

ONE WAY MEMO – SHORT TERM RENTALS ARE PROHIBITED.

Issue

Are short term rentals prohibited in the R-1 / R-2 Zoning District and in the Residential Land Use Classification of the Comprehensive Plan?

Summary

The City has recently been subjected to a new type of rental activity and one that has not historically been found in the City. This is the short term rental of homes, many of which have three or more bed rooms (short term rentals). This has had a negative impact on the residents of the City.

Short term rentals, particularly those of three bedrooms or more, are an illegal use in the residential areas of the city. This prohibition is found in the Comprehensive Plan (Comp Plan) and the Zoning Code. The pertinent parts of the Comp Plan and Zoning Code are set out below. This is a summary and explanation of the City's "law".

First, the relationship of the Comp Plan and the Zoning Code must be stated. *"A 'comprehensive plan' is a plan that meets certain statutory requirements'. It is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality. The plan is like a constitution for all future development within the governmental boundary.<sup>2</sup> A comprehensive land-use plan is not a zoning ordinance; rather, it serves as a conceptual framework within which zoning is to be accomplished consistent with the plan.<sup>3</sup> A comprehensive plan is similar to a constitution for all future development within the governmental boundary .7 Fla. Jur 2d Building, Zoning, and Land Controls § 127"*

The Zoning Code is interpreted so that it is consistent with the Comp Plan.

The Comp Plan prohibits short term rental for they are not consistent with the Comp Plan and are in violation of the Comp Plan. The Comp Plan mandates that the Single Family residential character must be maintained and protected (Goal 1). This, at a minimum, requires that adjacent land uses must be compatible. Commercial and Residential land uses are not compatible and residential areas must be protected by restricting non-residential activities to the commercial and ROR land use categories (Policy 1.1.2, Objective 1.2 and Policy 1.2.2) Short term rental is a commercial activity that is not allowed in the Residential Land Use Category. Policy 1.3.6 recognizes this by stating that land uses meeting the lodging needs of the tourist population may only occur in the Commercial Land Use Category.

With the Comp Plans requirements in mind, it is clear that the Zoning Code does not allow short term rentals in the R- /R-2 zoning district. The Code states that permitted uses are those uses specifically allowed in the zoning classification. A prohibited use is any use that is not specifically allowed in a zoning classification. Short term rental is not listed as one of the allowed uses in the R-1/R-2 district and is thus a prohibited use. While short term rentals are not defined, they match the definition of Hotel/Motel which means "a building or structure or group of buildings or structures **which provides three or more lodging units** within a parcel or lot

**kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants..."** Hotels and Motels are like wise prohibited in the R-1/ R-2 district.

There has been concern expressed concerning the historical long term rentals. The majority of these rentals are legal non-conforming uses. It is up to the owner to provide proof that the property meets the non-conformity standards.

In summary, both the Anna Maria Comprehensive Plan and the Zoning Code prohibit short term rentals in the City of Anna Maria.

#### Suggested Findings

1. Short Term (less than 30 days) rentals and/or rental of buildings containing 3 bedrooms or more are not an allowed use in the R-1 / R-2 zoning classifications.
2. Short Term (less than 30 days) rentals and/or rental of buildings containing 3 bedrooms or more in the R-1 / R-2 zoning classifications are not consistent with and are in violation of the Residential Land Use Classification of the Comprehensive Plan

#### Suggested Policy Direction to Administration / Staff

1. Applicant must declare intended use of property in development (building) permit application.
2. Applicant must declare intended use of property prior to the issuance of the Certificate of Occupancy.
3. Do not issue development, redevelopment, building and reconstruction permits to proposed development consisting of short term (less than 30 days also known as transient) rentals located in the R-1,R-2 district.
4. Do not issue Certificate of Occupancies to proposed development consisting of short term (less than 30 days also known as transient) rentals located in the R-1,R-2 district
5. Do not issue development, redevelopment, building and reconstruction permits to proposed development consisting of the rental of three bedrooms or more (rentals located in the R-1,R-2 district.
6. Do not issue Certificate of Occupancies to proposed development consisting of the rental of three bedrooms or more (rentals located in the R-1,R-2 district.
7. Take enforcement action against property use consisting of short term (less than 30 days also known as transient) rentals located in the R-1, R-2 district.
8. Take enforcement action against property use consisting of the rental of three bedrooms or more (rentals located in the R-1, R-2 district.
9. Recognize legal nonconforming uses that predate restriction in the various Anna Maria Comprehensive Plans and various Zoning Codes. The burden is on the property owner to show evidence of legal nonconforming uses. With proper proof on a case by case basis, legal nonconforming uses of long term rentals (more than 30 days) should be allowed.



