

# County of Monroe

## Planning & Environmental Resources

### Department

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## Board of County Commissioners

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*We strive to be caring, professional, and fair.*

December 1, 2015

Barton W. Smith, Esq.  
Oceanside 104, LLC  
138-142 Simonton Street  
Key West, FL 33040

**SUBJECT: LETTER OF UNDERSTANDING CONCERNING THE USE OF A SINGLE FAMILY UNIT (CONDOMINIUM UNIT 104) AS A VACATION RENTAL WITHOUT A VACATION RENTAL PERMIT, ON PROPERTY COMMONLY KNOWN AS OCEANSIDE RESIDENTIAL CONDOMINIUM, LOCATED AT 5960 PENINSULAR AVENUE, STOCK ISLAND, HAVING REAL ESTATE NUMBER 00127430.000104.**

Mr. Smith,

Pursuant to §110-3 of the Monroe County Code (MCC), this document shall constitute a Letter of Understanding (LOU).

*Materials presented for review included:*

- a) Pre-Application Conference Request Form;
- b) Monroe County Property Record Card;
- c) Declaration of Condominium Establishing Oceanside Residential Condominium (recorded in the Public records Book 1924, Pages 439-536);
- d) Amendment to the Declaration of Condominium Establishing Oceanside Residential Condominium Association (recorded in the Public records Book 2004, Page 2447);
- e) Monroe County Planning Commission Resolution P52-97 approving an amendment to Major Conditional Use to construct twenty-two (22) attached residential dwelling units, swimming pool, pool house, office, observation gazebo, boat storage building, an addition to the Sailfish Restaurant, and renovations to existing development; and

- f) Development Agreement between Monroe County, Paradise Island Park, Oceanside Marina, Inc., and the Department of Community Affairs (recorded in the Public records Book 1627, Pages 444-536.

## **I. APPLICANT PROPOSAL**

The Applicant is requesting confirmation if a single family unit (condominium unit 104) can be utilized as a vacation rental without a vacation rental permit, on property commonly known as Oceanside Residential Condominium, located at 5960 Peninsular Avenue, Stock Island, having real estate number 00127430.000104.

## **II. SUBJECT PROPERTY DESCRIPTION**

1. The subject property is located at approximate mile marker 5 and consists of three (3) buildings with twenty-two (22) attached residential dwelling units.
2. The subject property is currently comprised of one (1) parcel, located at 5960 Peninsular Avenue, Stock Island, Monroe County, Florida and assessed under real estate (RE) number 00127430.000104.





### III. RELEVANT PRIOR COUNTY ACTIONS

1. In 1997, Douglas Walker applied for an amendment to the major conditional use permit (real estate #00127420.000000) to construct twenty-two (22) attached residential dwelling units, swimming pool, pool house, office, observation gazebo, boat storage building, an addition to the Sailfish Restaurant, and renovations to existing development. The approval is memorialized by Planning Commission Resolution #P52-97, approved by the Planning Commission at a public hearing on July 10, 1997, signed by the Planning Commission Chair on August 18, 1999 and recorded in the official records of Monroe County on August 24, 1999. The amendment allowed for the construction of 22 attached, market rate residential dwelling units, one boat storage building; an addition to an existing restaurant; and other associated accessory improvements.
2. In 1999, Monroe County, Paradise Island Park, Oceanside Marina, Inc., and the Department of Community Affairs entered into a development agreement allowing the transfer of 22 market-rate transferrable ROGO exemptions (TRE's) from Paradise Island Park to the Oceanside property. The development agreement was recorded in the official records of Monroe County on April 7, 2000 (Book #1627, Pages #444 through #536) (Planning Department File #99039)

### IV. REVIEW

The following regulations directly affect the proposal; however, please note that there may be other regulations not referred to nor described in this letter, which may govern development.

