

M E M O R A N D U M

TO: Howard Tipton, Town Manager

From: Allen Parsons, AICP
Director, Planning, Zoning & Building Department

Report Date: October 30, 2024

Meeting Date: November 12, 2024

Subject: Nonconforming Density Redevelopment Options Overview and Discussion Regarding Two Post Hurricane Redevelopment Issues for Further Consideration: Extension of Nonconforming Uses or Structures Abandonment and Docks and Boat Lift Maximum Heights

Recommended Action

Receive the nonconforming density redevelopment overview and consider providing direction to the Planning and Zoning Board to provide recommendations on potential Zoning Code amendments to the nonconforming uses/structures abandonment provisions for hurricane related damage, and height standards for docks and boat lifts.

Overview

In the aftermath of Hurricane Helene, at their October 7, 2024, Regular Meeting, and in anticipation of the severe impacts associated with the then-pending Hurricane Milton, the Town Commission (Commission) requested to have a review of the current regulations associated with the redevelopment of nonconforming density¹ properties. Staff has prepared a summarized overview below.

In addition, as part of the ongoing important discussions on how the Town rebuilds after these storms, staff has added two topics for the Commission's consideration which could be further evaluated and developed by the Planning & Zoning Board.

First is a discussion regarding the Zoning Code's nonconforming uses and structures, termination or abandonment provisions and whether those should be further extended beyond the current 12-month period. The second is related to current standards regulating the maximum allowable height of docks and boat lifts and whether those standards should be increased to account for sea level rise and storm surge conditions.

Nonconforming Density Redevelopment Option Overview Background

The current nonconforming density redevelopment options were incorporated into the Zoning Code via Ordinance 2018-20. This ordinance was developed via a series of three Special Commission Workshop Meetings held in April, May, and June 2018, and then subsequently considered in Regular Workshop meetings in November and December 2018.

¹ Properties that contain more legally approved dwelling units per acre than their current underlying zoning district densities would otherwise allow for.

The Commission developed the current options based on three overall goals, in no particular order:

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

The Commission ultimately eliminated distinctions that previously existed in the Zoning Code that governed legally nonconforming redevelopment depending on whether the redevelopment would be a result of either "voluntary" or "involuntary" actions of a property owner(s). The Town's adoption of voluntary nonconforming rebuilding provisions followed the Town's approval of a March 2008 Referendum that posed the question to voters:

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

The Commission believed that having separate, and slightly different, rebuilding standards and requirements, based on the reason why a property would be seeking to rebuild (i.e., due to voluntary or involuntary actions of a property owner), no longer applied. The distinction between voluntary and involuntary nonconforming reconstruction was therefore removed from the Zoning Code.

The Commission also approved a series of three (3) options nonconforming density property owners could pursue:

- Option 1- Allows for redevelopment of legally nonconforming density and structures, in **exactly** the same size/height/dimensions as currently exist on a property (i.e., you can build back what you previously had). Allowances for building elevations to comply with FEMA flood requirements are included.
- Option 2- Allows for redevelopment of legally nonconforming density properties, in the circumstance where all applicable Zoning District standards (other than density) can be met.
- Option 3- Allows for redevelopment of legally nonconforming density properties utilizing a "Floating Zone District" called the CORD (Conformance Overlay Redevelopment District). This option allows for applicants to request modifications for redevelopment from underlying zoning district standards, in situations where all of the underlying zoning district standards cannot be met, and provides for the subject property's density to become conforming with the Zoning Code and Comprehensive Plan.

Each of the 3 options retained an intent to reduce or eliminate nonconformities, with a preference that properties develop according to their applicable zoning district standards.

Option 1, however, recognizes that, due to a variety of circumstances, including unplanned or undesired destruction, existing legally nonconforming developments may be reconstructed to the same number of units, and the same type of principal use(s) in existence prior to the reconstruction. Such development, which includes noncompliant structure(s), may be rebuilt to the same density and building cubic volume², allowing an increase in the height of the structure to correspond with the increase in height required by the flood ordinance(s).

Option 1 was a continuation of the provisions that were associated with the Zoning Code's prior **involuntary** reconstruction provisions. It allows legally nonconforming residential or tourism properties that exceed the current allowable density, to be rebuilt for the existing use, density, and cubic volume, along with aspects of the structure(s) that may be nonconforming such as height, setbacks, and open space in existence prior to their removal. While Option 1 has an overall intent to encourage more conforming redevelopment, it does allow nonconforming properties to generally be built to a site's existing "as is" condition, but no more. Under Option 1, properties still would retain nonconforming status with regard to density. The method of approval is via Site Development Plan approval or by administrative Site Plan approval.

Option 2 in the ordinance incorporated a new option to the nonconforming redevelopment provisions. This option labeled **Nonconforming Redevelopment in Conformance with Zone District Requirements**, allows legally nonconforming multifamily and tourism-zoned properties that rebuild and meet **all** of the applicable zoning requirements to redevelop with the nonconforming density and not have to maintain a building(s)' cubic content in a redevelopment scenario. This option provides more flexibility than Option 1, in that it permits the redevelopment of a property to configure building(s) differently than what was existing on the property previously, and to add cubic content to those buildings, as long as all of the other requirements of the zoning district for the property (height, open space, setbacks, etc.) are met. This option, however, still would retain a nonconforming status with regard to density. The method of approval is via Site Development Plan approval.

The third option above created a new floating overlay Zoning District option within the Town, referred to as the **Conformance Overlay Redevelopment District** (CORD). The CORD option provides the opportunity for legally nonconforming density properties to seek rezoning to this newly established floating overlay zoning district in order to obtain conforming status. The CORD also provides the ability to seek modification(s) to the existing underlying zoning district standards on the property.