## 2007 Comprehensive Plan

Note: Comprehensive Plan Future Land Use Map and Zoning Map mirror one another

### HOUSING ELEMENT

**Objective 1.5:** The useful life of the existing housing stock will be conserved and extended, and neighborhood quality will be improved.

### FUTURE LAND USE ELEMENT

#### C. Land Use Categories

Although located on a barrier island, **the City of Anna Maria has been able to avoid the development of a strong tourist attraction.** Those individuals that are drawn to the City are either "day-trippers" from adjacent communities or counties or seasonal visitors. **As a result, the City has become a predominantly single family detached residential community with limited commercial development.**

Community leaders have indicated that **the continuation of the land use distribution which supports the community character described in this Element (i.e., single family residential) is the aim of this comprehensive plan.** Therefore, in conjunction with and furtherance of the Goals, Objectives, and Policies contained in this Element, the following land use categories are intended to guide the community in the continued maintenance of its desired character.

#### Local Goals, Objectives, and Policies

**GOAL 1: ENSURE THAT THE SINGLE-FAMILY RESIDENTIAL CHARACTER OF THE CITY OF ANNA MARIA IS MAINTAINED AND PROTECTED, WHILE SUPPORTING COMMERCIAL USES IN THE COMMERCIAL AND ROR LAND USE CATEGORIES, WHILE MAXIMIZING THE ENJOYMENT OF NATURAL AND MANMADE RESOURCES BY THE CITIZENS AND MINIMIZING THE TREAT TO HEALTH, SAFETY, AND WELFARE POSED BY HAZARDS, NUISANCES, INCOMPATIBLE (sic) LAND USES, AND ENVIRONMENTAL DEGRADATION.**

**Objective 1.1:** Recognizing that the City of Anna Maria is located on a barrier island, future growth and development shall be managed through the implementation, and enforcement of land development regulations, consistent with this adopted Comprehensive.

**Policy 1.1.2:** The City shall continue to implement land development regulations that contain specific and detailed provisions required to implement this Comprehensive Plan, which, at a minimum shall:

...

**Ensure the compatibility of adjacent land uses and provide for adequate and appropriate buffering;**

...

**Objective 1.2:** The integrity and quality of life shall be maintained in existing residential neighborhoods.

...

**Policy 1.2.2:** Existing residential areas shown as Residential Land Use on the Future Land Use Map shall be protected by restricting non-residential development to the Commercial and mixed use land use categories.

**Policy 1.2.3:** The land development regulations shall contain provisions which ensure that:

o Residential areas shall be located and designed to protect life and property from natural **and manmade hazards** such as flooding, **excessive traffic**, subsidence, noxious odors, and **noise**; and

o Residential land uses shall be encouraged in a manner which is compatible with the type and scale of surrounding land uses. All structures shall be limited to two residential/habitable floors.

**Policy 1.2.4:** Land development regulations shall address the location and extent of non-residential land uses in accordance with the Future Land Use Map and the policies and descriptions of types, sizes, densities and intensities of land uses contained in this Element.

...

**Objective 1.3:** Commercial development compatible with environmental and economic resources and the desired single-family residential character of the community shall occur in a planned and orderly fashion.

...

**Policy 1.3.6: Community and General commercial land uses shall be located in a manner which ensures the compatibility with the type and scale of surrounding land uses and where existing or programmed public facilities shall not be over burdened.**

**The General Commercial Land Use Category is intended to provide for the day-to-day commercial (i.e., convenience goods and personal services) and professional office needs of the residents and seasonal population of the City. Recognizing that although limited in number, these establishments are intended to serve the immediate commercial needs of the tourist population (i.e., restaurants, motels, marinas) as permitted in this land use category. Strip commercial development will be discouraged. Residential development is not allowed in this category. Commercial development will be limited to 90% lot coverage including parking and drainage facilities. The 10% must be a natural landscaped area.**

Structures in this category are limited to two usable floors:

One story ground level commercial

One ground level commercial with one story elevated

Two story elevated commercial.

