

## ORDINANCE 2018-20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, on February 4, 2019, the Town Commission conducted a duly noticed second reading and public hearing on the proposed Zoning Code amendments and the Town Commission approved the amendments.

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

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

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

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

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

**158.139 - Reconstruction of nonconformities.**

- (A) *Intent*. It is the intent of this section, subject to an applicant meeting all the criteria set forth below, to allow existing, legally nonconforming residential or tourism properties that exceed the current allowable density, to be rebuilt for the existing use and density in accordance with all existing Zoning and Building requirements. Existing developments that are legally nonconforming due to the current number of dwelling or tourism units, may be reconstructed to the same number of units, and the same type of principal use(s) in existence prior to the reconstruction. It is also the intent of this section that noncompliant structures may be rebuilt to the same density and building cubic volume, allowing an increase of height of the structure to correspond with the increase in height required by the flood ordinance(s). In any redevelopment scenario, the overarching intent is to reduce or eliminate nonconformities with a preference that properties develop according their zone district, especially gulf and pass waterfront yard setbacks, to the greatest extent possible, as set forth below. Three individual, and mutually exclusive, legal nonconforming density redevelopment options are provided below. These options may not be combined.
- (B) **Option 1- Redevelopment of Non-Compliant Structures** Legally nonconforming structures, buildings and uses may be reconstructed. Such reconstruction shall be limited to the same building cubic content, location, and number of units in existence prior to their removal, 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.
  - (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 non-compliant structure(s) to the same building cubic content that existed prior to removal. Additional building volume created as a result of compliance with flood control laws shall not be included in determining building cubic content. Additional areas and volume created for elevators, stairs, landings, mechanical areas and walkways, which were not included in the former structure(s), shall not be included in building cubic content, provided that the addition of any of these elements does not create a greater nonconformity as to open space or required setback.
- (4) *Unit area increase.* So long as there is no increase in overall building cubic content, as determined by subsection (3) above, units within the structure(s) may be increased in cubic content only as a result of decreasing the number of units within the structure or diminishing the previously existing common areas within the non-compliant structure(s).
- (5) *Time frame for obtaining site plan approval.* To qualify for rights under this provision, any such reconstruction shall obtain site plan approval prior to or within two years of the removal or abandonment of use. The planning and zoning board may, upon application received prior to the expiration of the two-year period, extend such time for demonstrated cause pursuant to the town's Code. A building permit shall be obtained within the timeframe conditioned at the time of site plan approval. Notwithstanding the foregoing, the planning and zoning board may in its sole discretion unilaterally extend the date for site plan approval up to an additional two years if, owing to circumstances such as a natural disaster, such extension is in the best interests of the town.
- (6) *Demonstration of Legal Nonconformity.* It is the burden of the applicant, with the assistance of all available Town records, to establish, to the satisfaction of the town manager or designee, by clear and convincing evidence, through documentation, as applicable to the nonconformity proposing to be maintained, including, but not limited to, certification, photographs, diagrams, plans, affidavits, and permits, the actual uses, building cubic content, densities, and intensities legally existing prior to the disaster event or redevelopment, prior to seeking site plan approval.
- (7) *Nonconformities and the relaxation of certain controls.* To minimize the need for individual variances or departure applications, prior to the approval of reconstruction site plans, the planning and zoning board may, as part of the site plan review process, relax or modify one or several of the controls listed in sections 158.069, 158.102, 158.127, 158.128, 158.145, 158.150 and 158.153 in conformance with this section. However, prior existing nonconformities shall be eliminated to the greatest extent possible. In considering such request, the planning and zoning board shall also consider the nature and character of development in the surrounding area, and the impact thereon, in determining whether, or the extent to which, these controls may be modified. Those controls which may be modified are listed below in order of importance, highest to lowest, such that the control with the highest importance is the control with the greatest need for reduction or elimination of any nonconformities (and least likely of relaxation or modification) and the control with lower importance has a lesser need for reduction or elimination (and more likely of relaxation or modification).
  - (a) Required yards:

- (i) Properties which were previously permitted to build within a gulf or pass waterfront yard, closer to the water than currently permitted, may continue to enjoy these lawfully existing rights without subsequent planning and zoning board approval, however those properties shall not be able to avail themselves of this Code section regarding reconstruction of nonconformities and shall comply in all respects with the codes in effect at the time of reconstruction . 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.
- (ii) 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.
- (iii) Street, rear, side, or waterfront yards, other than the gulf waterfront yard, may be modified to:
  - (1) 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;
  - (2) 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;
  - (3) Permit the construction of a handicapped access appurtenance to any reconstruction; or
  - (4) Allow for the placement of stairs or stair landing that provides access into a reconstructed dwelling unit.
  - (5) Buildings or structures that are non-compliant with the current street, rear, side or waterfront yards regulations, other than the gulf or pass waterfront yards, and can be proven to have been permitted prior to the adoption of such regulations shall be considered legally nonconforming. The street, rear, side or waterfront yards, other than the gulf or pass waterfront yards, may be modified to be reconstructed as it existed prior to the disaster event.
- (b) *Open space:*
  - (i) Modifications which reduce the open space requirement of the Zoning Code may be allowed when it:
    - (1) 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 (e)(iii) and (iv) below ; or
    - (2) Accommodates other approved changes to the site as a result of the reconstruction.

- (ii) Reductions from the open space that existed prior to reconstruction 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.
- (c) *Building height:*
  - (i) 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").
  - (ii) The overall height of a building may be increased by a maximum of the additional elevation required to comply with subsection (c)(i) above.
- (d) *Maximum building length, distance between buildings, and distance between buildings and driveways.* These development criteria may be modified to allow reconstruction of existing non-conforming structures, but shall not be reduced in a manner that jeopardizes public safety.
- (e) *Off-street parking spaces.*
  - (i) In no instance shall the parking requirements be modified where the reconstruction involves the increase of density or intensity of use.
  - (ii) Shelters for parking spaces that were previously unsheltered shall not be permitted unless the shelters meet the setback and land coverage requirements for the site.
  - (iii) Where to the greatest extent possible, the ground floor area of the reconstructed building shall be utilized for off-street parking.
  - (iv) Off-street parking modifications may include the number of spaces provided, minimum dimensions of the stalls, minimum aisle widths, and location of spaces within required yards, and be made to:
    - (1) Improve ingress and egress to the site;
    - (2) Eliminate or reduce the instances where conditions require that parked vehicles back out onto public/private streets; or
    - (3) Allow for the provision of handicapped-accessible parking spaces.
- (8) Site plan approval.
  - (a) All applications for the rebuilding of nonconforming structures, buildings or uses shall be submitted for site plan review in accordance with article III of this chapter.
  - (b) Permitted uses without site plan review, as listed in section 158.125, are not required to be processed under the site plan review provisions of article III, but can instead be processed in accordance with section 150.31.
  - (c) Permitted uses with site plan review, which meet the provisions of section 158.100, may be exempted from site plan submission requirements, in accordance with said section, and the administrative staff is hereby authorized to modify the controls as set forth herein.
- (9) The town commission, by emergency ordinance, may develop additional or alternative procedures for the swift processing of applications in cases where a state of emergency is declared; and, in addition, may expand the authority of the administrative staff to relax certain controls by the emergency ordinance. A status report, delineating activities undertaken by the administrative staff under the

provisions of this section, shall be provided to the planning and zoning board on a monthly basis.

- (10) Decisions of the administrative staff, made relative to the provisions of this section, may be appealed by any person to the zoning board of adjustment, in accordance with the appeal procedures set forth in section 158.027. No provision herein, shall be construed to deny the reconstruction, continuance or improvement of legally nonconforming structures, buildings and uses, so long as the reconstruction, continuance or improvement is in accordance with this section.
- (11) The provisions relating to Option 1 shall not be construed to prevent a mobile home owner or park owner from reconstructing such structures pursuant to an applicable statutory pre-emption.

