



PLANNING & ZONING BOARD

STAFF REPORT

PLANNING, ZONING AND BUILDING DEPARTMENT
100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444
PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200



City-Initiated Amendment to the Land Development Regulations Article 1.3 “Nonconforming Uses, Lots and Structures” and Section 7.8.4 “Requirements for Alterations, Additions or Repairs”

Ordinance No. 20-18

Planning and Zoning Board: September 17, 2018

File No.: 2017-135

Application Type: Amendment to the Land Development Regulations

Request: Provide a recommendation to the City Commission regarding Ordinance No. 20-18, a City-initiated amendment repealing and replacing Article 1.3 “Nonconforming Uses, Lots and Structures”, to provide amended regulations regarding nonconforming lots, uses of land, and uses of structures; providing for repairs and maintenance of nonconforming structures and reconstruction necessitated by Acts of God; and amending Article 7.8 “Unsafe Buildings and Structures” by amending Section 7.8.4 “Requirements for Alterations, Additions or Repairs” to provide consistency with Article 1.3., pursuant to Land Development Regulation (LDR) Section 2.2.6(D)(6).

Recommendation: Recommend approval to the City Commission of the amendment to Land Development Regulation Article 1.3 “Nonconforming Uses, Lots and Structures”, by amending Article 7.8 “Unsafe Buildings And Structures”, by amending Section 7.8.4 “Requirements for Alterations, Additions, or Repairs”, by adopting the findings of fact and law contained in the staff report, and by finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

Review and Analysis

The LDRs provide for the continued existence of nonconforming structures, uses of land, and uses of structures which were lawful before the passage of certain code amendments which rendered such uses and/or structures prohibited, further regulated or restricted. The City currently pursues the elimination of nonconforming uses through the traditional method of applying restrictions on the continuance and expansion of such uses (i.e. not allowing the use to be re-established once it has been abandoned for six months; restricting the type and value of improvements; and limiting the expansion and alterations of a building or structure containing a nonconforming use). The regulations also provide limited allowances for routine repairs and maintenance. The idea of providing these limitations is to prevent the continued investment into a structure or a structure containing a nonconforming use that should not exist.

After the adoption of the LDRs in September 1990, Article 1.3 has been periodically amended, with the most recent amendment occurring in 2008. The proposed amendments re-evaluate these regulations to clarify the language and the City’s position regarding nonconforming uses and structures.

The proposed LDR amendment was initially considered by the Planning and Zoning Board on April 17, 2017. The Board continued the item and instructed staff to address several concerns raised at that meeting. Revisions to the proposed amendments were subsequently presented to the Board on July 17, 2017. Upon consideration, the Board, on a 7 to 0 vote, recommended approval to the City Commission of the proposed amendment with the **removal** of LDR Section 1.3.10 “Nonconformities Created by Governmental Eminent Domain Action”. This section was intended to address governmental eminent domain action, which resulted in nonconforming parcels and site features, such as landscaping, parking, building setbacks, vehicular use areas, and signage. The ordinance presented to the Planning and Zoning Board included provisions that allow such nonconformities to be considered legal and conforming.

The Board raised several concerns, namely, (i) it would allow the granting of administrative variances to create legal properties; (ii) that case law provides for legal nonconforming status when a parcel is impacted by an eminent domain action; (iii) that the proposed inclusion of Section 1.3.10 provides advantages to projects which should be reconfigured to meet current code or variances sought;

PAGE | 1

Project Planner:

Jasmin Allen, Senior Planner
allenj@mydelraybeach.com, 561.243.7044

Board Review Dates:

Planning and Zoning Board, September 17, 2018
City Commission, November 6, 2018 and November 20, 2018

Attachments:

- Ordinance No. 20-18
- Planning and Zoning Board Staff Report , July 17, 2017



and, (iv) that the amendment allows the vesting of nonconformities created by the eminent domain action.

