

ORDINANCE 2008-34

**AN ORDINANCE AMENDING THE ZONING CODE OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING CHAPTER 158, ZONING CODE, ARTICLE IV, GENERAL REGULATIONS, DIVISION 3. COMMERCIAL REVITALIZATION, BY AMENDING THE ZONING CODE TO ALLOW FOR THE DISTRIBUTION OF 250 TOURISM UNITS AS AUTHORIZED BY THE MARCH 2008 REFERENDUM, BY ADDING SECTION 158.180, DISTRIBUTION OF 250 TOURISM UNITS; AND BY AMENDING ARTICLE I, GENERAL PROVISIONS, SECTION 158.006, DEFINITIONS BY ADDING A DEFINITION FOR "BINDING CONCEPT PLAN;" PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR 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**, the electors of the Town of Longboat Key voted to allow the Town to consider the distribution of 250 tourism units in a referendum vote on March 18, 2008, as required by Article II, Section 22, as set forth in Section 160.04 of the Longboat Key Code of Ordinances; and

**WHEREAS**, it is recognized that tourism zoned properties and existing tourism developments will usually be the areas where adding additional units may be most compatible with the surrounding environs and afford minimal impact; and

**WHEREAS**, it is recognized that commercial, office-institutional, and marina zoned properties may provide a principal land use for considering the allowance of tourism units as an accessory use; and

**WHEREAS**, the Town wants to be able to review, consider, approve, approve with conditions, or disapprove all proposed developments using established criteria, ranking initial proposals, and thereafter, if applicable, evaluating individual applications by the same established criteria and standards; and

**WHEREAS**, pursuant to Town Code Section 158.030(B), the Planning and Zoning Board considered the subject Zoning Code amendment at a special meeting of December 2, 2008 and at a regular meeting of December 16, 2008; and

**WHEREAS**, the Planning and Zoning Board finds that the subject Zoning Code amendment is 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 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.

**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 I, *General Provisions*, Subsection 158.006, *Definitions*, is hereby amended to add the following definition:

“**BINDING CONCEPT PLAN.**” A general graphic and informational representation or depiction of the proposed development or development phase. The Plan shall in its entirety indicate the existing and proposed uses and structures, lots, streets, and other physical aspects of the proposed development and as enumerated in Sections 158.067 and 158.102.

SECTION 3. Chapter 158, *Zoning Code*, Article IV, *General Regulations*, Division 3, *Commercial Revitalization*, is hereby amended to add new Section 158.180, *Distribution of 250 tourism units*, to read as follows:

**Section 158.180, Distribution of 250 tourism units**

(A) It is the intent of this section to govern the eligibility for and allocation of the two hundred fifty tourism units authorized by referendum election held on March 18, 2008. Approval, approval with conditions, or disapproval shall be by vote after public hearing before the Town Commission, pursuant to the provisions of this section.

It is further the intention of this section that the quality and location of such units shall benefit the public interest of Longboat Key, while being compatible with and not detrimental to the character of the area. The terms “tourism unit” and “tourism use” as used in this section shall be defined by Section 158.006 *Definitions*, as amended, in the Zoning Code.

(B) Groups of eligibility. The following are eligible to apply for additional tourism units based upon applicable conditions as described under this section.

(1) Tourism developments

(a) Tourism zoned or residentially zoned properties with an existing legal tourism use.

(b) Two or more contiguous tourism developments or tourism zoned properties may merge to create one larger development lot as defined in Section 158.006.

- (2) Commercial, office, and marina zoned property with a conforming principal use may be eligible for tourism units.
  - (a) For commercial and office zoned property, the tourism use shall not exceed that allowed for an accessory use, as defined.
  - (b) For marina zoned property, marina must be its principal use, and no more than 33% of the buildable land area shall be allowed for total floor area of the tourism use. The total allowable floor area shall include the square footage of common use areas and open terraces, but not garages and non-habitable basement spaces.
- (3) Tourism units under this section are allowed in Residential Districts as provided in subsection (B)(1) only and are not permitted in OS-A, OS-P, OS-C, PD, NPD, and GPD zoning districts.
- (4) Properties with existing PUD overlays may be eligible based upon the underlying zoning district. The existing PUD overlay shall become null and void upon approval of the ODP amendment application. All property owners within the PUD shall join in the ODP amendment application in order for the application to be processed by the Town.

(C) Review. The standards of the underlying zoning district in which the subject property is located shall remain in effect. In order to grant approval or approval with conditions, the Town must find by competent substantial evidence that the project is in the best interest of the health, safety and welfare of the Town and its citizens and does not adversely impact or affect the public interest. Projects shall be reviewed, evaluated, ranked, approved, approved with conditions, or disapproved in accordance with the following criteria, as well as the criteria set forth in section (D) below. The criteria listed below are in prioritized order with the most important listed first. Projects that require a departure from the standards of the zoning code, or do not meet zoning constraints, must demonstrate by clear and convincing evidence that the projects are so beneficial to the Town as to warrant the granting of the requested departure or allowing the zoning constraints to be exceeded. In reviewing a proposed project, the Town shall consider:

- (1) Existing developments. Whether the project:
  - (a) meets current zoning constraints and would not need departures.
  - (b) meets current zoning constraints and would need departures for the additional units.
  - (c) does not meet current zoning constraints and would not need further departures.
  - (d) does not meet current zoning constraints and would need further departures.
- (2) Sufficiency of the land area. The site on which the project is to be located must be of sufficient size to accommodate the mass and scale of the proposed project, as well as to protect against adverse impacts to the adjacent parcels and surrounding area. Two or more contiguous existing tourism developments or tourism zoned properties that are merged shall be considered one lot for this consideration, in which case the underlying zoning district of each respective lot shall govern.

- (3) Number of Units.
  - (a) Proposed projects that appropriately utilize a greater number of available tourism units.
  - (b) Proposed projects that appropriately result in a greater total number of tourism units.
- (4) Open Space. Whether the proposed project preserves a larger percentage of open space than required by the Zoning Code.
- (5) Off-Street Parking. Whether the impacts of off-street parking is minimized through the maximization of understructure parking, the utilization of parking waivers, and the strict application of the minimum parking calculations as per Section 158.128 of the Zoning Code.
- (6) Setbacks. Whether the proposed project maintains or surpasses the required gulf and pass waterfront yards.
- (7) Building Height. With no order of preference, the proposed structures':
  - (a) Distance from structures on adjacent properties
  - (b) Distance from setback lines
  - (c) Distance from rights-of-way
  - (d) Relationship to the height of other onsite structures
  - (e) Relationship to the height of off-site structures
- (8) Traffic circulation and impacts.
- (9) Minimization of potable water usage (e.g. utilization of alternative water sources).
- (10) Minimization of stormwater runoff.

(D) Site Considerations and Compatibility Review Criteria. Projects shall be reviewed according to the criteria listed below which are in prioritized order with the most important listed first.

- (1) Character compatibility. Projects shall be compatible with and not detrimental to the character, including the use, of the area taking into consideration the adjacent property's potential development under the zoning code.
- (2) Consolidation of properties. The potential positive impacts that are likely to occur from the consolidation of smaller development sites resulting in a larger development site.
- (3) Quality of development.
  - (a) the proposed architecture enhances both the site and the surroundings.
  - (b) the proposed landscaping and tree preservation and plantings.
  - (c) the proposed on-site amenities and recreational opportunities serving the development.
- (4) Quality of life.
  - (a) Proximity and connection to beach or bay access
  - (b) Proximity and connection to existing commercial
  - (c) Proximity and connection to existing off-site recreational opportunities
  - (d) Pedestrian walkability and bicycle accessibility

(E) Initial application review period. Since the Town cannot anticipate whether requests for the utilization of the tourism units will exceed the 250 units available, upon the adoption of the Ordinance enacting this Section, a minimum initial 60-day application period shall be implemented to allow for the submission of all completed applications. At any time prior to a recommendation to the Town Commission on these initial applications, the Planning and Zoning Board may, by majority vote, extend the initial 60-day application period as well as the review period if the Board finds that to do so is necessary and proper to insure the orderly and fair evaluation of projects seeking to utilize some or all of the tourism units to be allocated hereunder. Upon expiration of the initial application period, the Planning Zoning and Building Director, or designee, shall review, rank and prioritize all applications, and forward the applications, together with recommendations, to the Planning and Zoning Board.

These applications shall be considered as a group before the Planning and Zoning Board. The Planning and Zoning Board shall provide recommendations to the Town Commission as to which, if any, projects meet the criteria for approval. If the total number of tourism units requested for projects that meet the criteria as determined by the Planning and Zoning Board exceeds 250 units, then the Planning and Zoning Board shall rank those projects from highest to lowest as part of its recommendation to the Town Commission.

These applications forwarded by the Planning and Zoning Board shall be considered as a group by the Town Commission. The Town Commission shall determine which projects, if any, meet the criteria of this section. If the total number of tourism units in projects that meet the criteria for approval exceeds 250, then the Town Commission shall rank those projects from highest to lowest. Projects shall be approved and units shall be committed by the Town in accordance with this Section starting with the project ranked highest.

If after the allocation of tourism units to the ranked project(s), there are units remaining but the next ranked project requires more units than are available, then the next ranked project shall be given the opportunity during the allocation determination of the Town Commission to make a minor modification to the number of units requested in order to comply with the number of units available. There shall be a finding that the proposed minor modification does not adversely impact the rankings of the pending applications in order for the units to be allocated.

If the next ranked project is unable to make acceptable minor modifications as described above, then the applicant(s) of the remaining ranked projects shall be given the opportunity to amend their application(s) and the remaining project(s) shall be ranked based on the criteria contained within Section (C) and (D). Amended application(s) shall be submitted within 60 days from the initial allocation determination of the Town Commission. The projects approved and allocated units may proceed through the remaining approval processes.



Ranked projects, for which the requested number of units cannot be committed, shall be kept under consideration until the site plan application period as described in Section (G) for the committed units has lapsed. If there are available units as a result of Section (G), these project(s) will be considered for the ranking, allocation, and assignment of any unused units along with any other applications that may be submitted and reviewed during the interim utilizing the process and procedure for ranking and allocation outlined above.

(F) After the initial application review period. If there are units that remain available for distribution, all applications will be reviewed as they are completed in accordance with the provisions of this code and the criteria and standards set forth above. The Town shall provide no guarantees or assurances of approval and no development permits or land uses based on the utilization of the 250 tourism units shall be granted until the review and determination of the initial applications is completed by the Town.

(G) Application and review process. Applications for eligibility and distribution of the 250 additional tourism units shall follow the procedures for and be approved, approved with conditions, or denied as an Outline Development Plan (ODP) that shall include a binding concept plan. The necessary units to implement the binding concept plan shall be committed by the Town upon the plan's approval, contingent upon the requirements of this Code. Upon approval of the ODP and binding concept plan, the applicant shall have no more than six months for the Town to receive a complete application for final site plan approval. Failure to submit a complete application within six months, or submitting a complete site plan application within six months that is denied after all appeals are exhausted, shall result in the loss of the tourism units committed to the project, and the units shall become available for other proposed developments within the Town.

- (1) Concurrent review and approval of the ODP and final site plan is allowed.
- (2) Concurrent review and approval of applications for Voluntary Rebuild, in accordance with Section 158.140, and applications for 250 tourism units, under this section, is allowed.
  - (a) However, in such case the ODP and final site plan review applications must also be reviewed and approved concurrently.
  - (b) The final site plan shall replace the need for a binding concept plan as described in (F).

(H) Site plan expiration. The final site plan for the construction of additional tourism units shall expire 24 months after the date of approval if a complete application for building permit has not been submitted to the Town and a building permit issued. Allocated tourism units associated with an expired site plan shall become available for other proposed developments within the Town.

(I) As a condition of approval, the applicant agrees to voluntarily forgo any underlying residential use of the subject property without a future amendment to the ODP.

(J) Committed tourism units that are not approved as part of the final site plan shall become available for other proposed developments within the Town.

(K) Tourism units that are approved by final site plan, but not approved as part of construction plans shall require a site plan amendment through public hearing. Units not constructed shall be removed from the allowable density of the subject parcel and become available for other proposed developments within the Town. Units constructed but subsequently removed shall revert to the Town for future allocation.

(L) Conflicting code provisions. Should the provisions eligibility and distribution of the 250 additional tourism units under this section for and the provisions of Sections 158.065 through 158.103 conflict, the provisions for eligibility and distribution of the 250 additional tourism units shall prevail.

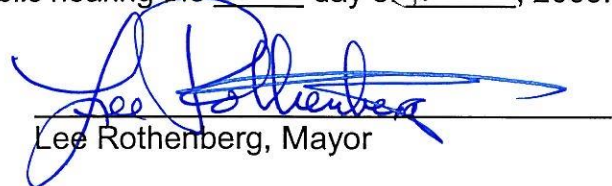
SECTION 4. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 5. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 6. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading and public hearing the 4<sup>th</sup> day of May, 2009.

Adopted on the second reading and public hearing the 18<sup>th</sup> day of June, 2009.

  
\_\_\_\_\_  
Lee Rothenberg, Mayor

ATTEST:  
  
\_\_\_\_\_  
Trish Granger, Town Clerk