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

Existing multifamily or tourism zoned properties that are legally nonconforming due to the current number of dwelling or tourism units exceeding the current allowable density, may be rebuilt for the existing use and density, provided the proposed redevelopment is in accordance with all of the criteria associated with the subject site's zoning and requirements of this code. Such developments may be redeveloped to the same number of units, same type of principal use(s) in existence prior to the redevelopment, and may add additional cubic content, subject to compliance with the following conditions:

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

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

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

- (1) *Time frame for obtaining Conformance Overlay Redevelopment District (CORD) approval.* To qualify for rights under this provision, any such redevelopment shall obtain CORD approval prior to or within two years of the removal or abandonment of use. The planning and zoning board may, upon application received prior to the expiration of the two-year period, extend such time for demonstrated cause pursuant to the town's Code. A building permit shall be obtained within the timeframe conditioned at the time of CORD approval. Notwithstanding the foregoing, the planning and zoning board may in its sole discretion unilaterally extend the date for CORD approval up to an additional two years if, owing to circumstances such as a natural disaster, such extension is in the best interests of the town.
- (2) *Demonstration of Legal Nonconformity.* It is the burden of the applicant to establish, with the assistance of all available Town records, to the satisfaction of the town manager or designee, by clear and convincing evidence, through documentation, as applicable to the nonconformity proposing to be maintained, including, but not limited to, certification, photographs, diagrams, plans, affidavits, and permits, the actual uses, densities, and intensities legally existing prior to the disaster event or redevelopment, prior to seeking site plan approval.

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

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

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

- (A) *Intent.* The provisions of this zoning overlay district are intended to apply to existing residential, tourism, or mixed use projects that were legally established prior to March 12, 1984, which do not comply with the existing maximum density provisions of the Comprehensive Plan. The intent of the Conformance Overlay Redevelopment District (CORD) zoning district is to function as a zoning overlay district, which can modify or adjust underlying zone district standards to allow the redevelopment of these properties consistent with the standards of this section. The overlay is intended to preserve the nonconforming density of these projects and enable such projects to rezone to become conforming, while providing for flexibility of design. The potential design flexibility is provided in order to achieve improved conformance with underlying zone district requirements and to encourage imaginative, functional, high-quality land planning developments compatible with adjacent and nearby lands and activities, in keeping with the low density character of the town.

Additionally, the overlay provides for flexibility to apply creative and innovative approaches and design to address challenges related to changing markets, building trends, and environmental conditions, while remaining compatible with the overall character of the island. Overall these developments should reduce or eliminate nonconformities, especially gulf and pass waterfront yard setbacks, to the greatest extent possible. For purposes of this section, "to the greatest extent possible" shall mean bringing the previous nonconformities into conformance with the town's code. Redevelopment proposed under the overlay zoning amendment process shall not be subject to any conflicting Redevelopment Standards, however, the proposed development must demonstrate that the standards proposed will enable a development that is superior to a development that could be permitted under standard zoning or that represents a significant improvement over existing nonconforming conditions. Properties approved under the outline development plan process of article III, division 1 of this chapter are not superseded or considered nonconforming by the provisions of this section.

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

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

- (C) Procedures for Approval

- (1) In General. The steps to request a change in zoning to the CORD will follow the requirements for a zoning amendment. A CORD zoning map amendment shall be accompanied by an associated site plan that is simultaneously approved by the town commission. Applications for a change in zoning to CORD shall be filed and reviewed concurrently with a requested Future Land Use map amendment. If a referendum is required to increase density pursuant to the Town Charter, a formal application for a CORD zoning amendment and site plan may not be submitted until such referendum for the increase has been approved. Approval of a referendum for increased density is merely permission for consideration of an application and does not guarantee approval of a density increase through the CORD zoning amendment process. A CORD zoning map amendment may also be allowed to include additional property(ies) that are combined with legally nonconforming density properties, when developed as a unified site plan.
- (2) Pre-Application Conference. A pre-application conference with the planning and zoning official, or designee, is required, at which time the request will be reviewed for eligibility to apply for the CORD zoning designation consistent with the standards of this section and with the provisions of the Comprehensive Plan. For the pre-application conference, applicants must specify in writing the existing and proposed uses and the existing and proposed density and intensity of the

development, as well as any other necessary information as determined by the planning and zoning official to determine eligibility to apply for a change in zoning to CORD. Applications will not be processed unless they are determined by the planning and zoning official, or designee, to be eligible to apply for the CORD zoning designation.

