



## MEMORANDUM

Date: April 26, 2013

To: Honorable Board of County Commissioners  
The Planning and Zoning Board

From: Inga Williams, AICP, Principal Planner  
Jie Shao, Planner III

Subject: Revisions to Section 3-9-10, Nonconformities

Recommendation: Approve adoption of the proposed revisions to Section 3-9-10, Nonconformities

During the process of creating the Little Gasparilla Island Community Plan, the island citizens raised a serious concern about a situation on the islands regarding nonconforming uses, such as the residential condominium constructed in the 1980s. Their concern was about what would happen to those uses should a natural disaster strike and the structures be damaged.

The county has an existing land development regulation, Section 3-9-10, Nonconformities, specifically dealing with legally nonconforming uses. Legally nonconforming uses are those that were correctly built to the development standards at the time the use was developed, but, because regulations changed, no longer meet the requirements of existing standards. The code states that if such a nonconforming use ceases to be actively used for more than one year, it cannot be reestablished.

In order to address the island citizens' concern, staff proposed an amendment to this section that will allow any legally nonconforming use on any bridgeless barrier island the ability to be reestablished on the original footprint at the same density.

### COMMUNITY DEVELOPMENT DEPARTMENT

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PART III - LAND DEVELOPMENT AND GROWTH MANAGEMENT

Chapter 3-9 – ZONING

ARTICLE I. - IN GENERAL

**Sec. 3-9-10. - Nonconformities.**

- (a) *Intent.* At the time the ordinance from which this chapter derives becomes effective or is amended, there may exist lots, structures, uses of land or water or characteristics of use which were lawful prior to the adoption or amendment of the regulations herein, but are prohibited, regulated or restricted by these regulations or amendments thereto. It is the intent of these regulations that nonconformities shall not be enlarged, expanded, intensified or extended, nor shall they be used as a basis for the addition of other structures or uses otherwise prohibited in the same district.
- (b) *Continuation of nonconformity.*
- (1) A lot, use, building or structure lawfully in existence on the effective date of the ordinance from which this chapter derives which is made nonconforming by the regulations herein or an amendment thereto may be continued except as otherwise provided by these regulations.
- (2) Disaster Recovery on the Bridgeless Barrier Islands. Following a natural disaster, as determined by the Board of County Commissioners, a structure that was legally non-conforming at the time of the disaster may be replaced or restored on the original footprint. There shall be no increase in square footage or residential density beyond what originally existed. All construction shall be in compliance with applicable County, State and Federal standards.
- (c) *Nonconforming lots of record.*
- (1) "Nonconforming or substandard lot" shall mean a lot of which the area, dimension or location was lawful prior to the adoption, revision or amendment of this chapter and which fails by reason of such adoption, revision or amendment to conform to the requirements for the zoning district in which the lot is located.
- (2) For the purpose of this chapter, a lot is "created" on such date that one (1) of the following conditions occur:
- a. The date that a deed for said lot is lawfully first recorded in the public records of the county; or
- b. The date that a subdivision plat has been lawfully recorded in the public records of the county and the lot is a part of the subdivision.
- (3) Nonconforming lots of record may be developed provided:
- a. A variance shall be required prior to the issuance of a building permit for a structure proposed on a nonconforming lot of record less than fifty (50) feet in width or less than five thousand (5,000) square foot in area.
- b. The burden of proof to establish that the lot is legally nonconforming and legally existing on the effective date of this section [July 6, 1989] shall be with the owner.
- (4) *Nonconforming multifamily lot:* Any lot, platted and recorded on the effective date of the regulation from which this section is derived, which is located in a zoning district that permits multifamily residential dwellings and which exceeds in area the minimum lot size for the district but which does not contain the area required by the district for two (2) dwelling units nevertheless may have constructed on it two (2) dwelling units. Notwithstanding the foregoing, the density shall not exceed the maximum density permitted by the comprehensive plan.
- (5) *Restrictions.*
- a. No division of any buildable lot may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this section unless the lot that is below the minimum requirements is for one (1) or more of the following uses: park, open space, or utilities.

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- b. Contiguous lots of record may be combined and redivided to create larger dimension lots of record as long as such recombination includes the total area of the lots.
  - c. Where residential lots of record are nonconforming because of width, the minimum side yard setback shall be not less than ten (10) percent of the lot width, provided that no side yard setback shall be less than five (5) feet wide.
- (d) *Nonconforming use.* A use lawfully in existence on the effective date of these regulations [December 8, 1981], which is made nonconforming by these regulations may be continued provided:
- (1) No nonconforming use shall be enlarged, intensified, increased or extended to occupy a greater area of land than it occupied on the effective date of this chapter;
  - (2) No such nonconforming use shall be moved to any portion of the lot or parcel other than that occupied by such use on the effective date of this chapter.
  - (3) If any nonconforming use ceases for a period to exceed one (1) year for any reason except when governmental action impedes use, any subsequent use shall conform to the applicable district regulations.
- (e) *Nonconforming structures.* A structure lawfully in existence on the effective date of the ordinance from which this chapter derives which is made nonconforming by the regulation herein or any amendment thereto may be continued provided:
- (1) No such nonconforming structure may be enlarged or moved unless such change conforms with these regulations.
  - (2) Only ordinary repairs and maintenance, including repair or replacement of roof covering, walls, fixtures, wiring or plumbing, shall be permitted. In no case shall such repairs include structural alterations which change the size, shape, occupancy, character or use of a building or structure, unless such alteration conforms with these regulations.
  - (3) If any such nonconforming structure is destroyed to an extent of more than fifty (50) percent of its replacement cost at the time of destruction as determined by the replacement valuation on the most recent county tax roll, it shall not be reconstructed except in conformity with these regulations.
- (f) *Variances.* Unless otherwise specified within this Code, there shall be permitted no variances or exceptions from the requirements set forth within this section.

**Economic Impact Statement  
for the Revision to Nonconformities Section of LDRs**

**I. Purpose**

Staff is proposing a revision to Section 3-9-10, Nonconformities for properties on the bridgeless barrier islands.

**II. Impact**

**A. Costs**

**1. Monetary-private sector**

There will be no private sector costs as a result of this revision.

**2. Non-monetary-private sector**

There will be no private sector costs as a result of this revision.

**3. Monetary- public sector**

There will be no public sector costs as a result of this revision.

**4. Non-monetary- public sector**

There will be no public sector costs as a result of this revision.

**B. Benefits**

**1. Monetary--private sector**

This revision will allow a legally nonconforming use to be reestablished following a natural disaster, whereas the existing language would not allow it to be reestablished if the use ceased for more than one year. The revision provides security to land owners of nonconforming uses.

**2. Non-monetary--private sector**

This should provide a greater feeling of security to people owning a nonconforming use.

**3. Monetary--public sector**

The tax base of the island should remain stable as a result of this change.

**4. Non-monetary--public sector**

None.

**C. Specific groups which will be impacted**

All properties located on the bridgeless barrier islands.