

## M E M O R A N D U M

**TO:** Tom Harmer, Town Manager

**FROM:** Allen Parsons, AICP  
Director, Planning, Zoning & Building Department

**DATE:** December 21, 2018

**SUBJECT:** Ordinance 2018-20, Amending Chapter 158, Reconstruction of Nonconformities in the Event of Voluntary Reconstruction or Involuntary Destruction or Damage, Providing for Creation of Conformance Overlay Redevelopment District (CORD)

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### **Recommended Action**

Forward Ordinance 2018-20 to the February 4, 2019 Regular Meeting for second reading, public hearing and adoption.

### **Background**

The Town Commission held discussions on Ordinance 2018-20 at their November 5, 2018, Regular Meeting, November 13, 2018, Regular Workshop Meeting and December 10, 2018, Regular Workshop Meeting and forwarded Ordinance 2018-20 to their January 7, 2019 Regular Meeting for 1<sup>st</sup> Reading and Public Hearing.

Following recommended changes from their December 10, 2018, Regular Workshop Meeting the Commission provided support for the following:

- **Provided consensus support for Nonconforming Redevelopment Option #1**, with recommendations for minor clarifications, which have been addressed in the attached Ordinance 2018-20.
  
- **Provided consensus support for Nonconforming Redevelopment Option #2**, with recommendations for minor clarifications and additions, which have been addressed in the attached Ordinance 2018-20.
  
- **Provided consensus support to consider Nonconforming Redevelopment Option #3**, with the following revisions. Items discussed are summarized below.
  - Revise the prioritization of standards that may be modified by the CORD to indicate which standards have the highest importance, with the greatest need for reduction or elimination of existing nonconformities, and therefore would be least likely to be approved for modification compared to zoning standards which may have a lower importance in terms of reducing or eliminating existing nonconformities. The previously provided ranking order, with the standards revised in order of importance<sup>1</sup>, from highest to lowest has been revised to move the level of importance Lot Coverage from 6<sup>th</sup> to 3<sup>rd</sup> in the following proposed order: 1) Building Setbacks; 2) Open Space; 3) Lot Coverage; 4) Building Height; 5) Maximum Building Length, Distance Between Buildings, Distance Between Buildings and Driveways;

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<sup>1</sup> Note: Proposed order of importance generally mirrors the order found in Sec. 158.139(B)(7), Option 1, Redevelopment of Non-Compliant Structures

6) Off-Street Parking. Note: Standards 7-11 are requirements of the CORD and do not confer authority to revise standards of the underlying zoning district.

- Related to the above bullet point, the Commission discussed providing minimums for developments standards to be achieved with redevelopment regardless of existing conditions. The Commission considered the draft minimum Open Space percentage of 20% and did not provide consensus support for revising this minimum standard. A request was made for staff to review and potentially provide a recommendation for what would be a maximum percentage that would be required regardless of existing conditions for the Lot Coverage standard. Typical Lot Coverage Requirements are 30% for residential or tourism uses. Lot coverages for commercial developments are up to 40%, and Lot Coverages of up to 50% are allowed in Commercial/Marine developments with PUD approval. One of the primary challenges with establishing either minimum or maximum standard thresholds that must be met, regardless of existing conditions, relates to the variety of existing nonconforming conditions. There are nonconforming properties within the Town that appear to have existing lot coverage conditions in the 60-70%+ ratio. Such properties will be challenged to redevelop and meet significantly lower maximum standards. Staff is of the opinion that providing a flexible option, that requires a demonstration of improvement in nonconforming conditions, would enhance existing conditions. Properties that are developed with high percentage amounts of lot coverage may be more likely to redevelop and realize improvements in existing nonconformities if they are not constrained meeting specified requirements. Staff therefore could find no basis or policy direction that would support recommendation of a specific mandatory lot coverage requirement amount.
- Provided consensus support to direct staff to subsequently provide background information and options for the Commissioner's consideration that would provide a mechanism to preserve unused redeveloped density units in a "pool" that could be utilized as additional development density by other eligible properties via a mechanism referred to as Transfer of Development Rights (TDRs). It was noted that creation of such a pool would likely require referendum approval. Staff will report back separately on this issue at a future meeting.

### **Discovery of Statutory Preemption Provision Applicable to Mobile Home Parks**

Following the Commission discussion, staff met with representatives of the two mobile home parks in the Town (Twin Shores and Gulfshore), who pointed out a statutory provision (Florida Statutes 723.041(4)<sup>1</sup>), which provides a preemption for the siting of any size new or used mobile home, that relates to allowing for maintaining standards that are in accordance with requirements that were in effect at the time of the approval of the mobile home. The Town's two mobile home parks pre-date the incorporation of the Town by several years (est. 1947). The Option 1 limitation in regards to maintaining existing

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<sup>1</sup> F.S. 723.041(4): "Except as expressly preempted by the requirements of the Department of Highway Safety and Motor Vehicles, a mobile home owner or the park owner shall be authorized pursuant to this section to site any size new or used mobile home and appurtenances on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the approval of the mobile home park."

cubic content, when redeveloping nonconforming structures, should therefore recognize the statutory preemption provision applicable to mobile home parks. To address this staff recommends the inclusion of the following underlined language as an additional provision in Option 1:

Sec. 158.139(B)(11)

(11) The provisions relating to Option 1 shall not be construed to prevent a mobile home owner or park owner from reconstructing such structures pursuant to an applicable statutory pre-emption.

### **Previous Background**

Ordinance 2018-20 follows from the Town Commission's series of three Special Workshop Meetings held in April, May, and June 2018, on the historically challenging subject of redevelopment of properties that contain more legally approved dwelling units per acre than their underlying zoning district densities would allow for (a/k/a "Non-Conforming" Densities). At their June 4, 2018, Special Workshop Meeting, the Town Commission reached consensus on a series of goals and options (i.e. methods) for the redevelopment of legally nonconforming properties (see attached meeting minutes).

The Commission's overall goals, in no particular order, for redevelopment of legally nonconforming properties from those workshops were:

- Goal 1- No new density will be allowed (without a referendum approval).
- Goal 2- A property's use and its structures, in any redevelopment, would meet existing zoning district standards (i.e. other than density, redevelopment will ideally meet all applicable zoning requirements).
- Goal 3- Any redevelopment of legally nonconforming properties will use their best efforts to meet the existing zoning district requirements (i.e. providing options and potential for flexibility).

Among the topics discussed during the Town Commission Workshop Meetings, the Commission raised the question as to whether there needed to continue to be distinctions between the existing Zoning Code provisions that govern legally nonconforming redevelopment depending on whether the redevelopment is a result of either "voluntary" or "involuntary" actions of a property owner(s). The Town's adoption of voluntary nonconforming rebuilding provisions followed the Town's approval of a March 2008 Referendum that posed the question to voters:

*For the properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?*

In response to the Commission's policy question, staff is of the opinion that separate, and slightly different, rebuilding standards and requirements, based on the reason why a property may be seeking to rebuild, need no longer apply. The distinction between voluntary and involuntary nonconforming reconstruction has therefore been removed in Ordinance 2018-20.

For the Town Commission's consideration, the existing Redevelopment Regulations (Zoning Code Sections 158.139 "Involuntary" and 158.140 "Voluntary") have been combined and a new draft "Floating Overlay Zone District"<sup>1</sup> are proposed to address updated non-conforming redevelopment regulations that attain the methods arrived at by Commission consensus. These methods are described as a series of three (3) options arrived at by Commission consensus:

- Option 1- Redevelopment of legally nonconforming density and structures with existing limitations generally prohibiting additional building cubic content. This option is available to all nonconforming properties within the Town.
- Option 2- Redevelopment of legally nonconforming density via meeting all applicable Zoning District standards (allowing additional cubic content). This option is available to all nonconforming properties within the Town.
- Option 3- Redevelopment of legally nonconforming density utilizing a New "Floating Zone District" (allowing additional cubic content, ability to request modifications from underlying zoning district standards and providing for conformity of a subject property's density with the Zoning Code and Comprehensive Plan). This option is available to all nonconforming properties within the Town.

Ordinance 2018-20 provides three (3) options for the Town Commission's consideration.

The first two of the options above are addressed via the proposed combination of existing nonconforming code sections 158.139 (Involuntary Destruction) and 158.140 (Voluntary Reconstruction) into a combined single Section, which, as drafted, is **Sec. 158.139 – Reconstruction of Nonconformities**.

The third option above includes the creation of a new floating overlay Zoning District within the Town, tentatively referred to as the **Conformance Overlay Redevelopment District (CORD)** and proposed as a new code section, **Article III, Division 3, Sec.158.114**. The proposed CORD would provide the opportunity for legally nonconforming density properties to seek rezoning to this newly established floating overlay zoning district in order to obtain conforming status. The CORD also provides for the ability to seek modification(s) to the existing underlying zoning district standards on the property. Note: The Planning and Zoning Board (P&Z) reviewed the draft contents of the CORD as a separate draft Ordinance (previously included as part of draft Ord. 2018-14). Addressing this as a separate Ordinance made the P&Z's consideration unnecessarily awkward by requiring separate and repeated actions to ultimately recommend approval of all three options. Staff has addressed this former cumbersome Ordinance construction by separating the concepts into two Ordinances: Ordinance 2018-20 which is before you, and companion Ordinance 2018-14, which addresses the limiting the Town's existing Planned Unit Development (PUD) process for properties to non-residential properties, and properties with conforming residential or tourism densities, along with the Town's

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<sup>1</sup> Definition: An overlay zone is a zoning district which is applied over one or more previously established zoning districts, establishing additional or different standards and criteria for covered properties in addition to those of the underlying zoning district. The Town of Longboat Key, Future Land Use Policy 1.1.5 provides authority to the Land Development Code to: specify standards for redeveloping lawfully existing property that does not conform to the future land use density and building volume limits provided elsewhere in the Plan and allows for the establishment of standards to conform such properties to densities established by their lawfully existing nonconforming density.

Mixed Use Community (MUC) zoning districts/land uses. The contents of both ordinances generally contain the language reviewed and recommended for approval by the P&Z.

Proposed amendments to the existing voluntary and involuntary reconstruction provisions (Secs. 158.139 and 158.140) provide three (3) individual and mutually exclusive redevelopment options described below. These options retain the same intent to reduce or eliminate nonconformities, with a preference that properties develop according to their applicable zoning district standards. Option 1, however, recognizes that, due to a variety of circumstances, including unplanned or undesired destruction, existing legally nonconforming developments may be reconstructed to the same number of units, and the same type of principal use(s) in existence prior to the reconstruction. Such development, that includes noncompliant structure(s), may be rebuilt to the same density and building cubic volume, allowing an increase of height of the structure to correspond with the increase in height required by the flood ordinance(s).

This nonconforming structure(s) redevelopment scenario is provided for and labeled as Option 1 in proposed Ordinance 2018-20. Option 1 can be viewed as a continuation of the provisions presently more typically associated with the existing *involuntary* reconstruction provisions. It allows legally nonconforming residential or tourism properties that exceed the current allowable density, to be rebuilt for the existing use, density and cubic content, along with aspects of the structure(s) that may be nonconforming such as height, setbacks and open space in existence prior to their removal. While Option 1 has an overall intent to encourage more conforming redevelopment, it does allow nonconforming properties to generally be built to a site's existing "as is" condition, but no more. Under Option 1, properties still would retain nonconforming status with regard to density.

Option 2 in the ordinance proposes new language, and a new option to the nonconforming redevelopment provisions. This option labeled **Nonconforming Redevelopment in Conformance with Zone District Requirements**, would allow legally nonconforming density properties that rebuild and meet *all* of the applicable zoning requirements to redevelop with the nonconforming density. Exercise of this redevelopment option would no longer require a site to maintain its existing building cubic content in a redevelopment scenario. This option provides more flexibility than Option 1, in that it would permit the redevelopment of a property to configure building(s) differently than what was existing on the property previously, and to add cubic content to those buildings, as long as all of the other requirements of the zoning district for the property (height, open space, setbacks, etc.) are met. This option, however, still would retain a nonconforming status with regard to density.

A noteworthy difference in the draft nonconforming redevelopment text is that the existing Sec. 158.139 (Involuntary Destruction) applies to all nonconforming properties in the Town, whereas Sec. 158.140 (Voluntary Reconstruction) is limited to multifamily and tourism properties. Thus, under the existing Code provisions, a nonconforming single family or two-family property can only rebuild to its nonconforming extent under the existing *involuntary* destruction provision. The draft text would permit nonconforming single family or two-family properties to rebuild regardless as to whether the redevelopment was either voluntary or involuntary in nature via the provisions of all three Options.

The proposed creation of a new **Conformance Overlay Redevelopment District (CORD)**, follows the Town Commission consensus and direction from their June 4, 2018, Special Workshop Meeting (see attached meeting minutes) to draft a new floating zoning

district to address nonconforming redevelopment opportunities that attain the following goals:

- Reduce existing nonconforming height, if applicable.
- Redevelopment should conform to the underlying zoning district standards to the greatest extent possible.
- Allow redevelopment flexibility (including building heights greater than allowed in underlying zoning district) from underlying zoning district standards, when certain site specific findings such as site or market/economic constraints and demonstration(s) can be made by the applicant.

The CORD is proposed to provide the opportunity for legally nonconforming properties to seek rezoning in order to obtain conforming status with the Zoning Code and Comprehensive Plan for density and provide the ability to request modification(s) to the existing underlying zoning district standards for the proposed redevelopment of a property. The CORD is referenced as **Option 3** in the revised nonconforming redevelopment text drafted as a combined Zoning Code Sec. **158.139 – Reconstruction of Nonconformities**. The CORD is proposed as a new Code section, **Article III, Division 3, Sec. 158.114**.

The CORD, as drafted, will function as a zoning overlay district, meaning that it can modify the underlying zoning district standards. For the CORD to apply, a rezoning of the property at a quasi-judicial hearing would have to occur to establish the legally nonconforming density as being conforming with Zoning Code and Comprehensive Plan densities. The CORD, as proposed, would offer some limited flexibility from the underlying zoning district standards. The potential design flexibility of the CORD provides the opportunity for properties to achieve improved conformance with underlying zoning district requirements, in comparison to existing legally nonconforming development, and would allow for imaginative, functional, high-quality land planning developments to be compatible with adjacent and nearby lands and activities, in keeping with the low density and lower-scale character of the Town. Overall, such developments are intended to reduce or eliminate nonconformities, especially Gulf and Pass waterfront yard setbacks, and bring previous nonconformities more into conformance with the Town's Zoning and Building Codes.

The steps to request a change in zoning to the CORD will follow the requirements for a zoning amendment (rezoning). The CORD introduces a new step of conducting a neighborhood meeting to inform nearby residents and interested parties of what is proposed, prior to filing an application. The rezoning would be required to be processed concurrently with a Future Land Use Map amendment that would apply the Town's, "Opportunity Area" designation to the site's Future Land Use designation. The application of the Opportunity Area future land use designation would allow for a site's legally nonconforming density to be recognized as conforming (per Future Land Use Policies 1.1.5 and 1.1.10).

Of note, with the creation of a new floating overlay district, staff is also proposing, in companion Ordinance 2018-14, that would limit the use of the Planned Unit Development (PUDs) process to conforming tourism and residential density properties, Mixed Use Community zone districts/future land uses and other commercial, office, institutional and marine zone districts. PUDs, via Outline Development Plans (ODPs), authorizes an applicant to apply for additional height and lot coverage that exceeds the zoning district

standard maximums, as set forth in Policy 1.1.10. Notwithstanding the foregoing, PUD requests are considered on a case by case basis by the Town Commission, and while these zoning district standards may be expanded in a qualifying PUD, they are not guaranteed. The potential increases, via PUD, include the following items highlighted below:

**Table 1  
Land Use Densities and Intensities in the Town of Longboat Key**

OPPORTUNITY AREAS		ESTABLISHED AREAS						
Symbol	Category	Symbol	Category	Density	Nonresidential Intensities			
					Maximum Lot Coverage		Maximum Height (stories/feet)	
					Standard	PUD or ODP	Standard	PUD or ODP
CTDO	Commercial Tourist Destination							
		TRC-3	Medium Density Tourist Resort/Commercial	3 u/ac	25%	35%	3/40	4/55
		TRC-6	High Density Tourist Resort/Commercial	6 u/ac	30%	40%	4/50	5/65**
COMO	Commercial							
		OI	Office-Institutional		30%	40%	2/30	
		CL	Limited Commercial		30%	40%	2/30*	
		CG	General Commercial		30%	40%	3/40*	
		CH	Highway Commercial	3 tourism u/ac	40%	50%	3/40*	
		MCS	Marina Commercial Service	1 accessory du located on the same lot	40%	50%	2/30*	

\* An additional five feet in building height allowed for a waterfront restaurant.

The proposed CORD does not presently include provisions for height or lot coverage increases like the PUD process does. Adoption of the proposed CORD would not change any existing entitlement rights as the potential for an additional story of height or lot coverage is at the discretion of the Town Commission, as is in PUD approval. Should the Commission wish to include similar provisions for the CORD, Future Land Use Policies 1.1.9 and 1.1.10 would need to be revised.

In addition, rezonings to the CORD are required to be accompanied by a site plan that is simultaneously reviewed by the Planning & Zoning Board and then by the Town Commission.

Although the CORD would afford the ability to request relief or modification from the underlying zoning district standards, applicants must demonstrate through the rezoning, the elimination or reduction of prior existing nonconformities, to the greatest extent possible, in conformance with the established standards of the CORD. These standards

include: Building Height, Lot Coverage, Building Setbacks, Off-Street Parking, Open Space, Building Distances, along with requirements to maintain Beach and Bay Access, Natural Shoreline, and the timing of the Development of Amenities and Tourism Units, in the case of mixed-use developments.

Below is a brief description of some of the standards and changes addressed in the CORD.

Building Height - Two separate standards apply.

- i. For properties with existing structures that are at or below the allowable height of the underlying zoning district, the maximum height shall be the height allowed by the underlying zoning district.
- ii. For properties with existing structure(s) that exceed the allowable height of the underlying zoning district, the Town Commission may approve waivers allowing increases in height above the maximum height of the underlying zoning district, provided that proposed height(s) represent a decrease in nonconforming height. The applicant shall demonstrate how reduction(s) in height on the property, to the greatest extent possible, will be more in conformity with the zoning district standards than the prior nonconforming height(s).

Cubic Content - Not restricted to the previous existing structures, and may be increased in conformance with the underlying, or modified, zoning district standards such as height, setbacks, and lot coverage.

Lot Coverage - Shall conform to the greatest extent possible to the lot coverage permitted in the underlying zoning district from the existing nonconforming development condition.

Building Setbacks – Shall to the greatest extent possible conform to the setbacks allowed by the underlying zoning district from the existing nonconforming development condition. Note: For any buildings that would exceed the underlying zoning district height, each building must have a minimum street setback of at least 2.5 times the overall height of the building, with a vegetative street buffer with sufficient density and height to minimize the visibility of the buildings from the right-of-way. Waivers to this required street setback may be granted by the Town Commission.

Open Space - The open space of the property proposed for zoning amendment shall conform to the greatest extent possible to the open space permitted in the underlying zoning district from the existing nonconforming development condition. However, open space shall not be less than 20 percent of the lot area.

Density - Provides for the preservation of the nonconforming density and authorizes the nonconforming density to become conforming within the CORD zoning district.

The Ordinance was also considered by the Planning and Zoning Board (P&Z Board) at its September 18, 2018, Regular Meeting and was recommended for approval. The recommendations were in the form of separate recommendations, as follows:

- Recommendation to strike all references to “Voluntary” and “Involuntary” within Ordinance 2018-20. Approved 6-0.



- Recommendation to approve Ordinance 2018-20, with the addition of the word 'zoned' to Sec. 158.139 (C), Option 2, in the first sentence, to state "*existing multifamily and tourism 'zoned' properties...*" Approved 5-1.
- Recommendation to approve the Conformance Overlay Redevelopment District (previously included as part of Ord. 2018-14). Approved 4-2.

Although not on the prevailing recommending side, concern was expressed by P&Z members regarding the flexibility provided by Option 3.

### **Staff Recommendation**

Forward Ordinance 2018-20 to the February 4, 2019 Regular Meeting for second reading, public hearing and adoption.

### **Attachments**

Ordinance 2018-20;

Staff PowerPoint Presentation;

Staff Report, dated 09-18-18, Director to P&Z Board;

Minutes from the 09-18-18 regular P&Z Board meeting on this issue; and

Minutes from the Town Commission Redevelopment Workshops: April 16, 2018, May 14, 2018, and June 4, 2018.

## ORDINANCE 2018-20

**AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, MODIFYING AND AMENDING TITLE 15 LAND DEVELOPMENT CODE, CHAPTER 158, ZONING CODE; MODIFYING AND AMENDING DIVISION 1, USE REGULATIONS WITHIN ARTICLE IV, GENERAL REGULATIONS; AMENDING 158.138 STATUS OF NONCONFORMITIES; AMENDING SECTION 158.139, RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF INVOLUNTARY DESTRUCTION OR DAMAGE AND RETITLING THE SECTION TO RECONSTRUCTION OF NONCONFORMITIES; DELETING SECTION 158.140, RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF VOLUNTARY RECONSTRUCTION; ADDING DIVISION 3 OVERLAY DISTRICTS WITHIN ARTICLE III, SITE AND DEVELOPMENT PLANS; ADDING SECTION 158.114, CONFORMANCE OVERLAY REDEVELOPMENT DISTRICT (CORD); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Charter of the Town of Longboat Key, Article II, Section 22(b), "*Comprehensive plan for town*," does not permit an increase in the allowable density as established by the March 12, 1984, Comprehensive Plan, without a referendum approved by the electors of Longboat Key; and

**WHEREAS**, on March 18, 2008, the electors of the Town of Longboat Key approved a referendum that allowed the Town's Comprehensive Plan and Zoning Code to be amended to allow then existing properties which had more dwelling or tourism units than the Comprehensive Plan allowed but which were legal at the time they were created to voluntarily rebuild to their then current dwelling or tourism density levels; and

**WHEREAS**, following that vote, the Town's Comprehensive Plan and Zoning Code were amended to allow certain nonconforming properties which have more multifamily dwelling or tourism units (density) than the Town's 1984 Comprehensive Plan allows, but which were legal at the time they were created, to rebuild to their current dwelling or tourism density levels under certain conditions by adopting Sections 158.139 and 158.140, of the Town Code which permitted such reconstruction; and

**WHEREAS**, the Town recognizes that property owners of Longboat Key should be able to continue to rebuild certain legally nonconforming structures, provided that certain conditions and all applicable local, state and federal codes are met in order to improve the public health, safety and welfare of the Town; and

**WHEREAS**, the Town Commission has deemed it desirable to stabilize and allow for the modernization of certain existing legally nonconforming residential, multifamily, and tourism densities by allowing redevelopment while allowing the current legally nonconforming density of the property to remain; and

**WHEREAS**, it is recognized that the owners of certain existing legally nonconforming residential, multifamily and tourism properties on Longboat Key should be able to apply to

rebuild their structures, provided that they are not increasing the extent of the prior existing nonconformities except as provided in this ordinance; and

**WHEREAS**, the Town's Land Development Code serves to preserve and enhance the Town's character by ensuring that land uses are responsive to the social and economic needs of the community and are consistent with the support capabilities of the natural and manmade systems; and

**WHEREAS**, the Town's Land Development Code also serves to maintain an environment conducive to the health, safety, welfare of the Town's residents, and preserves and enhances property values within the Town; and

**WHEREAS**, the Town Commission seeks to amend the Town's Land Development Code to create a new Overlay District, applicable to some legally nonconforming properties to enable flexibility of design and to encourage imaginative, functional, high-quality land planning developments in designated areas which are compatible with adjacent and nearby lands and activities and are consistent with the existing character of the Town, while also encouraging redevelopment of aging properties; and

**WHEREAS**, the Town Commission has determined that the new Overlay District also will provide a method to allow the Town Commission to consider requests from certain non-conforming properties that seek additional cubic content, while recognizing and keeping with the relatively low-density nature of the community; and

**WHEREAS**, it is the intent of this ordinance to require that all structures be brought into compliance with the State Building Code, FEMA requirements, and local flood control regulations; and

**WHEREAS**, the Town recognizes that to the "greatest extent possible," as referred to in this ordinance means that all structures, buildings, and uses that are rebuilt or restored under this ordinance should comply with the current local, state, and federal codes, with emphasis on meeting the gulf waterfront yard and open space requirements; and

**WHEREAS**, pursuant to Town Code Section 158.030(B), the Planning and Zoning Board considered the Zoning Code amendments described herein at its regular meeting and public hearing on September 18, 2018; and

**WHEREAS**, the Planning and Zoning Board found that the subject Zoning Code amendments are consistent with the Town of Longboat Key Comprehensive Plan as amended; and

**WHEREAS**, the Town Commission of the Town of Longboat Key, after review of the recommendations of the Planning and Zoning Board, comments made at public hearings, and careful consideration of the issues, finds that the proposed amendments are consistent with the Comprehensive Plan as amended and are in the best interest of the health, safety, and welfare of the citizens of Longboat Key.

**WHEREAS**, on January 7, 2019, the Town Commission conducted a duly noticed first reading and public hearing on the proposed Zoning Code amendments; and

**WHEREAS**, on \_\_\_\_\_, 2019, the Town Commission conducted a duly noticed second reading and public hearing on the proposed Zoning Code amendments and the Town Commission approved the amendments.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:**

SECTION 1. The whereas clauses above are ratified and confirmed as true and correct.

SECTION 2. Chapter 158, *Zoning Code*, Article IV, *General Regulations*, Division 1, *Use Regulations*, is hereby amended to delete Section 158.140, and amend Sections 158.138, and 158.139 of the Town's Zoning Code to read as follows:

**158.138(8)(a)- Status of Nonconformities, Abandonment**

(a) *Abandonment.* Except as set forth in ~~subsections 158.139(A) and 158.114~~, providing for the reconstruction of ~~legally involuntarily destroyed~~ nonconforming structures, buildings or uses, a nonconforming use not used for a period of one year or the change of use to a more restricted or conforming use for any period of time shall be considered an abandonment thereof and the nonconforming use shall not thereafter be revived.

**158.139 - Reconstruction of nonconformities ~~in the event of involuntary destruction or damage.~~**

(A) *Intent.* It is the intent of this section, subject to an applicant meeting all the criteria set forth below, that in the event of involuntary destruction due to natural events to allow existing, legally nonconforming noncompliant residential or tourism properties that exceed the current allowable density, structures to be rebuilt for the existing use and to the same density in accordance with all existing Zoning and Building requirements. Existing developments that are legally nonconforming due to the current number of dwelling or tourism units, may be reconstructed to the same number of units, and the same type of principal use(s) in existence prior to the reconstruction. It is also the intent of this section that noncompliant structures may be rebuilt to the same density and building cubic volume, allowing an increase of height of the structure to correspond with the increase in height required by the flood ordinance(s). In any redevelopment scenario, the overarching intent is and to reduce or eliminate nonconformities, with a preference that properties develop according their zone district, especially gulf and pass waterfront yard setbacks, to the greatest degree possible, as set forth below. Three individual, and mutually exclusive, legal nonconforming density redevelopment options are provided below. These options may not be combined.

(B) **Option 1- —Redevelopment of Non-Compliant Structures** Legally nonconforming structures, buildings and uses ~~which are substantially damaged by more than 50 percent in accordance with chapter 154, destroyed or made unsafe or unusable by hurricane, storm surge, or other involuntary act,~~ may be reconstructed. Such reconstruction shall

be limited to the same building cubic content, location, and number of units in existence prior to their removal-casualty, subject to compliance with the following conditions:

- (1) *Compliance with town ordinances.* To the greatest extent possible, such reconstruction shall comply with all codes and regulations of the town. For purposes of this section, "to the greatest extent possible" shall mean bringing the previous nonconformities into conformance with the Town's Code to the extent that it does not create an unnecessary and undue hardship as determined by the town.
- (2) *Prohibition on increase in extent of nonconformities.* All such reconstruction shall not increase the extent of the prior existing nonconformities, except for height as addressed below or as a result of modifications approved by the planning and zoning board, and prior existing nonconformities shall be eliminated to the greatest extent possible.
- (3) *Building cubic content.* Owners of legally nonconforming structures shall be permitted to rebuild ~~the non-compliant~~ structure(s) to the same building cubic content that existed prior to ~~the removal-casualty~~. Additional building volume created as a result of compliance with flood control laws shall not be included in determining building cubic content. Additional areas and volume created for elevators, stairs, landings, mechanical areas and walkways, which were not included in the former structure(s), shall not be included in building cubic content, provided that the addition of any of these elements does not create a greater nonconformity as to open space or required setback.
- (4) *Unit area increase.* So long as there is no increase in overall building cubic content, as determined by subsection (3) above, units within the structure(s) may be increased in cubic ~~content~~ volume only as a result of decreasing the number of units within the structure or diminishing the previously existing common areas within the ~~substantially damaged or destroyed non-compliant building~~ structure(s).
- (5) *Time frame for obtaining site plan approval.* To qualify for rights under this provision, any such reconstruction shall obtain site plan approval prior to or within two years of the ~~date of the casualty removal, or abandonment of use.~~ The planning and zoning board may, upon application received prior to the expiration of the two-year period, extend such time for demonstrated cause pursuant to the town's Code. A building permit shall be obtained within the timeframe conditioned at the time of site plan approval. Notwithstanding the foregoing, the planning and zoning board may in its sole discretion unilaterally extend the date for site plan approval up to an additional two years if, owing to ~~the~~ circumstances of the such as a natural disaster, such extension is in the best interests of the town.
- (6) *Demonstration of Legal Nonconformity.* It is the burden of the applicant, with the assistance of all available Town records, to establish, to the satisfaction of the town manager or designee, by clear and convincing evidence, through documentation, as applicable to the nonconformity proposing to be maintained, including, but not limited to, certification, photographs, diagrams, plans, affidavits, and permits, the actual uses, building cubic content, densities, and intensities legally existing prior to the disaster event or redevelopment, prior to seeking site plan approval.
- (7) *Nonconformities and the relaxation of certain controls.* To minimize the need for individual variances or departure applications, prior to the approval of reconstruction site plans, the planning and zoning board may, as part of the site plan review

process, relax or modify one or several of the controls listed in sections 158.069, 158.102, 158.127, 158.128, 158.145, 158.150 and 158.153 in conformance with this section. However, prior existing nonconformities shall be eliminated to the greatest extent possible. In considering such request, the planning and zoning board shall also consider the nature and character of development in the surrounding area, and the impact thereon, in determining whether, or the degree to which, these controls may be modified. Those controls which may be modified are listed below in order of importance, highest to lowest, such that the control with the highest importance is the control with the greatest need for reduction or elimination of any nonconformities (and least likely of relaxation or modification) and the control with lower importance has a lesser need for reduction or elimination (and more likely of relaxation or modification).

(a) ~~(1)~~ Required yards:

Required yards:

- (ia) Properties which were previously permitted to build within a gulf or pass waterfront yard, closer to the water than currently permitted, may continue to enjoy these lawfully existing rights without subsequent planning and zoning board approval, however those properties shall not be able to avail themselves of this Code section regarding reconstruction of nonconformities ~~in the event of involuntary destruction or damage~~ and shall comply in all respects with the codes in effect at the time of reconstruction ~~the destruction or damage~~. These properties may, alternatively, waive these previously granted rights and seek approval of the planning and zoning board for encroachments into the required gulf or pass waterfront yard, thus availing themselves of the provisions of this Code section. In accordance with the policies and procedures in this Code section, the planning and zoning board may approve encroachments into a waterfront yard up to the amount of the previously existing encroachment.
- (bii) The approval of a modification to the required gulf or pass waterfront yards shall never be less than 50 feet from the mean high-water line or erosion control line, whichever is most landward, unless the previous legal encroachment was less than 50 feet, in which case the modification may never be less than the previous encroachment. The burden to provide sufficient evidence as to why the modification is necessary and essential to the redevelopment of the site shall be upon the applicant.
- (iiie) Street, rear, side, or waterfront yards, other than the gulf waterfront yard, may be modified to:
  - (1i) Permit the reconstruction of existing structures that are nonconforming, with minor modifications to the required yards, in order to accommodate an increase in building cubic content, as permitted in subsection (B)(3) of this section;
  - (2ii) Permit the reconstruction of existing structures that are nonconforming with regard to a specific setback so long as the reconstruction will not further reduce the setback;
  - (3iii) Permit the construction of a handicapped access appurtenance to any reconstruction; or

- (4iv) Allow for the placement of stairs or stair landing that provides access into a reconstructed dwelling unit.
  - (5e) Buildings or structures that are ~~not in compliance~~non-compliant with the current street, rear, side or waterfront yards regulations, other than the gulf or pass waterfront yards, and can be proven to have been permitted prior to the adoption of such regulations shall be considered legally nonconforming. The street, rear, side or waterfront yards, other than the gulf or pass waterfront yards, may be modified to be reconstructed as it existed prior to the disaster event.
- (b2) *Open space:*
- (ia) Modifications which reduce the open space requirement of the Zoning Code may be allowed when it:
    - (1i) Accommodates modifications to the off-street parking requirements, and utilizes the subsection locating off-street parking at the ground floor level of a structure pursuant to subsections (e5)(iii)(e) and (iv)(d) below of this section; or
    - (2ii) Accommodates other approved changes to the site as a result of the reconstruction.
  - (iib) Reductions from the open space that existed prior to reconstruction ~~the disaster event~~ shall be minimized to the greatest extent possible to allow for compliance with the town's flood control ordinance, but open space shall not be less than 20 percent of the lot area.
- (c3) *Building height:*
- (ia) The overall height of a building, at the time of reconstruction, shall be measured from the minimum habitable floor elevation in accordance with the local flood control ordinance, or state mandated height, whichever is applicable. This shall not preclude the utilization of the ceiling of the ground floor parking garage from being utilized as the base measuring point for building height for a multifamily structure, as defined in section 158.006 (definition of "Building, Height of").
  - (iib) The overall height of a building may be increased by a maximum of the additional elevation required to comply with subsection (c)-(i)-(3)(a) above.
  - (d4) *Maximum building length, distance between buildings, and distance between buildings and driveways.* These development criteria may be modified to allow reconstruction of existing non-conforming structures, but shall not be reduced in a manner that jeopardizes public safety.
- (e5) *Off-street parking spaces.*
- (ia) In no instance shall the parking requirements be modified where the reconstruction involves the increase of density or intensity of use.
  - (iib) Shelters for parking spaces that were previously unsheltered shall not be permitted unless the shelters meet the setback and land coverage requirements for the site.

(iii) Where to the greatest extent possible, the ground floor area of the reconstructed building shall be utilized for off-street parking.

(iv) Off-street parking modifications may include the number of spaces provided, minimum dimensions of the stalls, minimum aisle widths, and location of spaces within required yards, and be made to:

(1) Improve ingress and egress to the site;

(2) Eliminate or reduce the instances where conditions require that parked vehicles back out onto public/private streets; or

(3) Allow for the provision of handicapped-accessible parking spaces.

(E) Site plan approval.

(a) All applications for the rebuilding of ~~involuntarily damaged or destroyed~~ nonconforming structures, buildings or uses shall be submitted for site plan review in accordance with article III of this chapter.

(b) Permitted uses without site plan review, as listed in section 158.125, are not required to be processed under the site plan review provisions of article III, but can instead be processed in accordance with section 150.31.

(c) Permitted uses with site plan review, which meet the provisions of section 158.100, may be exempted from site plan submission requirements, in accordance with said section, and the administrative staff is hereby authorized to modify the controls as set forth herein.

(F) The town commission, by emergency ordinance, may develop additional or alternative procedures for the swift processing of applications in cases where a state of emergency is declared; and, in addition, may expand the authority of the administrative staff to relax certain controls by the emergency ordinance. A status report, delineating activities undertaken by the administrative staff under the provisions of this section, shall be provided to the planning and zoning board on a monthly basis.

(10) Decisions of the administrative staff, made relative to the provisions of this section, may be appealed by any person to the zoning board of adjustment, in accordance with the appeal procedures set forth in section 158.027. No provision herein, shall be construed to deny the reconstruction, continuance or improvement of legally nonconforming structures, buildings and uses, so long as the reconstruction, continuance or improvement is in accordance with this section.

~~(H) — Developments approved by an outline development plan may request departures from the land development regulations through the standard ODP procedures.~~

**(C) Option 2— Nonconforming Redevelopment in Conformance with Zone District Requirements**

Legally nonconforming structures, buildings and uses may be rebuilt to the existing use and density, provided the proposed redevelopment is in accordance with all of the criteria associated with the subject site's zoning and requirements of this code. Such developments may be redeveloped to the same number of units, same type of principal use(s) in existence



prior to the redevelopment, and may add additional cubic content, subject to compliance with the following conditions:

- (1) *Intent.* The purpose of Option 2 is to accommodate redevelopment of existing legal nonconforming properties that could retain their existing nonconforming densities and uses but, through redevelopment of their properties, would achieve conformity with all applicable building heights and all other town codes, regulations and ordinances.
- (2) *Building cubic content.* Structures can be rebuilt to the same total building cubic content as before, which volume can also be increased to an extent consistent with section 158.139 (C)(1). Owners may elect to reduce the number of nonconforming units in order to achieve compliance with Option 2.
- (3) *Time frame for obtaining site plan approval.* To qualify for rights under this provision, any such redevelopment shall obtain site plan approval prior to or within two years of the removal or abandonment of use. The planning and zoning board may, upon application received prior to the expiration of the two-year period, extend such time for demonstrated cause pursuant to the town's Code. A building permit shall be obtained within the timeframe conditioned at the time of site plan approval. Notwithstanding the foregoing, the planning and zoning board may in its sole discretion unilaterally extend the date for site plan approval up to an additional two years if, owing to circumstances such as a natural disaster, such extension is in the best interests of the town.
- (4) *Demonstration of Legal Nonconformity.* It is the burden of the applicant to establish, with the assistance of all available Town records, to the satisfaction of the town manager or designee, by clear and convincing evidence, the density proposed to be maintained, prior to seeking site plan approval.
- (5) *Site plan approval.* All applications shall be submitted for site plan review in accordance with article III of this chapter.

**(D) Option 3- Nonconforming Redevelopment Seeking Modifications from Zone District Requirements**

Existing properties that are legally nonconforming due to the current number of dwelling or tourism units exceeding the current allowable density, may also seek a zoning amendment to the Conformance Overlay Redevelopment District (CORD) in accordance with section 158.114 of this code. Such rezoning, if approved, allow for properties to be made conforming and provide for relaxation or modification of one or several of the controls as identified in the CORD.

- (1) *Time frame for obtaining Conformance Overlay Redevelopment District (CORD) approval.* To qualify for rights under this provision, any such redevelopment shall obtain CORD approval prior to or within two years of the removal or abandonment of use. The planning and zoning board may, upon application received prior to the expiration of the two-year period, extend such time for demonstrated cause pursuant to the town's Code. A building permit shall be obtained within the timeframe conditioned at the time of CORD approval. Notwithstanding the foregoing, the

planning and zoning board may in its sole discretion unilaterally extend the date for CORD approval up to an additional two years if, owing to circumstances such as a natural disaster, such extension is in the best interests of the town.

(2) *Demonstration of Legal Nonconformity.* It is the burden of the applicant to establish, with the assistance of all available Town records, to the satisfaction of the town manager or designee, by clear and convincing evidence, through documentation, as applicable to the nonconformity proposing to be maintained, including, but not limited to, certification, photographs, diagrams, plans, affidavits, and permits, the actual uses, densities, and intensities legally existing prior to the disaster event or redevelopment, prior to seeking site plan approval.

#### ~~158.140—Reconstruction of nonconformities in the event of voluntary reconstruction.~~

~~(A)—*Intent.* It is the intent of this section, subject to an applicant meeting all of the criteria set forth below, to allow existing, legally nonconforming multifamily residential or tourism properties that exceed the current allowable density, to be voluntarily demolished and rebuilt for the existing use and density. Existing developments that are legally nonconforming due to the current number of dwelling or tourism units, may be reconstructed to the same building cubic content, the same number of units, and the same type of principal use(s) in existence prior to the reconstruction.~~

~~(1)— For multifamily or tourism use structures whose first habitable floor does not comply with the current flood control ordinance(s) or state requirements, an increase in height of the new structure will be granted equal to the increase in height required by the local flood control ordinance(s) or the state.~~

~~(2)— Voluntary reconstruction under this section allows for the town commission under certain circumstances to allow for modifications of zoning code requirements to comply with federal, state, or local code requirements and limited adjustments from the requirements of this Code as set forth below.~~

~~(3)— *Density.*~~

~~(a)— The maximum allowable density for voluntary reconstruction under this section shall be the density allowed by the underlying zoning district or the legally nonconforming existing density on the subject site at the time of application, whichever is greater.~~

~~(b)— The number of units approved by the ODP shall become the maximum allowable density.~~

~~(c)— Any additional density between what is allowed by the ODP and what was legally nonconforming shall be lost, forfeited and not available for future development.~~

~~(B)— *Nonconformities and code compliance.* In conjunction with an application to voluntarily reconstruct a legally nonconforming structure, the town commission may, as part of the review and approval process, permit modifications for one or several of the controls listed in sections 158.069, 158.102, 158.127, 158.128, 158.145, 158.150 and 158.153, in conformance with this section. In considering such request, the town commission shall~~

~~consider the nature and character of existing and approved future development in the surrounding area, the comprehensive plan, and the impact thereon, in determining whether or the degree to which these controls may be modified. Modifications of zoning code requirements shall be subject to compliance with the following conditions:~~

~~(1) *Compliance with town ordinances.* To the greatest extent possible, such reconstruction shall comply with all codes and regulations of the town, to eliminate prior existing nonconformities. For purposes of this section, "to the greatest extent possible" shall mean bringing the previous nonconformities into conformance with the Town's Code to the extent that it does not create an unnecessary and undue hardship as determined by the town.~~

~~(2) *Prohibition on increase in extent of nonconformities.* All such reconstruction shall not increase the extent of the prior existing nonconformities, except for height as provided herein, and all prior existing nonconformities shall be eliminated to the greatest extent possible.~~

~~(3) *Modifications of zoning code requirements may be granted for the following:*~~

~~(a) *Building height.*~~

~~i. The overall allowable height of a building, at the time of reconstruction, shall be measured from the minimum habitable floor elevation, as required by the local flood control regulations, or state mandated height, whichever is applicable.~~

~~ii. The overall height of a building may be increased by a maximum of the additional elevation required to comply with subsection (A).~~

~~iii. Modifications of zoning code requirements for the existing building height, exceeding the application of subsections (B)(3)(a)i. and (B)(3)(a)ii. above, may be requested not to exceed the minimum height necessary to comply with federal, state and town flood regulations and to allow for the maximum use of understructure area for parking to encourage the reduction of nonopen space. The burden to provide sufficient evidence as to why the modification is the minimum necessary and essential to the redevelopment of the site shall be upon the licensed design professional.~~

~~(b) *Building cubic content.* Legally nonconforming structures shall be permitted to rebuild the structure to the same building cubic content that existed at the time of application for voluntary reconstruction, subject to compliance with the following conditions:~~

~~i. Additional building volume created as a result of compliance with flood control laws shall not be included in determining building cubic content.~~

~~ii. Additional areas and volume created for elevators, stairs, landings, mechanical areas and walkways required to meet all applicable code requirements and minimum legal standards, which were not included in the former structure, shall not be included in building cubic content, provided that the addition of any of these elements does not create a greater nonconformity as to open space or required setback.~~

~~iii. *Unit area.* So long as there is no increase in overall building cubic content, as determined by the applicable subsection of (B)(3)(b), subject to~~

~~compliance with all other conditions of this section, units within the structure may be increased in cubic volume as a result of decreasing the number of units to be reconstructed or by diminishing the previously existing common areas within the building.~~

~~(c) — *Open space.* The required open space may be modified, but shall not be less than what existed prior to the voluntary redevelopment or a minimum of 50 percent of the lot area.~~

~~(d) — *Yard areas.* Buildings or structures that are not in compliance with the current street, rear, side or waterfront yards regulations, other than the gulf or pass waterfront yards, and can be proven to have been permitted prior to the adoption of such regulations shall be considered legally nonconforming. The street, rear, side or waterfront yards, other than the gulf or pass waterfront yards, may be modified to be reconstructed as it existed prior to the application for voluntary reconstruction. The burden to provide evidence, sufficient to establish that the modification is the minimum necessary and essential to the redevelopment of the site, shall be upon the licensed design professional.~~

~~i. — Modifications may be permitted to yard areas for the construction of a handicapped access appurtenance to the minimum legal standards necessary for any reconstruction.~~

~~ii. — Modifications may be permitted to yard areas for the placement of stairs or stair landings that provide access into a reconstructed dwelling unit to the minimum code standard.~~

~~(C) — *Limited adjustments.* Limited adjustments may be granted to the following controls in order to benefit the public interest. The burden of proof shall be upon the applicant. The benefit to the public interest shall be demonstrated by clear and convincing evidence and that the adjustments are necessary and essential to the application.~~

~~(1) — *Building height.*~~

~~(a) — Adjustments to the existing building height, exceeding the application of subsection (B)(3)(a), may be requested.~~

~~(b) — Additional height permitted by the zoning code does not require an adjustment.~~

~~(2) — *Unit area.*~~

~~(a) — Units within the structure may be increased in cubic volume, as a result of increasing unit square footage, only if there is sufficient open space on the property to accommodate the increased square footage, and the structure complies with the building coverage requirements of the site.~~

~~(b) — The floor area ratio (FAR) for the proposed structure shall not exceed the FAR of the existing structure or that allowed by the underlying zoning district, whichever is greater.~~

~~(3) — *Required yards.* Properties that were previously permitted to build within a gulf or pass waterfront yard, closer to the water than currently permitted, must comply with the minimum required gulf or pass waterfront yard to the greatest extent possible. These properties may request an adjustment to decrease the required yard, but in no case shall the adjustment permit encroachments into a waterfront yard further than the amount of the previously existing encroachment.~~

- ~~(a) The adjustment to the required gulf or pass waterfront yards shall never be less than 50 feet from the mean high-water line or erosion control line, whichever is most landward.~~
- ~~(b) If the structure cannot be otherwise constructed, adjustments to the required street, rear, side or waterfront yards, other than the gulf and pass waterfront yards, may be requested subject to compliance with the following:~~
- ~~i. Adjustments may be permitted to yard areas for the reconstruction of existing structures that are nonconforming, with adjustments to the required yards, in order to accommodate an increase in building cubic content as permitted in subsection (B)(3)(b) building cubic content, and shall be subject to the following limits:~~
    - ~~a. Street yards shall be no less than 20 feet.~~
    - ~~b. Side yards shall be no less than ten feet on each side.~~
    - ~~c. Water yards, other than gulf or pass waterfront yards, shall be no less than 30 feet.~~
    - ~~d. Rear yards shall be no less than 20 feet.~~
  - ~~ii. Adjustments may be permitted for the reconstruction of existing structures that are nonconforming with regard to a specific setback so long as the reconstruction will not further reduce the setback.~~
  - ~~iii. Adjustments to required yards shall be prioritized with the goal of preserving the required gulf waterfront yard.~~
- ~~(4) Open space. Adjustments may be granted so long as the provided open space is no less than 20 percent of the land area.~~
- ~~(5) Off-street parking spaces:~~
- ~~(a) In no instance shall the parking requirements be modified where the reconstruction involves the intensity of use.~~
  - ~~(b) Shelters for parking spaces that were previously unsheltered shall not be permitted unless the shelters meet the setback and land coverage requirements for the site.~~
  - ~~(c) To the greatest extent possible, the ground floor area of the reconstructed building shall be utilized for off-street parking.~~
  - ~~(d) Requested adjustments to the off street parking requirements of the zoning code may include the number of spaces provided, minimum dimensions of the stalls, minimum aisle widths, and location of spaces within required yards only when clear and convincing evidence is submitted that the adjustment will:~~
    - ~~i. Improve ingress and egress to the site;~~
    - ~~ii. Eliminate or reduce the instances where conditions require that parked vehicles back out onto public/private streets; or~~
    - ~~iii. Allow for the provision of handicapped accessible parking spaces.~~
- ~~(6) If ten or more units cannot be otherwise constructed, the following adjustments to the supplemental controls for setbacks, maximum building length, distance between~~

~~buildings, and distance between buildings and driveways for buildings may be requested:~~

~~(a) *Maximum building length.* Adjustments to the allowable building length may be granted so long as the proposed side yards comply with the underlying zoning district of the property.~~

~~(b) *Distance between buildings.*~~

~~i. Adjustments to the required distance between buildings may be granted so long as all applicable life safety, fire and building code requirements are met.~~

~~ii. Adjustments to the required distance between the front or rear of any buildings may be granted so long as all applicable life safety, fire and building code requirements are met.~~

~~iii. Adjustments to the required distance between the sides of any buildings may be granted so long as all applicable life safety, fire and building code requirements are met.~~

~~(c) *Distance between buildings and driveways.* Adjustments to the distance between the driveway or parking lot and any building may be granted, but shall not be reduced to less than ten feet. This supplemental control does not apply to proposed parking under or within a building or to a front entrance to a building.~~

~~(D) *Application and review process.* Applications for voluntary reconstruction of nonconforming multifamily or tourism properties shall follow the procedures for approval of an outline development plan and site plan review under article III of the Town of Longboat Key Zoning Code. The review process required for voluntary reconstruction shall require concurrent review and approval of the ODP and site plan applications.~~

~~(E) *Mobile home parks.* Mobile home parks that were in existence as of January 1, 2009, may voluntarily rebuild and convert to a multifamily building or buildings with up to the same density and up to the same cubic foot content of each mobile home in existence within a particular mobile home park and ancillary structures within the park, so long as the lot, yard, height and bulk regulations of the underlying zoning district are met. Each unit shall meet the minimum requirements for square footage in accordance with section 158.145. The application shall be in the form of an outline development plan and site plan and shall be otherwise governed by the provisions of this Code.~~

~~(F) *Conflicting code provisions.* Should provisions under this section for voluntary reconstruction and the provisions of sections 158.065 through 158.103 conflict, the provisions for voluntary reconstruction shall prevail.~~

~~(Ord. 90-06, passed 3-19-90; Ord. 06-09, passed 6-15-06; Ord. 07-20, passed 4-9-07; Ord. 2008-29, § 4, passed 1-5-09)~~

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**SECTION 3.** Chapter 158, Zoning Code, Article III, Site and Development Plans, Division 3, Conformance Overlay Redevelopment District (CORD), is hereby established as follows:

### **Division 3. Conformance Overlay Redevelopment Districts (CORD)**

#### **158.114– Overview of Conformance Overlay Redevelopment District (CORD)**

(A) *Intent.* The provisions of this zoning overlay district are intended to apply to existing residential, tourism, or mixed use projects that were legally established prior to March 12, 1984, which do not comply with the existing maximum density provisions of the Comprehensive Plan. The intent of the Conformance Overlay Redevelopment District (CORD) zoning district is to function as a zoning overlay district, which can modify or adjust underlying zone district standards to allow the redevelopment of these properties consistent with the standards of this section. The overlay is intended to preserve the nonconforming density of these projects and enable such projects to rezone to become conforming, while providing for flexibility of design. The potential design flexibility is provided in order to achieve improved conformance with underlying zone district requirements and to encourage imaginative, functional, high-quality land planning developments compatible with adjacent and nearby lands and activities, in keeping with the low density character of the town. Additionally, the overlay provides for flexibility to apply creative and innovative approaches and design to address challenges related to changing markets, building trends, and environmental conditions, while remaining compatible with the overall character of the island. Overall these developments should reduce or eliminate nonconformities, especially gulf and pass waterfront yard setbacks, to the greatest degree possible. For purposes of this section, "to the greatest degree possible" shall mean bringing the previous nonconformities into conformance with the town's code to the extent that it does not create an unnecessary and undue hardship as determined by the town. Redevelopment proposed under the overlay zoning amendment process shall not be subject to any conflicting Redevelopment Standards, however, the proposed development must demonstrate that the standards proposed will enable a development that is superior to a development that could be permitted under standard zoning or that represents a significant improvement over existing nonconforming conditions. Properties approved under the outline development plan process of article III, division 1 of this chapter are not superseded or considered nonconforming by the provisions of this section.

(B) *Uses Permitted.* The principal and accessory uses that are allowed are those that are permitted in the appropriate underlying zoning district as described in the Schedule of use regulations 158.125.

In addition, the overlay permits the replacement of any legally established, by March 12, 1984, principal or accessory use that is not currently conforming to the applicable Future Land Use designation of the Comprehensive Plan without regard to the Redevelopment Standards of section 158.139.

(C) *Procedures for Approval*

(1) *In General.* The steps to request a change in zoning to the CORD will follow the requirements for a zoning amendment. A CORD zoning map amendment shall be accompanied by an associated site plan that is simultaneously approved by the town commission. Applications for a

change in zoning to CORD shall be filed and reviewed concurrently with a requested Future Land Use map amendment. If a referendum is required to increase density pursuant to the Town Charter, a formal application for a CORD zoning amendment and site plan may not be submitted until such referendum for the increase has been approved. Approval of a referendum for increased density is merely permission for consideration of an application and does not guarantee approval of a density increase through the CORD zoning amendment process. A CORD zoning map amendment may also be allowed to include additional property(ies) that are combined with legally nonconforming density properties, when developed as a unified site plan.

- (2) *Pre-Application Conference.* A pre-application conference with the planning and zoning official, or designee, is required, at which time the request will be reviewed for eligibility to apply for the CORD zoning designation consistent with the standards of this section and with the provisions of the Comprehensive Plan. For the pre-application conference, applicants must specify in writing the existing and proposed uses and the existing and proposed density and intensity of the development, as well as any other necessary information as determined by the planning and zoning official to determine eligibility to apply for a change in zoning to CORD. Applications will not be processed unless they are determined by the planning and zoning official, or designee, to be eligible to apply for the CORD zoning designation.
- (3) *Neighborhood Information Meeting.* Prior to submittal of the application by the planning and zoning board, the applicant shall hold a neighborhood information meeting with property owners and interested community members within 200 feet of the proposed development. The meeting must be held within the Town at a location and time convenient to the surrounding property owners to maximize attendance, subject to the following requirements:

  - (a) *Notification.* Two weeks prior to the meeting date, the applicant shall mail notices of the meeting date, time, and place to all property owners within a radius of 200 feet from the boundary of the proposed development and shall post the property. The applicant shall inform the planning and zoning official of the proposed meeting date and time prior to sending out the notices. Documentation of the mailed notice shall be provided to the planning and zoning official for verification.
  - (b) *Applicant's Presentation.* At the meeting, the applicant shall explain the proposed use of the subject property and make a copy of the proposed concept plan available for review by attendees. The applicant may also discuss the project's development objectives, design philosophy and proposed schedule for completion.
  - (c) *Question and Answer Period.* Upon completion of the presentation, time shall be reserved for a question and answer period. Questions should be limited to the proposal as presented, not to the question of whether the site should be developed or redeveloped. The applicant shall identify how potential community concerns will be mitigated. Meeting notes, prepared by the applicant or representative, shall be taken of items covered and questions raised and responses provided



at the meeting. Meeting notes will be required to be included in the formal application submittal.

- (4) *Formal Application.* The application for a CORD shall be filed with the planning and zoning official and follow the procedures for Zoning Map Amendments. An application for site plan approval for the CORD shall be filed and reviewed concurrently with the CORD application. The application for site plan approval shall be processed in accordance with article III, division 2 of this chapter. Upon receipt of the application the planning and zoning official shall review the application to determine its appropriateness and completeness in respect to the requirements of this section, and accept or reject it in writing. Upon acceptance of the application, the town's administrative staff shall refer the application, together with all supporting documentation and a staff report, including findings of fact as to the consistency of the application with the Land Development Code and the Comprehensive Plan, to the planning and zoning board for its review and recommendations. The planning and zoning board and town commission shall not receive, review, make recommendations or act on applications for CORD approval except during the town's annual site and development plan season. During the review process, the town may retain consultants to assist in the review. The cost of retaining the consultants shall be borne by the applicant. For purposes of this chapter, the annual site and development plan cycle shall be September through June of the following year. For purposes of calculating the required processing times set forth in this section for the planning and zoning board and the town commission, the period of time from July 1 through August 31 shall not be counted in said computation.
- (5) *Planning and Zoning Board Public Hearing.* Upon receipt of the application from the planning and zoning official, the planning and zoning board shall, in a quasi-judicial proceeding, review the CORD application and make recommendations to the town commission that are based on competent, substantial evidence of record. The planning and zoning board may also formulate findings of fact as to the consistency of the application with the Land Development Code and with the Comprehensive Plan. The planning and zoning board shall recommend approval of the application as submitted, approval of the application with changes or special conditions, or denial of the application. The determination and recommendations of the planning and zoning board shall be advisory only and shall not be binding upon the town commission. For purposes of this section, the planning and zoning board shall receive the application from the planning and zoning official at the board's next regular meeting where a quorum is present following the planning and zoning official's submittal of the application to the board. The planning and zoning board is specifically authorized to continue its deliberations, reasonably request additional relevant materials, and elicit expert testimony to aid in its deliberations.
- (6) *Town Commission Public Hearing.* A public hearing on the CORD application, conducted as a quasi-judicial proceeding, shall be held by the town commission upon the commission's receipt of the application from the planning and zoning board. Public notice of such hearing shall be given in accordance with the provisions of applicable Florida Statutes, the Town

Charter and this chapter. For purposes of this section, the town commission shall receive an application from the planning and zoning board at the commission's next regular meeting where a quorum is present, following the submittal of the planning and zoning board's action on the application to the town commission. A transcript of the hearing may be caused to be made by the town commission at the cost of the applicant, copies of which shall be made available at cost to any party to the proceedings; and all exhibits accepted in evidence shall be identified and duly preserved, or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record. The town commission is specifically authorized to continue its deliberations, request additional materials, and elicit expert testimony to aid in its deliberations, and may, at its sole discretion, remand the application to the planning and zoning board for additional hearing and consideration. If changes are made to the application, accompanying plans or conditions of approval after review by the planning and zoning board, the town commission may, at its sole discretion, remand the application back to the planning and zoning board, but is not required to do so.

- (7) *Town Commission Decision Procedures.* At the conclusion of the public hearing, the town commission shall review the CORD application and either approve it as submitted, approve it with changes or special conditions, or deny it. The applicant may request that the application be withdrawn or that the hearing be continued if the applicant does not accept the changes or special conditions recommended by the town commission. The action taken by the town commission shall be by ordinance. The town commission may unilaterally extend the time for final action where the town commission determines additional time is necessary to properly and completely review the CORD overlay application.
- (a) In the event approval is granted, the town commission shall, as part of its ordinance, specify the drawings, plan sheets, renderings, specifications, and form of performance and maintenance bonds that shall be considered part of the final approval.
- (b) In the event a CORD is granted approval, the town commission shall set forth in the ordinance the time within which an application for final site plan approval, or applications in the case of a phased development, shall be filed. However, if a final site plan for the entire CORD overlay was approved concurrently with the CORD overlay, the ordinance does not need to specify a time period.
- (8) *Filing with the Town Clerk.* Within seven days after the adoption of the ordinance provided for in section 158.114(C)(7) above, it shall be certified by the town clerk and shall be filed in the clerk's office, and a certified copy shall be mailed to the applicant. A CORD overlay upon approval and acceptance, as provided herein, shall be depicted on the Town Official Zoning Map and is defined as running with the land; however, an applicant may apply for a revision to the site plan in accordance with the site plan procedures. Any changes or amendments to an approved site plan, not determined to be minor development proposals, shall require a resubmission in accordance with the provisions of this section. Immediately following expiration of the 30-day appeal period and upon successful

resolution of any appeals, if applicable, the town clerk shall file with the clerk of the court the concept plan to record it in the official records of the county in which the property is located at the cost of the applicant.

- (D) *CORD Zoning Development Standards.* A CORD shall be permitted only upon an order of the town commission approving the CORD, with a site plan, and any site specific development standards, as may be modified or adjusted by the town commission due to an applicant's demonstration of applicable site constraints or economic or market related demands below, in conformance with this section. However, prior existing nonconformities shall be eliminated to the greatest extent possible. In considering such a request, the town commission shall also consider the nature and character of development in the surrounding area, and the impact thereon, in determining whether, or the degree to which, these development standards may be modified.

No CORD shall be approved unless it complies with the following standards listed below in order of importance, highest to lowest, such that the control with the highest importance is the control with the greatest need for reduction or elimination of any nonconformities (and least likely of relaxation or modification) and the control with lower importance has a lesser need for reduction or elimination (and more likely of relaxation or modification):

- (1) *Building Setbacks.* The proposed minimum side, rear, and waterfront building setbacks, as measured from the boundaries of the CORD request, shall to the greatest extent possible conform with the setbacks allowed by the underlying zone district from the existing non-conforming development condition. For any buildings that would exceed the underlying zone district height, each building must have a minimum street setback of at least 2.5 times the overall height of the building, with a vegetative street buffer with sufficient density and height to minimize the visibility of the buildings from the right-of-way. Waivers to this required street setback may be granted if the town commission determines that the waiver is necessary to meet the intent of the Comprehensive Plan and this chapter to enable redevelopment of properties that are nonconforming to density and is in the public interest.
- (2) *Open space.* The open space of the property proposed for zoning amendment shall conform to the greatest extent possible to the open space permitted in the underlying zoning district from the existing nonconforming development condition. However, open space shall not be less than 20 percent of the lot area.
- (3) *Lot Coverage.* The lot coverage of the property proposed for zoning amendment shall conform to the greatest extent possible to the lot coverage permitted in the underlying zoning district from the existing nonconforming development condition.
- (4) *Building Height.* The height of structure(s) on property proposed for zoning amendment to the CORD shall conform to the greatest extent possible to the height of the underlying zone district, in which the property is located, subject to the following:

- a. For properties with existing structures that are at or below the allowable height of the underlying zone district, the maximum height shall be the height allowed by the underlying zone district.
  - b. For properties with existing structure(s) that exceed the allowable height of the underlying zone district, the town commission may approve waivers allowing for height(s) above the maximum height of the underlying zone district, provided that proposed height(s) represent a decrease in nonconforming height. The applicant shall demonstrate how reduction(s) in height on the property, to the greatest extent possible, will be more in conformity with the zone district standards than the prior nonconforming height(s).
- (5) Maximum building length, distance between buildings, and distance between buildings and driveways. These development criteria may be modified to allow redevelopment of existing nonconforming structures, but shall not be reduced in a manner that jeopardizes public safety.
  - (6) Off-Street Parking. Off-street parking shall meet the standards and requirements of the parking section of the Land Development Code. The town commission may reduce the number of required parking spaces upon submittal by the applicant of a parking study demonstrating a reduction in parking need. The parking study shall be based on competent, substantial evidence which may include, but is not limited to, utilization of professional standards, formulas or studies from sources such as the Urban Land Institute (ULI), the Institute of Transportation Engineers (ITE), or similar organizations.
  - (7) Beach and Bay Access. For all proposed CORD overlays the number of existing beach and/or bay access points shall not be decreased below the number existing at the time of the CORD overlay application. All public beach and/or bay access points shall be recorded as easements in the public record and copies provided to the town clerk.
  - (8) Natural Shoreline. For proposed CORD overlays located west of Gulf of Mexico Drive, the same percentage of natural shoreline area as a percentage of the total shoreline as it exists at the time of CORD application shall be preserved or provided.
  - (9) Development of Amenities and Tourism Units. Amenities such as parks, open space, playgrounds, pools, marinas, docks, beach and Bay accesses, and tennis/pickle-ball courts must be completed prior to issuance of building permits of more than 40 percent of the total number of authorized residential or tourism units. For mixed-use developments, all proposed tourism units must be completed prior to the issuance of any certificates of occupancy for any residential unit.
  - (10) Cubic Content. Redevelopment utilizing the CORD does not restrict the cubic volume of structures to the prior extent of previously existing structures. If a CORD development is approved, the bulk of any structures shall be limited by the underlying zoning district standards and requirements of this code.
  - (11) Density. The proposed density shall not exceed the total density allowed by the underlying zoning district of the property proposed for zoning amendment to CORD, or the density of the existing nonconforming development that is proposed for redevelopment. Owners may elect to reduce the number of nonconforming units in order to achieve compliance with the CORD

development standards. If a referendum is required to increase density pursuant to the Town Charter, a formal application for a CORD zoning amendment and site plan may not be submitted until such referendum for the increase has been approved. Approval of a referendum for increased density is merely permission for consideration of an application and does not guarantee approval of a density increase through the CORD zoning amendment process.

(E) Application Contents and Submittal Requirements. An application for CORD shall be accompanied by a site plan as required in Article III Division 2.

(F) Review Criteria. The planning and zoning board in its recommendation, and the town commission in its decision shall base its decision on each CORD application on competent, substantial evidence of record and shall include conclusions but may also include written findings of fact related to the specific proposal and shall set forth the reasons for the grant of approval, with or without changes or special conditions, or for the denial of a CORD application. The town commission's approval, approval with changes or special conditions, or denial of a CORD application, shall be based on the application, evidence and testimony presented in the public hearing, and all of the following standards for review:

- (1) In what respects the CORD is or is not consistent with the intent of a CORD zoning district as provided in this section.
- (2) Whether the proposed request decreases existing nonconforming characteristics to the greatest extent possible.
- (3) The adequacy, location and amount of open space in the plan.
- (4) Whether the proposed request is compatible with surrounding properties and is consistent with the character of the surrounding area.
- (5) Whether the proposed placement of the building allows for improved scenic views from adjacent properties and/or opens scenic view corridors from the street.
- (6) Whether the proposed request will cause an increase or decrease in shadow effects on surrounding properties, the street, and the public beach, if applicable for building heights greater than underlying zone district standards.
- (7) Whether the existing or proposed vegetative street buffer is sufficient to minimize the mass and scale of the building from the right-of-way.
- (8) The physical design of the plan and the manner in which the design makes adequate provision for public services, provides adequate control over vehicular traffic and parking, and addresses the amenities of light and air, recreation and visual enjoyment.
- (9) For phased developments, the plan must provide sufficient safeguards to protect the public interest, and the residents and owners of the CORD through the completion of the project.
- (10) Whether the proposed development is not contrary to the interests of the Town and/or does not adversely impact or affect the public interest.

(G) Effect of Approval. Approval of a CORD zoning map amendment and site plan does not convey any rights for development. Development may only occur after approval of a final site plan, subdivision, and/or other development approvals and permits, as applicable, consistent with the approved concept plan, the Land Development Code, and the Comprehensive Plan.

- (1) Notwithstanding the 24-month period specified in subsection 158.099(E), final site development plan approval for a CORD runs with the land for a period not to exceed four calendar years from the date of the ordinance adopting the final site development plan.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

SECTION 5. Repeal of Ordinances in Conflict. All other ordinances of the Town of Longboat Key, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

SECTION 6. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key upon adoption.

SECTION 7. Effective Date. This Ordinance shall take effect immediately upon its adoption, as provided by law.

Passed on first reading and public hearing the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

Adopted on second reading and public hearing the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
George L. Spoll, Mayor

ATTEST:

\_\_\_\_\_  
Trish Shinkle, Town Clerk



## **Ord. 2018-20**

# **Reconstruction of Nonconformities in the Event of Voluntary Reconstruction or Involuntary Destruction or Damage, Providing for Creation of Conformance Overlay Redevelopment District (CORD)**

**Town Commission Public Hearing  
January 7, 2019**



# Outline

- **Background/Commission Workshops**
- **Consensus Direction/Options High-Level Overview**
- **Questions**
- **Public Input**
- **Discussion**





## **Legally Nonconforming Density Redevelopment Workshops April, May, June 2018 Town Commission's Overall Goals:**

- Reduce existing nonconforming height, if applicable.
- Redevelopment should conform to the underlying zone district standards to the greatest extent possible.
- Allow redevelopment flexibility (including building heights greater than allowed in underlying zone district) from underlying zone district standards, when findings such as site or market/economic constraints demonstration(s) can be made.



## Legally Nonconforming Density Redevelopment Workshops April, May, June 2018 Town Commission's Consensus Options:

- Option 1- Redevelopment of nonconforming density and *structures* with existing limitations for additional cubic content.
- Option 2- Redevelopment via meeting Zone District standards (allowing additional cubic content).
- Option 3- Redevelopment Under New “Floating Zone District” (allowing additional cubic content):



**Legally Nonconforming Density  
Redevelopment Workshops April, May, June 2018  
Policy Question:**

**Q: Distinction still needed between: Voluntary &  
Involuntary Redevelopment/Reconstruction?**

**R: Policy Decision | Staff Opinion= No**



## Combined Voluntary & Involuntary Provisions

### Menu

**Option 1- Rebuild Existing Nonconformities**

**Option 2 (New) – Zone District Conformance**

**Option 3 (New) – New Floating Zone District**



## Intent: Reconstruction of Nonconformities

- “Existing developments that are legally nonconforming due to the current number of dwelling or tourism units, may be reconstructed to the same number of units, and the same type of principal use(s) in existence prior to the reconstruction.”
- “In any redevelopment scenario, the **overarching intent is to reduce or eliminate nonconformities**, with a preference that properties **develop according their zone district**, especially gulf and pass waterfront yard setbacks, **to the greatest degree possible...**”



## Option 1 – Existing Redevelopment Rights

Allows nonconforming properties to build back exactly what they previously had, but no more.

- Option 1- Redevelopment of nonconforming density and *structures* with existing limitations for additional cubic content.
- Retains nonconforming status



## Option 2 – Zone District Conformance

- Allows properties to retain nonconforming density and use.
- May add additional cubic content.
- Must meet all zoning requirements (setbacks, height, open space etc.),
- Retains nonconforming status



## December 10, 2018 Regular Workshop Meeting: Summary/Follow-ups

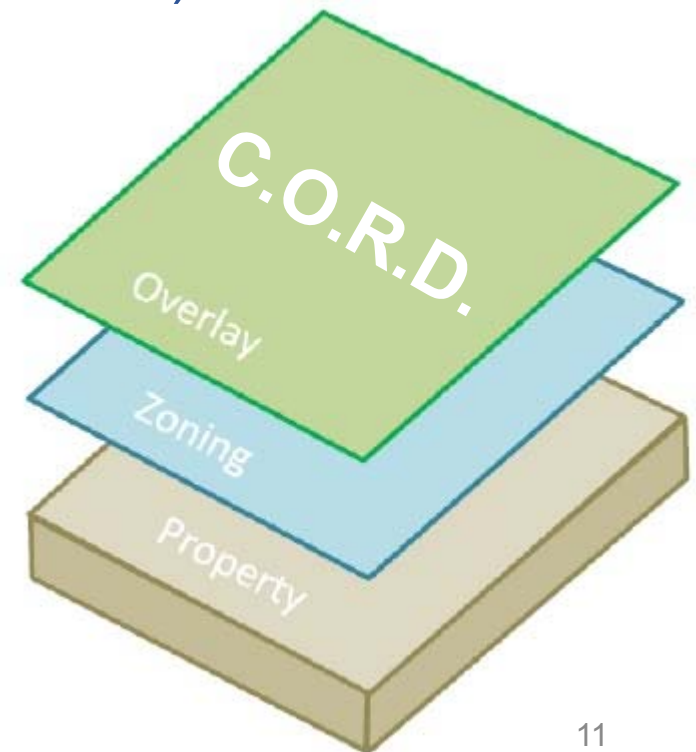
- **Option 3: CORD. Continued Discussion Topics:**
  - **Prioritize Standards**
  - **Establish Minimums for Certain Standards**
  - **Preserve Unused Density Concept (TDRs)**





## Option 3 – New Floating Overlay Zone District Conformance Overlay Redevelopment District (CORD)

- Option 3- Redevelopment Under New “Floating Zone District” (allowing additional cubic content).
- Eliminates nonconforming status.
- Zoning Overlay district modifies underlying zone district standards.





## Option 3 – New CORD Zone District

- Ability to request modification(s) to the existing underlying zone district standards for the proposed redevelopment of a property.
- Applicants must demonstrate through the rezoning the **elimination or reduction of prior existing nonconformities to the greatest extent possible** in conformance with the established standards of the CORD.
- Provides the opportunity for properties to achieve improved conformance with underlying zone district requirements.



## Modifiable Zone District Standards Prioritization:

- Staff has revised Ordinance 2018-20 to indicate such a ranking order with the standards revised in order of importance, from highest to lowest with the following proposed order:
- 1) Building Setbacks;
- 2) Open Space;
- 3) Lot Coverage
- 4) Building Height;
- 5) Maximum Building Length, Distance Between Buildings, Distance Between Buildings and Driveways;
- 6) Off-Street Parking;
- Note: Standards 7-11 are requirements of the CORD and do not confer authority to revise standards of the underlying zoning district.



## CORD Zone District Standards

### Building Height - two separate standards.

i. For properties with existing structures at or below the allowable height of the underlying zone district, the maximum height shall be the height allowed by the underlying zone district.

ii. For properties with existing structure(s) that exceed the allowable height of the underlying zone district, the Town may approve waivers allowing increases in height above the maximum height of the underlying zone district, provided that proposed height(s) represent a decrease in nonconforming height. The applicant shall demonstrate how the reduction(s) in height are to the greatest extent possible, and will be more in conformity with the zone district standards than the prior nonconforming height(s).



## CORD Zone District Standards

**Cubic Content** - Not restricted to the previous existing structures, and may be increased in conformance with the underlying zone district standards such as height, setbacks, and lot coverage.

**Density** - Shall not exceed the total density allowed by the underlying zoning district, or the density of the existing nonconforming development that is proposed for redevelopment, whichever is greater.

**Lot Coverage** - Shall conform to the greatest extent possible to the lot coverage permitted in the underlying zoning district or the existing nonconforming development that is proposed for redevelopment, whichever is greater.



## CORD Zone District Standards

**Building Setbacks** - Shall to the greatest extent possible conform to the setbacks allowed by the underlying zone district, or the building setbacks of the existing development, whichever are less. **For any buildings that would exceed the underlying zone district height, each building must have a minimum street setback of at least 2.5 times the overall height of the building, with a vegetative street buffer** with sufficient density and height to minimize the visibility of the buildings from the right-of-way. Waivers to this required street setback may be granted by the Town Commission.



## CORD Zone District Standards

**Open space** - The open space of the property proposed for zoning amendment shall conform to the greatest extent possible to the open space permitted in the underlying zoning district or the existing nonconforming development, whichever is greater. However, **open space shall not be less than 20 percent of the lot area.**



## CORD Review Criteria

- (1) Consistency with the intent of the CORD
- (2) Whether request decreases existing nonconforming characteristics to the greatest extent possible.
- (3) The adequacy, location and amount of open space in the plan.
- (4) Whether request is compatible with character of the surrounding area.
- (5) Improved scenic views from adjacent properties and/or opens scenic view corridors from the street.
- (6) Increase or decrease in shadow effects on surrounding properties, the street, and the public beach, if applicable for building heights greater than underlying zone district standards.
- (7) Whether vegetative street buffer is sufficient to minimize the mass and scale of the building from the right-of-way.
- (8) Adequate provision for public services, control over vehicular traffic and parking, and addresses the amenities of light and air, recreation and visual enjoyment.
- (9) For phased developments, sufficient safeguards to protect the public interest, and the residents and owners through the completion of the project.
- (10) Whether development is not contrary to the interests of the Town and/or does not adversely impact or affect the public interest.





## CORD Process

- Neighborhood Meeting (Prior to Application Filing- *New*)
- Rezoning/Site Plan Application.
- Companion Future Land Use Map Amendment Application
  - “Opportunity Area” FLUM Designation
- Public Hearings- P&Z Board (1) & Town Commission (2)



## Recommendations:

- **Staff:** Provided the companion Ordinance 2018-14 is advanced for adoption, staff recommends the Commission forward Ordinance 2018-20 to the February 4, 2019 Regular Meeting for second reading, public hearing and adoption.



## Recommendations:

**Planning and Zoning Board (P&Z Board):** Recommended approval. The recommendations were in the form of separate recommendations, as follows:

- Recommendation to strike all references to “Voluntary” and “Involuntary” within Ordinance 2018-20. Approved 6-0.
- Recommendation to approve Ordinance 2018-20, with the addition of the word ‘zoned’ to Sec. 158.139 (C), Option 2, in the first sentence, to state “*existing multifamily and tourism ‘zoned’ properties...*” Approved 5-1.
- Recommendation to approve the Conformance Overlay Redevelopment District (previously included as part of Ord. 2018-14). Approved 4-2.

Though not on the prevailing recommending side, concern was expressed by PZB members regarding the flexibility provided by Option 3.

## MEMORANDUM

**DATE:** September 18, 2018

**TO:** Planning and Zoning Board

**FROM:** Allen Parsons, AICP, Director  
Planning, Zoning and Building Department

**SUBJECT:** 158.139 – Reconstruction of nonconformities in the event of voluntary reconstruction or involuntary destruction or damage

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The Town Commission held a series of three special workshops, in April, May and June 2018, on the historically challenging subject of redevelopment of properties that contain more dwelling units per acre than their underlying zoning district densities would allow for (a/k/a “Non-Conforming” Densities). At their June 4, 2018 Special Workshop Meeting, the Town Commission reached consensus on a series of goals and options (i.e. methods) for the redevelopment of legally nonconforming properties.

The Commission’s overall goals, in no particular order, for redevelopment of legally nonconforming properties are:

- Goal 1- No new density will be allowed (without a referendum approval).
- Goal 2- Any redevelopment of legally nonconforming properties will use their best efforts to meet the existing zone district requirements (i.e. providing options and potential for flexibility).
- Goal 3- A property’s use and its structures, in any redevelopment, would meet existing zone district standards (i.e. other than density, redevelopment will ideally meet all applicable zoning requirements).

Among the topics discussed, the Commission raised the question as to whether there needed to continue to be distinctions between the existing zoning code provisions that govern legally nonconforming redevelopment depending on whether the redevelopment is a result of either “voluntary” or “involuntary” actions of a property owner(s). Given the Town’s approval of a March 2008 Referendum that posed the question to voters:

*For the properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?*

Staff is of the opinion that separate and slightly different requirements, based on the origin of a property’s redevelopment, need no longer apply.

For the Planning and Zoning Board’s consideration, the existing Redevelopment Regulations (Zoning Code Sections 158.139 and 158.140) have been combined and a draft new “Floating Zone District” are proposed to address updated non-conforming

redevelopment regulations that attain the methods (described as a series of 3 options) arrived at by Commission consensus:

- Option 1- Redevelopment of nonconforming density and *structures* with existing limitations for additional cubic content.
- Option 2- Redevelopment via meeting Zone District standards (allowing additional cubic content).
- Option 3- Redevelopment Under New “Floating Zone District” (allowing additional cubic content):

Staff has addressed the first two of the options above in the combined sections of the Zoning Code which were formerly sections 158.139 (Involuntary Destruction) and 158.140 (Voluntary Reconstruction) into just one section, which as drafted is **Sec. 158.139 – Reconstruction of nonconformities in the event of voluntary reconstruction or involuntary destruction or damage**. This ordinance retains the same intent as the provisions of the previous sections but combines the types of destruction, whether voluntary or involuntary, into one single intent. This intent, which remains unchanged, is to allow existing, legally nonconforming residential or tourism properties that exceed the current allowable density, to be rebuilt for the existing use and density.

Option 1 allows legally nonconforming residential or tourism properties that exceed the current allowable density, to be rebuilt for the existing use, density and cubic content, along with aspects of the structure(s) that may be nonconforming such as height, setbacks and open space in existence prior to their removal. In short, Option 1 allows nonconforming properties to build back exactly what they previously had, but no more.

Option 2 in the draft proposes new language to the text. This option labeled - **Nonconforming Redevelopment in Conformance with Zone District Requirements** would allow legally nonconforming density multifamily or tourism properties that rebuild and meet all of the zoning requirements for the site to add additional cubic content. This option provides more flexibility than Option 1, in that it would permit the redevelopment of a property to configure the buildings differently than what was existing on the property previously, and to add cubic content to those buildings, as long as all of the requirements of the zoning district for the property (height, open space, setbacks, etc.) are met. This option, however, still would retain a nonconforming status with regard to density.

Option 3, referenced in the draft, is also new language addition to the text. This option labeled - **Nonconforming Redevelopment Seeking Modifications from Zone District Requirements** provides the opportunity for nonconforming properties to seek rezoning to a new floating overlay zone district in order to obtain conforming status and modification(s) to the existing zone district standards on the property. The proposed new overlay zone district tentatively referred to as the Conformance Overlay Redevelopment District (CORD) is addressed as a separate item for the PZB to consider.

One difference to note in the draft text, 158.139 (Involuntary Destruction) applies to all nonconforming properties in the Town, where 158.140 (Voluntary Reconstruction) only applies to multifamily and tourism properties. Thus, under the existing code provisions, a nonconforming single family or two-family property can only rebuild to its nonconforming

extent under the existing *involuntary* destruction provision. The draft text would permit nonconforming single family or two-family properties to rebuild under either voluntary or involuntary reconstruction circumstances under the provision of Option 1 (to existing nonconforming extents and cubic content) or Option 3 (via rezoning to the CORD).

The Town Commission further directed that the Planning and Zoning Board consider and review the draft redevelopment regulations. Town staff will be presenting an overview of the draft text which incorporates concepts and input received by staff from the recent Town Commission special workshops.

## AGENDA ITEM 5

### ORDINANCE 2018-20, RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF VOLUNTARY RECONSTRUCTION OR INVOLUNTARY DESTRUCTION OR DAMAGE

Pursuant to published notice, the public hearing was opened.

Mr. Parsons reviewed proposed Ordinance 2018-20 noting:

- The Town Commission initiated workshops on this subject to review the discussions that had taken place on redevelopment over the last ten years
- Goals were established from the three workshops:
  - Goal 1- No new density will be allowed (without a referendum approval).
  - Goal 2- Any redevelopment of legally nonconforming properties will use their best efforts to meet the existing zone district requirements (i.e. providing options and potential for flexibility).
  - Goal 3- A property's use and its structures, in any redevelopment, would meet existing zone district standards (i.e. other than density, redevelopment will ideally meet all applicable zoning requirements)
- The proposed ordinance combined Sections 158.159 and 158.140

Discussion ensued on:

- The Town Charter and the density set in the 1984 Comprehensive Plan
- Language in the referendum
- the ordinance would allow someone to request a change, but did not grant them the right
- the 1984 Charter 'locked in' density, which was the measure in which the Town tracked density
- the properties in question were nonconforming as a result of the downzoning in the 1984 Charter
- referendum was only to density; the Town Commission were not restricted from their ability to regulate items such as, height, open space, etc.
- concern with the addition of a 'floating zone'
- the differences between Option 2 and Option 3 and what they accomplished
- concerns with Option 1
- properties having a 'nonconforming' status and possible inability to obtain financing
- providing user-friendly ordinances
- Public Records laws and the Town's responsibility in terms of retaining documents when originally submitted
- Removing the words 'voluntary' and 'involuntary' from the proposed code

**MR. YOUNGER MOVED TO STRIKE ALL REFERENCES TO ‘VOLUNTARY’ AND ‘INVOLUNTARY’ FROM THE ORDINANCE. MR. MARSH SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: BISHOP, AYE; GARNER, AYE; HAYCOCK, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER, AYE.**

**MR. MARSH MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2018-20, AS AMENDED.**

MR. YOUNGER MOVED THAT OPTION 1 BE STRICKEN FROM THE ORDINANCE.

Discussions were held with Mr. Younger, Mr. Marsh, Mr. Garner and Mr. Haycock on Option 1:

- Option 1 would place the Town in a ‘status quo’ with limiting everything to cubic content, contrary to previous board discussions
- The Town Attorney had commented regarding Option 1 being integral to the ordinance
- Should not have three options in the ordinance
- The three options would allow property owners to determine which process was appropriate for their situation
- Believed the board had agreed to preserve the ability of the homeowner to build ‘in-kind’ if the structure were damaged or destroyed
- Whether Option 1 should be removed from the list
- The three options offer a choice to pursue, but did not grant the owner any rights

MR. YOUNGER’S MOTION DIED FOR LACK OF SECOND.

Steve Schield, St. Judes Drive North, addressed the board regarding his letter, which he previously submitted, outlining his concerns with the ordinance, and the impact it could have on his neighborhood. He suggested the Board revise the language in Option 2 to state, “...existing multifamily and tourism zoned properties...”

Mr. Marsh inquired of Attorney Mooney as to Mr. Schield’s suggestion. Attorney Mooney explained if the board believed there was an issue, then staff could revisit the language and address the concern. Mr. Younger questioned if any rights would be taken. Attorney Mooney responded it was not taking away rights, but was granting new rights.

**MR. GARNER REQUESTED A FRIENDLY AMENDMENT TO ADD THE WORD ‘ZONED’ TO (C), OPTION 2, ON PAGE 6 OF 11, IN THE FIRST SENTENCE, TO STATE “EXISTING MULTIFAMILY AND TOURISM ‘ZONED’ PROPERTIES...” MR. MARSH ACCEPTED THE AMENDMENT.**

Further discussion took place related to:

- Concern with allowing large structures to be built, similar to Anna Maria Island



- In those areas, the Town would want to encourage single-family homes and not multi-family
- How someone would apply for the ‘floating district’ overlay

The board discussed the connection between Ordinance 2018-20 and Ordinance 2018-14 and believed they should table discussion of Ordinance 2018-20 until after Ordinance 2018-14.

**MR. YOUNGER MOVED TO TABLE DISCUSSION OF ORDINANCE 2018-20 PENDING ACTION ON ORDINANCE 2018-14. MR. HAYCOCK SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

The Board recessed from 10:45 am – 11:00 am.

AGENDA ITEM 5 (CONTINUED)

ORDINANCE 2018-20, RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF VOLUNTARY RECONSTRUCTION OR INVOLUNTARY DESTRUCTION OR DAMAGE

Mr. Parsons provided a summary of the ordinance and discussions from earlier in the meeting.

Chair Bishop noted that the amendments included: 1) removal of references to ‘voluntary’ and ‘involuntarily’ throughout the document; and 2) acronyms should reflect their meaning. Discussion followed with Mr. Garner, Mr. Parsons, Chair Bishop, Mr. Haycock and Attorney Mooney on:

- the issue of abandonment of nonconformities, and its definition, referenced in Section 158.139.
- the addition of the word ‘zoned’ in Option 2
- Mobile Home parks and the provisions in the reconstruction portion of the code, which specifically referenced mobile home parks

**MOTION TO RECOMMEND APPROVAL OF ORDINANCE 2018-20, AS AMENDED, CARRIED ON ROLL CALL VOTE: BISHOP, AYE; GARNER, AYE; HAYCOCK, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER NO.**

**MINUTES  
LONGBOAT KEY TOWN COMMISSION  
SPECIAL WORKSHOP MEETING  
APRIL 16, 2018**

**Present:** Mayor George Spoll, Vice Mayor Ed Zunz, Commrs. Jim Brown, Randy Clair, Jack Daly, Irwin Pastor, Ken Schneier

**Also Present:** Town Manager Tom Harmer, Town Attorney Maggie Mooney-Portale, Deputy Town Clerk Savannah Schield

**CALL TO ORDER/PLEDGE OF ALLEGIANCE**

**Mayor Spoll called the April 16, 2018, Special Workshop to order at 9:00 a.m. in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida, noted the Town's Civility Code, and read the Pledge of Public Conduct.**

1. Opportunity for Public to Address Town Commission - No items were presented.

2. Discussion Regarding Redevelopment of Non-Conforming Properties

At their March 28, 2018, Regular Workshop Meeting the Town Commission requested that the subject of Redevelopment of Nonconforming Properties be placed on a Special Workshop Meeting to afford adequate time for discussion, prior to remanding to the Planning & Zoning (P&Z) Board for their consideration. Members of the P&Z Board have been invited to attend this Special Workshop Meeting. Recommended Action: Pending discussion, provide direction to Manager.

Following comments by Town Manager Tom Harmer and Mayor Spoll, discussions were held on the following topics/issues:

- history of labeling properties non-conforming
- tourist-zone T6 – separating classes
- conforming units
- down zoning in the 80s - 1984
- history of what Longboat Key residents wanted to preserve
- Vision Plan 2007 - 2008
- public referendums regarding density
- density and intensity
- principles and concepts to move forward on issue
- population of Longboat Key decreasing
- loss of restaurants/vitality of island
- preserving non-conforming properties/providing flexibility
- properties use and size before down-zoning
- results oriented approach
- hurricane recovery
- redevelopment during involuntary destruction
- changes to zoning code/adding non-conforming
- condominiums voluntarily redeveloping
- accommodating revitalization
- Proposed Ordinance 2016-32

2. Discussion Regarding Redevelopment of Non-Conforming Properties - Continued

- PUD (Planned Unit Development) Process
- accommodating older buildings on the Key
- condominium and hotel revitalization
- lack of maintenance on properties leading to redevelopment
- "Keep Longboat Longboat"
- Identification of non-conforming properties/explanation of non-conformance
- site specific zoning
- zone districts
- reconfiguration of buildings for density.

Planning, Zoning, and Building Department Director Allen Parsons commented on conforming and non-conforming properties as they relate to density.

**RECESS:** 10:32 a.m. - 10:41 a.m.

The following individuals commented on redevelopment:

Ms. B.J. Bishop, Buttonwood Drive  
Mr. Mike Haycock, Gulf of Mexico Drive  
Attorney Robert Lincoln, Wood Street, Sarasota  
Mr. Phillip Younger, Bayou Sound

**Subsequent to discussion, there was consensus for new terminology for non-conformities.**

Discussion ensued on the following topics/issues:

- Quasi-Judicial hearing needed for changing zoning districts
- Legislation Policy Setting
- rebuilding structures voluntarily and involuntarily in Code
- eliminating flexibility of PUD
- Consent Judgements mechanism
- grandfathering properties
- height provisions
- description of zoning districts.

**Subsequent to comments by Mr. Parsons, there was a consensus for less flexibility and more specific standards if a new zone district is created.**

Ms. Pat Zunz, Lands End, commented on property owners' rights.

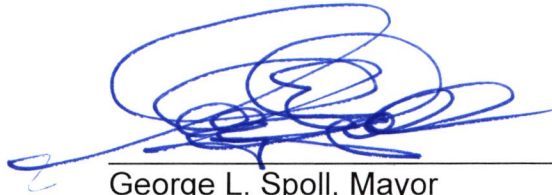
Town Manager Tom Harmer commented on staff's response to the issues raised and advised that an additional meeting date and time will be presented at the April 23, 2018, Regular Workshop.

**ADJOURNMENT**

**Mayor Spoll adjourned the April 16, 2018, Special Workshop at 12:13 p.m.**



Savannah Schield, Deputy Town Clerk



George L. Spoll, Mayor

Minutes Approved: 05-07-18

**MINUTES  
LONGBOAT KEY TOWN COMMISSION  
SPECIAL WORKSHOP MEETING  
MAY 14, 2018**

**Present:** Mayor George Spoll, Vice Mayor Ed Zunz, Commrs. Jim Brown, Randy Clair, Jack Daly, Ken Schneier

**Absent:** Commr. Irwin Pastor

**Also Present:** Town Manager Tom Harmer, Town Attorney Maggie Mooney-Portale, Deputy Town Clerk Savannah Schield

**CALL TO ORDER**

**Mayor Spoll called the May 14, 2018, Special Workshop to order at 1:00 p.m. in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida, noted the Town's Civility Code, and read the Pledge of Public Conduct.**

**1. Opportunity for Public to Address Town Commission**

**A. Code Enforcement**

Ms. B.J. Bishop, Buttonwood Drive, commented on the condition of the property at the entrance of Buttonwood (Drive) and the complaints from the neighborhood residents.

**2. Discussion Regarding Redevelopment of Non-Conforming Properties**

Following discussion at the April 16, 2018, Special Workshop Meeting, the Town Commission requested that staff summarize key issues and investigate options for consideration on the subject of redevelopment of non-conforming properties. They also asked for a future Special Workshop Meeting to afford adequate time for continued discussion. Members of the P&Z Board have been invited to attend the May 14, 2018, Special Workshop Meeting. Recommended Action: Pending discussion, provide direction to Manager.

Following a PowerPoint presentation by Planning, Zoning and Building Department Director Allen Parsons, discussions were held on the following topics/issues:

- stigma of non-conforming properties
- implementing a certification process
- documentation of existing built conditions
- reconfiguration of properties
- voluntary redevelopment
- rebuilding after involuntary destruction
- rebuilding in accordance with current code
- cubic volume
- process of eliminating non-conforming properties
- amending code for allowance of rebuilding after natural disaster
- LiDAR (Light Detection and Ranging) mapping technology
- zone district heights
- lower-scale buildings redevelopment

2. Discussion Regarding Redevelopment of Non-Conforming Properties - Continued

- proposed Ordinance 2016-32
- height allowances with FEMA (Federal Emergency Management Agency) standards
- additional height than zone district allows
- limitation on lot coverage/setback requirements
- density.

Mr. Parsons provided a PowerPoint presentation on examples of redevelopment challenges with taller versus lower-scale buildings.

**There was a consensus for additional height for lower-scale buildings.**

**RECESS:** 2:56 p.m. – 3:09 p.m.

Discussions were held on the following topics/issues:

- maximum building heights
- reviewing and amending the Zoning Code
- PUD (Planned Unit Development) process
- rebuilding after voluntary destruction with code
- building heights with FEMA standards
- options for new Zoning districts
- additional cubic content in lower-scale buildings.

The following individuals commented on redevelopment of non-conforming properties:

Ms. B.J. Bishop, Buttonwood Drive  
Mr. Tom Freiwald, Spanish Drive

**Following comments by Town Manager Tom Harmer, Mr. Parsons noted the following consensus items:**

- **follow up on the certification process for properties**
- **no additional height for buildings currently higher than zoning districts provides**
- **follow up on potential to limit those buildings to not include FEMA height**
- **any expansion would be in conformance with the zoning district**
- **removing cubic content regulations for buildings taller than zoning district, when new or additional development meets zone district requirements**
- **explore options for lower buildings to exceed zoning district heights with criteria**
- **allow for additional cubic content in the redevelopment scenario for buildings that are lower height than zoning district provides for.**

Town Manager Harmer suggested that the Comprehensive Plan also be reviewed, commented on the next steps, and following comments, noted that an additional workshop would be scheduled regarding redevelopment of non-conforming properties.

3. Other Business

A. Town Commission

Town Attorney Maggie Mooney-Portale requested an Attorney-Client session and provided date options for scheduling a Special Meeting.

**Following comments, there was consensus to schedule a Special Meeting on May 22, 2018, at 9:00 a.m., in the Town Commission Chamber (501 Bay Isles Road, Longboat Key).**

2. Discussion Regarding Redevelopment of Non-Conforming Properties - Continued

**Following comments, there was consensus to schedule a Special Workshop on June 4, 2018, at 9:00 a.m. for continued discussion on redevelopment of non-conforming properties.**

**ADJOURNMENT**

**Mayor Spoll adjourned the May 14, 2018, Special Workshop at 4:19 p.m.**



Savannah Schield, Deputy Town Clerk



George L. Spoll, Mayor

Minutes Approved: 06-04-2018



**MINUTES  
LONGBOAT KEY TOWN COMMISSION  
SPECIAL WORKSHOP MEETING  
JUNE 4, 2018**

**Present:** Mayor George Spoll, Vice Mayor Ed Zunz, Commrs. Jim Brown, Randy Clair, Jack Daly, Irwin Pastor, Ken Schneier

**Also Present:** Town Manager Tom Harmer, Town Attorney Maggie Mooney-Portale  
Deputy Town Clerk Savannah Schield

**CALL TO ORDER**

**Mayor Spoll called the June 4, 2018, Special Workshop to order at 9:01 a.m. in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida, noted the Town's Civility Code, and read the Pledge of Public Conduct.**

**PUBLIC TO BE HEARD**

1. Opportunity for Public to Address Town Commission – No items were presented

2. Discussion Regarding Redevelopment of Non-Conforming Properties

Following discussion at the April 16 and May 14, 2018, Special Workshop Meetings, the Town Commission requested that staff summarize key issues and investigate options for consideration on the subject of redevelopment of non-conforming properties. They also asked for a future Special Workshop Meeting to afford for continued discussion. Members of the P&Z Board have been invited to attend the June 4, 2018, Special Workshop Meeting. Recommended Action: Pending discussion, provide direction to Manager.

(Note: Town Attorney arrived at 9:26 a.m.)

Following a PowerPoint presentation by Planning, Zoning, and Building Department Director Allen Parsons, discussions were held on the following topics/issues:

- voluntary versus involuntary redevelopment
- taller buildings
- expansion of non-conforming uses
- preserving density
- maximum building heights.

**Following comments by Mayor Spoll, there was a consensus on the following items:**

- redevelopment would use best efforts to meet zone districts
- result of redevelopment of any non-conforming property would be a fully conforming use and structure, regardless of redevelopment option chosen
- allow development flexibility when redevelopment may not meet zone district standards due to site constraints or market demonstration made
- will attempt to have all properties to be conforming.

**RECESS:** 10:48 a.m. – 11:00 a.m.



2. Discussion Regarding Redevelopment of Non-Conforming Properties - Continued  
Discussions continued on the following topics/issues:

- redevelopment within existing zone district standards
- no new density allowed
- use and structures in redevelopment meeting zone district standards
- redevelopment and consideration of FEMA (Federal Emergency Management Agency) requirements
- redevelopment under new "Floating Zone District"
- reducing height
- inventory creation efforts
- allow development flexibility
- voluntary redevelopment ordinance changes
- updating and rewriting Code of Ordinances.

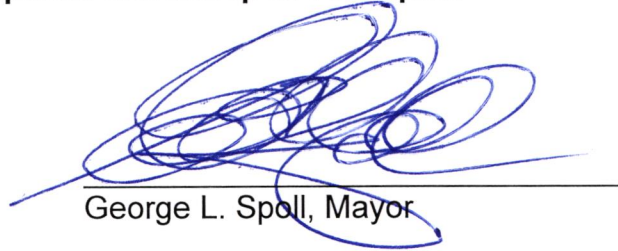
Staff reviewed the discussions and noted the next steps in the process.

**ADJOURNMENT**

**Mayor Spoll adjourned the June 4, 2018, Special Workshop at 11:24 p.m.**



Savannah Schield, Deputy Town Clerk



George L. Spoll, Mayor

Minutes Approved: 9/11/2018



To: All Commissioners, Allan Parsons, and all P & Z Board Members,

At the December 10 Commission Workshop a topic was how to deal with Non-conforming properties. This has been at issue for many years, and resolution appears to be near at hand. Compliments to The Planning & Zoning Department, The Planning and Zoning Board, and The Town Commission for getting us so close to final resolution. However, a few nits appear left to be resolved. Option 1 and Option 2 of the current three-option proposal appear to be generally acceptable by the Commission as a group. Option 3 appears to remain at issue, being forwarded to First Vote 4 – 3 by the Commission.

A primary issue with Option 3 appears to be the "flexibility" allowed whether or not said "flexibility" would allow future a Commission to circumvent what appears to be the general population desire to maintain a cap on building heights (and density, of course). Perhaps the "red flag" lies within a Commissioner's comment to the effect that, but not a direct quote, ..... maybe the (actually, a) Commission would be willing to allow some height increases that would still be less than a pre-existing building, but above code allowed limits to facilitate new construction on a redeveloping property. Seven stories, which exceeds code, were cited as an example.

Although the suggestion herein comes as the clock approaches the midnight hour for a final Commission vote, perhaps Option 3 is in fact too "flexible" and too complicated. The "flexibility" allowed by Option 3 appears to be tantamount to a Planned Unit Development (PUD) that has been generally disavowed heretofore. The real question should be what portion of a pre-existing building(s) violates current code and recognition that that portion is considered to have vested rights vis-à-vis the Harris Act. The key is that it is only that portion, and that is what should be addressed.

Each property has a code allowed building cube, consisting of the length and width of the property within the setback limits and the maximum height allowed for the property's zone. (See Attachment A.) Anything that meets code within that cube is allowed, period. A non-conforming property violates current code and its allowed building cube in some manner, such as encroaching into the setback area or exceeding building height. (See Attachments B and C.)

That portion of a non-conforming property that violates maximum height code is essentially grandfathered and shall be allowed to continue exactly as it pre-exists if a building is rebuilt as is. However, the only thing that should be actually grandfathered is the pre-existing building's cubic volume that exceeds current code and the height that exceeds current code. It is suggested that both be allowed to be shifted to a new building as they pre-exist or in a modified form as long as the pre-existing height is not exceeded. In other words, the cubic volume may be reconfigured, but the pre-existing height may not be exceeded. That would mean the reconfigured cubic volume could be spread out, but not up, with the net effect of actually lowering the height verses that of the pre-existing building. (See Attachment C.)

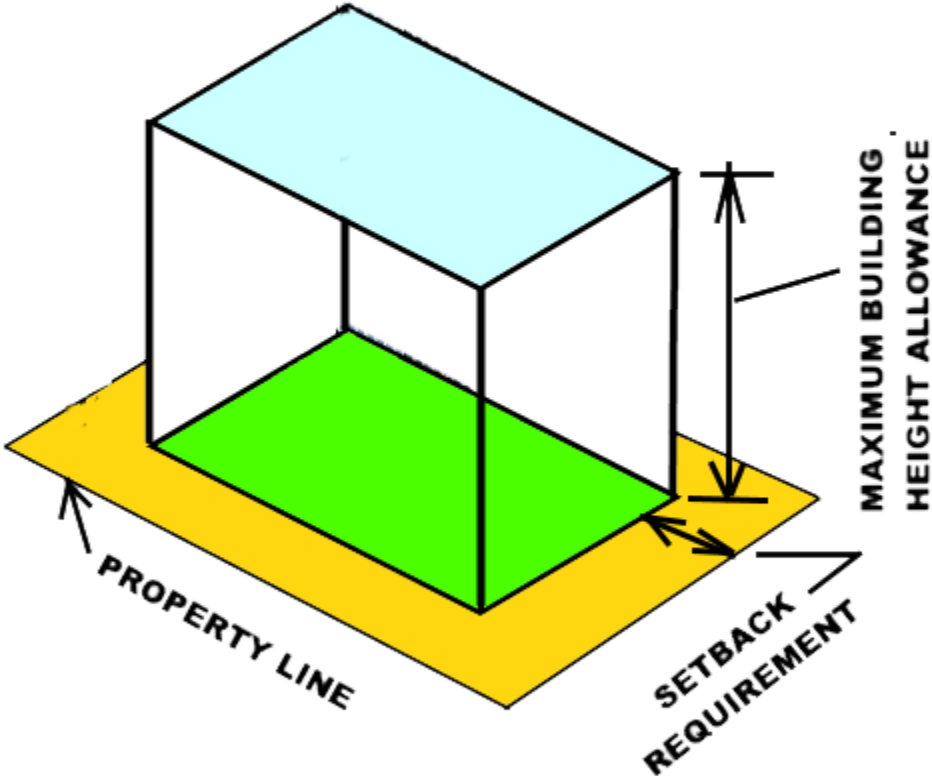
That portion consisting of the length and width of a non-conforming property that violates current setback code is the other aspect that should be considered as essentially grand-fathered, and it is suggested that it be allowed to continue exactly as it pre-exists in-situ if a building is rebuilt as is. (See Attachment E.) If a new building is to be located elsewhere, the pre-existing in-situ location shall be deemed as voluntarily abandoned.

Other than the above parameters any new construction on any property must comply with current code. This procedure would eliminate the pitfalls associated with the "flexibility" encompassed in Option 3 of the current proposal.

Regards,

Phill Younger

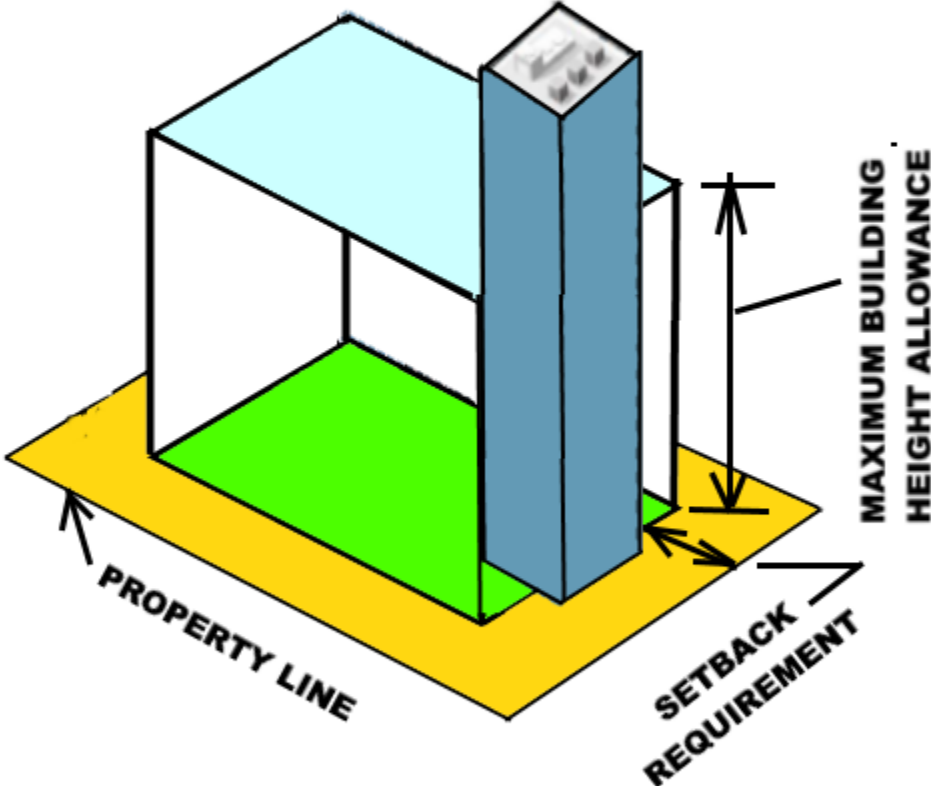
# ATTACHMENT A



**ALLOWABLE CUBE WITHIN WHICH BUILDINGS MAY BE CONSTRUCTED**

# ATTACHMENT B

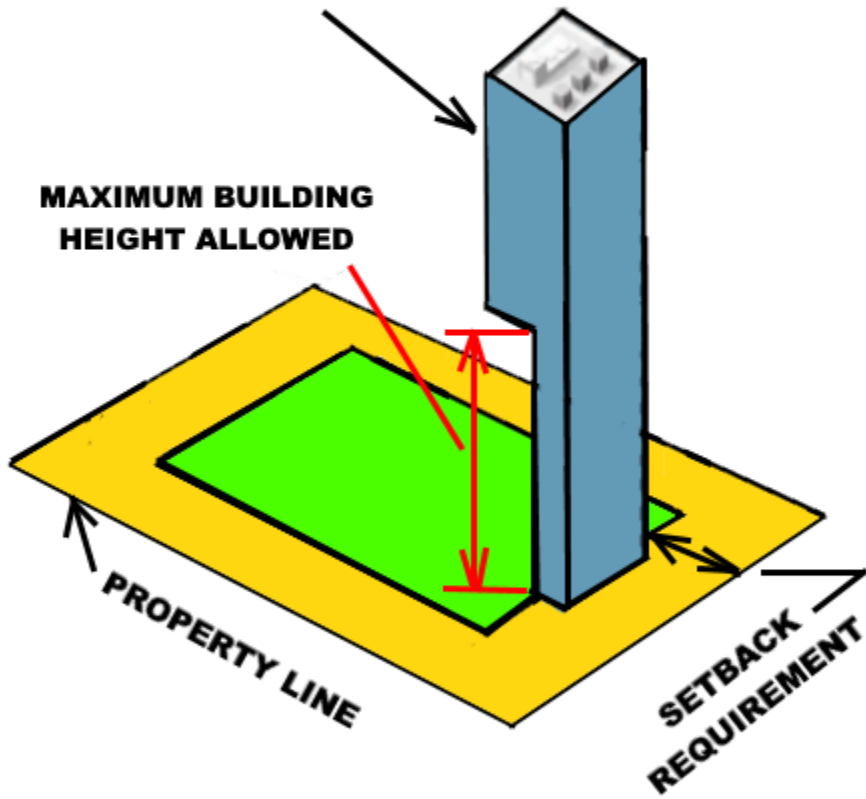
**PRE-EXISTING BUILDING EXCEEDS  
CODE ALLOWED SETBACK AND HEIGHT**



**ALLOWABLE CUBE WITHIN WHICH  
BUILDINGS MAY BE CONSTRUCTED**

# ATTACHMENT C

**BUILDING PORTION OUTSIDE OF  
ALLOWED CONSTRUCTION CUBE**



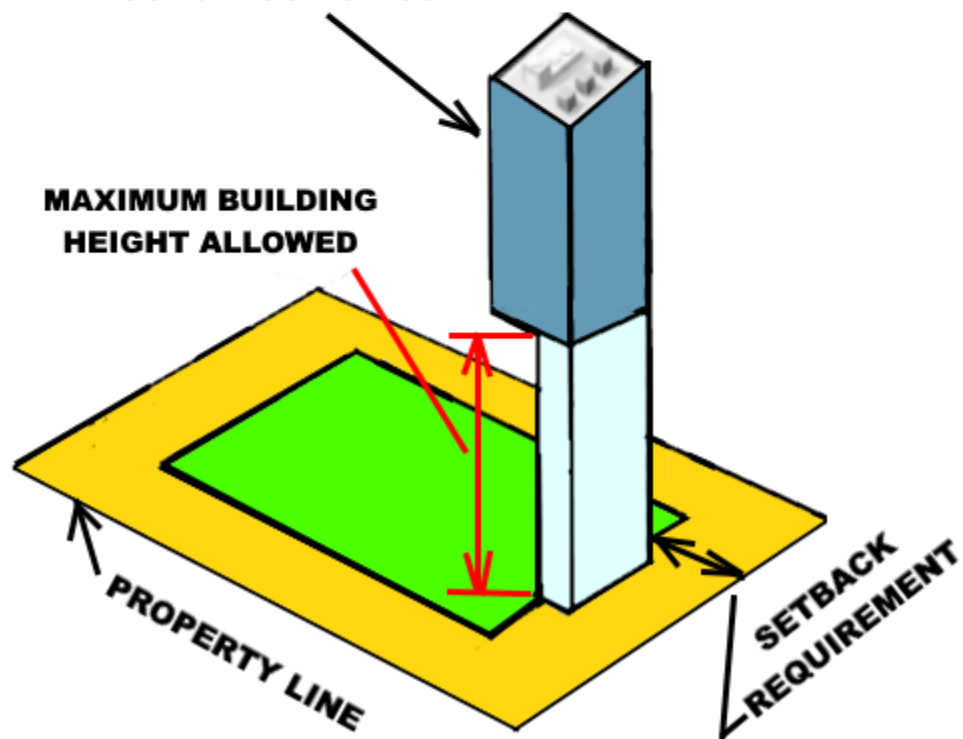
## ATTACHMENT D

**THE CUBIC FEET OF THIS PORTION TO BE ALLOWED IN FUTURE CONSTRUCTION.**

**THE HEIGHT BY WHICH THIS PORTION EXCEEDS CURRENT CODE TO BE CAPPED AT THE PRE-EXISTING MAXIMUM.**

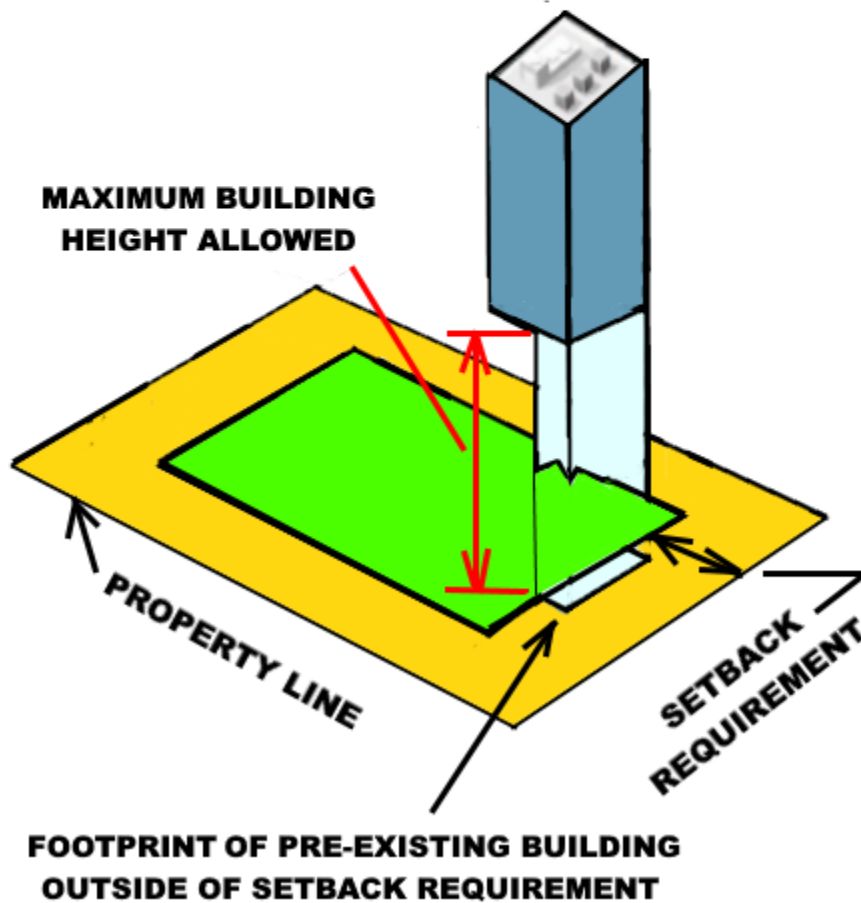
**REARRANGEMENT OF CUBIC FEET FOR THIS PORTION TO BE ALLOWED ONLY IF HEIGHT OF BUILDING IS NOT INCREASED ABOVE THE PRE-EXISTING LEVEL.**

**BUILDING PORTION OUTSIDE OF AND OVER HEIGHT LIMIT OF ALLOWED CONSTRUCTION CUBE**



## ATTACHMENT E

**FOOTPRINT OF PRE-EXISTING BUILDING OUTSIDE OF SETBACK REQUIREMENT MAY REMAIN IN SITU FOR FUTURE CONSTRUCTION AND CANNOT BE RELOCATED WITHOUT A WAIVER GRANT.**



Dear Mayor George Spoll,

I am writing to the Town Commission about a concern with an amendment made to proposed Ordinance 2018-20 for the redevelopment of non-conforming residential and tourism properties. As written, the ordinance would allow the redevelopment of existing non-conforming multifamily and tourism properties at a much larger scale in single-family zoned neighborhoods.

The existing code only allows these non-conforming properties to redevelop at the same cubic volume as currently exists. The amended rule under Option 2 of the proposed ordinance would allow these properties to redevelop under the single-family zoning regulations. This could mean that properties could greatly expand. You could get four or five-bedroom, 3,000 square foot tourism units developed on the beach in the middle of the single-family estates on the north end. One of these properties has six units, another has eight units, both of these could be redeveloped with large tourism units. This could also be done in the Village, with a large multifamily complex being built on Broadway and another on Poinsetta.

My main concern is my street, where I have lived in a single-family home for 24 years, St. Judes Drive is a mix of single-family, duplex, and multifamily homes. The street has always been zoned single family and the street is slowly transitioning to single family from old rental duplexes with property values increasing. Two new single-family homes are presently being built at the end of the street, one replacing an old duplex. The change would stop the transitioning and allow large multifamily units with four or five bedrooms to be built on our street, we would become the next Anna Maria Island with loud rental units overrun with traffic from rentals.

Please protect our single-family neighborhoods and do not allow this to happen. The simple solution is to replace the word "zoned" to Option 2 as approved by the planning board, so it will read "existing multifamily and tourism zoned properties". This would allow these properties to be protected as they exist and rezone the property if it makes sense, but not allow them to expand and adversely impact our single-family neighborhoods. Only about a dozen properties would have their value increased by the change, but hundreds of single-family homes will be impacted. I do not object treating duplexes the same in multi-family or tourism zoned areas, but please protect our single-family neighborhoods. We cannot try this out, because if this were allowed, we could not go back or the Town would face "Bert Harris Act" suits, just like Anna Maria Island.

Thank you for your consideration in this matter.

Steve and Doreen Schield





**End of Agenda Item**