1. The subject property is currently located within a Mixed Use (MU) Land Use (Zoning) District and designated within a Mixed Use/Commercial (MC) Future Land Use Map (FLUM) category.
2. The subject property has a tier designation of Tier III.
3. Pursuant to MCC §130-38, the purpose of the MU district is to establish or conserve areas of mixed uses, including commercial fishing, resorts, residential, institutional and commercial uses, and preserve these as areas representative of the character, economy and cultural history of the Florida Keys.
4. Pursuant to Policy 101.4.5, the purpose of the MC FLUM is to provide for the establishment of commercial land use (zoning) districts where various types of commercial retail and office may be permitted at intensities which are consistent with the community character and the natural environment. Employee housing and commercial apartments are also permitted. In addition, Mixed Use/Commercial land use districts are to establish and conserve areas of mixed uses, which may include maritime industry, light industrial uses, commercial fishing, transient and permanent residential, institutional, public, and commercial retail uses. This land use category is also intended to allow for the establishment of mixed use development patterns, where appropriate. Various types of residential and non-residential uses may be permitted; however, heavy industrial uses and similarly incompatible uses shall be prohibited. The County shall continue to take a proactive role in encouraging the maintenance and enhancement of community character and recreational and commercial working waterfronts.



5. The proposed development consists of the vacation rental use of one (1) single-family attached residential dwelling unit. As defined in MCC §101-1, *dwelling, attached*, means a residential dwelling unit consisting of one or more of residential units that are developed without open yards on all sides of the dwelling unit. *Dwelling unit* means one or more rooms physically arranged to create a housekeeping establishment for occupancy by one family with separate toilet facilities.
6. Pursuant to MCC §130-88, in the MU district and density-permitting, detached and attached residential dwellings may be developed.
7. Pursuant to MCC §130-88 (13), vacation rental use of detached dwelling units is permitted, if a special vacation rental permit is obtained under the regulations established in section 134-1.

Additionally, pursuant to MCC §130-74, no structure or land in the County shall hereafter be developed, used or occupied unless expressly authorized in a land use district in this article [Article III. - Permitted and Conditional Uses].

The subject property is single-family attached residential dwelling unit (condominium unit 104) within the twenty-two (22) attached residential dwelling units of Oceanside Residential Condominium. The MU zoning district does not provide for nor expressly authorize vacation rental use of attached dwellings units and, as such, vacation rental use of the subject property is not permitted.

8. MCC §134-1 provides for exemptions to obtaining annual special vacation rental permit if certain criteria are met (see excerpt below). As the MU zoning district does not provide for vacation rental use of attached dwellings units, the vacation rental use of the subject property is not permitted and the vacation rental permit exemptions do not apply.

*(a)Special vacation rental permit.*

*An owner or agent is required to obtain an annual special vacation rental permit for each dwelling unit prior to renting any dwelling unit as a vacation rental, as defined in section 101-1, except as provided for under subsection (b) of this section. A special vacation rental permit is nontransferable between owners. A change of ownership of the vacation rental unit shall require the new owner or his agent to obtain a new vacation rental permit for the residential dwelling unit.*

*(b)Exemptions.*

*A vacation rental permit is not required for the following:*

*(1)A vacation rental of a dwelling unit located within a controlled access, gated community with a homeowner's or property owner's association that expressly regulates or manages vacation rental uses; or*

*(2)A vacation rental of a dwelling unit within a multifamily building located within a multifamily district, which has 24 hour on-site management or 24 hour on-site supervision that has received an exemption from the planning director. To meet these site management or supervision requirements, a designated individual must be physically located within the building or within 300 feet of the subject building and must be available at all times to respond to tenants' and neighbors' complaints.*

*To obtain an exemption under the provisions of this section, the owner or agent must submit an application to the planning department in a form prescribed by the planning director.*

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Pursuant to MCC §110-3, you are entitled to rely upon the representations set forth in this letter as accurate under the regulations currently in effect. This letter does not provide any vesting to the existing regulations. If the Monroe County Code or Comprehensive Plan is amended, the project would be required to be consistent with all regulations and policies at the time of development approval. The Department acknowledges that all items required as a part of the application for development approval may not have been addressed, and consequently reserves the right for additional comment.

You may appeal any decision, determination or interpretation made in this letter pursuant to MCC §102-185. A notice of appeal must be filed with the County Administrator, 1100 Simonton Street, Gato Building, Key West, FL 33040, within thirty (30) calendar days from the date of this letter. In addition, please submit a copy of your notice of appeal to the Planning Commission Coordinator, Monroe County Planning & Environmental Resources Department, 2798 Overseas Highway, Suite 410, Marathon, FL 33050.

We trust that this information is of assistance. If you have any questions regarding the contents of this letter, or if we may further assist you with your project, please feel free to contact our Marathon office at (305) 289-2500.

Sincerely yours,



Mayté Santamaria

Senior Director Planning & Environmental Resources