use with authority to continue pursuant to Section 102-56, may be continued in accordance with the provisions of this section.
- (b) **Ordinary repair and maintenance.** Normal maintenance and repair of nonconforming structures registered in accordance with section 102-55 may be performed.
- (c) **Enlargements, expansions, and extensions.** Lawful nonconforming structures that are used in a manner conforming to the provisions of this Land Development Code and the Comprehensive Plan may be enlarged, expanded, or extended, provided that:
 - (1) The improvement does not constitute a substantial improvement;
 - (2) A nonconforming use is not located in the nonconforming structure; and
 - (3) The nonconformity is not further violated.
- (d) **Relocation.** A nonconforming structure, other than a historic structure listed on the National Register of Historic Places, the Florida Inventory of Historic Places, and/or designated as historic by the BOCC, shall not be moved unless it thereafter shall conform to the regulations of the land use (zoning) district in which it is relocated.
- (e) **Termination, Damage or Destruction and Retrofits.**

- (1) *Abandonment.* Where a nonconforming structure is voluntarily abandoned for 18 consecutive months, then such structure shall be demolished, removed or converted to a conforming structure.
- (2) *Damage or destruction.*
 - a. A nonconforming structure that is damaged or destroyed to the extent of less than 50 percent of the fair market value of such structure may be restored as of right if a building permit for reconstruction is issued within six months of the date of the damage (such damage or destruction may be voluntarily or due to natural phenomena whose effects could not be prevented by the exercise of reasonable care and foresight).
 - b. Except as provided in section 135-5, chapter 122 in regard to mobile homes, and section 130-163, 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. Fair market value shall be determined by reference to the official tax assessment rolls for that year or by an appraisal by a qualified independent appraiser. The extent of damage or destruction shall be determined by the building official, in consultation with the Planning Director, by comparing the estimated cost of repairs or restoration with the fair market value.
 - c. Substantial improvement or reconstruction of nonconforming single-family dwelling units/residences shall comply with all applicable setback and open space provisions of this Land Development Code set forth in chapters 130 and 131 except where strict compliance would result in a reduction in lot coverage as compared to the pre-destruction footprint of the dwelling unit/house. In such cases, the previously approved open space ratio shall be applied; and the maximum shoreline setback shall be maintained and in no event shall the shoreline setback be less than ten (10) feet from mean high water.
- (3) *Elevation Retrofits.* To further recovery, post disaster and resiliency, as provided in Policy 101.9.4, a lawfully-existing residential dwelling unit, not including mobile homes, may be retrofitted to elevate the structure above base flood level to reduce flood damage, pursuant to:
 - a. The lawfully-existing dwelling unit may maintain its existing setbacks and open space, even if nonconforming, provided the structure is elevated within the original (existing) footprint of the structure.
 - b. Setbacks and open space requirements are waived to allow necessary improvements to a dwelling unit being retrofitted by elevating the unit to meet or exceed flood levels. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.
 - c. Side and rear setback requirements are waived to allow accessory elevated platforms above base flood for equipment (mechanical, plumbing and electrical systems, appliances and components) situated at least two (2) feet from the side yard property line or at least five (5) feet from the rear yard property line. In no event shall the total combined area of all accessory structures occupy more than 80 percent (80%) of the required side yard setback area or 60 percent (60%) of the required rear yard setback area.
 - d. Maximum shoreline setbacks are to be maintained and, in no event shall a shoreline setback be less than ten (10) feet from mean high water.
 - e. The improvements shall be constructed to avoid off-site discharge of stormwater from the subject parcel, in accordance with Section 114-3 of the Monroe County Land Development Code.

- f. [This Policy does not waive any required minimum vegetated setbacks adjacent to wetlands \(see Policy 203.1.2 and Policy 204.2.5\) and does not authorize any encroachments to a conservation easement.](#)
- g. [This Policy does not restrict a property owner from proposing other additions or improvements to the elevated house, as long as the additions, enlargements, expansions, and extensions do not create a nonconformity or cause a further violation to an existing nonconformity.](#)

(4) *Amortization.* Any nonconforming structure may be subject to compulsory termination when it is found detrimental to the conservation of the value of surrounding land and improvements, and therefore is tending to deteriorate or blight the neighborhood. In ordering the compulsory termination of a nonconforming structure, the BOCC will establish a definite and reasonable amortization period during which the nonconforming structure may continue while the investment value decrement resulting from termination is amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the nonconforming structure less their value and condition for a conforming structure, and such other reasonable costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

- (f) **Water-dependent and water-related commercial nonconforming structures.** Lawfully established water-dependent and water-related nonresidential structures which are identified as a source of economic sustainability within a Livable CommuniKeys Plan may be permitted to be rebuilt even if 100 percent destroyed provided that they are rebuilt to preexisting use and registered in accordance with section 102-55. Development shall be brought into compliance to the maximum extent practicable, as determined by the Planning Director.

Sec. 131-1. Required Setbacks.

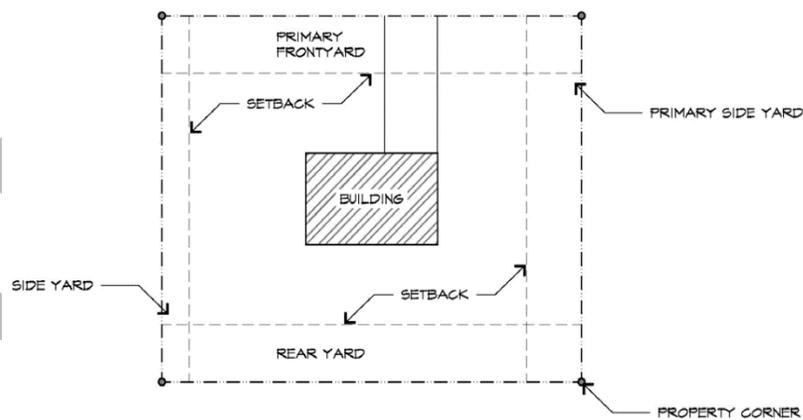
- (a) Unless otherwise allowed for in this Land Development Code, no structure or land shall be developed, used or occupied except in accordance with the bulk regulations set out in the following table.

Land Use District/Land Use	Primary Front Yard (ft.) ^{***}	Secondary Front Yard (ft.) ^{***}	Primary Side Yard (ft.) ^{***}	Secondary Side Yard (ft.) ^{***}	Rear Yard (ft.) ^{***}
Airport (AD)	25	25	10	10	25
Commercial 1 (C1)	25	15	10	5	10
Commercial 2 (C2)	15	15	10	5	10
Commercial Fishing Area (CFA), Commercial Fishing Special District (CFSD), and Commercial Fishing Village (CFV)	25	15	10	5	20
Conservation (C)	25	15	10	5	20
Destination Resort (DR)	50	25	20	15	30
Improved Subdivision (IS)	25	15	10	5	20
Industrial (I)	25	15	10	5	25
Mainland Native (MN)	25	25	10	5	20
Maritime Industries (MI)	25	25	10	5	25
Military Facilities (MF)	25	15	10	5	20
Mixed Use (MU)	15	15	10	5	10
Native Area (NA)	25	15	10	5	20
Offshore Island (OS)	25	15	10	5	20
Park and Refuge (PR)	25	15	10	10	10
Recreational Vehicle (RV)*	25	15	10	5	10
Sparsely Settled (SS)	25	15	10	5	10

Suburban Commercial (SC)	25	15	10	5	10
Suburban Residential (SR)	25	15	10	5	10
Suburban Residential Limited (SR-L)	25	15	10	5	10
Urban Commercial (UC)	15	15	10	5	10
Urban Residential (UR):	15	15	10	5	10
Urban Residential Mobile Home (URM)**					
Lots less than 50 feet wide	10	10	5	5	10
Lots 50 feet wide or greater	10	10	10	5	10
Urban Residential Mobile Home Limited (URM-L)**	10	10	10	10	10
*For RV parks within the RV Land Use District, the RV setback requirements shall apply to the district/RV park boundaries and not to the interior RV spaces.					
**For mobile home parks within the URM and URM-L Land Use Districts, the setback requirements shall apply to the district/mobile home park boundaries and not to the interior mobile home spaces.					
*** Notwithstanding the required setbacks, retrofitting a lawfully existing residential dwelling unit, not including mobile homes, to elevate the unit above base flood level to reduce flood damage may encroach the required setbacks, as provided in Policies 101.5.34 and 101.9.4 and Sections 102-57 and 131-3.					

(b) Applicability of required setbacks.

**APPLICABILITY OF
REQUIRED SETBACKS**



Sec. 131-3. Applicability of Required Setbacks.

- (a) **Bufferyards.** When a bufferyard is required under the provisions of Chapter 114, Article V, compliance with the bufferyard provisions along a property line shall relieve the necessity of complying with the setback provisions along the same property line if the width of the bufferyard is greater than the applicable setback requirement set forth in Section 131-1.
- (b) **Shoreline setbacks.** All development shall be set back from shorelines as required in Section 118-12. Docking and mooring facilities within the shoreline setback shall be set back from side property lines in accordance with Section 118-12. The side yard setback does not apply to a utility pole, [utility rack](#), seawall, fence, retaining wall, or marginal dock.
- (c) **Front yard setbacks.** A front yard is a required setback on a parcel of land that is located along the full length of the front property line of the parcel, is generally the property frontage to which development on the parcel is oriented and is generally adjacent a road. On parcels fronting more than one road, such as corner lots and double frontage parcels, each yard along a road shall be a front yard. The front yard setback does not apply to a utility pole [or utility rack](#).

