

PLANNING AND ZONING BOARD

STAFF REPORT

MEETING DATE: July 17, 2017

AGENDA NO: IX.A

AGENDA ITEM: Ordinance No. 20-17, a City-initiated amendment to Article 1.3 "Nonconforming Uses, Lots and Structures" 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; inserting previously adopted regulations on Lots of Records from Section 4.1.4. to Article 1.3; providing for repairs and maintenance of nonconforming structures and reconstruction necessitated by Acts of God; adopting entirely new provisions concerning nonconformities created by governmental eminent domain actions; and providing for minor subsection amendments to Articles 4.5 and 4.7 to provide for code references consistent with revised section numbers in amended Article 1.3.

FILE: 2017-135

PREPARED BY: Jasmin Allen, Senior Planner

ITEM BEFORE THE BOARD

The item before the Board is a recommendation to the City Commission regarding a City-initiated amendment to Article 1.3 "Nonconforming Uses, Lots and Structures" pursuant to Land Development Regulation (LDR) Section 2.2.6(D)(6), repealing and replacing Article 1.3 to provide amended regulations regarding nonconforming lots, uses of lands, and uses of structures; relocating previously adopted regulations for Lots of Records from Section 4.1.4. to Article 1.3; providing for repairs and maintenance of nonconforming structures and reconstruction necessitated by Acts of God; adopting entirely new provisions concerning nonconformities created by eminent domain action; and providing for minor subsection amendments to Articles 4.5 and 4.7 to provide for code references consistent with revised section numbers in amended Article 1.3.

BACKGROUND

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 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 however, 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.

Subsequent to 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 nonconforming regulations to clarify the language and the City's position regarding nonconforming uses and structures.

At its meeting of April 17, 2017, the Planning and Zoning Board considered an amendment to Article 1.3 "Nonconforming Uses, Lots and Structures". Upon consideration, the Planning and Zoning Board continued the action to afford staff the opportunity to address the comments raised by the Board. The proposed ordinance has been significantly revised and restructured and the following highlights the proposed changes.

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:
 1. A definition of a nonconforming lot of record which requires that such lots were legally created but do not now comply with the lot dimension standards as specified for that zoning district.
 2. Incorporate Section 4.1.4 "Uses of Lots of Record" which was previously only referenced herein. Section 4.1.4 "Uses of Lots of Record", provides the circumstances under which nonconforming residential lots could be developed.
 3. Provide regulations for nonconforming lots within non-residential zoning districts.
- 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 that was lawfully established but does not comply with the standards applied by 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.
- 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. 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 or the Historic Preservation Board.

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 this 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 1.3.10 Nonconformities Created by Governmental Eminent Domain Action: This is a new section which addresses the creation of nonconformities resulting from governmental eminent domain action. For existing developments, governmental eminent domain action may result in nonconforming parcels and site features such as landscaping, parking, building setbacks, vehicular use areas, and signage. The proposed ordinance provides that such nonconformities shall be considered legal and conforming subject to the provisions of this section.

1. The proposed ordinance specifies regulations when such action results in:

- a) Lots with Insufficient Lot Area, Frontage, Width or Depth. Any lot reduced in size which results in the lot being insufficient in lot area, frontage, width, or depth shall be deemed to be a conforming lot for the purposes of continuing an existing use, redevelopment of the property, or new development.
- b) Lots with Insufficient Setbacks. Any lot reduced in size which results in the lot being insufficient in setback(s) shall be deemed to be a conforming lot for the purposes of continuing an existing use or continuing structure. New construction and additions shall be in compliance with the following:
 - i. Any new construction, other than an addition to an existing structure, shall meet setback standards of the applicable zoning district.
 - ii. The setbacks for new additions to existing structures may be measured from the property line existing prior to the eminent domain proceedings.
- c) Lots with Insufficient Open Space or Excess Lot Coverage. Any lot reduced in size which results in the lot being insufficient in open space or exceeding the threshold for lot coverage shall be deemed to be a conforming lot for the purposes of continuing an existing use or continuing structure. Any new construction shall meet the standards of the applicable zoning district.
- d) Lots with Insufficient Landscaping. Any reduction in perimeter landscape buffers, buffers along rights-of-way and interior parking lot landscaping requirements shall be deemed to be conforming to the Land Development Regulation requirements.