After the July 17, 2017 Planning and Zoning Board meeting, the following additional changes were made to the ordinance currently proposed:

- Removing the changes to relocate Section 4.1.4 “Uses of Lots of Record” to Article 1.3. Section 4.1.4 addresses the development of residential lots of record that do not comply with zoning requirements. To address the comments raised by the public and the Comprehensive Plan Steering Committee to explore creative ways to address nonconforming lots and the provision of additional housing, it is premature to change the regulations pertaining to uses of lots of record at this time until such policies are approved within the Housing Element of the Comprehensive Plan.
- Amending LDR Section 7.8.4 as “clean-up” primarily within LDR Section 7.8.4 to provide consistency with Article 1.3 with respect to the determination of the values of a structure and the amount allotted for alterations, additions or repairs.
- Adding new language regarding the cessation of uses within the area designated on the Regulating Plan with Required Retail Frontage in the Central Business District to be consistent with the proposed changes to the CBD Regulations.
- Adding new language regarding the discontinuance of use.
- Adding new language regarding repairs of nonconforming single family residences located a minimum of 150 feet from Atlantic Avenue to be consistent with existing CBD regulations.

Proposed Amendment

The changes associated with the subject amendment are as follows:

- LDR Section 1.3.1 Purpose and Intent: This Section has been revised to provide minor grammatical changes to improve the clarity and consistency of the regulations.
- LDR Section 1.3.2 Nonconforming Lots of Record: This Section has been revised to provide a definition of a nonconforming lot of record which requires that such lots were lawfully created but do not now comply with the lot dimension standards as specified for that zoning district.
- LDR Section 1.3.3 Nonconforming Uses of Land: This Section was revised to incorporate the following:
 1. Revised to eliminate the inclusion of a minor structure (value not exceeding \$1,000) from this category. All nonconforming structures are addressed within Section 1.3.5.
 2. A definition of a nonconforming use of land was created to state “A Nonconforming Use of Land shall mean any use of land only, outside of a building or structure, that was lawfully established but does not now comply with the current standards of the Land Development Regulations”. Examples of nonconforming uses of land include, but are not limited to, commercial parking lot in a single family residential zoning district or an urban farm in a single family residential zoning district.
 3. For clarity, rules and regulations are categorized with respect to Enlargement, Relocation, Discontinuance of Use and Erection of Structures. The only substantive change to these rules and regulations specify that such nonconforming use shall not be moved to any other parcel or located in any district within which it is not permitted.
- LDR Section 1.3.4 Nonconforming Uses of Structures: Previously nonconforming uses of structures and land were combined within the Section 1.3.5. The proposed ordinance creates a new section that pertains only to the nonconforming use of structures. Additional proposed changes are noted below:
 1. This new section provides a definition of a nonconforming use of structure to state “any use of a structure or building that was lawfully established but does not comply with the use standards applied by the Land Development Regulations”.
 2. The section is restructured to provide for rules and regulations for Enlargement, Discontinuance of Use and Reconstruction



or Repair After Damage.

