

March 11, 2015

To: Longboat Key Planning & Zoning Board (PZB)
From: UF Resilient Communities Initiative (UFRCI)
Through: Alaina Ray, Director, Planning, Zoning & Building
Re: Process Report

In advance of the March 17, 2015 regular meeting of the PZB, here is an update on current progress and next steps to further the development of the new Comprehensive Plan (Plan) and Land Development Code (LDC), discussed under the headings of the various aspects of the ongoing planning efforts for the Town.

Nonconforming properties

Ordinance 2015-02. The PZB has completed its focused preliminary review of the Plan Future Land Use Element (FLUE) policies directly related to nonconforming properties. The PZB has recommended changes to the Plan to combine current FLUE Policies 1.1.5 (A), 1.1.5 (B), and 1.1.6 into a new FLUE Policy 1.1.5 in Ordinance 2015-12. That ordinance was reviewed by the Town Commission at a workshop, adopted on first reading and transmitted to the state for review by the Florida Department of Economic Opportunity in accordance with State Law. The state has completed their review and has offered no objections. It is anticipated that that the Town Commission will adopt Ordinance 2015-12 on second reading in April.

Ordinance 2015-11. On March 17, 2015, the PZB will begin crafting the changes to the Land Development Code to implement the Plan changes provided in Ordinance 2015-02 with regard to non-conformities. Each section of the Land Development Code that addresses nonconformities has been identified and is provided for review with suggested revisions. A new LDC chapter is presented to address nonconforming property moving forward. Existing sections with copious detail for addressing nonconformities have been deleted as the policy direction is to eliminate most nonconformities through amendments to the Plan and LDC that seek to provide a more conforming regulatory scheme for these existing properties. The PZB will determine if any specific existing provisions should be retained and included in the new general LDC Chapter for nonconformities.

Ordinance 2015-10. Also on March 17, 2015, the PZB will begin the more complicated evaluation of modifications to the future land use categories as provided by Table 1 of the FLUE and described in Policy 1.1.10. As a preliminary step to the eventual modification of the Future Land Use Map, UFRCI proposes to subsume several of the current future land use categories into more general groupings focused on opportunity areas identified throughout the Town, i.e., Open Space, Single Family

Residential, Multi-Family Residential, Commercial, Mixed Use, etc. The conceptual framework is to establish broader, more general future land use categories to accommodate currently nonconforming properties that provide the planning bases for new zoning districts in the land development code. The land development code will subsequently be revised to provide the various ranges of density and intensity of uses in new or revised zoning districts. Additionally, the existing future land use categories will provide for

1. “Stable Areas”—areas that are mature and settled in their development pattern, and unlikely to be desirous of, or to support a market for, dynamic changes in use; and
2. “Opportunity Areas”—e.g., commercial tourism areas that are suitable for and capable of the type of dynamic redevelopment that can restore the historic balance of residential and tourism uses the Town desires for the future.

If this concept is acceptable subsequent steps will be to revise the Future Land Use Map, amend the zoning code, and revise the zoning map. It is likely that these steps will trigger the need for referenda approvals by the electors in satisfaction of Article II, Section 22(b) of the Town Charter.

ORDINANCE 2015-11

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA; AMENDING THE CODE OF ORDINANCES; AMENDING TITLE 3, ADMINISTRATION, CHAPTER 33, BOARDS AND COMMISSIONS; AMENDING SECTION 33.18 VIOLATIONS, PROCEDURE; AMENDING TITLE 11, BUSINESS REGULATION, CHAPTER 111, LOCAL BUSINESS TAX; AMENDING SECTION 111.11 LOCAL BUSINESS TAX SCHEDULE; AMENDING TITLE 15, LAND DEVELOPMENT CODE, CHAPTER 150, BUILDINGS; AMENDING SECTION 150.23 PROCEDURE FOR CONVERSION OF EXISTING STRUCTURES; AMENDING SECTION 150.24 NONCONFORMING USES; AMENDING CHAPTER 156, SIGN CODE; AMENDING SECTION 156.03 DEFINITIONS; AMENDING SECTION 156.08 PERMANENT SIGNS;; AMENDING SECTION 156.13 NONCONFORMING SIGNS; AMENDING SECTION 156.14 MAINTENANCE AND ABANDONMENT; AMENDING CHAPTER 157, SUBDIVISION REGULATION; AMENDING SECTION 157.03 DEFINITIONS; AMENDING CHAPTER 158, ZONING CODE; AMENDING SECTION 158.006 DEFINITIONS; AMENDING SECTION 158.008 ESTABLISHMENT OF ZONING DISTRICTS; AMENDING SECTION 158.009 DESCRIPTION OF DISTRICTS AND DISTRICT POLICIES; AMENDING SECTION 158.017 PARKS AND OPENS SPACE LAND ACQUISITIONS; AMENDING SECTION 158.029 VARIANCES; AMENDING SECTION 158.067 REVIEW AND APPROVAL OF PLANNED UNIT DEVELOPMENTS; AMENDING SECTION 158.070 TOURISM AND RESIDENTIAL DENSITY; AMENDING SECTION 158.071 PROPOSED LAND USES; AMENDING SECTION 158.102 PERFORMANCE STANDARDS FOR SITE AND DEVELOPMENT PLANS; AMENDING SECTION 158.125 SCHEDULE OF USE REGULATIONS; AMENDING SECTION 158.127 ACCESSORY USE OR BUILDING; AMENDING SECTION 158.128 OFF-STREET PARKING; AMENDING SECTION 158.132 TOURISM USES; AMENDING SECTION 158.137 PROPOSED LAND USES, DENSITY, CONVERSIONS OF SINGLE-FAMILY DWELLINGS TO MULTIFAMILY; AMENDING SECTION 158.138 STATUS OF NONCONFORMITIES; AMENDING SECTION 158.139 RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF INVOLUNTARY DESTRUCTION OR DAMAGE; AMENDING SECTION 158.149 RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF VOLUNTARY RECONSTRUCTION; AMENDING SECTION 158.141 CONVERSIONS TO TIME-SHARE TOURISM USE; AMENDING SECTION 158.145 SCHEDULE OF LOT, YARD AND BULK REGULATIONS; AMENDING SECTION 158.151 MINIMUM REGULATIONS FOR ACCESSORY STRUCTURES; AMENDING SECTION 158.152 WALLS, FENCES, HEDGES, BERMS, LANDSCAPE LOGS AND FIREWOOD; AMENDING SECTION 158.154 SCREENING REGULATIONS; AMENDING SECTION 158.157 MECHANICAL EQUIPMENT; AMENDING SECTION 158.175 COMMERCIAL REVITALIZATION—INTENT AND PURPOSE; AMENDING SECTION 158.179 COMMERCIAL REVITALIZATION—SITE PLAN REQUIREMENTS; AMENDING SECTION 158.180 DISTRIBUTION OF 250 TOURISM UNITS; AMENDING CHAPTER 159, POST DISASTER

