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# Memo

To: Charter Review Board, Town of Lauderdale-By-The-Sea  
From: Susan L. Trevarthen, Town Attorney  
Cc: Connie Hoffmann, Town Manager  
Date: June 13, 2012  
Re: **Article VII of Charter - Selected Issues Which the Board May Wish to Discuss**

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## **Replacement of Nonconforming Buildings**

Section 7.1(5) of the Town Charter provides criteria for the replacement of legal nonconforming buildings that exceed the height limits, in the event of a natural disaster or planned redevelopment. In replacing these buildings, the Charter essentially requires:

- Compliance with the use restrictions of the Charter. Only parking, storage, lobby and service types of nonhabitable uses are allowed on the first floor in residential districts. Commercial uses are allowed if located in the B districts and if there is offstreet dedicated parking that does not back out into traffic.
- The building can rebuild up to its prior height and square footage, or that height and square footage necessary to achieve the same number of habitable floors.
- The building must provide offstreet parking (onsite or adjacent), and parking must not back out into traffic.

The Charter allows a replacement building to exceed the original height and square footage of the non-conforming building if needed because of the first story use requirement or any other requirements of state or federal law. However, for most properties, an exact rebuild would not be possible. First, the building must meet the first floor non-habitable space and parking requirements as outlined in the Charter. Second, only the height and square footage of the nonconforming building is preserved. Other nonconforming aspects, such as setbacks or other development standards, are not preserved by the charter.

## **Inability of Town Commission to “Rezone for Any Other Use Whatsoever”**

Section 7.1(9) not only preserves the charter-mandated height limits from change without voter approval. It also requires voter approval to raise the residential height limits in the Town Code

to the heights allowed in the Charter, or to rezone residential districts “for any other use whatsoever.” Finally, the Town is not permitted to create new categories of zoning without voter approval of the category and all of its provisions.

### **Measurement and Application of Height Limits**

The definitions of height limits and measurements of height provided in Section 7.1 of the charter are complex and difficult to interpret, and it may be beneficial to simplify or clarify the wording.