3. The basis for determining the values for damages to a structure used for a nonconforming use has been changed from the “replacement cost” to “current improvement value as determined by Palm Beach County Property Appraiser”. This may be considered a significant change.
 4. Clarifies regulations regarding the discontinuance of use.
- **LDR Section 1.3.5 Nonconforming Structures:** The proposed ordinance establishes a definition of a nonconforming structure to state, “any building or structure that was lawfully developed but does not comply with the following standards governed by the Land Development Regulations: size, height, coverage, setbacks, or other location or design aspects”. Having a specific definition eliminates the potential for confusion that often arises when addressing nonconforming structures. To this end, the criteria is tied to a physical aspect of the structure. The following proposed changes are noted:
 1. The Section is revised to clarify that a nonconforming structure may be enlarged in a way that complies with current standards, and which do not create any new nonconformity or decreases the existing nonconformity.
 2. This Section is restructured to provide for rules and regulations for Enlargement or Alteration, Relocation, Reconstruction or Repair After Damage.
 3. The current ordinance provides for regulations pertaining to reconstruction or repair after damages greater than 50% of the replacement costs (which are not created by Acts of God). In such cases, the current LDR require that the structure shall be only be rebuilt in conformance with current codes and does not address those structures which may have suffered damages less than 50%. The proposed ordinance provides regulations in situations where the damages are less than 50% of the improvement value.
 - **LDR Section 1.3.6 Repairs and Maintenance:** Previously this section combined regulations for repairs and maintenance; and, exterior modifications. The proposed changes separate exterior modification as a new Section 1.3.7. Other proposed changes also include:
 1. Increasing the maximum percentage value of the structure for repairs and maintenance from 10% to 25% for ordinary repairs and maintenance in any 12-month period. Ordinary repairs and maintenance involves plumbing, wiring, replacement of nonbearing walls, fixtures and other interior alterations which are necessary for maintaining safety and sanitation.
 - **LDR Section 1.3.7 Exterior Remodeling:** Currently, the LDR allows for the exterior remodeling of a structure containing a nonconforming use or a nonconforming structure provided that the modification does not exceed 15% of the current replacement cost upon approval by the Site Plan Review and Appearance Board (SPRAB) or the Historic Preservation Board (HPB). Increases above the 15% may be approved by the HPB for contributing structures or individually listed historic structures.

The proposed ordinance increases the percentage value from 15% to 25%, with increases above the stated maximum allowed for contributing historic properties or individually designated historic properties. As stated previously, the value will be based on the improvement value as determined by Palm Beach County Property Appraiser.
 - **LDR Section 1.3.8 Uses Allowed as Condition Uses:** This section is only modified to establish the commencement date of these regulations.
 - **LDR Section 1.3.9 Reconstruction Necessitated by An Act of God:** The primary change removes the applicability to only residential or commercial structures so that this section pertains to all nonconforming structures or structures containing a nonconforming use.
 - **LDR Section 7.8.4 “Requirements for alterations, additions, or repairs”** Revisions pertaining to unsafe buildings or structure to provide consistency with Article 1.3 with respect to the determination of the values of a structure and the amount allotted for alterations, additions or repairs.



ANALYSIS

Pursuant to **LDR Section 2.4.5(M)(1)**, amendments to the Land Development Regulations may be initiated by the City Commission, Planning and Zoning Board or City Administration; or an individual. The proposed amendment is a City-initiated text amendment to the Land Development Regulations.

Pursuant to **LDR Section 2.4.5(M)(5), Findings**, in addition to LDR Section 1.1.6(A), the City Commission must make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies of the Comprehensive Plan.

A review of the Objectives and Policies of the adopted Comprehensive Plan was conducted, and the applicable policies to this specific request are listed below:

Future Land Use Element, Policy A-2.6: Whenever a commercial, residential, hotel, motel, or resort dwelling unit structure is destroyed to an extent of greater than 50% of its value by disaster, the structure may be rebuilt to pre-disaster use, densities and heights if permit applications are submitted within one year following the disaster. Current fire and building codes shall be met; current parking, building setbacks, and landscape requirements shall be complied with as closely as possible. For purposes of this policy, disaster means any non-self imposed catastrophic damage including, but not limited to, fire, flood and storm.

Future Land Use Element, Policy A-2.7: Whenever a structure is damaged to an extent of greater than 50% of its value, it shall not be reconstructed unless such reconstruction complies with the requirements of the zoning district which applied to the property, except as provided in Policy A-2.6.

The current limitations on the costs of improvements which may be undertaken in any 12-month period imposed on nonconforming structures and structures containing nonconforming uses has in many cases resulted in deterioration and blight. The regulations are revised to address the method of determining the value on which the repairs maintenance and improvements are based. Currently, the value is established based on the replacement cost of the nonconforming structure or the structure containing the nonconforming use. This method of valuation often consumes significant staff time in determining the accuracy of the cost analysis provided by the property owner. The ordinance proposes utilization of the improvement value (for buildings and structures) as determined by Palm Beach County Property Appraiser's Office.

This structure for determining the maximum repairs and improvement costs and with the increased percentages, owners are able to make one investment in improving their properties rather than being forced to make incremental improvements on an annual basis.