- (1) *Single frontage parcels.* For a parcel that has only a single road frontage, the primary front yard requirement set forth in Section 131-1 shall be applied.
 - (2) *Double frontage parcels.* For a parcel that has road frontage along two or more roads, the primary front yard requirement set forth in Section 131-1 shall generally be applied to the front yard to which development on the parcel is oriented. The secondary front yard requirement set forth in Section 131-1 shall be applied to the remaining front yard(s). For parcels located within the median of U.S. Highway 1, the primary front yard requirements shall be applied to both front yards situated along the highway right-of-ways.
 - (3) *Accessory driveways and walkways.* Accessory structures, limited to driveways and walkways, may be permitted within a required front yard setback provided they do not exceed six (6) inches in height as measured from grade. In no event shall the total combined area of all accessory structures occupy more than 60 percent of the required front yard setback area.
 - (4) *Off-street parking on residentially developed parcels.* Any required off-street parking spaces may be located on an accessory driveway within the front yard setback on a parcel developed exclusively with a residential use. Any vehicle utilizing such an off-street parking space shall be properly licensed and operable.
 - (5) *Signs, fences and landscaping.* Signs as permitted in Chapter 142, fences as permitted in Chapter 114 and landscaping may be permitted in a required front yard setback.
 - (6) *Ingress and Egress for lawfully established residential dwelling units retrofitted to elevate the structure above base flood level. Retrofitting a lawfully existing residential dwelling unit, not including mobile homes, to elevate the unit above base flood level to reduce flood damage may encroach the front yard requirement set forth in Section 131-1 to allow necessary improvements to access the dwelling unit. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.*
- (d) **Side yard setbacks.** A side yard is a required setback on a parcel of land that is located along the full length of the side property line and is generally between the front and rear property lines. The side yard setback does not apply to a utility pole, utility rack, seawall, fence, retaining wall, or marginal dock.
- (1) *Side yard requirements (excluding four-sided platted corner lots).* With the exception of four-sided platted corner lots, the primary side yard requirement set forth in Section 131-1 shall be applied to one side yard. The secondary side yard requirement set forth in Section 131-1 shall be applied to any remaining side yards.
 - (2) *Side yard requirements for four-sided platted corner lots.* On a platted corner lot with only four sides, there shall be a primary front yard, secondary front yard, rear yard, and a single side yard. For such lots, there shall be no primary side yard setback requirement, and the single side yard shall be subject to the secondary side yard setback requirement set forth in Section 131-1.
 - (3) *Accessory driveways, walkways, patios and decking on residentially developed parcels.* Accessory structures, limited to driveways, walkways, patios, and decks, may be permitted within a required side yard setback on a parcel developed exclusively with a residential use if the structure meets the provisions of this subsection. Such an accessory structure shall a) not exceed six (6) inches in height as measured from grade; b) be situated at least one (1) foot from the side yard property line; and c) be constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. In no event shall the total combined area of all accessory structures occupy more than 80 percent of the required side yard setback area.

- (4) *Accessory stairs and platforms to elevate mechanical, plumbing and electrical equipment on parcels developed with a residential dwelling unit built prior to March 15, 2012.* Accessory structures, limited to stairs and platforms, may be permitted within a required side yard setback on a parcel developed exclusively with a residential use if the following provisions are met:
- a) the residential unit was issued a certificate of occupancy prior to March 15, 2012;
 - b) the accessory structure is required to elevate mechanical, plumbing and electrical equipment at or above required flood elevations;
 - c) the accessory structures shall be situated at least two (2) feet from the side yard property line; and
 - d) the accessory structures must be constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. In no event shall the total combined area of all accessory structures occupy more than 80 percent of the required side yard setback area.
- (5) *Ingress and Egress for lawfully established residential dwelling units retrofitted to elevate the structure above base flood level. Retrofitting a lawfully existing residential dwelling unit, not including mobile homes, to elevate the unit above base flood level to reduce flood damage may encroach the primary side yard requirement set forth in Section 131-1 to allow necessary improvements to access the dwelling unit. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.*
- (e) **Rear yard setbacks.** A rear yard is a required setback on a parcel of land that is located along the full length of the rear property line and is generally on the side opposite to the primary front yard. The rear yard setback does not apply to a utility pole or utility rack or plumbing and electric fixtures for a vessel pumpout.
- (1) *Accessory structures on residentially developed parcels.* An accessory structure may be permitted within a required rear yard setback on a parcel developed exclusively with a residential use if the structure meets the provisions of this subsection. An accessory structure not exceeding eighteen (18) inches in height as measured from grade may be permitted if the structure is a) situated at least one (1) foot from the rear yard property line and b) constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. An accessory structure not exceeding twelve feet (12) feet in height as measured from grade may be permitted if the structure is a) situated at least ten (10) feet from the rear property line. In no event shall the total combined area of all accessory structures occupy more than 60 percent of the required rear yard setback area.
 - (2) *Ingress and Egress for lawfully established residential dwelling units retrofitted to elevate the structure above base flood level. Retrofitting a lawfully existing residential dwelling unit, not including mobile homes, to elevate the unit above base flood level to reduce flood damage may encroach the rear yard requirement set forth in Section 131-1 to allow necessary improvements to access the dwelling unit. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.*
 - (3) *Accessory stairs and platforms to elevate mechanical, plumbing and electrical equipment on parcels developed with a residential dwelling unit retrofitted to elevate the structure above base flood level. Accessory structures, limited to stairs and platforms, may be permitted within a required rear setback on a parcel developed exclusively with a residential use if the following provisions are met: a) For the rear setback area, the structure is situated at least*

five (5) feet from the rear yard property line. In no event shall the total combined area of all accessory structures occupy more than 60 percent (60%) of the required rear yard setback area.

IV. CONSISTENCY WITH THE MONROE COUNTY LAND DEVELOPMENT CODE

The proposed amendment is consistent with one or more of the required provisions of LDC Section 102-158(d)(7)(b):

1. Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;
N/A
2. Changed assumptions (e.g., regarding demographic trends);
N/A
3. Data errors, including errors in mapping, vegetative types and natural features described in volume 1 of the plan;
N/A
4. New issues;

As directed by the BOCC on July 21, 2021 (see agenda item K6), the Monroe County Planning & Environmental Resources Department is proposing amendments to the Monroe County Land Development Code Section 102-57 Nonconforming Structures and Section 31-1 Required Setbacks, to facilitate the elevation (lifting up) of lawfully-existing residential dwelling units by providing waivers or reductions to certain setback and open space requirements to allow necessary improvements to provide access (stairs, ramp, etc.) to a house elevated above base flood level to reduce the risk of future flood damage.

5. Recognition of a need for additional detail or comprehensiveness; or

The County is proposing text amendments to the Monroe County 2030 Comprehensive Plan Future Land Use Element to facilitate the elevation (lifting up) of lawfully-existing residential dwelling units by waiving or reducing certain setback and open space requirements, to allow necessary improvements to provide access (stairs, ramp, etc.) to a house elevated above base flood level to reduce the risk of future flood damage.

The proposed text amendments to Section 138-24 are necessary to be consistent with the proposed comprehensive plan amendments. Sections 163.3194 and 163.3201, F.S., require land development regulations to be consistent with and implement the Comprehensive Plan.

6. Data updates;
N/A

In no event shall an amendment be approved which will result in an adverse community change to the planning area in which the proposed development is located or to any area in accordance with a livable communities master plan pursuant to findings of the board of county commissioners.

The proposed text amendment is not anticipated to result in an adverse community change.

V. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.

A. The proposed amendment is consistent with the Goals, Objectives and Policies of the Monroe County 2030 Comprehensive Plan. Specifically, it furthers:

GOAL 101: Monroe County shall manage future growth to enhance the quality of life, ensure the safety of County residents and visitors, and protect valuable natural resources.

Policy 101.5.32: Within 1 year of the effective date of this policy, Monroe County shall adopt Land Development Regulations which provide a Flood Protection Height Exception to Policy 101.5.30 to promote public health, safety and general welfare; allow adaptation to coastal flooding, storm surge and other hazards; protect property from flooding and minimize damages; minimize public and private losses due to flooding; minimize future expenditures of public funds for flood control projects and for recovery from flood events; and mitigate rising flood insurance premiums. A Flood Protection Height Exception of up to a maximum of five (5) feet above the 35-foot height limit shall be provided to allow lawfully existing buildings to be voluntarily elevated up to three (3) feet above FEMA base flood elevation; and a flood protection height exception of a maximum of three (3) feet above the 35-foot height limit shall be provided to allow new (new construction or substantially improved) buildings to voluntarily elevate up to three (3) feet above FEMA base flood elevation. These exceptions are in order to promote flood protection, minimize flood damage, reduce flood insurance premiums and minimize future expenditures of public funds for recovery from flood events. In no case shall a Flood Protection Height Exception result in a new building exceeding a maximum height of 38 feet or a lawfully existing building exceeding a maximum height of 40 feet.

