

Repair or Reconstruction of Nonconforming Structures – Zoning Text Amendment

Staff Report: Andy Bauer
Application #: ZTA20-01

COW Meeting Date: August 3, 2020
Applicant: City of Gulf Shores

STAFF RECOMMENDATION: APPROVE THE ZONING TEXT AMENDMENT

SUMMARY OF REQUEST

The City of Gulf Shores seeks to amend Article 13-4 to add a “Savings Clause” applicable to certain nonconforming condominiums in the Beach Area and to amend the “Valuation of a Structure” section.

BACKGROUND

2005 – The Savings Clause was adopted by the City in 2005 as part of the Envision Gulf Shores zoning amendments. The Savings Clause was added to allow non-conforming condominiums, hotels, and motels damaged greater than 60% by Hurricane Ivan to be reconstructed in a manner that recreated the same number of units that existed prior to destruction. The regulations provided damaged or destroyed structures 2 years to apply to be reconstructed.

2009 – Upon adoption of the re-written Zoning Ordinance in 2009, the Savings Clause was removed, because the two year time limit had expired.

PROPOSAL

The details of the proposal are as follows.

- ADD** **§13-4. Repair or Reconstruction of Nonconforming Structures, B. 3. Reconstruction.** Add language to the Zoning Ordinance to allow legal non-conforming condominiums in the Beach Area Overlay District, Walking Area Overlay District and Lagoon Pass Overlay District that have been destroyed by natural disaster to be reconstructed. The reconstruction shall comply with the following:
- A Building Permit must be issued within 5 years of destruction;
 - Recreate the same number of dwelling units or lodging units and the same gross floor area contained in the structure on the day before its damage or destruction; and
 - Reconstruction or restoration of a damaged or destroyed structure must in all other respects comply with all applicable Zoning Ordinance, federal, state, or local laws in place at the time of site plan approval application for reconstruction or restoration.
- MODIFY** **Article 13-4 Repair or Reconstruction of Nonconforming Structures, C. Determining Value of Structures.** Modify this section to require the valuation of a structure to be determined by the most current fair and reasonable market value of the structure prior to damage, provide a method to determine the market value, and align the wording of this section with the Building Code.

ANALYSIS

Savings Clause

This amendment will allow non-conforming condominium buildings in the Beach Area to be rebuilt with the same number of dwelling units and the same gross floor area contained in the structure before its damage or destruction.

City staff routinely receives requests from real estate appraisers inquiring about the zoning of individual properties and developments. At times, staff has noticed some condominium developments in the Beach Area have more dwelling units than allowed by the current Zoning Regulations. These developments are grandfathered-in and could not be rebuilt to the same density that exists today. This revelation prompted staff to analyze condominiums in the Beach Area to determine if the non-conformities were restricted to a few condominiums or if non-conforming condominiums were widespread.

The table below presents the findings of the analysis performed by staff on the numbers of existing condominium buildings and units that do not conform to current density regulations.

BEACH AREA NONCONFORMING CONDOMINIUM ANALYSIS				
Zoning District	Number of Developments	Number of Non-Conforming Developments	Number of Units	Number of Non-Conforming Units
BT-1N	0	0	0	0
BT-1	2	2	23	23
BT-2	15	9	564	383
BT-3	29	13	1058	824
BT-4	57	5	2816	618
BT-5	0	0	0	0
TOTALS	103	29	4461	1848

The above table indicates there are 29 nonconforming condominium developments and 1,848 nonconforming condominium units. This equates to 28% of the condominium developments and 41% of the condominium units are nonconforming in the Beach Area. It is clear from the analysis, there are many condominiums which are grandfathered-in and could not be rebuilt to the same density as exists today if destroyed. Since these condominium units are individually owned, staff recommends the addition of the savings clause to Article 13-4 of the Zoning Ordinance to allow condominium owners to rebuild their units if destroyed.

Valuation of Structures

Section 13-4 C. *Determining the Value of Structures*, bases the valuation of a damaged or destroyed building on a previous version of the Building Code that is no longer in use. The proposed amendment will update this section to base the valuation on the most current fair and reasonable market value of the structure prior to damage, provide a method to determine the market value and reference current Building Code valuation standards.

RECOMMENDATION

City staff and the Planning Commission recommend the City Council approve the amendment to Article 13-4 Repair or Reconstruction of Nonconforming Structures as proposed.