- (3) Neighborhood Information Meeting. Prior to submittal of the application by the planning and zoning board, the applicant shall hold a neighborhood information meeting with property owners and interested community members within 200 feet of the proposed development. The meeting must be held within the Town at a location and time convenient to the surrounding property owners to maximize attendance, subject to the following requirements:
  - (a) Notification. Two weeks prior to the meeting date, the applicant shall mail notices of the meeting date, time, and place to all property owners within a radius of 200 feet from the boundary of the proposed development and shall post the property. The applicant shall inform the planning and zoning official of the proposed meeting date and time prior to sending out the notices. Documentation of the mailed notice shall be provided to the planning and zoning official for verification.
  - (b) Applicant's Presentation. At the meeting, the applicant shall explain the proposed use of the subject property and make a copy of the proposed concept plan available for review by attendees. The applicant may also discuss the project's development objectives, design philosophy and proposed schedule for completion.
  - (c) Question and Answer Period. Upon completion of the presentation, time shall be reserved for a question and answer period. Questions should be limited to the proposal as presented, not to the question of whether the site should be developed or redeveloped. The applicant shall identify how potential community concerns will be mitigated. Meeting notes, prepared by the applicant or representative, shall be taken of items covered and questions raised and responses provided at the meeting. Meeting notes will be required to be included in the formal application submittal.
- (4) Formal Application. The application for a CORD shall be filed with the planning and zoning official and follow the procedures for Zoning Map Amendments. An application for site plan approval for the CORD shall be filed and reviewed concurrently with the CORD application. The application for site plan approval shall be processed in accordance with article III, division 2 of this chapter. Upon receipt of the application the planning and zoning official shall review the application to determine its appropriateness and completeness in respect to the requirements of this section, and accept or reject it in writing. Upon acceptance of the application, the town's administrative staff shall refer the application, together with all supporting documentation and a staff report, including findings of fact as to the consistency of the application with the Land Development Code and the Comprehensive Plan, to the planning and zoning board for its review and recommendations. The planning and zoning board and town commission shall not receive, review, make

recommendations or act on applications for CORD approval except during the town's annual site and development plan season. During the review process, the town may retain consultants to assist in the review. The cost of retaining the consultants shall be borne by the applicant. For purposes of this chapter, the annual site and development plan cycle shall be September through June of the following year. For purposes of calculating the required processing times set forth in this section for the planning and zoning board and the town commission, the period of time from July 1 through August 31 shall not be counted in said computation.

- (5) Planning and Zoning Board Public Hearing. Upon receipt of the application from the planning and zoning official, the planning and zoning board shall, in a quasi-judicial proceeding, review the CORD application and make recommendations to the town commission that are based on competent, substantial evidence of record. The planning and zoning board may also formulate findings of fact as to the consistency of the application with the Land Development Code and with the Comprehensive Plan. The planning and zoning board shall recommend approval of the application as submitted, approval of the application with changes or special conditions, or denial of the application. The determination and recommendations of the planning and zoning board shall be advisory only and shall not be binding upon the town commission. For purposes of this section, the planning and zoning board shall receive the application from the planning and zoning official at the board's next regular meeting where a quorum is present following the planning and zoning official's submittal of the application to the board. The planning and zoning board is specifically authorized to continue its deliberations, reasonably request additional relevant materials, and elicit expert testimony to aid in its deliberations.
- (6) Town Commission Public Hearing. A public hearing on the CORD application, conducted as a quasi-judicial proceeding, shall be held by the town commission upon the commission's receipt of the application from the planning and zoning board. Public notice of such hearing shall be given in accordance with the provisions of applicable Florida Statutes, the Town Charter and this chapter. For purposes of this section, the town commission shall receive an application from the planning and zoning board at the commission's next regular meeting where a quorum is present, following the submittal of the planning and zoning board's action on the application to the town commission. A transcript of the hearing may be caused to be made by the town commission at the cost of the applicant, copies of which shall be made available at cost to any party to the proceedings; and all exhibits accepted in evidence shall be identified and duly preserved, or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record. The town commission is specifically authorized to continue its deliberations, request additional materials, and elicit expert testimony to aid in its deliberations, and may, at its sole discretion, remand the application to the planning and zoning board for additional hearing and consideration. If changes are made to the application, accompanying plans or conditions of approval after review by the planning and zoning board, the town commission may,