**Objective 1.4: Land uses or structures which are either incompatible or inconsistent with this adopted Future Land Use Plan shall be deemed nonconforming as of the effective date of this Comprehensive Plan.**

**Policy 1.4.1: Non conforming land uses, which existed prior to adoption of this plan, that are destroyed by natural disasters (destroyed by any cause other than the owner's voluntary action or abandonment), may be rebuilt to it's pre-disaster status, (including density and/or intensity, use and without regard to the ratio of allowed mix) so long as the re-development is consistent with all other requirements of the Plan and Code **However, all new development and re-development shall be consistent with the land use categories and densities and intensities of land uses contained in this Element.****

**Policy 1.4.2: The City of Anna Maria will continue to consistently implement the mixed use policies of this Plan which do not allow incompatible and/or nonconforming land uses.**

## ANNA MARIA CODE OF ORDINANCES

Sec. 1-2. - Definitions and rules of construction.



In the construction of this Code and of all ordinances of the city, the following definitions and rules of construction shall be observed, unless such construction would be inconsistent with the manifest intent of the city commission:

...

## ANNA MARIA ZONING CODE

Sec. 70-1. - Definitions and rules of construction. (*PARTIAL PERTINENT EXTRACT*)

- (a) The following rules shall be observed in the application and interpretation of provisions of subpart B, Land Development Regulations, except when the context clearly requires otherwise:

...

- (5) The word "used" or "occupied" includes the words "intended, designed or arranged to be used or occupied."

...

- (7) Unless specifically defined in subsection (b) of this section, words or phrases used in this subpart shall have the meaning of common usage which gives this subpart its most reasonable application.

- (b) The following words, terms and phrases, when used in subpart B, Land Development Regulations, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Building code* means the Florida Building Code as adopted by the state. (The Building Code defines transient rental).

*Commercial uses* means activities which are predominantly connected with the sale, rental and distribution of products or performance of services.

*Development* and *development activity* mean the addition to or improvement of real estate, including any of the following activities:

- (1) Construction, clearing, filling, excavating, grading, paving, dredging, drilling or otherwise significantly disturbing the soil of the site.

(2) Building, installing, enlarging, replacing or substantially restoring a structure, impervious surface or water management system, including the longterm storage of materials.

(3) Subdividing land into three or more parcels.

(4) Erection of a permanent sign unless expressly exempted by this Code.

(5) Changing the use of a site so that the need for parking is increased.

(6) Construction, elimination or alteration of a driveway onto a public street.

*Development order* means any order granting, denying or granting with conditions an application for approval of a development project or activity.

*Development order* means any order granting, denying or granting with conditions an application for approval of a development project or activity.

*Development order* means any order granting, denying or granting with conditions an application for approval of a development project or activity.

*Dwelling* means a building or portion thereof which is used exclusively for human habitation.

*Dwelling, multifamily* means a building containing three or more dwelling units, not to include a hotel or motel.

*Dwelling, single-family* means a building containing only one dwelling unit.

*Dwelling, two-family or duplex* means a building containing two dwelling units.

*Dwelling unit* means a single housing unit providing complete, independent living facilities for one

housekeeping unit. including permanent provisions for living, sleeping, eating, cooking and sanitation.

*Existing use* means the use of a lot of record, parcel, structure or building at the time of the enactment of the comprehensive plan.

*Family* means any number of individuals related by blood, marriage or legal adoption, and not more than four persons not so related, living together as a single housekeeping unit. Foster children are considered part of a family.

*Existing use* means the use of a lot of record, parcel, structure or building at the time of the enactment of the comprehensive plan.

*Hotel and motel* mean a building or structure or group of buildings or structures **which provides three or more lodging units** within a parcel or lot **kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants**. A hotel or motel shall be deemed to include establishments which provide residential living accommodations on a more-or-less permanent basis, such as an apartment hotel.

*Intensity* means the degree to which land is occupied or the density of development. There is no single measure of the intensity of land use. Rather, a land use is relatively more or less intense than another use. Generally, a particular use may be more intense due to one or more characteristics, such as traffic generated, bulk of the buildings or structures, or number of employees, or because of a nuisance such as pollution, noise, light, etc.

*Nonconformity*. Within the districts established by this subpart or amendments that later may be adopted, there exist lots, parcels, buildings, structures and uses which were lawful before this subpart was passed, the new establishment of which would be prohibited by this subpart. These lots, parcels, buildings, structures and uses are defined as nonconformities. Nonconformities include



nonconforming lots or parcels, nonconforming buildings or structures and nonconforming uses. Nonconformities are further defined in article III of chapter 114.