Given the above, the adoption of this text amendment will further the applicable Goals, Objectives and Policies of the Comprehensive Plan.

ALTERNATIVE ACTIONS

- A. Continue with direction.
- B. Move a recommendation of approval to the City Commission of the amendments to Land Development Regulation Article 1.3 "Nonconforming Uses, Lots and Structures", and amending Article 7.8 "Unsafe Buildings And Structures", by amending Section 7.8.4 "Requirements for Alterations, Additions, or Repairs", by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).
- C. Move a recommendation of denial to the City Commission of the amendment to Land Development Regulation Article 1.3 "Nonconforming Uses, Lots and Structures", amending Article 7.8 "Unsafe Buildings And Structures", by amending Section 7.8.4 "Requirements for Alterations, Additions, or Repairs", by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in LDR Section 2.4.5(M).

ORDINANCE NO. 20-18

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, ARTICLE 1.3 NONCONFORMING USES, LOTS AND STRUCTURES, BY REPEALING THIS ARTICLE AND READOPTING IT TO PROVIDE UPDATED REGULATIONS FOR NONCONFORMING LOTS, USES OF LAND AND STRUCTURES IN ADDITION TO REGULATIONS ON REMODELING NONCONFORMING STRUCTURES OR RECONSTRUCTING SUCH STRUCTURES IF AFFECTED BY AN ACT OF GOD; AND AMENDING ARTICLE 7.8 UNSAFE BUILDINGS AND STRUCTURES, BY REPEALING AND READOPTING SECTION 7.8.4 REQUIREMENTS FOR ALTERATIONS, ADDITIONS, OR REPAIRS TO PROVIDE FOR CONSISTENCY WITH ARTICLE 1.3 NONCONFORMING USES, LOTS AND STRUCTURES; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City has previously addressed nonconforming uses, lots and structures which exist in City in Article 1.3 of the Land Development Regulations of the City; and

WHEREAS, the City desires to modify the Land Development Regulations governing such nonconforming uses, lots and structures to provide for the public health, safety and welfare of the residents of the City and its visitors; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency (LPA), has determined that the amendments are consistent with and further the goals, objectives, and policies of the Comprehensive Plan; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on _____, voted _____ to recommend that the changes be approved; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the staff report; and

WHEREAS, the City Commission at duly notice public meetings on _____2018, and on _____2018, received and considered comments from the Planning and Zoning Board and from the public, and gave careful consideration to all aspects of this ordinance; and

WHEREAS, the City Commission has determined it to be in the best interest of the City of Delray Beach that the Land Development Regulations be amended as described in this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1: That the recitations set forth above are incorporated herein.

Section 2: That ARTICLE 1.3 “NONCONFORMING USES, LOTS AND STRUCTURES” of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida (“City”), is hereby repealed and readopted; providing that ARTICLE 1.3 shall hereafter read as follows:

ARTICLE 1.3 NONCONFORMING USES, LOTS, AND STRUCTURES

Section 1.3.1 Purpose and Intent:

- (A) Within the ~~zoning districts established by Chapter Four~~ City of Delray Beach, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before the passage of ~~said Chapter Four~~ certain code amendments but are now prohibited, further regulated, or restricted. It is the intent of this Article to allow such legal nonconformities to continue until they are eliminated, provided they meet the conditions established in this Article. ~~until they are removed, but not to encourage their continuation.~~ Nonconformities shall not be enlarged ~~upon~~, expanded, extended, or used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.
- (B) Nonconforming uses are declared to be incompatible with uses allowed in the zoning districts involved. A nonconforming use of a structure, land, or structure and land in combination shall not be extended or enlarged, either by erecting additional signs, adding additional square footage to a structure, or adding other uses of a nature which would be prohibited in the zoning district involved, except as provided for in this Article under specific circumstances.
- (C) To avoid undue hardship, nothing herein shall require a change in the plans, construction, or designated use of any ~~structure building~~ on which actual construction has been carried on diligently for an approved project which may now contain a non-conformity. Actual construction shall include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition, excavation, or removal of an existing ~~structure building~~ has been substantially started preparatory to rebuilding, such demolition, excavation, or removal shall be considered actual construction, provided the work is carried on diligently, and the development becomes established pursuant to 2.4.4(D).