at its sole discretion, remand the application back to the planning and zoning board, but is not required to do so.

- (7) Town Commission Decision Procedures. At the conclusion of the public hearing, the town commission shall review the CORD application and either approve it as submitted, approve it with changes or special conditions, or deny it. The applicant may request that the application be withdrawn or that the hearing be continued if the applicant does not accept the changes or special conditions recommended by the town commission. The action taken by the town commission shall be by ordinance. The town commission may unilaterally extend the time for final action where the town commission determines additional time is necessary to properly and completely review the CORD overlay application.
- (a) In the event approval is granted, the town commission shall, as part of its ordinance, specify the drawings, plan sheets, renderings, specifications, and form of performance and maintenance bonds that shall be considered part of the final approval.
- (b) In the event a CORD is granted approval, the town commission shall set forth in the ordinance the time within which an application for final site plan approval, or applications in the case of a phased development, shall be filed. However, if a final site plan for the entire CORD overlay was approved concurrently with the CORD overlay, the ordinance does not need to specify a time period.
- (8) Filing with the Town Clerk. Within seven days after the adoption of the ordinance provided for in section 158.114(C)(7) above, it shall be certified by the town clerk and shall be filed in the clerk's office, and a certified copy shall be mailed to the applicant. A CORD overlay upon approval and acceptance, as provided herein, shall be depicted on the Town Official Zoning Map and is defined as running with the land; however, an applicant may apply for a revision to the site plan in accordance with the site plan procedures. Any changes or amendments to an approved site plan, not determined to be minor development proposals, shall require a resubmission in accordance with the provisions of this section. Immediately following expiration of the 30-day appeal period and upon successful resolution of any appeals, if applicable, the town clerk shall file with the clerk of the court the concept plan to record it in the official records of the county in which the property is located at the cost of the applicant.
- (D) CORD Zoning Development Standards. A CORD shall be permitted only upon an order of the town commission approving the CORD, with a site plan, and any site specific development standards, as may be modified or adjusted by the town commission due to an applicant's demonstration of applicable site constraints or economic or market related demands below, in conformance with this section. However, prior existing nonconformities shall be eliminated to the greatest extent possible. In considering such a request, the town commission shall also consider the nature and character of development in the surrounding area, and the impact thereon, in determining whether, or the extent to which, these development standards may be modified.

