



**TO:** Craig Olmstead, Chairman, and Members  
of the Board of Zoning Adjustment

**DATE:** June 1, 2021

**FROM:** Andy Bauer, AICP  
Zoning Administrator

**Via:** Lee Jones, AICP, PLA  
Director

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**SUBJECT:** Administrative Appeal – ZA21-000028 - Article 11-10 D. Conservation Subdivision  
Density Determination

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**SUMMARY:** Mr. David Dichiara, Engineering Design Group, LLC. requests clarification to  
Section 11-10 D., *Density Determination*, of the Conservation Subdivision regulations as it  
relates to current and future Conservation Subdivision applications.

**BACKGROUND:**

**December 14, 2009** – A revised Zoning Ordinance was adopted, which included a Conservation  
Subdivision option for development on lands that are constrained by environmentally sensitive  
areas.

**February 8, 2021** – Mr. David Dichiara submitted an application for a 56-lot Conservation  
Subdivision to be located in the 17000 block of State Highway 180.

**April 20, 2021** – City staff provided the applicant with their interpretation of how density is  
calculated in Conservation Subdivisions. Due to a difference of opinion between the applicant  
and City staff in how density is calculated, the applicant decided not to utilize the Conservation  
Subdivision option, and revised his application to a conventional subdivision.

**APPEAL PROCEDURE:** Section 17-4 A., *Procedure*, of the Zoning Ordinance allows any  
person aggrieved or affected by any decision of an administrative officer of the City of Gulf  
Shores the right of to appeal such decision before the Board of Zoning Adjustment.

1. Upon receipt of an appeal application, City staff shall examine such appeal and  
forward all documents, plans, papers or other materials constituting the record to the  
City Attorney for his review and opinion as to whether or not the appeal falls within  
the jurisdiction of the BZA.
2. The City Attorney, Donald Stewart, has reviewed the file and appeal application, and  
he has determined the appeal falls within the jurisdiction of the Board of Zoning  
Adjustment.
3. The concurring vote of four (4) members of the BZA shall be necessary to reverse  
any order, requirement, decision or determination of the administrative official or to  
decide in favor of the appellant.

**ISSUE:** Article 11-10 D., *Density Determination*, establishes how density is to be calculated for Conservation Subdivisions. This section reads:

“The maximum number of Lots shall be determined by the minimum Lot size of the Applicable District, the minimum Lot size as required by City or County Health Department Standards for septic tank use (or similar Density limitation where applicable), or the maximum Density of the Applicable District, whichever is most restrictive. **Furthermore, density determination shall also take into account the amount of land necessary for internal streets and other subdivision requirements.** In making this calculation, the following shall not be included in the total acreage of the Parcel:

1. Bodies of open water over 5,000 sf of contiguous area; and
2. Wetlands, as defined by the City or by the Army Corps of Engineers pursuant to Section 404 of the Clean Water Act.”

The language in question is the sentence, “**Furthermore, density determination shall also take into account the amount of land necessary for internal streets and other subdivision requirements.**”

The applicant believes the intent of this sentence is to include the land area dedicated to internal streets in the calculation of density for Conservation Subdivisions. The Zoning Administrator has interpreted this particular sentence to mean that the land necessary for internal streets and other subdivision requirements shall be removed from the total developable acreage of the parcel prior to calculating permitted density.

**ANALYSIS:** The Zoning Ordinance indicates a Conservation Subdivision is a subdivision, wherein portions of the site containing environmental features are left substantially undeveloped for preservation and/or recreation but where the developer may otherwise build the number of lots permissible under the base zoning district for the entire site by clustering such dwellings on the portion(s) of the site not containing said environmental features. A basis of Conservation Subdivisions is to achieve similar densities compared to the development of a property utilizing the underlying zoning and conventional subdivision regulations.

Prior to providing a determination to Mr. Dichiaro, the Zoning Administrator researched the history of the language in the ordinance. The results of this research are provided below.

1. **Author of the Ordinance.** The Conservation Subdivision Regulations were added to the Zoning Ordinance upon adoption of the 2009 comprehensive Zoning Ordinance re-write. The Zoning Administrator contacted the author of the Zoning Ordinance, Jason Fondren of KPS Group, Inc. Mr. Fondren states in an email dated April 22, 2021, the density of a conservation subdivision is determined by estimating the land area necessary for street rights-of-way and subtracting that land from the gross tract area before dividing by the minimum lot size of the zoning district.
2. **Planning Director’s Review of the Ordinance.** The second document is a review of the draft Conservation Subdivision language by Steve Foote, former City of Gulf Shores

Planning Director. Mr. Foote reviewed the draft language for Density Determination, and included a note about the intent of this section.

His review ultimately led to the addition of the sentence in question. He stated in his review notes that the density determination should not be a math calculation, but rather should be based on what is, “achievable,” “drawn with roads, retention, etc.” This note indicates that density should be based on what is achievable after required roadways and other subdivision requirements are accounted for.

**RECOMMENDATION:** Staff recommends the Board of Zoning Adjustment uphold staff’s interpretation that the density calculation for Conservation Subdivisions excludes the land necessary for internal streets and other subdivision requirements.

Attachments: Applicant’s written request and supplemental information