Section 1.3.2 Nonconforming Lots of Record: Any lot or parcel which qualifies as a lot of record may be used only as allowed in Section 4.1.4.

- (A) **Definition.** A Nonconforming Lot may mean a Lot of Record that was lawfully created but does not comply with the lot standards of this Code, or a parcel of land that does not meet the lot standard of the applicable code.

Section 1.3.3 Nonconforming Uses on the Land ~~or Land with Minor Structures Only:~~
~~Where lawful use of the land existed on September 1, 1990, that would not now be allowed, and where the use involves no individual structures with a replacement cost exceeding \$1,000, the use may be continued, subject to the following provisions:~~

- ~~(A) A nonconforming use shall not be enlarged, increased, nor extended to occupy a greater area of land than was occupied at the effective date of this chapter.~~
- ~~(B) A nonconforming use shall not be moved in whole or in part to any portion of the lot or parcel, other than that occupied by such use on September 1, 1990.~~
- ~~(C) If any nonconforming use of land only, ceases for any reason for a continuous period of 30 days, every subsequent use of the land shall conform to the requirements specified for the zoning district in which the land is located.~~
- ~~(D) No additional structures shall be erected unless they conform to the requirements of the zoning district in which the land is located.~~

- (A) **Definition.** A Nonconforming Use on the Land shall mean any use on the land only, outside of a building or structure, that was lawfully established but does not now comply with the current standards of the Land Development Regulations.

(B) **Rules and Regulations of Nonconforming Uses on Land.**

- (1) **Enlargement.** A nonconforming use on land shall not be enlarged, increased, nor extended to occupy a greater area of land.
- (2) **Relocation.** A nonconforming use on land shall not be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use, nor shall such nonconforming use on land be moved to any other parcel or located in any district within which said use is not permitted.
- (3) **Discontinuance of use.** If any nonconforming use on land ceases for any reason for a continuous period of 30 days, every subsequent use of the land shall conform to the requirements specified for the zoning district in which the land is located.

- (4) Erection of Structures.** No structures shall be erected in connection with such nonconforming use on the land.

Section 1.3.4 Nonconforming Uses of Structures

- (A) Definition.** A Nonconforming Use of Structure shall mean any use of a structure or building that was lawfully established but does not comply with the use standards applied by the Land Development Regulations.

(B) Rules and Regulations of Nonconforming Use of Structure.

- (1) Enlargement.** A nonconforming use of a structure may be permitted to enlarge internally throughout any part of the structure, except for properties located on streets designated on the Regulating Plan with Required Retail Frontage within the Central Business District where the nonconforming use shall not be permitted to occupy any other portion of the structure. Additionally, nonconforming uses shall not be extended to occupy any land outside the existing structure or within any additional structure on the same lot not used for such nonconforming use.

(2) Discontinuance of use.

- (a) If any nonconforming use of a structure ceases for any reason for a continuous period of 180 days as to its then current use, every subsequent use of the structure shall conform to the requirements specified for the zoning district in which it is located. Notwithstanding the above, within the area designated on the Regulating Plan with Required Retail Frontage in the Central Business District, if the nonconforming use ceases for a continuous period of 90 days as to its then current use, every subsequent use of the structure shall conform to the use requirements of the Regulating Plan.
- (b) Time spent renovating or repairing a structure devoted to the nonconforming use is not considered a discontinuance of the use, provided:
- (i) All appropriate development permits are obtained;
 - (ii) The renovation or repair is completed within 18 months after commencement of the repair or renovation;
 - (iii) The use is reestablished within one month after completion of the renovation or repairs; and
 - (iv) Any discontinuance of use caused by government action and without the contributing fault by the nonconforming user shall not be considered in determining the length of discontinuance.