Policy 101.5.33: Within 1 year of the effective date of this policy, Monroe County shall adopt Land Development Regulations which provide a Flood Protection Height Exception for lawfully established existing buildings which exceed the 35-foot height limit, to promote public health, safety and general welfare; allow adaptation to coastal flooding, storm surge and other hazards; protect property from flooding and minimize damages; minimize public and private losses due to flooding; minimize future expenditures of public funds for flood control projects and for recovery from flood events; and mitigate rising flood insurance premiums. A lawfully established existing building may be repaired, improved, redeveloped and/or elevated to meet required FEMA base flood elevation (BFE) provided the building does not exceed a total maximum building height of 40 feet, and the building is limited to the existing lawfully established intensity, floor area, building envelope (floor to floor height), density and type of use. For lawfully established existing buildings that are proposed to exceed a total height of 40 feet, a public hearing before the Planning Commission and the Board of County Commissioners shall be required to review and specify the maximum approved height prior to issuance of any county permit or development approval. The Planning Commission shall provide a recommendation to the BOCC on the maximum height of a building. The BOCC shall adopt a resolution specifying the maximum approved height.

Policy 101.9.4: With the following exception, nonconforming structures which are damaged or destroyed so as to require substantial improvement shall be repaired or restored in conformance with all applicable provisions of the current Monroe County Code. Substantial improvement or reconstruction of nonconforming single-family homes shall comply with the setback and open space provisions set forth in Policy 101.5.25 and in Chapters 130 and 131 of the Monroe County Land Development Code except where strict compliance would result in a reduction in lot coverage as compared to the pre-destruction footprint of the house. In such cases, the previously approved open space ratio shall be applied; and the maximum shoreline setback shall be maintained and in no event shall the shoreline setback be less than ten (10) feet from mean high water.

GOAL 216: Monroe County shall maintain a program of hazard mitigation and post-disaster redevelopment to increase public safety and reduce damages and public expenditures.

Policy 216.1.4: Monroe County shall continue its policy of reviewing the current Building Code and, as appropriate, adopting structural standards and site alteration restrictions that meet or exceed the minimum FEMA requirements. The Building Code shall be reviewed and revised at least every five years. The recommendations of the applicable interagency hazard mitigation report shall be considered in revisions to the Code. [F.S. § 163.3178(2)(d)]

Policy 216.1.5: Monroe County shall continue to participate in the National Flood Insurance Program (NFIP) Community Rating System (CRS) to the maximum extent possible and shall seek to improve its current CRS Class rating. [F.S. § 163.3178(2)(d)]

Policy 216.1.6: Monroe County shall continue to enforce federal, state and local setback and elevation requirements to promote the protection and safety of life and property. Revisions to the existing setback requirements contained in the land development regulations shall be considered as a means of reducing property damage caused by storms.

Policy 216.2.2: Monroe County shall maintain a Post-Disaster Redevelopment Plan which specifies procedures for implementing programs for immediate repair, replacement, and cleanup, and long-term rebuilding and redevelopment. The plan shall also include procedures for the identification of damaged infrastructure and consideration of alternatives to its repair or replacement in the CHHA.

Policy 216.2.3: The Post-Disaster Redevelopment Plan shall identify areas particularly susceptible to damage within the CHHA such as the FEMA designated V-zones and repetitive loss areas as defined by FEMA and shall specify procedures for relocating or replacing public infrastructure away from them, where feasible.

Policy 216.2.4: Monroe County shall update the Post-Disaster Redevelopment Plan and coordinate with Emergency Management to include in the Local Mitigation Strategy considerations for repetitive loss and severe repetitive loss structures and limits to redevelopment in areas within the CHHA particularly susceptible to repeated damage.

GOAL 601: Monroe County shall adopt programs and policies to facilitate access by residents to adequate and affordable housing that is safe, decent, and structurally sound, and that meets the needs of the population based on type, tenure characteristics, unit size and individual preferences.

Objective 601.3: Monroe County shall continue implementation efforts to eliminate substandard housing and to preserve, conserve and enhance the existing housing stock, including historic structures and sites.

Policy 601.3.1: Monroe County shall coordinate with other County agencies to monitor housing conditions. Standards for evaluation of the structural condition of the housing stock are summarized below:

Sound: Most housing units in this category are in good condition and have no visible defects. However, some structures with slight defects are also included.

Deteriorating: A housing unit in this category needs more repair than would be provided in the course of regular maintenance, such as repainting. A housing unit is classified as deteriorating when its deficiencies indicate a lack of proper upkeep.

Dilapidated (Substandard): A housing unit in this category indicates that the unit can no longer provide safe and adequate shelter or is of inadequate original construction including being constructed below the minimum required elevation by FEMA or the County's Floodplain Regulations.

Policy 601.3.2: The County Code Compliance Office and Building Department will enforce building code regulations and County ordinances governing the structural condition of the housing stock, to ensure the provision of safe, decent and sanitary housing and stabilization of residential neighborhoods.

Policy 601.3.3: Monroe County shall encourage expanded use of U.S. Department of Housing and Urban Development (HUD) rental rehabilitation programs by the Monroe County Housing Authority and State and Federal Floodplain or Hazard Mitigation programs to facilitate increased private reinvestment in housing by providing information, technical assistance in applications for federal and State funding, or provide local public funds for rehabilitation purposes.

Policy 1503.4.1: Within five (5) years after the adoption of the 2030 Comprehensive Plan, Monroe County shall review its post-disaster redevelopment plan and land development regulations to include, as appropriate, consideration of climate change impacts, repetitive loss structures and shoreline stabilization needs.

B. The amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statutes.

For the purposes of reviewing 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 no specific provision shall 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 benthic 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 postdisaster 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 not inconsistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.

C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute (F.S.). Specifically, the amendment furthers:

163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

163.3194(1)(b), F.S. – All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent. If a local government allows an existing land development regulation which is inconsistent with the most recently adopted comprehensive plan, or element or portion thereof, to remain in effect, the local government shall adopt a schedule for bringing the land development regulation into conformity with the provisions of the most recently adopted comprehensive plan, or element or portion thereof. During the interim period when

the provisions of the most recently adopted comprehensive plan, or element or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, shall govern any action taken in regard to an application for a development order.

(2) After a comprehensive plan for the area, or element or portion thereof, is adopted by the governing body, no land development regulation, land development code, or amendment thereto shall be adopted by the governing body until such regulation, code, or amendment has been referred either to the local planning agency or to a separate land development regulation commission created pursuant to local ordinance, or to both, for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan, or element or portion thereof. Said recommendation shall be made within a reasonable time, but no later than within 2 months after the time of reference. If a recommendation is not made within the time provided, then the governing body may act on the adoption.

(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

163.3201, F.S. – Relationship of comprehensive plan to exercise of land development regulatory authority.—It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

VI. PROCESS

Land Development Code Amendments may be proposed by the Board of County Commissioners, the Planning Commission, the Director of Planning, private application, or the owner or other person having a contractual interest in property to be affected by a proposed amendment. The Director of Planning shall review and process applications as they are received and pass them onto the Development Review Committee and the Planning Commission.

The Planning Commission shall hold at least one public hearing. The Planning Commission shall review the application, the reports and recommendations of the Department of Planning & Environmental Resources and the Development Review Committee and the testimony given at the public hearing. The Planning Commission shall submit its recommendations and findings to the Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the adoption of the proposed amendment, and considers the staff report, staff recommendation, Planning Commission recommendation and the testimony given at the public hearing. The BOCC may adopt the proposed amendment based on one or more of the factors established in LDC Section 102-158(d)(7).

VII. STAFF RECOMMENDATION

Staff recommends approval of the proposed amendment.

VIII. EXHIBITS

1. BOCC agenda item K6 from the July 21, 2021 BOCC meeting



County Commission Meeting
July 21, 2021
Agenda Item Number: K.6
Agenda Item Summary #8411

BULK ITEM: No

DEPARTMENT: Planning/Environmental Resources

TIME APPROXIMATE:
N/A

STAFF CONTACT: Christine Hurley (305) 292-4441

AGENDA ITEM WORDING: Discussion and direction to process Comprehensive Plan and Land Development Code amendments to facilitate the elevation (lifting up) of lawfully-existing residential dwelling units by waiving or reducing certain setback and open space requirements, to allow necessary improvements to provide access (stairs, ramp, etc.) to a house elevated above base flood level to reduce the risk of future flood damage.

ITEM BACKGROUND: On September 10, 2017, Hurricane Irma made landfall near Cudjoe Key as a Category 4 Hurricane with maximum sustained winds of 130 mph and flooding occurred in various neighborhoods. Hurricane Irma caused significant damage throughout the Florida Keys, particularly to structures built prior to the upgraded Florida Building Code adopted after Hurricane Andrew, to *non-elevated structures* and to mobile homes.