*Permitted use* means any use allowed in a zoning district and subject to the regulations applicable to that zoning district.

*Primary or principal use* means that use intended to be the predominant use in a zoning district. For this purpose and ease of identification, respective zoning districts bear the name of the primary use permitted.

*Prohibited use* means a use that is not permitted in a zoning district.

*Residential use* means activities within land areas used predominantly for housing.

*Use* means the purpose or activity for which land, structures or buildings are designed, arranged or intended, or for which land, structures or buildings are occupied or maintained.

#### **Sec. 74-31. - Adoption of Florida Building Code.**

(a) Florida Building Code adopted.

(1) There is hereby adopted as the building code for the City of Anna Maria, the Florida Building Code and technical references contained therein as amended from time to time by the State of Florida.

## ZONING

#### **Sec. 114-133. - Nonconforming uses.**

(a) *Definition.* For the purposes of this article, a use of any land or structure, other than a sign, is a nonconforming use if:

The use is not listed as a permitted use, special exception use or permitted accessory use in the zoning district in which it is situated.

(b) Extension or relocation.

(1)

*Extension.* No nonconforming use, or structure housing a nonconforming use, shall be enlarged, increased, intensified, substituted or extended to

occupy a greater area than it occupied at the effective date of the ordinance from which this chapter is derived.

**Sec. 114-191. - Purpose and intent of article.**

The purpose of this article is to describe land use restrictions which apply to specific zoning districts within the city. All incorporated lands within the city have been divided into zoning districts which are intended to be consistent with and implement the land use categories identified in the future land use element and displayed on the future land use map of the city's comprehensive plan.

**Sec. 114-193. - Description of districts.**

The intent of the various zoning districts is as follows:

- (1) *R-1, single-family dwelling district.* This district is intended to provide for single-family detached homes, partially implementing the low density residential land use category.
- (2) *R-2, two-family dwelling district.* This district is intended to provide for single-family detached homes, duplex dwellings and mobile homes implementing the medium density residential land use category.
- (3) *ROR, residential/office/retail district.* This district is intended to provide an opportunity for flexible development of mixed commercial and low density residential uses consistent with the overall residential character of the community, implementing the residential/office/retail land use category.
- (4) *C-1, commercial district.* This district is intended to provide for the day-to-day commercial and professional office needs of residents and the seasonal population of the city, and the immediate commercial needs of the tourist population, implementing the commercial land use category.
- (5) *PSP, public/semipublic district.* This district is intended to provide areas for public, municipal and semipublic centers, community services and facilities to implement the public/semipublic land use category.
- (6) *PRA, public recreation area district.* This district is intended to provide areas for active and passive recreation to implement the recreation/open space land use category.

(7) *CON-1, conservation-1 district.* This district is intended for areas of significant environmental or ecological importance that should implement the conservation land use category.

(8) *CON-2, conservation-2 district.* This district is intended to protect areas in the community containing beach sands, for open space or low intensity uses, and to implement the conservation land use category.

**Sec. 114-196. - Application of district regulations.**

(a) The regulations set by this chapter within the city as a whole shall be minimum regulations and shall be applied uniformly to each class or kind of structure except as provided in this chapter.

(b) No building, structure, land or water area shall be used for any purpose except those specifically identified as permitted accessory or special exception uses.

(c) No building or structure, or part thereof, shall be located, erected, reconstructed or structurally altered unless in conformity with the provisions of this chapter.

*(Ord. No. 96-549, § 1(2.03.00), 2-16-96)*

**Sec. 114-197. - Intent of district regulations.**

(a) Existing residential areas shall be protected from encroachment of incompatible activities, and other land use areas shall be protected from encroachment by incompatible residential activities.

(b) Residential and nonresidential land uses shall be encouraged in a manner which ensures compatibility with the type and scale of surrounding land uses and where existing or programmed public facilities shall not be overburdened.

*(Ord. No. 96-549, § 1(3.00.00), 2-16-96)*

**DIVISION 2. - R-1, R-2 RESIDENTIAL DISTRICT**

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Sec. 114-221. - Use regulations.

Sec. 114-222. - Lot, yard, bulk and parking regulations.

Secs. 114-223—114-240. - Reserved.



