

ORDINANCE NO. 1132

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO NONCONFORMING USES AND STRUCTURES, ALLOWING RECONSTRUCTION OF ACCIDENTALLY DESTROYED NONCONFORMING USES AND STRUCTURES TO THE SAME OR SMALLER DIMENSIONS, AS LONG AS SUCH RECONSTRUCTION OCCURS WITHIN ONE YEAR OF THE DESTRUCTION; LIMITING INTENTIONAL CHANGES TO NONCONFORMING STRUCTURES TO 50 PERCENT OF THE REPLACEMENT VALUE OF THE STRUCTURE; REQUIRING A PERMIT FOR REVIEW OF NONCONFORMING USE AND STRUCTURE CHANGES; AND REORGANIZING THE CHAPTER FOR BETTER IMPLEMENTATION; ADDING NEW SECTION 17.68.025, AMENDING SECTIONS 17.68.030, 17.68.038, 17.68.040 AND 19.01.003; REPEALING SECTION 17.68.035; RENUMBERING SECTIONS 17.68.045 AND 17.68.060 OF THE GIG HARBOR MUNICIPAL CODE AS ADOPTED IN ORDINANCE 1122

WHEREAS, chapter 17.68 may not allow the reconstruction of existing residential and nonresidential uses after accidental destruction; and

WHEREAS, in Ordinance 1122, the City Council directed the Planning Commission to review Chapter 17.68 GHMC and provide Council recommendations for changes by July 1, 2008; and

WHEREAS, the City desires to allow all uses to rebuild in the case of destruction by acts of nature to retain the services and housing options provided in the City; and

WHEREAS, the City desires that the rebuilding of nonconforming uses and structures comply with all municipal codes to the extent possible in order to reduce the perpetuation of nonconformities in the structure and to achieve the vision and goals of Gig Harbor; and

WHEREAS, additional changes need to be made to the language in GHMC Section 17.68.040, so that a nonconforming structure may not be intentionally destroyed, altered or damaged more than 50 percent of its replacement value and then reconstructed to its original dimensions; and

WHEREAS, the City desires to reorganize chapter 17.68 GHMC to achieve better understanding of the provisions contained in the chapter; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on March 5, 2008; and

WHEREAS, on March 5, 2008, a copy of this Ordinance was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on March 6, 2008 and made a recommendation of approval to the City Council on March 20, 2008 after a work-study session; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on May 27, 2008; and

WHEREAS, on June 23, 2008, the City Council adopted this Ordinance at third reading during a regular City Council meeting; Now, therefore;

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
ORDAINS AS FOLLOWS:

Section 1. A new Section 17.68.025 of the Gig Harbor Municipal Code is hereby added to the Gig Harbor Municipal Code, to read as follows:

17.68.025 Nonconforming use and structure review.

A. Any change to a nonconforming use or nonconforming structure shall be reviewed for compliance with the standards of this Chapter and nonconforming review approval shall be obtained prior to the commencement of any such change.

B. Nonconforming review is a Type II project permit application and shall be processed as set forth in Title 19 GHMC with the exception of changes described in GHMC Section 17.68.035 which shall be processed as a Type III project permit application as set forth in Title 19 GHMC.

C. A complete nonconforming review application shall contain the following information:

1. A written description of the proposed nonconforming use and/or nonconforming structure change including any plans and drawings which illustrate such change;

2. A written statement of justification for approving the nonconforming change pursuant to the regulations contained within this Chapter.

Section 2. Section 17.68.030 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.68.030 Nonconforming uses of land.