To provide additional protection to residents that reside in mobile homes in flood hazard areas, reduce the repeated impacts by flooding, and enhance public health, safety and welfare, the County already adopted an amendment to eliminate the ability for a mobile home to be placed at an elevation below base flood elevation.

Further, the County has embarked on proactively assisting property owners with voluntary elevations through FEMA funded grant programs. In order to encourage participation in proactive flood mitigation projects, such as elevations, staff are recommending the BOCC consider allowing owners to elevate their homes, in place (within the existing footprint of the house), without the need for variances to setbacks, etc. If a house was built before current code requirements for setbacks and open space, it is possible the house location on a site is currently nonconforming, and the current code requires that structures undergoing substantial improvement, where work equals or exceeds 50 percent of the structure's market value, be fully rebuilt to the current code (come into compliance with current requirements).

The County should consider if additional amendments are needed to provide allowances within certain setback and open space requirements, to allow elevations and eliminate impediments to elevating lawfully-existing residential dwelling units, not including mobile homes, above base flood

level to reduce future flood damage. This is particularly important, in light of the impacts of Hurricane Irma, the County's better understanding of the flood risks associated with structures below base flood elevation, the opportunity for property owners to reduce their insurance premiums by elevating homes, and the County's ongoing participation in numerous recovery, post disaster and resiliency programs. Further, as the County begins elevating roadways and improving drainage in low lying neighborhoods, it is important to encourage private property owners to elevate their homes.

Property owners may self-fund improvements to their homes to elevate above base flood levels and there may be additional funding opportunities with the County participating in several grant programs to provide for the mitigation of flood risks, such as:

- FEMA Hazard Mitigation Grant Program (HMGP) for mitigation measures
- Flood Mitigation Assistance (FMA) Grant Program to reduce or eliminate the long-term risk of flood damage
- Rebuild Florida Program to demo, repair, reconstruct and elevate primary homes

Considering these programs, and the County's current effort to prepare for the upcoming FEMA Flood Mitigation Assistance (FMA) Grant Program (*typically federal funding is available for up to 75 percent of the eligible activity costs*) and similar funding opportunities, the County should consider what steps it can take to further facilitate reducing the risk of future damage, hardship, loss, or flood damage within the community.

Staff is looking for direction for processing Comprehensive Plan and Land Development Code amendments to further enable elevating lawfully-existing residential dwelling units, not including mobile homes, above base flood level, as follows (draft language only):

Notwithstanding the open space provisions set forth in Policy 101.5.25 and Chapter 130 of the Land Development Code and the minimum required setbacks in Chapters 130 and 131 of the Land Development Code, a lawfully-existing residential dwelling unit, not including mobile homes, may be elevated above base flood level to reduce flood damage, pursuant to:

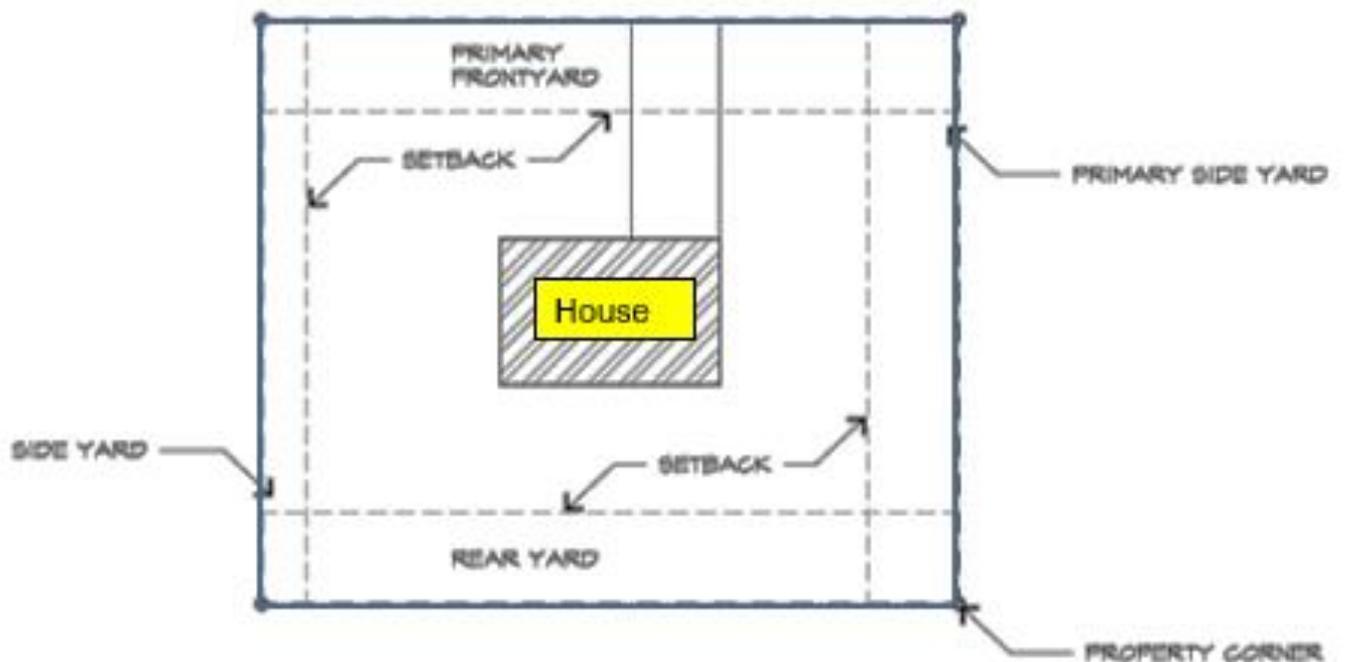
- *The lawfully-existing dwelling unit may maintain its existing setbacks and open space, even if nonconforming, provided the structure is elevated within the original (existing) footprint of the structure.*
- *Setbacks and open space requirements are waived to allow necessary improvements to a dwelling unit being retrofitted by elevating the unit to meet or exceed flood levels. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.*
- *Side and rear setback requirements are waived to allow accessory elevated platforms above base flood for equipment (mechanical, plumbing and electrical systems, appliances and components) situated at least two*

(2) feet from the side yard property line or at least five (5) feet from the rear yard property line. In no event shall the total combined area of all accessory structures occupy more than 80 percent (80%) of the required side yard setback area or 60 percent (60%) of the required rear yard setback area.

- Maximum shoreline setbacks are to be maintained and, in no event shall a shoreline setback be less than ten (10) feet from mean high water.
- The improvements shall be constructed to avoid off-site discharge of stormwater from the subject parcel, in accordance with Section 114-3 of the Monroe County Land Development Code.
- This Policy does not waive any required minimum vegetated setbacks adjacent to wetlands (see Policy 203.1.2 and Policy 204.2.5) and does not authorize any encroachments to a conservation easement.
- This Policy does not restrict a property owner from proposing other additions or improvements to the elevated house, as long as the additions, enlargements, expansions, and extensions do not create a nonconformity or cause a further violation to an existing nonconformity.

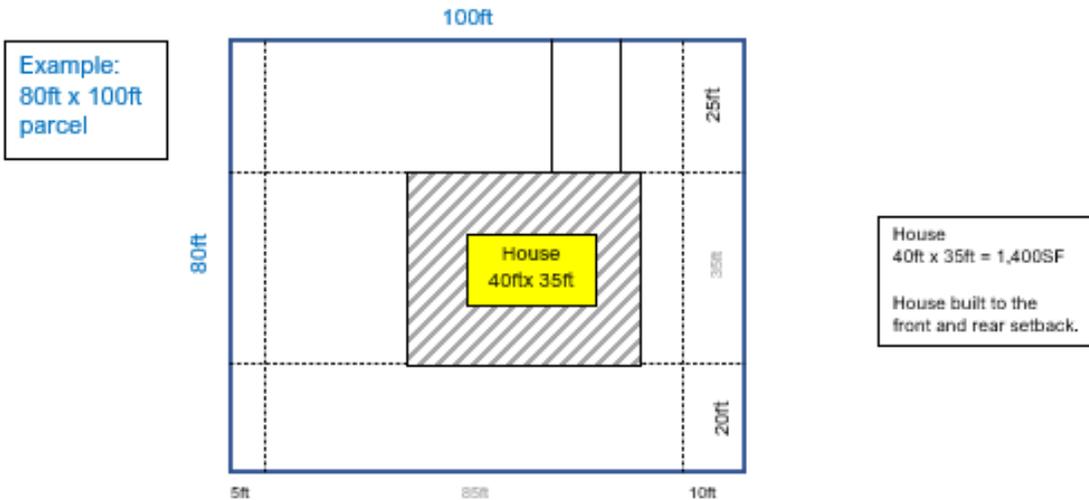
In reviewing the Comprehensive Plan and Land Development Code to identify potential areas that may impact elevating a lawfully-existing residential dwelling unit above base flood level to reduce flood damage, staff has identified setbacks, in particular, as an area to evaluate.