- e) Lots with Insufficient Parking or Vehicular Use Area. Any reduction in parking or vehicular use area, which because of the taking do not comply, shall not be required to be reconstructed to meet such requirements and shall be deemed to be conforming to the Land Development Regulation requirements.
- 2. The ordinance provides that the Planning Director shall determine whether or not the granting of the exemption to the setback requirements shall result in a condition dangerous to the health, safety or welfare of the general public.
- 3. The ordinance also provides that the impacts of an eminent domain action may be addressed through the submittal and approval of a Site Cure Plan. The Site Cure Plan is intended to address off-street parking spaces, perimeter landscaping, interior landscaping, street trees, and other site conditions that may have been impacted by the eminent domain action. The Site Cure Plan should conform to the minimum Land Development Regulations requirements to the maximum extent practicable; but may include an increase in the percentage of compact parking spaces relative to standard spaces, reduction in drive aisle width dimensions, increased allowance of palm trees or non-canopy trees, reduction in the width of landscape buffer areas, or other applicable allowances primarily due to the circumstances of the property after the eminent domain action.
- **Other Changes:** Additional revisions within the Ordinance are included as "clean-up" primarily to provide consistency of text and formatting within the Section and to provide for minor subsection amendments to Articles 4.5 and 4.7 to provide for code references consistent with revised section numbers in amended Article 1.3.

PLANNING AND ZONING BOARD INQUIRIES
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The following addresses the comments/questions made by the Planning and Zoning Board at the April 17, 2017 meeting.

1. **Distinguish between a nonconforming structure or building and a building containing a nonconforming use.**

The proposed ordinance provides definitions for nonconforming use and nonconforming structure and distinguishes that the criteria of a nonconforming structure is tied to a physical aspect of the structure i.e. size, height, coverage, setbacks, or other location or design aspects.

2. **Can a nonconforming structure be modified or enlarged?**

The proposed ordinance provides that a nonconforming structure can be modified and enlarged, provided that it complies with applicable dimensional standards and does not create any new nonconformity or decreases the degree of nonconformity.

3. **Is the repair, maintenance or improvement value based on the entire structure or only that portion of the structure that is being improved?**

The value will be based on the entire structure. As the improvement value is determined by Palm Beach County Property Appraiser, it does not distinguish by structure or portions of.

4. **How is a lot of record defined?**

The City Attorney has provided a legal opinion regarding the interpretation and applicability of the definition of 'Lot of Record' which is attached

5. **Does the ordinance place a more important role on platted lots versus other lots recorded in the public records?**

The Code does not place more weight on platted versus unplatted lots and this is addressed in the legal opinion rendered by the City Attorney.

6. **The restriction that the square footage shall not exceed 10% of the minimum floor area for a single family residence on a nonconforming lot is arbitrary.**

The proposed ordinance removes this regulation and incorporates the existing code provisions for residential development on nonconforming lots of record.

7. **That the definition of lot of record should have a "frozen date" after which property owners should be required to obtain a subdivision.**

This will be taken into consideration with the proposed amendment to the definition on a lot of record.

8. **If a residential lot is rendered nonconforming due to an eminent domain action and a single family home is subsequently demolished, could a new home be constructed?**

The proposed regulations provide that lots with insufficient lot area, frontage, width or depth shall be deemed a conforming lot for the purposes of continuing an existing use, redevelopment of the property or new development.

9. **If a taking occurred which rendered a structure nonconforming with respect to setbacks, i.e. if the setback was 10' and after the taking the setback is 7' could a second story be built at 7'?**

This is addressed in Section 1.3.10(C)(2), lots with insufficient setback shall be deemed conforming. The setbacks for new additions to existing structures may be measured from the property line existing prior to the eminent domain action.

10. **That the request for a conformity certification shall only be made by the property owner and not the condemning authority?**

The ordinance has been revised to state that the request for the conformity certificate or site cure plan shall be made by the property owner.

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.

Housing Element, Objective A-9: The City shall support the conservation and rehabilitation of historically significant housing, especially where such housing is an identifying characteristic of a particular neighborhood.

ASSESSMENT

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 non conforming 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.

Finally, the provisions to exempt the remainder parcel resulting from a governmental eminent domain action from the requirement that future improvements shall be reconstructed to meet current requirements will alleviate the requirement of the property owner from seeking variances for such occurrences.

