

**ORDINANCE NO. 1122**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO RESIDENTIAL NONCONFORMING USES AND STRUCTURES IN THE R-2 ZONING DISTRICT, ALLOWING RECONSTRUCTION OF ACCIDENTIALLY DESTROYED NONCONFORMING RESIDENTIAL STRUCTURES IN THE R-2 ZONE BUT ONLY TO THE SAME OR SMALLER DIMENSIONS AND AS LONG AS SUCH RECONSTRUCTION OCCURRED WITHIN ONE YEAR OF THE DESTRUCTION, DIRECTING THE PLANNING COMMISSION TO ADDRESS POSSIBLE CHANGES TO CHAPTER 17.68 OF THE GIG HARBOR MUNICIPAL CODE WITHIN THE NEXT YEAR; ADDING NEW SECTIONS 17.68.035 AND 17.68.038 AND 17.68.045, AMENDING SECTION 17.68.040 OF THE GIG HARBOR MUNICIPAL CODE.**

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WHEREAS, the Gig Harbor City Council directed City staff to consider whether an amendment to chapter 17.68 GHMC was necessary, in light of the potential for elimination of existing housing after destruction of residential structures in the R-2 zone; and

WHEREAS, several nonconforming residential structures in the R-2 zoning district provide needed housing; and

WHEREAS, a recent request for a code interpretation brought to light ambiguity in GHMC Section 17.68.040, which allows reconstruction of a nonconforming structure if it is destroyed by “any means;” and

WHEREAS, the City Council acknowledges that this issue must be addressed in all zones with existing residential housing, but believes that an amendment to the code relating to existing residential housing in the R-2 zone should be considered without delay, because several existing property owners have indicated that they are currently unable to obtain homeowner’s insurance

and/or refinance, because their properties are currently nonconforming uses and/or structures; 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 and then reconstructed to its original dimensions; and

WHEREAS, further changes need to be made to GHMC Section 17.68.040(C), because reference is made to a procedure whereby the hearing examiner makes a decision to allow a change in one nonconforming use to another, without a public hearing, and the City's permit processing procedures do not allow the hearing examiner to make any decisions without holding a public hearing; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on December 21, 2007;; and

WHEREAS, on December 3, 2007, a copy of this Ordinance was sent to the Washington Department of Construction, Trade and Economic Development, pursuant to RCW 36.70A.106(1); and

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meetings of January 28<sup>th</sup> and February 11<sup>th</sup> 2008; and

WHEREAS, on February 11, 2008, the City Council adopted this Ordinance 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 17.68.035 of the Gig Harbor Municipal Code is hereby added to the Gig Harbor Municipal Code, to read as follows:

**17.68.035 Nonconforming residential uses of land in R-2 Zones.**

When, before the effective date of the adoption or an amendment of the applicable regulations, a lawful residential use of land existed in a Medium Density Residential zone (“R-2”) that would not be permitted by the regulations thereafter imposed by chapter 17.01 GHMC or amendments thereof, the residential use may be continued so long as it remains otherwise lawful, and it shall be deemed a nonconforming use; provided, however, that:

A. Enlargement Prohibited. No such nonconforming residential 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 of an amendment of such applicable regulations.

B. Movement of Uses. No such residential 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. If any such residential nonconforming use of land 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. 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 longer 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. “Discontinued is defined in GHMC Section 17.68.038.

Section 2. A new Section 17.68.038 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**17.68.038 Discontinuance of nonconforming structures and uses.**

A. A use is considered discontinued when:

1. A permit to change the use of the lot or structure was issued and acted upon;

2. The structure, or a portion of the structure is not being used for the 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 3. Section 17.68.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.68.040 Nonconforming Structures.**

When a lawful structure existed on 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 in any way that increases its nonconformity respective to bulk or dimensional standards in effect, but any structure or portion thereof may be altered to decrease its nonconformity;

~~B. Should such nonconforming structure or nonconforming portion of a structure be damaged to less than 50 percent of its replacement cost by any means it may be replaced to its original dimensions, and this shall occur within one year of the time of damage or not at all. The reconstruction shall comply with all applicable building codes in force at the time of the replacement, and GHMC 17.68.090.~~

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. "Discontinued" is defined in GHMC Section 17.68.038; and

~~C. If no structural alterations are made, any nonconforming use of a structure and premises may be changed to another nonconforming use, after approval by the hearing examiner; and provided that the hearing examiner finds that the proposed use is more appropriate for the district than the existing nonconforming use, and in permitting such a change, the hearing examiner may require appropriate conditions and safeguards, and these conditions and safeguards may be made without a public hearing;~~

~~D. Any structure and premises in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the use regulations for the district in which they are located and the nonconforming use may not thereafter be resumed; and~~

~~C. E.~~ When a nonconforming use of a structure and premises is discontinued or abandoned 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

F. D. When a structure and premises have a nonconforming use status, the removal or intentional destruction of the structure shall eliminate the nonconforming status. ~~and~~ Removal and intentional destruction for the purposes of this subsection is defined as damage causing loss value greater than 50 percent of the replacement cost at the time of destruction or removal.

Section 3. A new Section 17.68.045 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**17.68.045 Changes from one nonconforming use to another.**

A.. If no structural alterations are made, any nonconforming use of a structure and premises may be changed to another nonconforming use, under the procedures established in Title 19GHMC for a Type III project permit application. In order to approve such new nonconforming use, the hearing examiner must find that the proposed use is more appropriate for the district than the existing nonconforming use. The hearing examiner may also require that appropriate conditions and safeguards be imposed on the change from one nonconforming use to another.

B. Any structure and premises in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the use regulations for the district in which they are located and the nonconforming use may not thereafter be resumed.

Section 4. Planning Commission Direction. The City Council hereby directs the Planning Commission to include a review of chapter 17.68 GHMC on their list of projects for the year 2008, and to provide the City Council a report on their review by July 1, 2008.

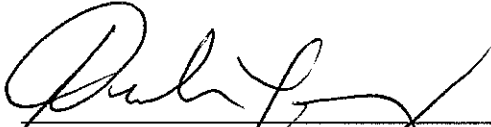
Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or

constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. 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 11<sup>th</sup> day of February, 2008.

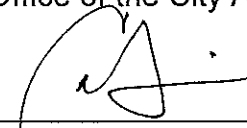
CITY OF GIG HARBOR

  
Derek Young, Mayor Pro Tem

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: 01/23/08  
PASSED BY THE CITY COUNCIL: 02/11/08  
PUBLISHED: 02/20/08  
EFFECTIVE DATE: 02/25/08  
ORDINANCE NO: 1122