When, before the effective date of the adoption or an amendment of the applicable regulations, a lawful use of land existed that would not be permitted by the regulations thereafter imposed by ~~Chapter 17.04~~ Title 17 GHMC or amendments thereof, the use may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming use; provided however, that:

A. Enlargement Prohibited. No such nonconforming use shall be enlarged in size or increased in size or extended to occupy a greater area of land than was occupied at the effective date of the adoption or an amendment of such applicable regulations;

B. Movement of Uses. No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or parcel other than that occupied by such use at the effective date of the adoption or an amendment of such applicable regulations;

C. Destruction and Discontinuance.

1. If any such nonconforming use of land ceases is discontinued for any reason for a period of more than one year, any subsequent use of land shall conform to the regulations specified by this title for the district in which such land is located. "Discontinued" is defined in GHMC Section 17.68.038.

2. A nonconforming use that is damaged by fire, act of nature or other causes beyond the control of the owners may be resumed, as long as the use is not discontinued more than one year. Any structure occupied by a nonconforming use that is unintentionally destroyed may only be reconstructed to the same or smaller configuration existing immediately prior to the time the structure was damaged or destroyed. The reconstruction shall comply with all applicable building codes in force at the time of replacement. As determined during the nonconforming use and structure review process (see GHMC Section 17.68.025), the reconstruction shall comply with all other applicable codes to the maximum extent possible.

3. When a structure and premises have a nonconforming use status, the intentional removal, intentional destruction or intentional alteration of the structure shall eliminate the nonconforming use status. Intentional removal, intentional destruction and intentional alteration for the purposes of this subsection is defined as damage and/or alterations valued at more than 50 percent of the replacement value of the structure at the time of damage and/or alterations as determined by the square foot construction cost table in the city's fee schedule.

D. No additional structure not conforming to the requirements of this title shall be erected in connection with such nonconforming use of land.

Section 3. Section 17.68.035 of the Gig Harbor Municipal Code as last amended by Ordinance 1122, is hereby repealed.

Section 4. Section 17.68.045 of the Gig Harbor Municipal Code, **“Changes from one nonconforming use to another”**, as last amended by Ordinance 1122, is hereby renumbered to Section 17.68.035.

Section 5. Section 17.68.038 of the Gig Harbor Municipal Code, as last amended by Ordinance 1122, is hereby amended to read as follows:

17.68.038 Discontinuance of nonconforming structures uses and uses structures.

A. A use is considered discontinued when:

1. A permit to change the use of the nonconforming lot or nonconforming structure was issued and acted upon;
2. The structure, or a portion of the structure is not being used for the nonconforming use allowed by the most recent permit;
3. The structure is vacant, or the portion of the structure formerly occupied by the nonconforming use is vacant. The use of the structure shall be considered discontinued even if materials from the former use remain or are stored on the property. A multi-family structure with one or more vacant dwelling units is not considered vacant and the use is not considered to be discontinued unless all units in the structure are vacant.
4. If a complete application for a permit that would allow the nonconforming use to continue, or that would authorize a change to another nonconforming use has been submitted before the structure has been vacant for twelve (12) consecutive months, the nonconforming use shall not be considered discontinued unless the permit lapses or the permit is denied. ~~If the permit is denied, the nonconforming use may be reestablished after all appeals are exhausted, if the City's denial is reversed.~~

Section 6. Section 17.68.060 of the Gig Harbor Municipal Code, **“Uses permitted under conditional use provisions”**, is hereby renumbered to Section 17.68.039.

Section 7. Section 17.68.040 of the Gig Harbor Municipal Code, as last amended by Ordinance 1122, is hereby amended to read as follows:

17.68.040 Nonconforming structures.

When a lawful structure existed at the effective date of the adoption or an amendment of the applicable regulations and could not be built under the terms of the current regulations set forth in GHMC Title 17, or amendments thereof, by reason of the restrictions on area, lot size or dimension, coverage, height, yards and the location on the lot or other

requirements concerning the structure, such structure may be continued as a nonconforming structure so long as it remains otherwise lawful and shall be subject to the following provisions:

A. No such nonconforming structure may be altered or remodeled in any way that increases its nonconformity respective to bulk or dimensional standards in effect, but any structure or portion thereof may be altered or remodeled to decrease its nonconformity;