**Sec. 114-221. - Use regulations.**

(a)

*Generally.* Specific uses are either allowable in the R-1 district, allowable as accessory uses to the permitted principal use, or prohibited as incompatible with the intent and character of the district. Development of any lot or parcel in the residential district which lot or parcel also has land partially within the CON-1, conservation district, on the official zoning map shall be subject to the requirements for determination of the buildable area as set forth in section 114-343. Any lands subsequently determined under the criteria of section 114-343 to be located within the conservation district shall be subject to the restrictions set forth in section 114-344. For lots or parcels which contain both the R-1 or R-2 and the CON-1 districts, the entire lot or parcel may be used in determining setbacks, building coverage and lot coverage requirements. If the determination of the buildable area within the CON-1 district requires a greater setback than required by section 114-222, the more restrictive shall apply.

(b)

*Permitted uses.* Not more than one permitted use, and only one such use, shall be permitted on an individual lot. Permitted uses are as follows:

(1)

Single-family detached dwellings.

(2)

Group home or foster care facility licensed to serve six or fewer clients of the state department of health and rehabilitative services, provided such uses shall not be located closer than 1,000 feet to another group home or foster care facility.

(3)

Mobile homes (permitted in FEMA A zones only).

(4)

Community residential homes as defined in F.S. ch. 419, but licensed to serve six or fewer clients of the state department of health and rehabilitative services, provided such uses shall not be located closer than 1,000 feet to another community residential home serving six or fewer clients.

(5)

Two-family dwellings existing prior to April 1, 2009. Such preexisting two-family dwellings may be reconfigured in order to achieve compliance with the requirements of subsection (b) above, provided the number of dwellings is not increased and any new construction complies with the requirements of this chapter. If reconfiguration or alterations of a

preexisting two-family dwelling is deemed to be a substantial demolition, only one dwelling unit may be reconstructed on the lot or parcel.

(c)

*Accessory uses.*

(1)

Home occupations shall be permitted as an accessory use in the principal dwelling provided that:

a.

The activity is a professional or business activity carried on by a member of the immediate family residing on the premises in connection with which there is used no sign other than a nonilluminated nameplate attached to the building of no more than one square foot in area.

b.

No display is made which will indicate from the exterior that the building is being used for any purpose other than a dwelling.

c.

No person is employed other than a member of the immediate family residing on the premises.

d.

No mechanical equipment is used except of a type similar in character to that normally used for domestic or household purposes.

(2)

Ordinary flower or vegetable gardens shall be allowed as an accessory use to the principal dwelling.

(3)

Arts, crafts and hobbies shall be allowed as an accessory use to the principal dwelling provided such activity is pursued by a member of the immediate family residing on the premises, provided that no nuisance shall result from such operation.

(d)

*Prohibited uses.* The following uses are prohibited:

(1)

All uses not specifically permitted.

(2)

Sale of any commodity on the premises. This provision is not to prohibit yard sales.

(3)

It shall be unlawful for any person to land or operate any aircraft, including helicopters, within the city limits of the residential district of the City of Anna Maria. Nothing in this section shall, however, be construed to prohibit emergency landings, landing by the U.S. Coast Guard, or other governmental agencies, landing for medical emergencies, and landings by law enforcement officers in the performance of their law enforcement duties.

*(Ord. No. 96-549, § 1(3.01.01), 2-16-96; Ord. No. 09-699, § 2, 3-26-09; Ord. No. 10-714, § 2, 9-23-10; Ord. No. 12-740, § 5, 4-26-12; Ord. No. 12-742, § 3, 8-23-12)*



**Alice Baird - City of AnnaMaria**

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**From:** Chuck Webb - City of AnnaMaria  
**Sent:** Wednesday, January 23, 2013 3:17 PM  
**To:** Sue Lynn - City of AnnaMaria; John Quam - City of AnnaMaria; Dale Woodland - City of AnnaMaria; Nancy Yetter - City of AnnaMaria; Gene Aubry - City of AnnaMaria; Bob Welch - City of AnnaMaria; Alan Garrett - City of AnnaMaria; Jim Dye - City of AnnaMaria; Alice Baird - City of AnnaMaria  
**Cc:** Chuck Webb - City of AnnaMaria  
**Subject:** One way memo: Agenda 7 Flood

Alice would you pass out the attached. This is for the meeting on the 24th, Thursday. Thanks.

ONE WAY MEMO

From: Chuck Webb

To: Mayor Sue Lynn, Chair Quam, Commissioner Woodland, Commissioner Yetter, Commissioner Aubry, Bob Welch, Allan Garrett, James Dye, Esq.