(3) **Reconstruction or Repair After Damage.** Except as provided in Section 1.3.9, a structure used for a nonconforming use which is destroyed by any means, the following shall apply:

- (a) **Damage up to 50% of Value.** If a structure used for a nonconforming use is damaged by any means to an extent whereby the cost of restoring the current structure to its before-damaged condition would be 50% or less of the structure's current Improvement Value as determined by the Palm Beach County Property Appraiser before the damage, the structure may be reconstructed or repaired if:
 - i. The reconstruction or repair does not increase, expand, enlarge, or extend the nonconforming use; and
 - ii. The reconstruction or repair is actually begun within one year after the damage and is diligently pursued to completion.
- (b) **Damage Greater than 50% of Value.** If a structure used for a nonconforming use is damaged by any means to an extent whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the structure's current Improvement Value (as determined by the Palm Beach County Property Appraiser) before the damage, the structure shall only be reconstructed for a conforming use.
- (c) **No Restriction Repairs.** For properties located within the West Atlantic Neighborhood District, there is no restriction on repair of nonconforming single family residences located a minimum of 150 feet from Atlantic Avenue.

Section 1.3.4. 5 Nonconforming Structures: ~~Where a lawful structure existed on September 1, 1990, that could not now be built, such structure may be continued, subject to the following provisions:~~

- (A) **Definition.** A Nonconforming Structure shall mean any structure or building that was lawfully developed but does not comply with the following standards governed by the Land Development Regulations: size, height, coverage, setbacks, or other location or design aspects.

(B) Rules and Regulations of Nonconforming Structures.

~~(A)~~**(1) Enlargement or Alteration.** A nonconforming structure shall not be altered or enlarged in any way which increases its nonconformity, vertically or horizontally. ~~Any structure may however, be altered to decrease its nonconformity.~~ Enlargement or alteration of the structure in a way that complies with applicable dimensional standards and does not create any new nonconformity, or alteration of the structure in a way that decreases the degree of nonconformity, is permitted.

(2) Relocation. A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless the entire structure thereafter conforms to the requirements of this Code.

~~(B)~~**(3) Reconstruction or Repair After Damage.** Except as provided in Section 1.3.9 the following shall apply: should the nonconforming structure be destroyed by any means to an extent exceeding 50% of its replacement cost the structure shall only be reconstructed in conformance with the requirements for the zoning district in which it is located.

(a) Damage up to 50% of Value. If a nonconforming structure is damaged by any means to an extent whereby the cost of restoring the structure to its before-damaged condition would be 50 percent or less of the structure's current Improvement Value as determined by the Palm Beach County Property Appraiser before the damage, the structure may be reconstructed or repaired if:

- i.** The reconstruction or repair does not increase, expand, enlarge, or extend the degree of nonconformity; and
- ii.** The reconstruction or repair is actually begun within one year after the damage and is diligently pursued to completion.

(b) Damage Greater than 50% of Value. If a nonconforming structure is damaged by any means to an extent whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the structure's current Improvement Value as determined by the Palm Beach County Property Appraiser before the damage, the structure shall not be reconstructed or repaired except in conformity with the provisions of this Code.

- (c) **No Restriction Repairs.** For properties located within the West Atlantic Neighborhood District, there is no restriction on repair of nonconforming single family residences located a minimum of 150 feet from Atlantic Avenue.

- ~~(C) — Should the nonconforming structure be moved for any reason, for any distance whatever, it shall thereafter conform to the requirements for the zoning district in which it is located.~~

~~Section 1.3.5 Nonconforming Uses of Structures and Land:~~ Where lawful use of a structure and land existed on September 1, 1990, that would not now be allowed, such use of a structure and land may be continued, subject to the following provisions:

- ~~(A) — The nonconforming use may be extended internally throughout any part of the structure, provided the use is not extended to occupy any land outside the existing structure.~~
- ~~(B) — When a nonconforming use is discontinued or abandoned for a continuous period of 180 days, every subsequent use shall be in conformity with the requirements for the zoning district in which it is located.~~
- ~~(C) — Except as provided in Section 1.3.8, should the structure involving a nonconforming use be destroyed by any means to an extent exceeding 50% of its replacement cost, the structure shall only be reconstructed in conformance with both the development and use requirements for the zoning district in which it is located.~~