REDEVELOPMENT PLAN; AMENDING SECTION 159.10 EMERGENCY REPAIRS AND EMERGENCY PERMITTING; ESTABLISHING CHAPTER 161 NONCONFORMITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Longboat Key Town Commission authorized amendment of the Town of Longboat Key Code of Ordinances, Title 15, Land Development Code, to establish a chapter within the Land Development Code specifically addressing the manner and standards by which nonconforming properties are regulated; and

WHEREAS, the Town Commission amended the Town of Longboat Key Comprehensive Plan through the adoption of Ordinance 2015-02 and directed that standards relating to nonconforming properties be provided in the Town Land Development Code to benefit the public interest of the Town of Longboat Key and be compatible with and not detrimental to the character of the Town; and

WHEREAS, amendments to the Code of Ordinances are required to update the criteria and procedures regarding nonconforming properties in conformance with Ordinance 2015-02; and

WHEREAS, at a duly noticed public hearing on March 17, 2015, the Planning and Zoning Board found the subject amendments to the Code of Ordinances to be consistent with the Town's Comprehensive Plan and recommended that the Town Commission approve the amendments to the Code of Ordinances; and

WHEREAS, the Town Commission of the Town of Longboat Key, at duly noticed public hearings on _____, 2015, and on _____, 2015, considered the proposed amendments to the Code of Ordinances as recommended by the Planning and Zoning Board; and

WHEREAS, the Town has received and considered comments from the public; 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 to the Code of Ordinances are consistent with the Comprehensive Plan and are in the best interest of the health, safety, and welfare of the citizens of Longboat Key.

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

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

SECTION 2. Code of Ordinances Chapters 33, 111, 150, 156, 157, 158, and 159 are hereby amended, and Chapter 161 is hereby established as follows:

[See attached Exhibit "A"]

SECTION 3. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance is not affected.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading and public hearing _____ day of _____, 2015.

Adopted on the second reading and public hearing the _____ day of _____, 2015.

Mayor

ATTEST:

Trish Granger, Town Clerk

Exhibits:

“A”: Amendments to the Code of Ordinances

Title 3

ADMINISTRATION

Chapter 33 - BOARDS AND COMMISSIONS

Supplemental Code Enforcement

33.18 - Violations, procedure.

(A) through (G) **[No changes proposed.]**

TOWN OF LONGBOAT KEY
SCHEDULE OF VIOLATIONS AND FINES
(ORDINANCE 90-11)

CATEGORY	FINE	
CATEGORY	I	\$ 40.00
CATEGORY	II	70.00
CATEGORY	III	90.00
CATEGORY	IV	120.00
CATEGORY	V	400.00

All fines include the \$2.00 and \$3.00 fees authorized by F.S. §§ 938.01 and 938.15.

* * *

LAND DEVELOPMENT CODE		
Signs:		
(II)	156.02	Sign Permit Required
(II)	156.03 156.15	Permit Fees
(II)	156.05	Prohibited Signs
(II)	156.06	Types of Signs; Regulations
(II)	156.07	Area; Number of Signs Permitted

(II)	156.08	Construction and Safety Standards
(II)	156.09-156.13	Nonconforming Signs; Removal
(V)	156.11-156.14	Unsafe or Unlawful Signs

Per section 33.17, the "Schedule of Violations and Fines" shall be applicable only if the violation is not contested by the violator. If the citation is contested, the maximum civil penalty shall be \$500.00 and shall be determined by the court, plus court costs.

[No other changes proposed to this title, chapter, and section.]

Title 11

BUSINESS REGULATIONS

Chapter 111 – LOCAL BUSINESS TAX

111.11 - Local business tax schedule.

The assessment of business tax, per annum, is hereby specified:

	Tax Amount
(A) through (C) [No changes proposed.]	
(D) Accommodations/leasing—Rentals:	
(1) Hotels, motels, and tourism units:	
Number of Units:	
1—3	\$86.10
4—50	103.95
51—100	154.35
101—200	204.75
201+	256.20

(2) Residential apartments and homes:	
Per Unit	33.60
(E) through (H) [No changes proposed.]	

[No other changes proposed to this title, chapter, and section.]

Title 15

LAND DEVELOPMENT CODE

Chapters:

150	Buildings
151	Shoreline Construction
152	Dredging and Filling
154	Flood Control
156	Sign Code
157	Subdivision Regulation
158	Zoning Code
159	Post Disaster Redevelopment Plan
160	Comprehensive Plan
<u>161</u>	<u>Nonconformities</u>

Chapter 150 - BUILDINGS

Sections:

General Provisions

150.01 through 150.07 [No changes.]

Administration

150.15 through 150.23 [No changes.]

150.24 Nonconforming Existing uses.

150.25 et seq. [No changes]

Administration

150.23 - Procedure for conversion of existing structures.

- (A) It ~~shall be is~~ unlawful for any person or corporation to change the use of or make any alterations, changes, or modifications covered by the Florida Building Code in any dwelling unit, **tourism unit**, building structures, foundation, or improvement within the town without first notifying the town and furnishing the town with the following information prior to obtaining a building permit:
- (1) Certificate of apparent ownership or attorney's opinion as to ownership with respect to the property involved, including legal description, address and location.
 - (2) The present use of the existing building structure, dwelling unit, **tourism unit**, ~~and or~~ improvement, the date alteration is planned, and a copy of any plat and restrictions or declaration.
 - (3) Site plans including details showing the building structure and dwelling unit, **tourism unit**, and foundations before and in their proposed altered condition.
- (B) Any alterations, changes or modifications made in any existing building structure, dwelling unit, **tourism unit**, foundation, or improvement without giving the notice or information provided in subsection (A) above, or conforming to section 150.25 ~~shall renders~~ the existing certificate of occupancy for the structure void.

[No other changes proposed to this section.]

150.24 – ~~Nonconforming Existing~~ uses.

Any alterations, changes or modifications in any existing building structure, dwelling unit, **tourism unit**, foundation, or improvement, including without limitation, motels, hotels, and bungalow courts, covered by the Florida Building Code, ~~shall must~~ comply with this Code.

[No other changes proposed to this chapter or section.]

Chapter 156 - SIGN CODE

156.03 - Definitions.

For the purpose of this chapter, the following definitions ~~shall~~ apply unless the context clearly indicates or requires a different meaning:

"Nonconforming sign." A sign ~~which that~~ does not conform to this ~~chapter code~~. *See also, Ch. 161.*

[No other changes to this section.]

156.08 - Permanent signs.

- (A) **[No changes.]**
- (B) Freestanding signs. All permanent freestanding signs that are not specifically regulated elsewhere in this ~~chapter code~~ are subject to the following criteria. Existing signs that were **legally conforming** as of the effective date of the ordinance codified in this chapter, but do not meet the standards provided herein, will be **legally nonconforming** signs. *See also Ch. 161.*
- (1) The maximum size for the sign and its structure, including the area of an informational strip or rider, is determined by the lineal feet of frontage on the principal right-of-way on which the building is located in accordance with the following schedule:

Lineal Feet of Frontage	Maximum Size of Sign Face and Structure
0—99 Feet	16 Square Feet
99+ Feet	42 Square Feet

- (2) The bottom of the sign face shall must be no more than two (2) feet above the base;
- (3) Signs and sign structures shall must not exceed eight (8) feet in height for single tenant properties and 12 feet in height for multi-tenant property, or for a residential or tourism development, as measured from finished grade;

[No other changes proposed to this subsection.]

(C) Wall signs.

(1) through (5) **[No proposed changes.]**

- (6) Legal conforming wall signs will be are exempted from sign structure size, but shall be are subject to sign area requirements.

(D) through (F) **[No proposed changes.]**

(G) Changeable copy signs.

- (1) Changeable copy signs are permitted only as part of a permanent sign and shall may be incorporated into the sign face, but not the sign structure.
- (2) The signs can only be erected in nonresidential zoned property or property which that is zoned residential but has a legal nonconforming use, see Ch. 161, and shall only indicate information pertaining to events, activities, or other information regarding the property where the sign is placed.

(3) through (5) **[No proposed changes.]**

156.13 - Nonconforming signs. See also Ch. 161.

A lawfully constructed sign or sign structure existing within the town on the effective date of the an ordinance codified in amending this code chapter, which that does not conform to the requirements of this code chapter, shall hereafter be is a legal nonconforming sign. Legal nonconforming signs and sign structures shall must be removed or made conforming by the owner or lessee of the sign, or by the owner of the property where the sign is located as follows:

(A) *Permanent sign.* Once a site plan is approved for a A legal nonconforming permanent sign on a real property seeking site plan approval property with a nonconforming permanent sign, the sign must be brought into conformance with the provisions of this Code code prior to the final issuance of the site plan approval. All other legal nonconforming permanent signs must be brought into conformity within 18 months of the effective date of an ordinance amending this chapter.

~~(B)~~ All sign permit fees will be waived for bringing legal nonconforming permanent signs that are brought into conformity within 18 months of the effective date of an ordinance amending this chapter.

~~(C)~~ *Temporary sign.* A legalLegal nonconforming temporary signs must be brought into conformity within nine (9) months from the effective date of an ordinance amending adoption of this chapter.

156.14 - Maintenance and abandonment.

(A) Maintenance.

[No changes.]

- (B) Abandoned signs. Abandoned signs are prohibited and shall must be removed by the owner of the sign, owner's agent, property owner, or persons having beneficial use of the building, structure or land, subject to enforcement action, costs, and fines. A sign structure that is attached to and sits on the ground along the sign's entire bottom surface, and which that is abandoned shall will be allowed to remain in place if all signage and other displays are removed, except for the site address, unless the structure is nonconforming. See Ch. 161,

Chapter 157 - SUBDIVISION REGULATIONS

157.03 - Definitions.

"Lot." A portion of a subdivision or other parcel of land, however designated, intended as a single building site or unit for the transfer of ownership, or for separate use of another. A lot is for the purpose of development conforming to this Code and the zoning code and the zoning code. A lot shall require no variance from the town ordinances and regulations in order to construct a principal structure.

- (a) "Corner lot." A lot abutting on two or more streets at their intersection.
- (b) "Double frontage lot" or "through lot." An interior lot having frontage on two streets, other than a corner lot.
- (c) "Interior lot." A lot other than a corner lot having frontage on one street.
- (d) "Substandard lot" or "nonconforming lot." A parcel of land that has less than the minimum area or minimum dimensions required in the zone in which the lot is located. See Ch.161.

[No other changes proposed to this section.]

Chapter 158 - ZONING CODE

Article I. - General Provisions

158.006 - Definitions.

For the purpose of this chapter code the following definitions shall apply unless the context clearly indicates or requires a different meaning:

* * *

"Legal conforming lots of record." Shall be defined Defined as those single-family lots, excluding lot remnants, as defined herein, which that comply with the size and dimension regulations of the current zoning this code, as may hereafter be amended.

"Legal nonconforming lots of record." Shall be defined Defined as those lots, excluding lot remnants, as defined herein, existing at the effective date of the 1984 Comprehensive Plan Amendment, which that were previously permitted pursuant to then-existing town ordinances and, because of changes in said town ordinances, no longer conform comply with the size and dimensional regulations of this code, as amended. See Ch. 161 of this code.

* * *

"Nonconforming building or structure." A building or structure which that does not conform to the yard or bulk regulations of this chapter code pertaining to the district zone in which it is situated located. See Ch. 161 of this code.

"Nonconforming lot." A lot which that does not conform to the schedule of lot regulations of this chapter code pertaining to the district zone in which it is located. See Ch. 161 of this code.

"Nonconforming use." A use that does not conform to the regulations of the district zone in which it is situated located. See Ch. 161 of this code.

* * *

"Pre-existing legal use" A use of land listed in section 158.125 that lawfully existed on January 1, 2014. A use that qualifies as a "pre-existing legal use" may also be classified as a nonconforming use, but by virtue of its listing in section 158.125, it ~~shall be is~~ afforded the privileges of a permitted use and may be reconstructed up to its ~~pre-~~ existing density in accordance with all applicable current regulations, but only on the specific parcel on which it is located.

Article II. - Administration and Administrative Procedures

Division 1. - Administrative Official, Boards and Amendments

158.029 - Variances.

- (A) **[No changes.]**
- (B) **[No changes.]**
- (C) In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of the conditions and safeguards, when made a part of the terms under which the variance is granted, ~~shall be deemed~~ **are** a violation of this ~~chapter code~~. The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required ~~shall be begun~~ **must commence** or **be** completed or both. Under no circumstances, except as permitted above, ~~shall may~~ the board of adjustment grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this chapter in the zoning district. ~~No~~ **The board of adjustment must not consider** nonconforming use of neighboring lands, structures, or buildings in the same zoning district ~~and no or~~ permitted use of lands, structures, or buildings in other zoning districts ~~shall be considered~~ grounds for the authorization of a variance.
- (D) **[No changes.]**

Article IV. - General Regulations

Division 1. - Use Regulations

158.127 - Accessory use or building.

- (A) **[No change]**
- (B) Swimming pools.
 - (1) **[No change.]**
 - (2) (a) In determining the percentage of coverage of a lot by buildings, swimming pools and decks surrounding the pool ~~shall are~~ not ~~be~~ counted in the computation if they are not more than six **(6)** inches above finished grade. (See subsection 158.102(F).) However, residential single-family buildings with a pool cage over a swimming pool and deck to surround the pool ~~shall be are~~ permitted an additional five percent **(5%)** of allowable building coverage over the percentage otherwise permitted in the district. In addition, where a residential single-family building's swimming pool is more than six **(6)** inches above finished grade and in conformance with town regulations, an additional five percent **(5%)** of allowable building coverage over the percentage otherwise permitted in the district ~~shall be is~~ permitted whether or not there is a swimming pool cage over the swimming pool and surrounding deck. In any event, the non-pool cage area of the building ~~may must~~ not exceed the building coverage otherwise permitted in the district. However, notwithstanding the above, existing single-family residential buildings with an existing legally **nonconforming** pool cage may apply for a building permit to replace the pool cage with a pool cage of the same dimensions or smaller. A larger

pool cage may be permitted subject to conformance with other town regulations, including total building coverage on the lot not exceeding five percent (5%) than the percentage otherwise permitted in the district.

(C) through (G) [No change.]

158.128 - Off-street parking.

(A) through (F) [No change.]

(G) Nonconforming uses. Where major alterations are to be made proposed for in a building occupied by a nonconforming use, no such alterations shall must not be permitted until the off-street parking requirements for the existing use have been fully provided are satisfied, and a site plan has been approved showing any additional required parking for the alteration.

(H) through (O) [No change.]

158.132 - Tourism uses.

(A) [No change.]

(B) Tourism uses that were legally conforming as of October 6, 1982, but were rendered legal nonconforming uses by virtue of Ordinance No. 82-10, shall maintain their legal nonconforming use status provided that the use has not been abandoned or terminated as provided in this Code code. See Ch. 161.

(C) through (D) [No change.]

158.138 - Status of nonconformities.

(A) Within the districts established by these zoning regulations or amendments that may be later adopted, there may exist lots, buildings, structures, or uses which are lawful at the effective date of this chapter but which would be prohibited, regulated, or restricted under the terms of this chapter to permit these nonconformities to continue until they are removed either voluntarily or as required by subsection (B)(5), unsafe structures, or subsection (B)(8)(a), abandonment. It is further the intent that nonconformities shall not be expanded, enlarged upon, intensified, or extended, except as provided hereafter in this section. Furthermore, no expansion, enlargement, intensification extension of a nonconforming structure, building, lot of record, use, or waiver thereof, shall be permitted which increases its nonconformance with present site and development plan performance standards or district regulations, unless provided for in this section or section 158.139

(B) The following policies shall determine the management of nonconformities:

(1) Nonconforming lots of record. A permitted or permissible building or structure may be erected, expanded or altered on any lot of record at the effective date of the ordinance from which this chapter derives or any legally created amendment thereto. The maximum density to the greatest extent possible, maximum lot coverage, building height and floor area shall conform to the district in which the lot is located, and shall be subject to the requirements below:

(a) All nonconforming lots shall:

1. Have a minimum required side yard setback of ten feet for each side yard or meet the minimum requirements within its respective district, whichever is less.
2. Meet the required yards conforming to the minimums required for the district in which the lot is located.

(b) Two or more nonconforming lots or combinations of lots shall be considered an undivided lot for the purposes of this chapter if:

1. ~~As of July 21, 1976, the lots were in continuous frontage in single ownership, of record in the appropriate county where located; and~~
 2. ~~The lots are deficient in the requirements established for lot width or area.~~
- (c) ~~Lot reduction.~~
1. ~~No lot or interest therein shall be transferred, conveyed, or sold as subdivided so as to create a new **nonconforming** lot, which avoids, circumvents or subverts any provision of this chapter or leaves remaining any lot in violation of the requirements of this chapter. No lot or portion of a lot required as a building site under this chapter shall be used as a portion of a lot required as a building site for another structure.~~
 2. ~~No building permit shall be issued for any lot or parcel of land which has been conveyed, sold, or subdivided in violation of this section. Any transferee who acquires a lot in violation of this section, without knowledge of such violation, or any subsequent transferee, shall have the right to rescind and receive damages from the transferor who violates the provisions of this section.~~
- (2) ~~**Nonconforming** buildings or structures. Where a building or structure exists lawfully that could not be built under this chapter or as it may be amended by reason of restrictions on lot area, lot coverage, height, yards, location on the lot, or requirements (other than use) concerning the structure, then the building or structure may be continued so long as it remains otherwise lawful; provided further, that:~~
- (a) ~~The building or structure may not be altered or enlarged in any way which creates a new nonconformity or increases or enlarges an existing **nonconformity**; and~~
 - (b) ~~The building or structure may be altered or enlarged in any way which decreases an existing **nonconformity** or in any way which is otherwise conforming.~~
- (3) ~~**Nonconforming** use. Where at the effective date of the ordinance codified in this chapter or any amendments thereto, lawful use of buildings or structures exists, the use may be continued subject to the provisions of this chapter. Any **nonconforming** use may be extended throughout any parts of a building which were manifestly arranged or designed for such a use at the effective date of the ordinance codified in this chapter or any amendments thereto. Any **nonconforming** use which occupied a portion of a building not originally designed or intended for such a use shall not be extended to any other part of the building.~~
- (4) ~~Repairs. Normal maintenance, repair and incidental alteration of a structure containing a **nonconforming** use is permitted, provided it does not extend the area or volume of space occupied by the **nonconforming** use. A building or other structure containing residential **nonconforming** uses may be altered in any way to improve interior livability; however, no structural alterations shall be made which would increase the number of dwelling units.~~
- (5) ~~Unsafe structures. If a **nonconforming** structure or portion of structure or any structure containing a **nonconforming** use becomes unsafe or unlawful due to lack of repairs or maintenance and is declared by the planning and zoning official to be unsafe or unlawful by reason of its condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the provisions of this chapter; and its removal shall be deemed voluntary.~~
- (6) ~~Off-street parking. Additional off-street parking may be permitted on other property in the immediate vicinity, subject to the provision of subchapter 3 [article IV, section 158.128] of this chapter.~~
- (7) ~~Change in **nonconforming** uses without structural alteration. If no structural alterations are made, a **nonconforming** use of a building or structure may be changed to another **nonconforming** use of a similar or higher (more restrictive) classification under the following conditions:~~
- (a) ~~The change in use shall not intensify or enlarge the basic use of the building or premises by increasing the need for more parking facilities, by increasing vehicular or pedestrian traffic, by creating more noise, vibration, fire hazard, smoke, dust or fumes, by increasing hours of operation or number of employees, by increasing ground coverage or adversely impacting drainage, or otherwise result in a more intensive use of the building or premises, or change the basic character of the building or premises except to more nearly conform to the character of the zoning of the district in which the building or structure is located.~~

- ~~(b) When a nonconforming use of all or any part of a building, structure or premises is changed to another nonconforming use of a more restricted character, the new use may not thereafter be changed to any nonconforming use.~~
- ~~(c) When a nonconforming use of all or any part of a building, structure or premises has been changed to a conforming use, the conforming use shall not thereafter be changed to any nonconforming use.~~
- ~~(d) No structural alterations shall be made to any building or structure occupied by a nonconforming use except as permitted in this Code.~~
- ~~(e) The parking and landscape provisions of this chapter shall be met.~~
- ~~(8) Termination of nonconforming uses and structures.~~
 - ~~(a) Abandonment. Except as set forth in subsection 158.139(A), providing for the reconstruction of 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.~~
 - ~~(b) Removal of nonconformance; extension of time to comply. A nonconforming building or structure not used or occupied in a lawful manner or vacant for a period of one year or more shall be considered an abandonment and the nonconforming building or structure shall be removed or made conforming. However, should the period of nonuse or vacancy be caused by legal restraints upon the owner or lessee, the owner or lessee may set forth such grounds in a petition to the town commission and serve such petition on the planning and zoning official. The time may be extended by the town commission for good cause shown. The town commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity.~~
 - ~~(c) Special extension for continuance. The town commission may grant a special extension for the continuance of an abandoned nonconforming building or structure for a period not to exceed five years to provide for the removal of the nonconforming building or structure, or the making of the building or structure conforming, on or before the end of the period approved. The property owner shall have furnished the town with a good and sufficient surety bond or other security in an amount to be approved by the town commission, to require compliance with this chapter.~~
- ~~(9) Pre-existing legal uses. Certain uses of land that cannot be added under current regulations are legal because they lawfully existed on January 1, 2014, and are authorized as "pre-existing legal uses" on the schedule of uses in section 158.125. "Pre-existing legal uses" uses may also be classified as nonconforming uses, but by virtue of their listing in section 158.125 shall be afforded the privileges of permitted uses and may be reconstructed up to their pre-existing density in accordance with all applicable current regulations, but only on the specific parcels on which they are located. The abandonment and termination provisions in subsection (B)(8) do not apply to uses that qualify as "pre-existing legal uses."~~

158.139 — Reconstruction of nonconformities in the event of involuntary destruction or damage.

- ~~(A) Intent. It is the intent of this section that in the event of involuntary destruction due to natural events to allow noncompliant structures to 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) and to reduce or eliminate nonconformities, especially gulf and pass waterfront yard setbacks, to the greatest degree possible, as set forth below.~~
- ~~(B) 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 to the same building cubic content and number of units in existence prior to the 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 structure to the same building cubic content that existed prior to the 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, 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 may be increased in cubic 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 building.~~
- ~~(5) Time frame for obtaining site plan approval. To qualify for rights under this provision, any such reconstruction shall obtain site plan approval within two years of the date of the casualty. 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 disaster, such extension is in the best interests of the town.~~

~~(C) It is the burden of the applicant to establish, to the satisfaction of the town manager or designee, by clear and convincing evidence, through documentation, including, but not limited to, photographs, diagrams, plans, affidavits, and permits, the actual uses, building cubic content, densities, and intensities legally existing prior to the disaster event, prior to seeking site plan approval.~~

~~(D) **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. These 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).~~

~~(1) Required yards:~~

~~(a) 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 these 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 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.~~

~~(b) 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.

~~(c) Street, rear, side, or waterfront yards, other than the gulf waterfront yard, may be modified to:~~

~~(i) 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;~~

~~(ii) 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;~~

~~(iii) Permit the construction of a handicapped access appurtenance to any reconstruction; or~~

~~(iv) Allow for the placement of stairs or stair landing that provides access into a reconstructed dwelling unit.~~

~~(d) 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 disaster event.~~

~~(2) Open space:~~

~~(a) Modifications which reduce the open space requirement of the Zoning Code may be allowed when it:~~

~~(i) 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 (5)(c) and (d) of this section; or~~

~~(ii) Accommodates other approved changes to the site as a result of the reconstruction.~~

~~(b) Reductions from the open space that existed prior to 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.~~

~~(3) Building height:~~

~~(a) 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").~~

~~(b) The overall height of a building may be increased by a maximum of the additional elevation required to comply with subsection (3)(a) above.~~

~~(4) Maximum building length, distance between buildings, and distance between buildings and driveways. These development criteria may be modified, but shall not be reduced in a manner that jeopardizes public safety.~~

~~(5) Off-street parking spaces.~~

~~(a) In no instance shall the parking requirements be modified where the reconstruction involves the increase of density or 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) Where to the greatest extent possible, the ground floor area of the reconstructed building shall be utilized for off-street parking.~~

~~(d) 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:~~

~~(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.~~

~~(E) Site plan approval.~~

- (1) ~~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.~~
- (2) ~~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 150.34~~
- (3) ~~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.~~

~~(G) 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.~~

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.~~

158.141 - Conversions to time-share tourism use.

- (A) Any conversions of existing residential or tourism units in tourism districts to timeshare tourism units not adding bedrooms to the existing unit ~~shall be is permitted to convert existing units to time share tourism units~~ on a one-for-one unit basis.
- (B) Any conversion of existing residential or tourism units in tourism districts to timeshare tourism units ~~which that~~ adds additional bedrooms to existing units ~~shall must~~ conform to the density requirements for time-share tourism use for those units as set forth in the schedule of lot, yard and bulk regulations as set out in section 158.145
- (C) Conversion of any existing nonconforming tourism use to time-share tourism use in any district other than a tourism district is an intensification of a nonconforming use and is prohibited. See Ch. 161.

Division 2. - Lot, yard and bulk regulations

158.145 - Schedule of lot, yard and bulk regulations.

The restrictions and controls intended to regulate development in each zoning district are set forth in the schedule below and in the schedule in section 158.125, which are supplemented by other sections of this chapter.

- (A) **[No change.]**
- (B) Any building that lawfully existed on January 1, 2014, in the MUC-1, MUC-2, and MUC-3 zoning districts ~~shall not be deemed~~ is not nonconforming as a result of the lot, yard, and bulk regulations that were adopted for these districts in 2014. ~~Any such building~~ and may be reconstructed in its current configuration in accordance with all other applicable current regulations, but only on the specific parcel on which it is located.
- (C) **[No change.]**

158.152 - Walls, fences, hedges, berms, landscape logs and firewood.

All walls, fences or hedges within the required yard areas shall conform to the following regulations except where special requirements are set forth for specific screening purposes elsewhere in this chapter:

- (A) through (I) **[No change.]**
- (J) For properties ~~which are nonconforming~~ with regard to lot coverage, a trellis, as defined in section 158.006, may be attached to an existing building, subject to the following standards and special exception approval in accordance with section 158.126
 - (1) The trellis shall extend no more than six feet beyond the face of the exterior wall of the building.
 - (2) Except for vertical support structures, no structure shall be constructed, nor shall construction material be installed below the overhead horizontal member of the trellis structure.
 - (3) The minimum distance between vertical support structures of the trellis shall be five feet.
- (K) through (O) **[No change.]**

158.154 - Screening regulations.

- (A) Buffering and required landscaping. Subject to the requirements of section 158.148 "Intersection visibility", and subsection (C) for waterfront yards in section 158.152 "Walls, fences hedges, berms, landscape logs and firewood", where a nonresidential use abuts a residential district or where a multifamily residential use abuts a single-family residential district or use, the abutting nonresidential or multifamily use shall be visually screened from the adjoining residential property utilizing one of the following methods:

- (1) A fence or wall of at least 80 percent opacity that is the maximum height allowed under the zoning code. The fence or wall shall be located completely within the limits of the nonresidential or multifamily lot and shall have equal architectural treatment on both sides; or
 - (2) A buffer at least ten feet in width from the property line of the adjoining property, containing required landscaping which is selected and arranged to form a visual screen of at least 80 percent between the nonresidential or multifamily use and the residential use. The required landscape buffer shall be provided by mature plants having already attained a six-foot height or by a berm combined with landscaping of at least six feet in height. A permanent fence may be required to supplement the required landscaping.
 - (3) However, if a property in a commercial zoning district changes its land use and zoning to residential or a multifamily zoned property changes its use and zoning to single-family residential, or a property in a residential district contains a legally **nonconforming** nonresidential use and that use is changed to a conforming residential use, then the required landscaping or other screening on the adjacent nonresidential or multifamily property **shall is not be** required.
 - (4) **[No change.]**
 - (5) **[No change.]**
- (B) through (C) **[No change.]**

Division 3. - Commercial Revitalization

158.175 - Commercial revitalization—Intent and purpose.

These commercial revitalization sections (sections 158.175 through 158.179) recognize that within the town there exist commercially zoned and developed parcels with structures, **which were** lawful when established, but as of October 1, 2002 are **nonconforming** under the terms of the town's land development code. It is the intent of the commercial revitalization sections to provide reasonable flexibility for these **nonconforming** commercial, office, and marina establishments located within the C-1, C-2, C-3, O-I and M-1 zoning districts, that are developed with conforming uses as of October 1, 2002, by providing a process for existing business establishments to make small alterations in order to meet state or federal mandates; or to improve their businesses to maintain viability.

The commercial revitalization is optional. Property owners may avail themselves of these provisions contingent on the requirements and standards identified in this section. Waiver approvals shall apply during the life of the building or improvement only and **shall do** not run with the land. Waiver approvals **shall** terminate at the time of building demolition and/or destruction whether by voluntary or involuntary means.

158.176 - Commercial revitalization—Permitted uses.

(A) Without site plan review and approval.

(1) Essential services.

(B) With site plan review and approval.

(1) Permitted uses in C-1, C-2, C-3, O-I and M-1 districts.

All uses are subject to the provisions of **subsection 158.138(A), the status of chapter 161 (nonconformities).**

158.180 - Distribution of 250 tourism units.

(A) **[No change.]**

(B) Eligible properties. The following properties are eligible to apply for additional tourism units based upon applicable conditions as described under this section:

- (1) T-3 and T-6 zoned properties may be eligible for additional tourism units. Two or more contiguous T-3 or T-6 properties may be merged to create one larger development lot.

(2) Residentially zoned properties with an existing legal tourism use may be eligible for additional tourism units. Two or more contiguous **nonconforming** tourism used properties may be merged to create one larger development lot.

(3) **[No change.]**

(C) through (F) **[No change.]**

Chapter 159 - POST-DISASTER REDEVELOPMENT PLAN

159.10 - Emergency repairs and emergency permitting.

(A) through (B) **[No change.]**

(C) Emergency permits to permit emergency repairs ~~shall not be deemed~~ **are not** a waiver ~~of~~ **by** the town of a determination of whether the structure has been substantially damaged in excess of 50 percent or more as provided in chapter 154 ~~(flood control)~~. Such determination ~~shall~~ **must** be made pursuant to chapter 154 ~~(flood control)~~ and, where applicable, ~~section 158.139, "rebuilding nonconforming structures in the event of involuntary destruction"~~ chapter 161 (nonconformities), as well as any other applicable state or local laws. Further, such emergency repairs may be considered in the calculation for determining whether the market value of the improvement meets or exceeds 50 percent of the value of the structure as defined and calculated under chapter 154, ~~(flood control)~~.

(D) **[No change.]**

Chapter 161

NONCONFORMITIES

Sections:

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<u>161.12</u>	<u>Applicability.</u>
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<u>161.24</u>	<u>Conditions.</u>
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<u>161.31</u>	<u>Purpose and Findings</u>
<u>161.32</u>	<u>Applicability</u>
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DIVISION I: NONCONFORMITIES

SUBDIVISION 1: GENERALLY

161.11 - Purpose and Findings.

The purpose of this chapter is to protect a property right lawfully established, and continuously maintained in a lawful manner, a structure or use prior to the adoption of this chapter or prior to any amendment to this chapter that otherwise renders such structure or use unlawful. A nonconforming structure or use recognized prior to the adoption of this chapter may continue to operate in accordance with the law under which the nonconforming structure or use was recognized so long as the nonconforming structure or use is not in violation of such law, the adoption of this chapter notwithstanding. Nothing in this chapter prohibits the voluntary compliance with any future ordinance, regulation, or incentive.

161.12 - Applicability.

This division applies to any nonconformity. There are four (4) categories of nonconformities as defined in Table 161-1.

161.13 - Continuation.

On or after the effective date of the Land Development Code (LDC), a nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all regulations in effect at that time may continue subject to this division.

161.14 - Abandonment.

If a nonconformity is abandoned for 12 months, any future use of such premises must conform to the provisions of this chapter. Such abandonment of a nonconformity terminates the right to continue the nonconformity.

SUBDIVISION 2: NONCONFORMING USES

161.21 - Applicability.

This section applies to the continuation, enlargement, or expansion of a nonconforming use.

161.22 - Continuance.

The lawful use of any structure existing as of the effective date of this chapter may be continued, although such use does not conform to the provisions of this chapter. Such use may be extended throughout the structure, provided there are no structural alterations or additions to the structure, except those required by law.

**Table 161-1
Nonconformities**

Situation	Definition
Nonconforming use (Subdivision 2 of this chapter)	A use that was lawfully established but that no longer complies with the use regulations applicable to the zoning district in which the property is located.
Nonconforming site (Subdivision 3 of this chapter)	A lot, parcel, or development site that was lawfully established but that does not comply with the development standards of this code.
Nonconforming structure (Subdivision 4 of this chapter)	A structure that was lawfully erected but that does not comply with all the regulations applicable regulations of this code.
Nonconforming lot (Subdivision 5 of this chapter)	A lot that fails to meet the requirements for area, height, yards, buffer, or other dimensional standards and regulations because of a change in the applicable zoning district regulations, annexation, condemnation of a portion of the lot, or other governmental action.

161.23 - Enlargement.

A conforming structure in which a nonconforming use operates may not be enlarged or extended except as required by law.

161.24 - Conditions.

The right of nonconforming uses to continue is subject to all regulations for maintenance of the premises and any conditions of operation that, in the judgment of the board of adjustment, are reasonably required for the protection of adjacent property.

161.25 - Change of Use Regulations

161.25(a) Changes to Conforming Uses

Any nonconforming use may be changed to a use conforming with these regulations established for the district in which the nonconforming use is located, provided, however, that a nonconforming use so changed must not in the future be changed back to a nonconforming use. A nonconforming use may be changed to another nonconforming use by order of the board of adjustment, provided that the new use is determined to be more consistent with the spirit of this code, the neighborhood, and the comprehensive plan.

161.25(b) Limitations on Changing Nonconforming Uses

All changes of nonconforming uses must conform to all development standards established by this code. A nonconforming use must not be changed to another nonconforming use that requires more off-street parking and loading space than the former nonconforming use unless adequate additional off-street parking and loading space is provided for the increment of the new nonconforming use as if the increment were a separate use. A nonconforming use must not be changed to another

nonconforming use unless the original nonconforming use is registered in conformance with this chapter.

SUBDIVISION 3: NONCONFORMING SITES

161.31 - Purpose and findings.

This code establishes various site design standards. Certain development sites may not meet current requirements and other design specifications. This section requires that nonconforming sites be conformed to the site development standards prescribed by this code.

161.32 - Applicability.

This section applies to the continuation, enlargement, or expansion of a nonconforming site.

161.33 - Authority to Continue.

Any lawfully existing nonconforming site may be continued so long as it remains otherwise lawful subject to this section.

161.34 - Nonconforming Site Categories.

Lots, parcels, or sites devoted to the uses described in Column (A) of Table 8-3 have the time period established in Column (B) of Table 8-3 to either bring the site into conformance with the provisions of this code or have a variance approved for the site. All owners of record of commercial zoned properties will be notified by the building official by first class mail of this provision prior to the end of the nine (9) year period.

161.35 - Extension.

A conforming use located on a nonconforming site must not be expanded until the site is brought into conformance with the provisions of this code. However, single-family residential structures that are located on a legally nonconforming site with respect to required yards, areas, or height may be structurally altered or enlarged, providing the portion of the structure that is altered or enlarged conforms with the provisions of this code.

Table 8-3
Nonconforming Site Categories

(A) Site Category	(B) Conformance Period
Commercial sites on parcels of at least 10 acres	10 years
Commercial sites on parcels of less than 10 acres	12 years
Multiple-family developments	15 years

161.36 - Relocations.

No structure may be relocated to a nonconforming site until the site is brought into conformance with the provisions of this ordinance.

161.37 - Change in Use.

An existing structure located on a nonconforming site must not be changed from one use classification to another use classification provided in this code until the site is brought into

conformance with the provisions of this code or a nonconforming site variance has been approved by the board of adjustment.

161.38 - Abandonment.

When the use of a nonconforming site has been abandoned for a period of 12 months, the site must not be used, developed, or improved until it is brought into conformance with this code. The board of adjustment may grant a single, six (6) month extension period for the purpose of bringing the site into conformance with this code. Extension applications must be filed in accordance with the procedures for site plan review in this code. For purposes of this chapter, rental or lease payments and taxes will not be considered a continued use, and the disconnection of utilities will constitute a means of establishing the commencement of the abandonment of the use of the site.

161.39 - Exception for Repairs Pursuant to Public Order.

Nothing in this chapter prevents the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official charged with protecting the public safety and who declares such structure to be unsafe and orders it to be restored to a safe condition, provided such restoration is not otherwise in violation of the various provisions of this code prohibiting the repair or restoration of partially damaged or destroyed structures.

SUBDIVISION 4: NONCONFORMING STRUCTURES

161.41 - Applicability.

This section applies to the continuation, enlargement, or expansion of nonconforming structures.

161.42 - Continuance of Nonconforming Structures.

Subject to all limitations in this code, and the provisions of Section 161.39 Exception for Repairs Pursuant to Public Order of this chapter, a nonconforming structure may be occupied, operated, and maintained in a state of good repair, but must not be enlarged or extended.

161.43 - Enlargement.

A nonconforming structure in which only permitted uses operate may be enlarged or extended if the enlargement or extension can be made in compliance with all of the provisions of this code established for structures in the zoning district where the nonconforming structure is located. Such enlargement is also subject to all other applicable Town ordinances.

161.44 - Termination of Nonconforming Structures.

161.44(a) Damage to Structures.

The right to operate and maintain a nonconforming structure terminates whenever the nonconforming structure is damaged in any manner from any cause and the cost of repairing such damage exceeds 50 percent of the replacement cost of the structure on the date of the damage.

161.44(b) Obsolescence of Structure.

The right to operate and maintain a nonconforming structure terminates whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the Town, and the cost of replacing the structure in lawful compliance with the applicable ordinance exceeds 50 percent of the replacement cost of the structure on the date that the proper official of the Town determines that the structure is obsolete or substandard.

161.44(c) Determination of Replacement Cost.

The cost of land or any factors other than the value of the nonconforming structure itself must not be included in determining the replacement cost of a nonconforming structure.

SUBDIVISION 5: NONCONFORMING LOTS

161.51 - Applicability.

This section applies to the continuation, enlargement, or expansion of nonconforming lots.

161.52 - Generally.