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

- (1) Building Setbacks. The proposed minimum side, rear, and waterfront building setbacks, as measured from the boundaries of the CORD request, shall to the greatest extent possible conform with the setbacks allowed by the underlying zone district from the existing non-conforming development condition. For any buildings that would exceed the underlying zone district height, each building must have a minimum street setback of at least 2.5 times the overall height of the building, with a vegetative street buffer with sufficient density and height to minimize the visibility of the buildings from the right-of-way. Waivers to this required street setback may be granted if the town commission determines that the waiver is necessary to meet the intent of the Comprehensive Plan and this chapter to enable redevelopment of properties that are nonconforming to density and is in the public interest.
- (2) Open space. The open space of the property proposed for zoning amendment shall conform to the greatest extent possible to the open space permitted in the underlying zoning district from the existing nonconforming development condition. However, open space shall not be less than 20 percent of the lot area.
- ~~(3)~~ Lot Coverage. The lot coverage of the property proposed for zoning amendment shall conform to the greatest extent possible to the lot coverage permitted in the underlying zoning district from the existing nonconforming development condition.
- (4) Building Height. The height of structure(s) on property proposed for zoning amendment to the CORD shall conform to the greatest extent possible to the height of the underlying zone district, in which the property is located, subject to the following:
  - a. For properties with existing structures that are at or below the allowable height of the underlying zone district, the maximum height shall be the height allowed by the underlying zone district.
  - b. For properties with existing structure(s) that exceed the allowable height of the underlying zone district, the town commission may approve waivers allowing for height(s) above the maximum height of the underlying zone district, provided that proposed height(s) represent a decrease in nonconforming height. The applicant shall demonstrate how reduction(s) in height on the property, to the greatest extent possible, will be more in conformity with the zone district standards than the prior nonconforming height(s).
- (5) Maximum building length, distance between buildings, and distance between buildings and driveways. These development criteria may be modified to allow redevelopment of existing nonconforming structures, but shall not be reduced in a manner that jeopardizes public safety.

- (6) Off-Street Parking. Off-street parking shall meet the standards and requirements of the parking section of the Land Development Code. The town commission may reduce the number of required parking spaces upon submittal by the applicant of a parking study demonstrating a reduction in parking need. The parking study shall be based on competent, substantial evidence which may include, but is not limited to, utilization of professional standards, formulas or studies from sources such as the Urban Land Institute (ULI), the Institute of Transportation Engineers (ITE), or similar organizations.
- (7) Beach and Bay Access. For all proposed CORD overlays the number of existing beach and/or bay access points shall not be decreased below the number existing at the time of the CORD overlay application. All public beach and/or bay access points shall be recorded as easements in the public record and copies provided to the town clerk.
- (8) Natural Shoreline. For proposed CORD overlays located west of Gulf of Mexico Drive, the same percentage of natural shoreline area as a percentage of the total shoreline as it exists at the time of CORD application shall be preserved or provided.
- (9) Development of Amenities and Tourism Units. Amenities such as parks, open space, playgrounds, pools, marinas, docks, beach and Bay accesses, and tennis/pickle-ball courts must be completed prior to issuance of building permits of more than 40 percent of the total number of authorized residential or tourism units. For mixed-use developments, all proposed tourism units must be completed prior to the issuance of any certificates of occupancy for any residential unit.
- (10) Cubic Content. Redevelopment utilizing the CORD does not restrict the cubic content of structures to the prior extent of previously existing structures.
- (11) Density. The proposed density shall not exceed the total density allowed by the underlying zoning district of the property proposed for zoning amendment to CORD, or the density of the existing nonconforming development that is proposed for redevelopment. Owners may elect to reduce the number of nonconforming units in order to achieve compliance with the CORD development standards. If a referendum is required to increase density pursuant to the Town Charter, a formal application for a CORD zoning amendment and site plan may not be submitted until such referendum for the increase has been approved. Approval of a referendum for increased density is merely permission for consideration of an application and does not guarantee approval of a density increase through the CORD zoning amendment process.
- (E) Application Contents and Submittal Requirements. An application for CORD shall be accompanied by a site plan as required in Article III Division 2.
- (F) Review Criteria. The planning and zoning board in its recommendation, and the town commission in its decision shall base its decision on each CORD application on competent, substantial evidence of record and shall include conclusions but may also include written findings of fact related to the specific proposal and shall set forth the reasons for the grant of approval, with or without changes or special conditions, or for the denial of a CORD application. The town commission's approval, approval with changes or special conditions, or denial of

a CORD application, shall be based on the application, evidence and testimony presented in the public hearing, and all of the following standards for review:

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

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

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

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

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

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

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

Passed on first reading and public hearing the 7<sup>th</sup> day of January, 2019.

Adopted on second reading and public hearing the 4<sup>th</sup> day of February, 2019.

/s/ George L. Spoll

George L. Spoll, Mayor

ATTEST:

/s/ Trish Shinkle

Trish Shinkle, Town Clerk