Section 1.3.6 Repairs and Maintenance On any nonconforming structure or on a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of fixtures, nonbearing walls, plumbing, or wiring, provided the repair work does not exceed 40% 25% of the current replacement cost of the structure Improvement Value of the structure as determined by the Palm Beach County Property Appraiser in any 12-month period, unless the damage is caused by an Act of God in which case Section 1.3.8~~9~~ shall apply. The following exceptions may apply:

- (A) **West Atlantic Neighborhood District.** For properties located within the West Atlantic Neighborhood District, there is no restriction on repair of nonconforming single family residences located a minimum of 150 feet from Atlantic Avenue. ~~In addition, the Site Plan Review and Appearance Board (SPRAB) or Historic Preservation Board (HPB) may approve exterior modifications to a noneonforming structure or a structure containing a nonconforming use, provided the modifications do not exceed 15% of the current replacement cost of the structure in any 12-month period, unless the damage is caused by an act of God in which case Section 1.3.8 shall apply. However, improvements to contributing structures within historic districts or to~~

~~individually listed historic structures can exceed the established 10% interior and 15% exterior maximum thresholds.~~

- (B) **Unsafe Structures.** If the Chief Building Official declares a nonconforming structure or structure containing a nonconforming use to be unsafe or unlawful due to its physical condition, such structure shall not be rebuilt, ~~repaired, or restored~~, except in conformance with the requirements of the zoning district in which it is located.
- (C) **Conforming Structures.** Nothing herein shall prevent the strengthening or restoring to a safe condition, any conforming structure building, or part thereof declared to be unsafe by the Chief Building Official.
- (D) **Historic Structures.** If granted approval by the Historic Preservation Board (HPB), as a Certificate of Appropriateness, repairs and maintenance to contributing structures within historic districts or to individually listed historic structures can exceed the 25% threshold listed in (A) above.

Section 1.3.7 Exterior Remodeling.

- (A) Exterior modifications to a nonconforming structure or a structure containing a nonconforming use shall be approved only in compliance with ALL of the following:
 - (1) The value of the modifications in any 12-month period does not exceed 25% of the current Improvement Value as determined by the Palm Beach County Property Appraiser, except that improvements to contributing structures within historic districts or to individually listed historic structures can exceed the 25% exterior remodeling maximum thresholds, if approved by the Historic Preservation Board.
 - (2) The exterior remodeling does not result in an increase of the floor area devoted to a nonconforming use;
 - (3) The exterior remodeling does not result in the increase in the number of dwelling units; and
 - (4) The modification is approved is as follows:
 - a. Single family detached residence or duplex requires approval by the Chief Building Official or designee.
 - b. Non-residential structure, mixed-use structure, or multifamily structure requires approval pursuant to Article 2.4.
 - c. Structures located within the historic districts or individually listed historic structures require approval by the Historic Preservation Board.

Section 1.3.78 Uses Allowed as Conditional Uses: Any legally established use which is now allowed as a conditional use in a zoning district but which, ~~prior to September 1, 1990~~ was once an legally established permitted use shall not be deemed a nonconforming use but shall without further action be considered a conforming conditional use. Any modification of a use considered a conforming conditional use must be processed in the same manner as a modification to a conditional use as required by these Regulations. A use previously established as a conditional use and now allowed as such, shall be subject to conditions as originally imposed thereon.

Section 1.3.89 Reconstruction Necessitated by An Act of God.

(A) **Definition.** An Act of God (the event) is an unusual, extraordinary, sudden and unexpected manifestation of the forces of nature which man cannot resist which may include, but not be limited to, floods, storms, fire and other catastrophes. An event shall not be considered an Act of God if it results from or is contributed to by the intentional or deliberate act or negligence of the owner that may have been prevented by the exercise of reasonable diligence or ordinary care. When an Act of God combines or occurs with the intentional or deliberate act or negligence of the owner and the damage necessitating the reconstruction would not have resulted but for the owner's intentional or deliberate act or negligence or omission the event shall not be considered an Act of God.