A substandard lot must comply with the yard, buffer, setback, and bulk regulations of the zoning district that makes the lot nonconforming to the required area of the lot. This section does not require the re-platting or combination of platted lots under same ownership protected by any Florida vested rights law contrary to this requirement.

161.53 - Annexed Territory.

Conforming rights will be granted to all properties in newly annexed areas in accordance with the provisions of this code. All applications for registration of nonconforming rights must be filed within 60 days of the effective date of annexation.

161.54 - Incomplete Construction.

Construction may be completed on any structure legally under construction upon annexation, provided:

161.54(a) The owner or designated representative applies to the Town Manager for a development approval to authorize further work on the structure, stating the proposed use of the structure and attaching the plans and specifications relating to the construction; and

161.54(b) The construction is completed within two (2) years of the effective date of annexation. Action on the development approvals is taken by the Town Manager within 15 days from the date of application. The Town Manager will deny the development approval upon a finding that the construction will not meet the requirements of the building, fire protection, or minimum housing codes and other applicable ordinances and codes of the Town. If the development approval is denied, the construction work must cease until necessary corrections are made.

161.54(c) Proposed Construction.

Proposed construction may be completed upon a finding by the board of adjustment that sufficient evidence exists that a valid development approval was obtained from the jurisdiction of the annexed area and was validly in place on the date of annexation. Within 15 days from the date of such filing, the Town Manager will present evidence to the board of adjustment for its determination, unless the applicant agrees to a longer period. The applicant will have 12 months from the date of the board of adjustment's favorable determination to secure all development approvals.

SUBDIVISION 6: CERTIFICATE OF NONCONFORMING USE

161.61 - Applicability.

161.61(a) - Generally.

The owner of a nonconformity must register the nonconformity by filing with the Town Manager a registration statement.

161.61(b) - Exemptions.

Registration is not required for:

- (1) A use or structure that is made nonconforming by a governmental action other than annexation or rezoning;
- (2) Any fence of legal height and construction that does not constitute a nonconforming use and does not require registration; and
- (3) Any nonconforming lot.

161.62 - Contents.

Registration must be made on behalf of the owner or by a person, firm, corporation, or other entity that has a legal or equitable interest in the nonconforming property. A registration statement requires a disclosure of the complete ownership of the land or structure, and must be in such form and require the furnishing of such information, photographs, and documentation necessary to demonstrate that:

- (a) The use was lawfully established prior to the effective date of the applicable regulations;
- (b) The use has been continuously maintained since it was established; and
- (c) The use has not been abandoned.

161.63 - Denial of Registration.

The Town Manager must deny any registration if it appears that the documents relied thereon are not valid, or that the documents produced do not show the existence of a lawful nonconformity in accordance with the criteria set forth in this chapter. The applicant may appeal this determination to the board of adjustment.

161.64 - Amendment.

At any time after registration, upon application to the Town Manager and with the written consent of the affected property owner affected, a registration statement may be amended to indicate changes in ownership. A copy of each registration statement must be returned to the owner and a copy filed in the records of the Town. The Town Manager will accept and file all tendered registration statements within the permitted time period, but the acceptance of such statements does not constitute an authorization to operate an unlawful use. The filing of a false registration statement with the department is a violation of this chapter.

SUBDIVISION 7: TERMINATION OF NONCONFORMITIES

161.71 - Violation of Chapter.

A violation of this chapter immediately terminates a lawful nonconformity.

161.73 - Specific Acts of Termination.

Any of the following specific acts immediately terminates a nonconformity:

- (a) Changing a nonconformity to conform. This type of termination applies only to the nonconformity existing prior to any change.
- (b) Abandonment of a nonconformity for a period of 12 or more consecutive calendar months; or
- (c) Failure to register a nonconformity as provided in this chapter.

161.73 - Notice.

The Town Manager must provide 30 days' advance notice and an opportunity for a hearing before the board of adjustment prior to terminating nonconforming rights under this chapter.

161.74 - Action of the Board of Adjustment.

The board of adjustment may inquire into the existence of a nonconformity, fire or health hazards, and any other danger or nuisance to the public due to or created by any condition or use existing on a nonconforming property. Upon written findings, the board may require the discontinuance of such use. The owner of the subject use will have at least 20 days' written notice prior to the day of the public hearing. Time allowed for discontinuance of such use will be prescribed by the board at a subsequent public hearing, after having heard from the affected parties, based on the board's ruling as to a reasonable amortization period for the nonconforming use.

In prescribing the amortization period, the board will consider the following factors:

- (a) The property owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming;
- (b) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages;
- (c) Any return on investment since inception of the use, including net income and depreciation; and
- (d) The anticipated annual recovery of investment, including net income and depreciation.

161.75 - Destruction or Damage of Structure.

The right to operate and maintain any nonconformity, except for a single-family dwelling unit, terminates and must cease to exist whenever the structure associated with the nonconformity is damaged or destroyed from any cause whatsoever, and the cost of repairing the damage or destruction exceeds 50 percent of the replacement cost of the structure on the date of the damage or destruction. A nonconforming single-family dwelling unit that is destroyed or damaged more than 50 percent of the replacement cost may be rebuilt, provided that a development approval is issued within one (1) year of the date of such damage or destruction. The Town Manager may require the submission of sufficient evidence to verify the date of damage or destruction.

SUBDIVISION 8: EXPANSION OF NONCONFORMITY

161.81 - Applicability.

A nonconformity must not expand unless a variance is approved in accordance with the provisions of this code.

161.81 - Additional Criteria for Expansion Variance.

In addition to the standard considerations and findings required by this code for a variance, the following additional considerations and findings are required for a variance to expand a nonconformity:

- (a) The termination of the nonconformity will result in unnecessary hardship;
- (b) The continuation and expansion of the nonconformity will not be contrary to the public interest;
- (c) The continuation and expansion of the nonconformity will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- (d) The use will be in harmony with the spirit and purpose of these regulations and the relevant comprehensive plan goals, objectives, policies, and strategies;
- (e) The plight of the applicant seeking the continuation and expansion of the nonconformity is due to unique circumstances existing on the property or within the surrounding district;

(f) The continuation and expansion of the nonconformity will not substantially weaken the general purposes of this chapter or the regulations established in this code for the applicable zoning district;

(g) The continuation and expansion of the nonconformity will not adversely affect the public health, safety, and welfare; and

(h) The continuation and expansion of the nonconformity through a reasonable amortization period is appropriate.

161.83 - Conditions Applicable.

All conditions attached to a variance, or any other development approval or development order issued under any previously enacted land development regulations continue to apply to the proposed expanded use and are enforceable as provided in this code. Such conditions may be waived if an application is approved pursuant to this chapter and the applicant agrees to waive and abandon all rights secured under the regulations formerly in effect.