² Cubic Volume or Content means a structure's overall existing building footprint and height.

The design flexibility of the CORD provides the opportunity for properties to achieve improved conformance with underlying zoning district requirements and is intended to allow for imaginative, functional, high-quality land planning developments to be compatible with adjacent and nearby lands and activities, in keeping with the low density and lower-scale character of the Town. Overall, such developments are intended to reduce or eliminate nonconformities, especially Gulf and Pass waterfront yard setbacks, and bring previous nonconformities more into conformance with the Town's Zoning and Building Codes.

The steps to request a change in zoning to the CORD follow the requirements for a zoning amendment (Rezoning). The CORD introduced a new step of conducting a neighborhood meeting to inform nearby residents and interested parties of what is proposed, prior to filing an application. The rezoning is required to be processed concurrently with a Future Land Use Map amendment that would apply the Town's, "Opportunity Area" designation to the site's Future Land Use designation. The application of the Opportunity Area future land use designation would allow for a site's legally nonconforming density to be recognized as conforming (per Future Land Use Policies 1.1.3 and 1.1.12).

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

Although the CORD affords the ability to request relief or modification from the underlying zoning district standards, applicants must demonstrate through the Rezoning process, the elimination or reduction of prior existing nonconformities, "to the greatest extent possible," in conformance with the established standards of the CORD. These standards include: Building Height, Lot Coverage, Building Setbacks, Off-Street Parking, Open Space, Building Distances, along with requirements to maintain Beach and Bay Access, Natural Shoreline, and the timing of the Development of on-site Amenities and Tourism Units, in the case of mixed-use developments.

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

Building Height - Two separate standards apply.

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

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

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

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

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

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

Extension of Nonconforming Uses and Structures Termination Background

Staff would like to discuss possible amendments to the Zoning Code to assist storm-related redevelopment post-disaster, specifically whether the deadline for nonconforming uses and structures should be further extended.

Currently, the deadline for re-establishing a nonconforming use³ or structure⁴ is 12 months from the date of abandonment (Sec. 158.131(8)).

Following the extensive damage from Hurricanes Helene and Milton, there may be numerous instances where the 12-month deadline can be surpassed while property owners deal with insurance claims, financing, and considering options. Staff would suggest consideration of adding language that would extend the deadline to 24 or 36 months where a state of local emergency exists beyond 6 months.

A nonconforming use is defined as a **“use that does not conform to the regulations of the district in which it is situated.”**

Examples of nonconforming uses that are subject to the deadline are:

³ A nonconforming use is defined as a *“use that does not conform to the regulations of the district in which it is situated.”*

⁴ *“Nonconforming building or structure.”* A building or structure which does not conform to the yard or bulk regulations of this Chapter pertaining to the district in which it is situated.

- Silver Sands- 5841 Gulf of Mexico Drive (tourism use not in a tourism district)
- Rolling Waves Beach Cottages- 6351 Gulf of Mexico Drive (tourism use not in a tourism district)
- Cannons by the Sea Cottages- 6051 Gulf of Mexico Drive (tourism use not in a tourism district)
- Longboat Pass Apartments- 380 North Shore Road (tourism use not in a tourism district)

With regard to nonconforming structures, there are many residential and commercial buildings constructed prior to the current Zoning Code standards, which may not meet current required setbacks or are in excess of permitted impermeable surface coverage, open space, residential or tourism density, or commercial floor area. Examples of nonconforming structures:

- Spanish Main Condominium – 5700 Gulf of Mexico Drive
- Gulf Shores and Twin Shores Mobile Home Parks – 3700 Gulf of Mexico Drive
- Duplexes or multifamily structures not in conformance with density – various locations.

Maximum Allowable Heights of Docks and Boat Lifts

The Commission and staff have also received feedback on the current height allowances for docks and boat lifts and how those may be inadvertently forcing property owners to repair or replace these features at heights that are vulnerable to future impacts from sea level rise and storm surge.

For docks, there are two different standards depending on whether a dock is located on a property with or without a seawall.

On properties **with** a seawall, the elevation of the walking surface of a dock cannot be any higher than the top of the seawall cap. On properties **without** a seawall, the walking surface of a dock cannot be any higher than 5 feet above the mean high-water line. This distinction (between properties with and without seawalls), along with maximum allowable heights is something that could be revisited. Recent maximum seawall height allowances (the Town now allows seawalls up to a max. of 6' above sea level) would be another element to be included in such an evaluation.

A related subject is the maximum allowable height of boat lifts⁵. Boat lifts are similarly limited to a maximum height of 5 feet above the walking surface of a dock or 5 feet above the top of a seawall cap. In cases of low-elevation seawalls, of which there are many in the Town, the associated maximum allowable height of boat lifts may inadvertently be impacting boats on lifts in cases of sea level rise and storm surge.

⁵ No part of the boat lift structure, except boat guides, shall exceed a height of five feet, measured from the highest walking surface of the dock.

Boat lifts adjacent to a seawall shall not exceed a maximum height of five feet measured from the top of the seawall cap.

Current Zoning Code standards for these structures were likely put in place to keep as low of a profile as possible along waterfront areas (to preserve views and to minimize visual impacts). Given that there have been significant hurricane-related impacts to all types of structures in the Town, especially those closest and most impacted by water and water levels, staff recommends a revisiting of these standards, and consideration of potential amendments, to take into account anticipated sea level changes and storm surge related impacts.

Staff Recommendation

Receive the nonconforming density redevelopment overview and consider providing direction to the Planning and Zoning Board to provide recommendations on potential Zoning Code amendments to the nonconforming uses/structures abandonment provisions for hurricane related damage, and height standards for docks and boat lifts.

Attachments

None.

End of Agenda Item