(B) ~~(A)~~ If a lawful nonconforming ~~residential or commercial~~ structure or a structure containing a nonconforming use is damaged or destroyed by an Act of God (the event), the owner shall be permitted to rebuild the structure in accordance with the use and number of units and square footage permitted by the certificate of occupancy in existence prior to the occurrence of the event. Where necessary, in order to accommodate the use or the same number of such units, structures may be reconstructed to heights previously established on building permit plans approved prior to the occurrence of the event. All rebuilding shall comply with fire and building codes in effect at the time of reconstruction, and shall comply to the greatest extent possible with applicable provisions of the Land Development Regulations.

(C) ~~(B)~~ ~~In order to~~ To receive approval for rebuilding pursuant to this section, applications for building permits must be submitted within one year of the date on which the event occurred and all reconstruction must be completed within three years from the date of the event.

(C) ~~The following definitions apply for the purposes of this section:~~

(1) ~~**Commercial Structure:** A Commercial Structure is a structure that is not residential as defined below.~~

(2) ~~**Residential Structure:** A Residential Structure is a structure that includes permanent dwelling units such as homes, townhouses, condominiums, and~~

~~apartments, as well as temporary dwellings such as hotel/motel rooms and resort dwelling units.—~~

- (3) ~~**Act of God (The Event):** An Act of God (the event) is an unusual, extraordinary, sudden and unexpected manifestation of the forces of nature which man cannot resist which may include, but not be limited to, floods, storms, fire and other catastrophes. An event shall not be considered an Act of God if it results from or is contributed to by the intentional or deliberate act or negligence of the owner that may have been prevented by the exercise of reasonable diligence or ordinary care. When an Act of God combines or occurs with the intentional or deliberate act or negligence of the owner and the damage necessitating the reconstruction would not have resulted but for the owner's intentional or deliberate act or negligence or omission the event shall not be considered an Act of God.—~~

Section 3. That ARTICLE 7.8 “UNSAFE BUILDINGS OR STRUCTURES” at Section 7.8.4 “Requirements for alterations, additions, or repairs” of the Land Development Regulations of the City of Delray Beach, Florida is hereby amended at Sub-section (A) to read as follows:

ARTICLE 7.8 UNSAFE BUILDINGS OR STRUCTURES

Section 7.8.4 Requirements for alterations, additions, or repairs

(A) Subject to the provisions of Paragraph (C) of this subsection, alteration, repair, or rehabilitation work may be made to an existing building or structure without requiring the entire building or structure to comply with all the requirements of this code, provided that the alteration, repair, or rehabilitation work conforms to the requirements of the code for new construction. However, if an existing building or structure is damaged by fire or otherwise requires repairs in excess of 50 percent of the structure's current Improvement Value as determined by the Palm Beach County Property Appraiser ~~of its replacement cost as proven by independent appraisal~~, the entire building or structure shall be made to conform to all current codes and Land Development Regulations for new buildings and current land use regulations. Additionally, any buildings or structure containing a nonconforming use must comply with current Land Development Regulations if required repairs of the structure exceed 25 percent of the structure's current Improvement Value as determined by the Palm Beach County Property Appraiser. ~~ten percent of the replacement cost of the structure or building as determined as noted above.~~

(B) – (D) (Shall remain the same as previously adopted).

Section 4. Repeal of Conflicting Ordinances. All ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

Section 5. **Severability.** If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this ordinance.

Section 6. **Inclusion in Code.** This ordinance shall be codified in the Code of Ordinances of the City of Delray Beach, Florida.

Section 7. **Effective Date.** The provisions of this Ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on second and final reading on this day of _____, 2018.

Shelly Petrolia, Mayor

ATTEST:

City Clerk

First Reading _____

Second Reading _____

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney