

M E M O R A N D U M

DATE: March 9, 2016

TO: Dave Bullock, Town Manager

FROM: Alaina Ray, Director
Planning, Zoning and Building Department

RE : Ordinance 2016-13, Amending Chapter 158, Zoning Code, Status of Nonconformities

Construction of many buildings and structures in the Town of Longboat Key occurred prior to the adoption of the Comprehensive Plan and Zoning Code, which has caused a situation in which these buildings and structures are currently designated as nonconforming. Staff has identified provisions within Zoning Code Section 158.138, which are problematic regarding implementation. These provisions are identified within this report, as well as Staff recommendations for Code revisions to address the identified issues. The recommendations provided herein correspond with the revisions provided in attached Ordinance 2016-13 and are shown in strike-through/underline format.

At their March 7, 2016 Regular Meeting, the Town Commission recommended one minor revision indicating that the extension period would be established at a public quasi-judicial hearing and another revision removing the minimum amount required for a surety bond. Those changes have been incorporated into this report and Ordinance 2016-13.

158.138(B)(8)(b)

This provision currently allows the Town Commission to grant an extension to the period of time a nonconforming use or structure can remain unused or vacant, if the nonuse or vacancy is caused by legal restraint upon the owner. The existing Code provision, however, does not contain specific language for the owner to secure the property in order to ensure the health, safety, and welfare of the public. While the Town Commission has typically included this as a condition of approval for extensions, Staff recommends codifying this provision to remove any perceived ambiguity.

Therefore, the following revision is recommended to provide more specific requirements of the Code:

158.138(B)(8)(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. The town commission may require the petitioner to secure the buildings, structures and/or property in a manner acceptable to the town to ensure the health, safety, and welfare of the public.

158.138(B)(8)(c)

This provision of the Code currently provides that the Town Commission may grant a special extension for a nonconforming use or structure; however, the Code currently limits extensions to a maximum period of five (5) years. This lack of flexibility regarding the maximum duration an extension limitation could be problematic if the Town Commission finds that sufficient extenuating circumstances exist to warrant an extension in excess of five (5) years.

Furthermore, the Code provision requires that the property owner of a property being granted an extension provide the Town with a good and sufficient surety bond. The Code does not designate a specific amount for the surety bond, and does not specify what the surety bond will be used for. The Code also states that the owner must comply with the Zoning Code's "chapter," instead of all relevant state and local codes. The Code does not provide criteria for surety bonds to ensure sufficient funds are available to maintain compliance with the Town Code and state building codes.

Therefore, Staff recommends the following revisions to provide clarity on what Codes the property owner must comply with, as well as setting a maximum amount for a surety bond:

158.138(B)(8)(c) Special extension for continuance. The town commission, by resolution, may grant a special extension for the continuance of an abandoned nonconforming building or structure for a specified period of time to be determined at a public hearing 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.

1. 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~~ code and/or state building codes.

2. The amount of the surety bond or security shall be established by the town commission at a quasi-judicial public hearing up to an amount of no more than 100 percent of the total value of the property, including structures and land. The value of the property, including structure and land, shall be determined based on the full assessed value prior to any exemptions assigned to said property.

including structures and land, according to the most recent tax assessment records for the property.

3. The purpose of such bond or security shall be for the town to utilize and draw on such amounts in circumstances where the property owner has failed to provide adequate building, structure and/or site maintenance to ensure health, safety and welfare of the public. In such circumstances, the town may elect to utilize such bond or security to bring said property into compliance with town and/or state building codes, which may include, but is not limited to, conditions related to structural demolition, debris removal, site stabilization, utility stabilization, environmental remediation, building maintenance, pest and/or rodent control, site security, pool maintenance, landscape maintenance, potential storm damage, fire, vagrancy, and vandalism.

4. Nothing within this section shall prohibit the town from any actions deemed necessary by the building official relating to unsafe buildings or structures.



Ordinance 2016-13

158.138: Status of Nonconformities

Town Commission
Regular Meeting
April 4, 2016



Termination of Nonconforming Uses and Structures

- Code currently allows Town Commission to extend nonconforming uses and structures for a maximum of five (5) years.
 - Currently no option to extend beyond five (5) years.
- Stipulates that bond or security must be deposited with the Town
 - Does not provide much guidance or detail as to amount or use.



158.138(B)(8)(c)

158.138(B)(8)(c) Special extension for continuance. The town commission, by resolution, may grant a special extension for the continuance of an abandoned nonconforming building or structure for a period **of time to be determined at a public hearing** ~~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.



158.138(B)(8)(c)

158.138(B)(8)(c)

1. 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 code and/or state building codes.
2. The amount of the surety bond or security shall be established by the town commission at a **quasi-judicial** public hearing up to an amount of no more than 100 percent of the total value of the property, including structures and land. The value of the property, including structures and land, shall be determined based on the full assessed value prior to any exemptions assigned to said property, including structures and land, according to the most recent tax assessment records for the property.



Incorporation into New Land Development Code

- Nonconforming Extensions
- Personal Wireless Services (Underground Project)
- Shoreline Construction (Seawalls)
- Signs (to comply with Supreme Court Decision)
- Turtle Protection (per Permit Requirements)

Consultant for Zoning Code Rewrite has been selected.

ORDINANCE 2016-13

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, REVISING WITHIN TITLE 15 LAND DEVELOPMENT CODE, CHAPTER 158, ZONING CODE; SECTION 158.138 STATUS OF NONCONFORMITIES; PROVIDING FOR AN EXTENSION OF CONTINUANCE OF AN ABANDONED NONCONFORMING BUILDING OR STRUCTURE; MODIFYING PROVISIONS FOR SPECIAL EXTENSION OF CONTINUANCE BY ESTABLISHING CRITERIA FOR SURETY BOND OR SECURITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, construction of many of the buildings and structures in the Town of Longboat Key occurred prior to adoption of the current Comprehensive Plan and Zoning Code; and

WHEREAS, many existing buildings, structures, and uses within the Town are currently considered nonconforming; and

WHEREAS, the Town of Longboat Key Zoning Code, Section 158.138(B)(8)(b), currently allows the Town Commission to grant an extension of the period of time a nonconforming use or structure can remain unused or vacant if the nonuse or vacancy is caused by legal restraints upon the owner or lessee; and

WHEREAS, the Town of Longboat Key Zoning Code, Section 158.138(B)(8)(c), currently provides that the Town Commission may grant a special extension for a period not to exceed five years; and

WHEREAS, the Town Commission may occasionally find it necessary to provide an extension in excess of five years due to extenuating circumstances; and

WHEREAS, the Town Commission finds it necessary to revise its Zoning Code to allow extensions beyond five years in special circumstances; and

WHEREAS, the Zoning Code requires a property owner of a property being granted an extension to provide the Town with a good and sufficient surety bond or other security, in an amount to be determined by the Town Commission; and

WHEREAS, the Town may utilize the surety bond or other security to ensure compliance with the Town Code and state building codes; and

WHEREAS, compliance with the Town Code and the Florida Building Code may include, but is not limited to: structural demolition, debris removal, site stabilization, utility stabilization, environmental remediation, building maintenance, pest and/or rodent control, site security, pool maintenance, landscape maintenance, potential storm damage, fire, vagrancy, and vandalism; and

WHEREAS, in the event a structure was deemed by the Town to be unsafe and demolition became necessary, costs to demolish said structure(s) and dispose of debris may typically cost up to twenty percent of the value of the structure(s) to be removed; and

WHEREAS, the Town Commission finds it necessary to establish criteria for surety bonds and other security to ensure sufficient funds are available to maintain compliance with the Town Code and state building codes; and

WHEREAS, after due public notice, the Town's Planning and Zoning Board held a public hearing on January 19, 2016, to consider the proposed Zoning Code amendments and provided recommendations to the Town Commission as the local governing body; and

WHEREAS, after due public notice, the Town Commission held a workshop on February 16, 2016, and considered the recommendations of the Town's Planning and Zoning Board; and

WHEREAS, on March 7, 2016, the Town Commission conducted a duly noticed initial public hearing on the proposed Zoning Code amendments; and

WHEREAS, on April 4, 2016, the Town Commission conducted a duly noticed second public hearing on the proposed Zoning Code amendments and the Town Commission approved the amendments.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are hereby incorporated fully by reference.

SECTION 2. Chapter 158, Section 158.138, is hereby amended as follows:

158.138(B)(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. The town commission may require the petitioner to secure the buildings, structures, and/or property in a manner acceptable to the town to ensure the health, safety, and welfare of the public.

- (c) *Special extension for continuance.* The town commission, by resolution, may grant a special extension for the continuance of an abandoned nonconforming building or structure for a period of time to be determined at a public hearing 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.
1. 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 code and/or state building codes.
 2. The amount of the surety bond or security shall be established by the town commission at a quasi-judicial public hearing up to an amount of no more than 100 percent of the total value of the property, including structures and land. The value of the property, including structures and land, shall be determined based on the full assessed value prior to any exemptions assigned to said property, including structures and land, according to the most recent tax assessment records for the property.
 3. The purpose of such bond or security shall be for the town to utilize and draw on such amounts in circumstances where the property owner has failed to provide adequate building, structure, and/or site maintenance to ensure the health, safety, and welfare of the public. In such circumstances, the town may elect to utilize such bond or security to bring said property into compliance with town and/or state building codes, which may include, but is not limited to, conditions related to structural demolition, debris removal, site stabilization, utility stabilization, environmental remediation, building maintenance, pest and/or rodent control, site security, pool maintenance, landscape maintenance, potential storm damage, fire, vagrancy, and vandalism.
 4. Nothing within this section shall prohibit the town from any actions deemed necessary by the building official relating to unsafe buildings or structures.

SECTION 3. 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 4. 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 5. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key.

SECTION 6. Effective Date. This Ordinance shall take effect immediately upon its adoption and approval, as provided by law.

Passed on first reading and public hearing the ____ day of _____, 2016.

Adopted on second reading and public hearing the ____ day of _____,
2016.

Jack G. Duncan, Mayor

ATTEST:

Trish Granger, Town Clerk



End of Agenda Item