Example of setback standards:

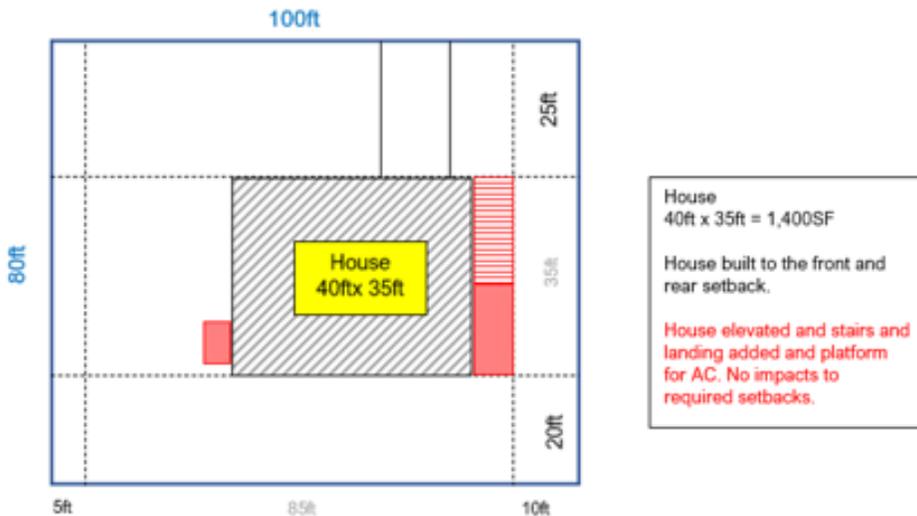


Land Use District/Land Use	Primary Front Yard (ft.)	Secondary Front Yard (ft.)	Primary Side Yard (ft.)	Secondary Side Yard (ft.)	Rear Yard (ft.)
Improved Subdivision (IS)	25	15	10	5	20
Sparsely Settled (SS)	25	15	10	5	10
Suburban Residential (SR)	25	15	10	5	10
Urban Residential (UR)	15	15	10	5	10

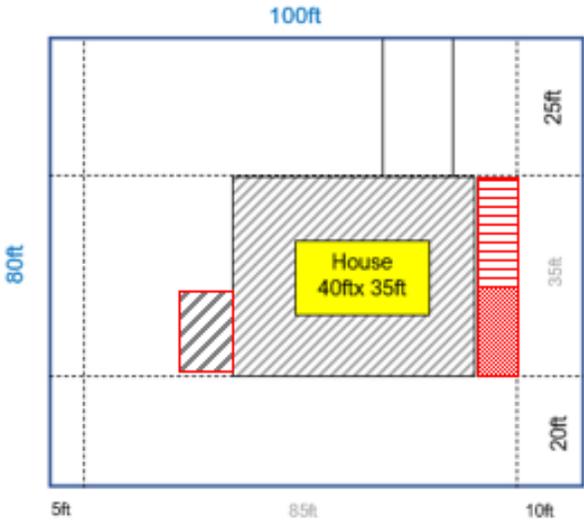
Example of setback scenarios with elevated a house in-place (in the existing location):



House conforming and the necessary improvements to the elevated house do not impact setback. No nonconformity created. No amendment needed.



House conforming and the necessary improvements and 'desired improvements' to the elevated house do not impact setback. No nonconformity created. No amendment needed.



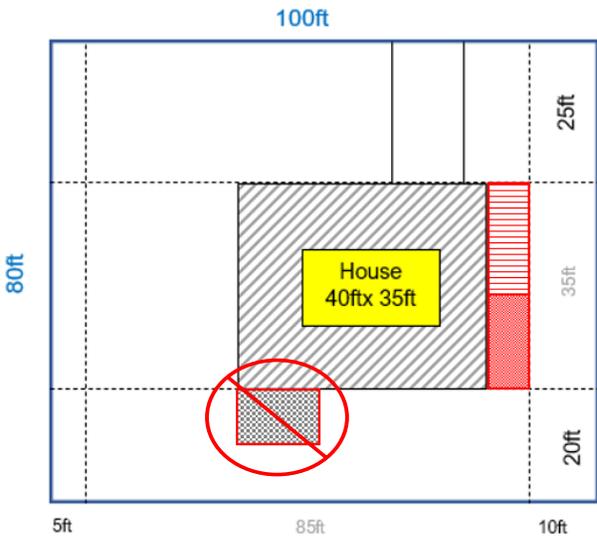
House
40ft x 35ft = 1,400SF

House built to the front and rear setback.

House elevated and stairs and landing added and 10% increase with an added bedroom. No impacts to required setbacks.



House conforming and the necessary improvements and to the elevated house do not impact setback. 'Desired improvements' proposed within the setbacks. Not permissible. Nonconformity created. No amendment proposed.



House
40ft x 35ft = 1,400SF

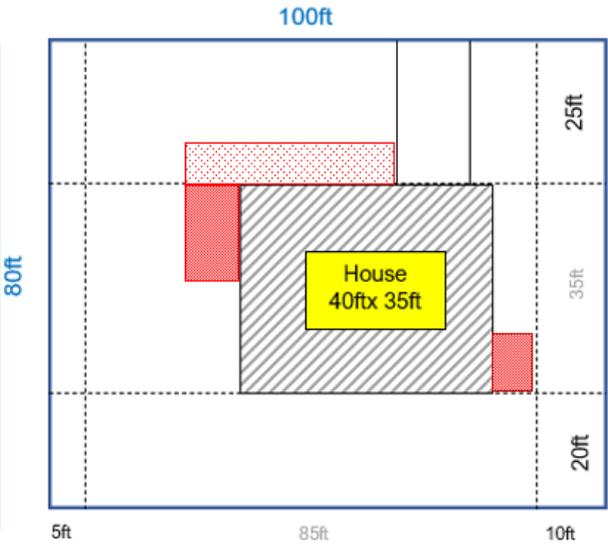
House built to the front and rear setback.

House elevated and stairs and landing added and 10% increase with an added bedroom. Impacts to required rear setback.

Do NOT permit b/c expansion could be built without impacting setback??



House conforming and the necessary improvements to the elevated house DO impact setback. Nonconformity created but necessary to access the home. **Amendment needed to allow without a variance approval.**



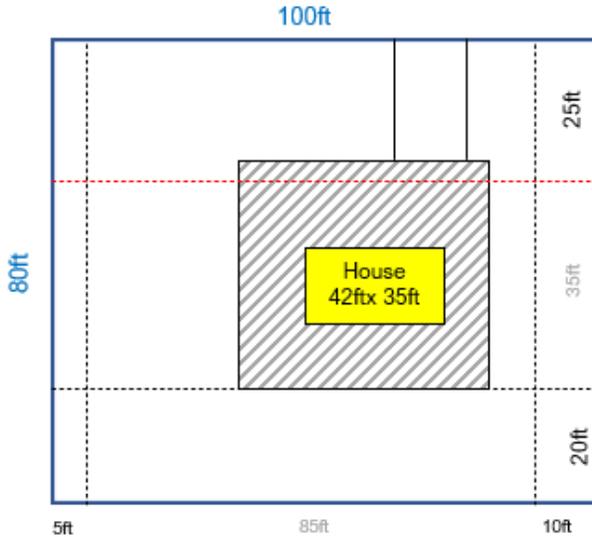
House
40ft x 35ft = 1,400SF

House built to the front and rear setback.

House elevated and ADA ramp and landing added. Ramp necessary in the front yard setback due the ADA items. Platform for AC but no impact to side setback.

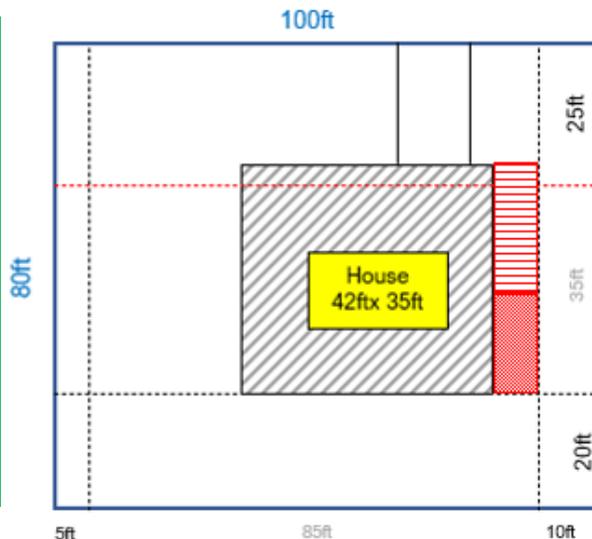


Example:
80ft x 100ft
parcel



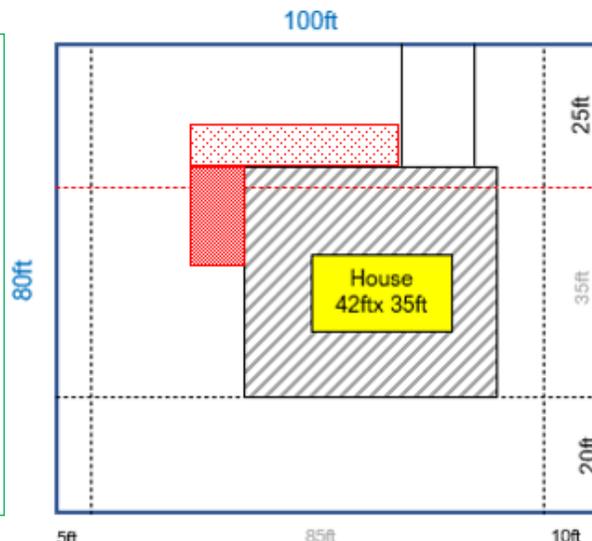
House
42ft x 35ft = 1,470SF
House built within
front setback.
House is an existing
nonconforming
structure.