B. A nonconforming structure that is damaged by fire, act of nature or other causes beyond the control of the owners may be reconstructed as long as it is not discontinued for more than twelve consecutive months. Any such structure that is unintentionally destroyed shall be reconstructed to the same or smaller configuration existing immediately prior to the time the structure was damaged or destroyed. The reconstruction shall comply with all applicable building codes in force at the time of replacement. As determined during the nonconforming use and structure review process (see GHMC Section 17.68.025), the reconstruction shall comply with all other applicable codes to the maximum extent possible. "Discontinued" is defined in GHMC Section 17.68.038; and

~~C. When a nonconforming use of a structure and premises is discontinued for one year, the structure and premises shall not thereafter be used except in conformity with the regulations of the district in which it is located; and~~

C. Any such nonconforming structure or nonconforming portion of a structure that is intentionally damaged or intentionally altered may be reconstructed to the same or smaller configuration existing immediately prior to the time the structure was damaged or altered, provided the alterations and/or damage is valued at less than 50 percent of the replacement value of the structure as determined by the square foot construction cost table in the city's fee schedule. Reconstruction shall occur within one year of the time of intentional damage or alteration or not at all. The reconstruction shall comply with all applicable building codes in force at the time of replacement. As determined during the nonconforming use and structure review process (see GHMC Section 17.68.025), the reconstruction shall comply with all other applicable codes to the maximum extent possible. Interior only remodels which do not increase a structure's nonconformity shall not count towards the replacement cost as it relates to this section;

~~D. When a structure and premises have has a nonconforming use structure status, the intentional removal, or intentional destruction damage, or intentional alteration of the structure shall eliminate the nonconforming status. Upon the elimination of the nonconforming status, the structure shall be brought into conformity with the existing code or shall be removed. Intentional Rremoval, and intentional destruction damage, or intentional alteration for the purposes of this subsection is defined as damage and/or alterations valued at more causing less value greater than 50 percent of the replacement ~~cost~~ value of the structure at~~

the time of ~~destruction~~ damage and/or alterations, over the lifetime of the structure, as determined by the square foot construction cost table in the city's fee schedule.

Section 8. Subsection GHMC 19.01.003(B) of the Gig Harbor Municipal Code is hereby amended, to read as follows:

19.01.003 Project permit application framework.

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B. Decisions.

TYPE I	TYPE II	TYPE III	TYPE III-A	TYPE IV	TYPE V
Permitted uses not requiring site plan review	Short plat	Plat vacations and alterations	Preliminary plats	Final plats	Comprehensive plan amendments
Boundary line adjustments	Sign permits	Site plan/major amendments to site plans	Preliminary PRD/PUD	Final PRD/PUD	Development regulations
Minor amendments to PUD/PRD	Design review ¹	CUP, general variances, sign permit variances, and site specific rezones			Zoning text amendments; area-wide zoning map amendments
Special use permits	Land clearing/grading	Shoreline substantial development, shoreline variance			Annexations
Temporary construction trailers	Revisions to shoreline management permits	Major amendments to PRD and PUD			
	Administrative variances	Amendment to height restriction area map			
	Administrative interpretations	Mobile/manufactured home park or subdivision			
	Home occupation permit	Performance-based height exception			
	Hardship variance, sign code	<u>Changes from one nonconforming use to another</u>			
	Modification to landscape plans				
	Minor amendment to PRD or PUD				
	<u>Nonconforming review</u>				

¹ In addition to the procedures in Title 19, applications for Design review shall follow the procedures set forth in Chapter 17.98 GHMC.

Section 9. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 10. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 23rd day of June, 2008.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 05/21/08
PASSED BY THE CITY COUNCIL: 06/23/08
PUBLISHED: 07/02/08
EFFECTIVE DATE: 07/07/08
ORDINANCE NO: 1132