Subj: Agenda Item 7. Improvements of Pre-FIRM (constructed prior to 1975) Homes that are in Compliance with the City of Anna Maria’s Code of Ordinances Flood Provisions – Sections 82-31 to 82-98.

Issue: Can Pre-FIRM home that are currently in compliance be expanded into the area below the first living floor which is located above 13’ NGVD? I.E. Can a home that has all or most of its living area above the 13’ height expand the living area into the car port area under the home just because the home was built prior to 1975?

Summary: Confusion has arisen over code interpretation and in the interaction of the term “New Construction” in the code and how it applies in this fact situation. The key provisions are set out below. The conclusion is that any home that is in compliance can not be expanded so that it becomes not compliant. It can not be expanded living area below the 13 foot heights. The Code’s intent is shown as follows. First is the general restriction which shows general intent.

Sec. 82-40. - Compliance. 

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.

Then come more specific restrictions in Section 82-76. General Standards. Only the key standards for this fact situation are set out.

(11) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this article shall meet the requirements of "new construction" as contained in this article.

(12) Any alteration, repair, reconstruction or improvements to a building that is not in conformance with the provisions of this article, shall be undertaken only if said nonconformity is not furthered, extended, or replaced.

The use of “new construction” in subsection 11 has had some refer back to the definition of new construction which would seem to provide a loop hole in that new construction is only construction after 1975. Closer examination of 11 shows that this section is not referring to new construction but to the “requirements for new construction”. Therefore, instead of going to the definition of new construction, the next step is to Section 82-77, Specific Standards and 82-78, Coastal High Hazard V Zone.

The requirements for the A zone modification of a compliant Pre-FIRM home (up on stilts) is in Section 82-77 which states in pertinent part:

Sec. 82-77. - Specific standards.

In all coastal high hazard A zone areas, the base flood elevation data have been established and construction shall comply with the following provisions:

(1) Be elevated on pilings or pier and column foundation as required by accepted engineering practice to meet sound engineering principles so that:

a. The lowest floor as defined herein is elevated to no lower than 13 feet NGVD.

...

(2) Residential construction. All new construction or substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, elevated to no lower than 13 feet NGVD. All new construction and substantial improvements shall have all walls used for an enclosure below the lowest floor at minimum constructed of a breakaway wall system. Additionally, there must be a minimum of two openings on different sides of each enclosed area sufficient to facilitate automatic equalization of flood hydrostatic forces in accordance with standards of subsection 82-77(5).

...

(4) Elevated buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space by not partitioning the space except to allow for the separation of the garage from the storage area and the construction of a foyer for building access, all enclosed areas shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on walls.

For properties in the V Zone, Section 82-78 applies:

In all coastal high hazard V zone areas, the base flood elevation data have been established and construction shall comply with the following provisions:

(1) Meet the requirements of sections 82-76 and 82-77

(2) All new construction and substantial improvements in V zones shall be elevated on pile foundation systems; and:

a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) shall be elevated to no lower than the base flood elevation shown



on the latest adopted flood information rate map or 13 feet NGVD whichever is highest and all horizontal structural members such as grade beams or pile caps must be installed below the scour level established by the Florida Department of Environmental Protection or in areas where the scour level has not been defined, below the existing grade.

...

- (4) New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space by not partitioning the space except to allow for the separation of the garage from the storage area and the construction of a foyer for building access, all enclosed areas shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on walls.

Again, the analysis is not to determine whether the home is new construction. The analysis is to first to determine whether the home is in compliance with the code. If it is then all new improvements must meet the requirements for new construction. When the home is in compliance, it may not expand living space into the areal below 13" or the first living floor. If there are some living areas constructed below first living floor in a Pre-FIRM house, these may not be expanded as stated in Section 82-76. General Standards subsection 12.

The conclusion is that Pre-FIRM homes code may not be expanded to create a non compliance.

Recommendation:

1. Find that When the home is in compliance, it may not expand living space into the areal below 13" or the first living floor. If there are some living areas constructed below first living floor in a Pre-FIRM house, these may not be expanded
2. Direct staff to redraft this section of the Code to make it easier to understand.
3. Direct staff to reject building permit applications that request improvements to Pre-FIRM home that would create or increase a non compliance. i.e. A Compliant Pre-FIRM home may not expand into the car port area under the home.
4. Direct Staff to not issue Certificates of Occupancies to homes that would create or increase a non compliance. i.e. A Compliant Pre-FIRM home may not expand into the car port area under the home.