House already
nonconforming and the
necessary improvements
to the elevated house DO
impact setback.
Nonconformity expanded
but necessary to access
the home.
**Amendment needed to
allow without a
variance approval.**



House
42ft x 35ft = 1,470SF
House built within front
setback.
House is an existing
nonconforming structure.
House elevated and
stairs and landing added
Impacts to required front
setback.

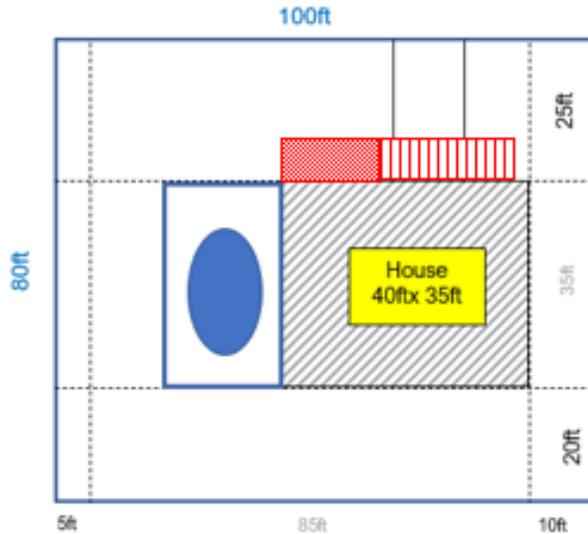
House already
nonconforming and the
necessary improvements
to the elevated house DO
impact setback.
Nonconformity expanded
but necessary to access
the home.
**Amendment needed to
allow without a variance
approval.**



House
42ft x 35ft = 1,470SF
House built within front
setback.
House is an existing
nonconforming structure.
House elevated ADA
ramp and landing added.
Impacts to required front
setback but necessary
for access.

House conforming and the necessary improvements to the elevated house DO impact setback. Nonconformity created but necessary to access the home.

Amendment needed to allow without a variance approval.



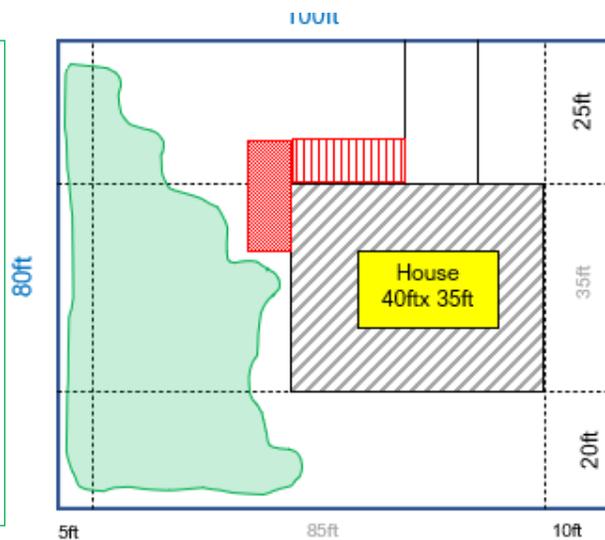
House
40ft x 35ft = 1,400SF
House built to the front, primary side and rear setback. Existing pool adjacent to home.

House elevated and stairs and landing added impacts to required front setback.



House conforming and the necessary improvements to the elevated house DO impact setback. Nonconformity created but necessary to access the home.

Amendment needed to allow without a variance approval.

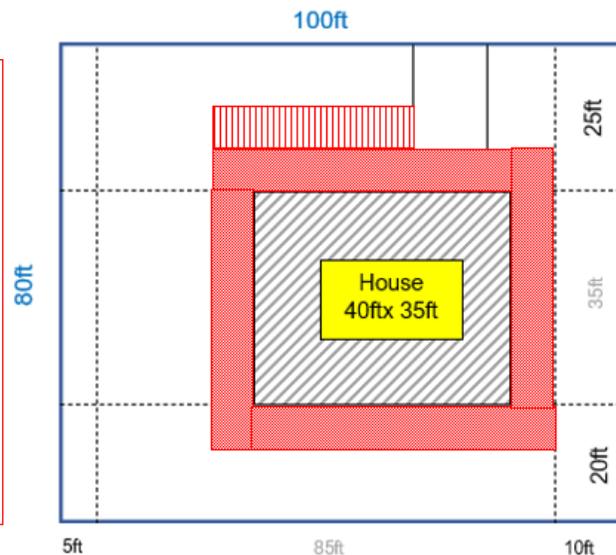


House
40ft x 35ft = 1,400SF
House built to the front, primary side and rear setback. Existing conservation easement.

House elevated and stairs and landing added Impacts to required front setback.



House conforming but owner proposed 'desired improvements' of a wraparound porch within the setbacks. Not permissible. Nonconformity created. Owner can propose access improvements in compliance with setbacks. No amendment



House
40ft x 35ft = 1,400SF
House built to the front and rear setback.

House elevated and proposing a wraparound porch and stairs. Impacts to required front and rear setbacks. Not the minimum necessary to provide access.



Potential Example Comprehensive Plan Amendments:

Objective 101.5 Monroe County shall regulate future development and redevelopment to maintain and enhance the character of the community and protect natural resources by providing for the compatible distribution of land uses consistent with the designations shown on the Future Land Use Map.

* * * * *

Policy 101.5.34

Notwithstanding the open space provisions set forth in Policy 101.5.25 and Chapter 130 of the Land Development Code and the minimum required setbacks in Chapters 130 and 131 of the Land Development Code, a lawfully-existing residential dwelling unit, not including mobile homes, may be elevated above base flood level to reduce flood damage, pursuant to:

- The lawfully-existing dwelling unit structure is elevated within the original (existing) footprint of the structure.
- Setbacks and open space requirements are waived to allow necessary improvements to a dwelling unit being retrofitted by elevating the unit to meet or exceed flood levels. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.
- Side and rear setback requirements are waived to allow accessory elevated platforms above base flood for equipment (mechanical, plumbing and electrical systems, appliances and components) situated at least two (2) feet from the side yard property line or at least five (5) feet from the rear yard property line. In no event shall the total combined area of all accessory structures occupy more than 80 percent (80%) of the required side yard setback area or 60 percent (60%) of the required rear yard setback area.
- Maximum shoreline setbacks are to be maintained and, in no event shall a shoreline setback be less than ten (10) feet from mean high water.
- The improvements shall be constructed to avoid off-site discharge of stormwater from the subject parcel, in accordance with Section 114-3 of the Monroe County Land Development Code.
- Development shall maintain compliance to the maximum extent practicable, as determined by the Planning Director.
- This Policy does not waive any required minimum vegetated setbacks adjacent to wetlands (see Policy 203.1.2 and Policy 204.2.5) and does not authorize any encroachments to a conservation easement.
- This Policy does not restrict a property owner from proposing other additions or improvements to the elevated house, as long as the additions,

enlargements, expansions, and extensions do not create a nonconformity or cause a further violation to an existing nonconformity.

Objective 101.9 Monroe County shall eliminate or reduce the frequency of structures which are inconsistent with the applicable provisions of the land development regulations, zoning districts, Future Land Use categories and the Future Land Use Map. In Monroe County, some nonconforming structures are an important part of the community character and the County desires to maintain such character and protect these lawfully established, nonconforming structures and allow them to be repaired or replaced.

Policy 101.9.1

Substantial improvement is defined as any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the pre-destruction market value of the structure. Improvements to historic structures, and improvements to meet health, sanitary or safety code specifications are not considered substantial improvements.

Policy 101.9.2

Enlargements and extensions to lawful nonconforming structures outside of the Mixed Use Commercial Fishing District or a Community Center Overlay shall be allowed, provided that:

1. the improvement does not constitute a substantial improvement;
2. a nonconforming use is not located in the nonconforming structure; and
3. the nonconformity is not further violated.

Policy 101.9.3

A nonconforming structure, other than a locally or nationally registered historic structure, shall not be moved unless it thereafter shall conform to the applicable provisions of the Monroe County Code.

Policy 101.9.4

With the following exceptions, nonconforming structures which are damaged or destroyed so as to require substantial improvement shall be repaired or restored in conformance with all applicable provisions of the current Monroe County Code. Substantial improvement or reconstruction of nonconforming single-family dwelling units ~~homes~~ shall comply with the setback and open space provisions set forth in Policy 101.5.25 and in Chapters 130 and 131 of the Monroe County Land Development Code, except where strict compliance would result in a reduction in lot coverage as compared to the pre-destruction footprint of the dwelling unit ~~house~~. In such cases, the previously approved open space ratio shall be applied; and the maximum shoreline setback shall be maintained and in no event shall the shoreline setback be less than ten (10) feet from mean high water.

To further recovery, post disaster and resiliency, notwithstanding the open space provisions set forth in Policy 101.5.25 and Chapter 130 of the Land Development Code and the minimum required setbacks in Chapters 130 and 131 of the Land Development Code, a lawfully-existing residential dwelling unit, not including mobile homes, may be retrofitted to elevate the structure above base flood level to reduce flood damage, pursuant to:

- The lawfully-existing dwelling unit may maintain its existing setbacks and open space, even if nonconforming, provided the structure is elevated within the original (existing) footprint of the structure.
- Setbacks and open space requirements are waived to allow necessary improvements to a dwelling unit being retrofitted by elevating the unit to meet or exceed flood levels. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.
- Side and rear setback requirements are waived to allow accessory elevated platforms above base flood for equipment (mechanical, plumbing and electrical systems, appliances and components) situated at least two (2) feet from the side yard property line or at least five (5) feet from the rear yard property line. In no event shall the total combined area of all accessory structures occupy more than 80 percent (80%) of the required side yard setback area or 60 percent (60%) of the required rear yard setback area.
- Maximum shoreline setbacks are to be maintained and, in no event shall a shoreline setback be less than ten (10) feet from mean high water.
- The improvements shall be constructed to avoid off-site discharge of stormwater from the subject parcel, in accordance with Section 114-3 of the Monroe County Land Development Code.
- This Policy does not waive any required minimum vegetated setbacks adjacent to wetlands (see Policy 203.1.2 and Policy 204.2.5) and does not authorize any encroachments to a conservation easement.
- This Policy does not restrict a property owner from proposing other additions or improvements to the elevated house, as long as the additions, enlargements, expansions, and extensions do not create a nonconformity or cause a further violation to an existing nonconformity.

* * * * *

Potential Example Land Development Code Amendments:

Sec. 102-57. Nonconforming Structures.

- (a) **Authority to continue.** A nonconforming structure devoted to a use permitted in the land use (zoning) district in which it is located, or devoted to a nonconforming use with authority to continue pursuant to Section 102-56, may be continued in accordance with the provisions of this section.

- (b) **Ordinary repair and maintenance.** Normal maintenance and repair of nonconforming structures registered in accordance with section 102-55 may be performed.
- (c) **Enlargements, expansions, and extensions.** Lawful nonconforming structures that are used in a manner conforming to the provisions of this Land Development Code and the Comprehensive Plan may be enlarged, expanded, or extended, provided that:
 - (1) The improvement does not constitute a substantial improvement;
 - (2) A nonconforming use is not located in the nonconforming structure; and
 - (3) The nonconformity is not further violated.
- (d) **Relocation.** A nonconforming structure, other than a historic structure listed on the National Register of Historic Places, the Florida Inventory of Historic Places, and/or designated as historic by the BOCC, shall not be moved unless it thereafter shall conform to the regulations of the land use (zoning) district in which it is relocated.
- (e) **Termination, Damage or Destruction and Retrofits.**
 - (1) *Abandonment.* Where a nonconforming structure is voluntarily abandoned for 18 consecutive months, then such structure shall be demolished, removed or converted to a conforming structure.
 - (2) *Damage or destruction.*
 - a. A nonconforming structure that is damaged or destroyed to the extent of less than 50 percent of the fair market value of such structure may be restored as of right if a building permit for reconstruction is issued within six months of the date of the damage (such damage or destruction may be voluntarily or due to natural phenomena whose effects could not be prevented by the exercise of reasonable care and foresight).
 - b. Except as provided in section 135-5, chapter 122 in regard to mobile homes, and section 130-163, 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. Fair market value shall be determined by reference to the official tax assessment rolls for that year or by an appraisal by a qualified independent appraiser. The extent of damage or destruction shall be determined by the building official, in consultation with the Planning Director, by comparing the estimated cost of repairs or restoration with the fair market value.
 - c. Substantial improvement or reconstruction of nonconforming single-family dwelling unitsresidences shall comply with all applicable setback and open space provisions of this Land Development Code set forth in chapters 130 and 131 except where strict compliance would result in a reduction in lot coverage as compared to the pre-destruction footprint of the dwelling unithouse. In such cases, the previously approved open space ratio shall be applied; and the maximum shoreline setback shall be maintained and in no event shall the shoreline setback be less than ten (10) feet from mean high water.

(3) Elevation Retrofits. To further recovery, post disaster and resiliency, as provided in Policy 101.9.4, a lawfully-existing residential dwelling unit, not including mobile homes, may be retrofitted to elevate the structure above base flood level to reduce flood damage, pursuant to:

- a. The lawfully-existing dwelling unit may maintain its existing setbacks and open space, even if nonconforming, provided the structure is elevated within the original (existing) footprint of the structure.
- b. Setbacks and open space requirements are waived to allow necessary improvements to a dwelling unit being retrofitted by elevating the unit to meet or exceed flood levels. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.
- c. Side and rear setback requirements are waived to allow accessory elevated platforms above base flood for equipment (mechanical, plumbing and electrical systems, appliances and components) situated at least two (2) feet from the side yard property line or at least five (5) feet from the rear yard property line. In no event shall the total combined area of all accessory structures occupy more than 80 percent (80%) of the required side yard setback area or 60 percent (60%) of the required rear yard setback area.
- d. Maximum shoreline setbacks are to be maintained and, in no event shall a shoreline setback be less than ten (10) feet from mean high water.
- e. The improvements shall be constructed to avoid off-site discharge of stormwater from the subject parcel, in accordance with Section 114-3 of the Monroe County Land Development Code.
- f. This Policy does not waive any required minimum vegetated setbacks adjacent to wetlands (see Policy 203.1.2 and Policy 204.2.5) and does not authorize any encroachments to a conservation easement.
- g. This Policy does not restrict a property owner from proposing other additions or improvements to the elevated house, as long as the additions, enlargements, expansions, and extensions do not create a nonconformity or cause a further violation to an existing nonconformity.

(4) Amortization. Any nonconforming structure may be subject to compulsory termination when it is found detrimental to the conservation of the value of surrounding land and improvements, and therefore is tending to deteriorate or blight the neighborhood. In ordering the compulsory termination of a nonconforming structure, the BOCC will establish a definite and reasonable amortization period during which the nonconforming structure may continue while the investment value decrement resulting from termination is amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the nonconforming structure less their value and condition for a conforming structure, and such other reasonable

costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

- (f) **Water-dependent and water-related commercial nonconforming structures.** Lawfully established water-dependent and water-related nonresidential structures which are identified as a source of economic sustainability within a Livable CommuniKeys Plan may be permitted to be rebuilt even if 100 percent destroyed provided that they are rebuilt to preexisting use and registered in accordance with section 102-55. Development shall be brought into compliance to the maximum extent practicable, as determined by the Planning Director.

Sec. 131-1. Required Setbacks.

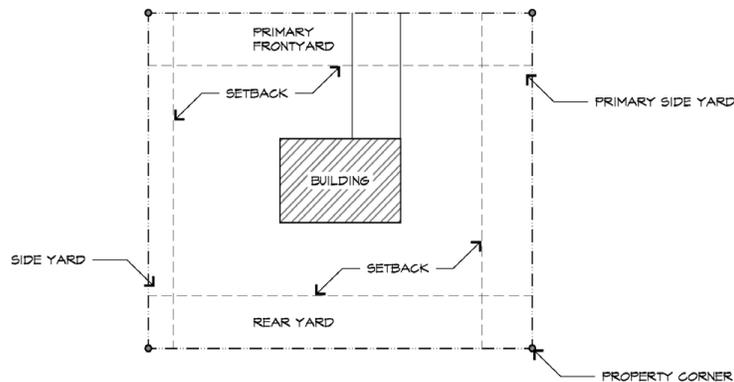
- (a) Unless otherwise allowed for in this Land Development Code, no structure or land shall be developed, used or occupied except in accordance with the bulk regulations set out in the following table.

Land Use District/Land Use	Primary Front Yard (ft.)***	Secondary Front Yard (ft.)***	Primary Side Yard (ft.)***	Secondary Side Yard (ft.)***	Rear Yard (ft.)***
Airport (AD)	25	25	10	10	25
Commercial 1 (C1)	25	15	10	5	10
Commercial 2 (C2)	15	15	10	5	10
Commercial Fishing Area (CFA), Commercial Fishing Special District (CFSD), and Commercial Fishing Village (CFV)	25	15	10	5	20
Conservation (C)	25	15	10	5	20
Destination Resort (DR)	50	25	20	15	30
Improved Subdivision (IS)	25	15	10	5	20
Industrial (I)	25	15	10	5	25
Mainland Native (MN)	25	25	10	5	20
Maritime Industries (MI)	25	25	10	5	25
Military Facilities (MF)	25	15	10	5	20
Mixed Use (MU)	15	15	10	5	10
Native Area (NA)	25	15	10	5	20
Offshore Island (OS)	25	15	10	5	20
Park and Refuge (PR)	25	15	10	10	10
Recreational Vehicle (RV)*	25	15	10	5	10
Sparsely Settled (SS)	25	15	10	5	10
Suburban Commercial (SC)	25	15	10	5	10
Suburban Residential (SR)	25	15	10	5	10
Suburban Residential Limited (SR-L)	25	15	10	5	10
Urban Commercial (UC)	15	15	10	5	10
Urban Residential (UR):	15	15	10	5	10
Urban Residential Mobile Home (URM)**					
Lots less than 50 feet wide	10	10	5	5	10
Lots 50 feet wide or greater	10	10	10	5	10

Urban Residential Mobile Home Limited (URM-L)**	10	10	10	10	10
*For RV parks within the RV Land Use District, the RV setback requirements shall apply to the district/RV park boundaries and not to the interior RV spaces.					
**For mobile home parks within the URM and URM-L Land Use Districts, the setback requirements shall apply to the district/mobile home park boundaries and not to the interior mobile home spaces.					
***Notwithstanding the required setbacks, retrofitting a lawfully existing residential dwelling unit, not including mobile homes, to elevate the unit above base flood level to reduce flood damage may encroach the required setbacks, as provided in Policies 101.5.34 and 101.9.4 and Sections 102-57 and 131-3.					

(b) Applicability of required setbacks.

APPLICABILITY OF
REQUIRED SETBACKS



Sec. 131-3. Applicability of Required Setbacks.

- (a) **Bufferyards.** When a bufferyard is required under the provisions of Chapter 114, Article V, compliance with the bufferyard provisions along a property line shall relieve the necessity of complying with the setback provisions along the same property line if the width of the bufferyard is greater than the applicable setback requirement set forth in Section 131-1.
- (b) **Shoreline setbacks.** All development shall be set back from shorelines as required in Section 118-12. Docking and mooring facilities within the shoreline setback shall be set back from side property lines in accordance with Section 118-12. The side yard setback does not apply to a utility pole, utility rack, seawall, fence, retaining wall, or marginal dock.
- (c) **Front yard setbacks.** A front yard is a required setback on a parcel of land that is located along the full length of the front property line of the parcel, is generally the property frontage to which development on the parcel is oriented and is generally adjacent a road. On parcels fronting more than one road, such as corner lots and double frontage parcels, each yard along a road shall be a front yard. The front yard setback does not apply to a utility pole or utility rack.
 - (1) *Single frontage parcels.* For a parcel that has only a single road frontage, the primary front yard requirement set forth in Section 131-1 shall be applied.

- (2) *Double frontage parcels.* For a parcel that has road frontage along two or more roads, the primary front yard requirement set forth in Section 131-1 shall generally be applied to the front yard to which development on the parcel is oriented. The secondary front yard requirement set forth in Section 131-1 shall be applied to the remaining front yard(s). For parcels located within the median of U.S. Highway 1, the primary front yard requirements shall be applied to both front yards situated along the highway right-of-ways.
 - (3) *Accessory driveways and walkways.* Accessory structures, limited to driveways and walkways, may be permitted within a required front yard setback provided they do not exceed six (6) inches in height as measured from grade. In no event shall the total combined area of all accessory structures occupy more than 60 percent of the required front yard setback area.
 - (4) *Off-street parking on residentially developed parcels.* Any required off-street parking spaces may be located on an accessory driveway within the front yard setback on a parcel developed exclusively with a residential use. Any vehicle utilizing such an off-street parking space shall be properly licensed and operable.
 - (5) *Signs, fences and landscaping.* Signs as permitted in Chapter 142, fences as permitted in Chapter 114 and landscaping may be permitted in a required front yard setback.
 - (6) *Ingress and Egress for lawfully established residential dwelling units retrofitted to elevate the structure above base flood level.* Retrofitting a lawfully existing residential dwelling unit, not including mobile homes, to elevate the unit above base flood level to reduce flood damage may encroach the front yard requirement set forth in Section 131-1 to allow necessary improvements to access the dwelling unit. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.
- (d) **Side yard setbacks.** A side yard is a required setback on a parcel of land that is located along the full length of the side property line and is generally between the front and rear property lines. The side yard setback does not apply to a utility pole, utility rack, seawall, fence, retaining wall, or marginal dock.
- (1) *Side yard requirements (excluding four-sided platted corner lots).* With the exception of four-sided platted corner lots, the primary side yard requirement set forth in Section 131-1 shall be applied to one side yard. The secondary side yard requirement set forth in Section 131-1 shall be applied to any remaining side yards.
 - (2) *Side yard requirements for four-sided platted corner lots.* On a platted corner lot with only four sides, there shall be a primary front yard, secondary front yard, rear yard, and a single side yard. For such lots, there shall be no primary side yard setback requirement, and the single side yard shall be subject to the secondary side yard setback requirement set forth in Section 131-1.

- (3) *Accessory driveways, walkways, patios and decking on residentially developed parcels.* Accessory structures, limited to driveways, walkways, patios, and decks, may be permitted within a required side yard setback on a parcel developed exclusively with a residential use if the structure meets the provisions of this subsection. Such an accessory structure shall a) not exceed six (6) inches in height as measured from grade; b) be situated at least one (1) foot from the side yard property line; and c) be constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. In no event shall the total combined area of all accessory structures occupy more than 80 percent of the required side yard setback area.
- (4) *Accessory stairs and platforms to elevate mechanical, plumbing and electrical equipment on parcels developed with a residential dwelling unit built prior to March 15, 2012.* Accessory structures, limited to stairs and platforms, may be permitted within a required side yard setback on a parcel developed exclusively with a residential use if the following provisions are met:
- a) the residential unit was issued a certificate of occupancy prior to March 15, 2012;
 - b) the accessory structure is required to elevate mechanical, plumbing and electrical equipment at or above required flood elevations;
 - c) the accessory structures shall be situated at least two (2) feet from the side yard property line; and
 - d) the accessory structures must be constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. In no event shall the total combined area of all accessory structures occupy more than 80 percent of the required side yard setback area.
- (5) *Ingress and Egress for lawfully established residential dwelling units retrofitted to elevate the structure above base flood level.* Retrofitting a lawfully existing residential dwelling unit, not including mobile homes, to elevate the unit above base flood level to reduce flood damage may encroach the primary side yard requirement set forth in Section 131-1 to allow necessary improvements to access the dwelling unit. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.
- (e) **Rear yard setbacks.** A rear yard is a required setback on a parcel of land that is located along the full length of the rear property line and is generally on the side opposite to the primary front yard. The rear yard setback does not apply to a utility pole or utility rack or plumbing and electric fixtures for a vessel pumpout.
- (1) *Accessory structures on residentially developed parcels.* An accessory structure may be permitted within a required rear yard setback on a parcel developed exclusively with a residential use if the structure meets the provisions of this subsection. An accessory structure not exceeding eighteen (18) inches in height as measured from grade may be permitted if the structure is a) situated at least one (1) foot from the rear yard property line and b)

constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. An accessory structure not exceeding twelve feet (12) feet in height as measured from grade may be permitted if the structure is a) situated at least ten (10) feet from the rear property line. In no event shall the total combined area of all accessory structures occupy more than 60 percent of the required rear yard setback area.

(2) Ingress and Egress for lawfully established residential dwelling units retrofitted to elevate the structure above base flood level. Retrofitting a lawfully existing residential dwelling unit, not including mobile homes, to elevate the unit above base flood level to reduce flood damage may encroach the rear yard requirement set forth in Section 131-1 to allow necessary improvements to access the dwelling unit. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.

(3) Accessory stairs and platforms to elevate mechanical, plumbing and electrical equipment on parcels developed with a residential dwelling unit retrofitted to elevate the structure above base flood level. Accessory structures, limited to stairs and platforms, may be permitted within a required rear setback on a parcel developed exclusively with a residential use if the following provisions are met: a) For the rear setback area, the structure is situated at least five (5) feet from the rear yard property line. In no event shall the total combined area of all accessory structures occupy more than 60 percent (60%) of the required rear yard setback area.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATION: Staff seeks direction on processing amendments.

DOCUMENTATION:

FINANCIAL IMPACT:

Effective Date:

Expiration Date:

Total Dollar Value of Contract:

Total Cost to County:

Current Year Portion:

Budgeted:
Source of Funds:
CPI:
Indirect Costs:
Estimated Ongoing Costs Not Included in above dollar amounts:

Revenue Producing: **If yes, amount:**

Grant:

County Match:

Insurance Required: n/a

Additional Details:

REVIEWED BY:

Assistant County Administrator Christine Hurley		Completed
	06/30/2021 12:53 PM	
Emily Schemper	Completed	07/06/2021 9:44 AM
Derek Howard	Completed	07/06/2021 10:11 AM
Purchasing	Completed	07/06/2021 10:13 AM
Budget and Finance	Completed	07/06/2021 4:20 PM
Maria Slavik	Completed	07/06/2021 5:47 PM
Liz Yongue	Completed	07/07/2021 9:14 AM
Board of County Commissioners	Pending	07/21/2021 9:00 AM