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", Section

4.1.4. "Uses of Lots of Record", Article 4.5 "Overlay and Environmental Management Districts" and Article 4.7 "Family/Workforce Housing", 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", Section 4.1.4. "Uses of Lots of Record", Article 4.5 "Overlay and Environmental Management Districts" and Article 4.7 "Family/Workforce Housing", 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).

RECOMMENDED ACTION

Recommend approval to the City Commission of the amendment to Land Development Regulation Article 1.3 "Nonconforming Uses, Lots and Structures", Section 4.1.4. "Uses of Lots of Record", Article 4.5 "Overlay and Environmental Management Districts" and Article 4.7 "Family/Workforce Housing", 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).

Report prepared by: Jasmin Allen, Senior Planner

Attachment: Ordinance No. 20-17

Memorandum from R. Max Lohman, City Attorney, dated January 31, 2017, regarding Lots of Record

ORDINANCE NO. 20-17

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; ADOPTING NEW REGULATIONS FOR PROPERTIES WHICH MAY BECOME NONCONFORMING OR BE RENDERED EVEN MORE NONCONFORMING BY GOVERNMENTAL EMINENT DOMAIN ACTIONS; AMENDING SECTION 4.1.4 USES OF LOTS OF RECORD TO REPEAL THIS SECTION IN ITS ENTIRETY; AMENDING ARTICLE 4.5. OVERLAY AND ENVIRONMENTAL MANAGEMENT DISTRICTS; AND ARTICLE 4.7 FAMILY/WORKFORCE HOUSING. PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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 April 17, 2017, and July 17, 2017 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 _____ 2017, and on _____ 2017, 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 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 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 shall mean a Lot of Record that was lawfully created, but does not comply with the lot standards of this Code.
- (B) **Rules and Regulations in Residential Zoning Districts**

- (1) **Lots with Insufficient Lot Area and/or Dimensions.** A Nonconforming Lot which is in compliance with all other zoning district regulations except minimum lot frontage or a Nonconforming Lot which does not comply with either lot area and minimum lot dimensions, shall only be developed with a single family detached residence as provided below.
 - (a) **Lots with no frontage.** A single family detached residential structure may be constructed on a lot with no frontage, provided that the lot conforms with all other aspects of the minimum lot size requirements. Further, such lots with no suitable access may achieve

private access for a single family detached residence and similar uses by means of a private access easement.

(b) **Lots with frontage of at least 50 feet. A residential structure may be constructed on any Nonconforming Lot within a residential zoning district which has a frontage of at least 50 feet.** The residential structure shall comply with all other zoning district regulations including but not limited to, minimum floor area, floor area ratio, lot coverage, setbacks, height and open space.

(c) **Lots with frontage greater than 40 feet and less than 50 feet.** The Nonconforming Lot shall only be developed for workforce housing as defined in Article 4.7 and shall comply with all of the following criteria:

- i. The Nonconforming Lot is located within the R-1-A, RL, and RM zoning districts;
- ii. The Nonconforming Lot is a minimum of 4,000 square feet;
- iii. The Nonconforming Lot conforms to setbacks; however, the minimum side setback may be reduced to a minimum of five feet if necessary to accommodate the designs set forth in Section 4.7.12(a);
- iv. The Nonconforming Lot meets all other development standards in the zoning district;
- v. The workforce housing unit shall meet the typical designs represented by the sketches set forth in Section 4.7.12(a);
- vi. Rear access via an alley shall be provided, if available; and
- vii. The unit must also contain design features such as, but not limited to, front porches, eyebrows, outriggers, gables, dormers, arbors, trellises, shutters, balconies, decorative vents, siding, textured stucco finishes, undulating facades and other such appropriate architectural features.

(d) **Lots with frontage less than 40 feet.** A Nonconforming Lot with a frontage of less than 40 feet shall not be developed, except as provided in Section (B)(1)(a) above.

- (2) **Lots with insufficient lot area.** A Nonconforming Lot which does not meet the minimum lot area as required for the zoning district shall not be developed with a duplex or multiple family structures.
- (3) **Two or more adjoining lots which have insufficient lot frontage or insufficient lot area and have same ownership.**
- (a) Adjoining lots which meet ALL of the following criteria shall only be developed in accordance with the minimum lot frontage and lot area requirements for the zoning district:
- i. Two or more lots are adjoining (or combination of lots and portion of lots are adjoining);
 - ii. These lots were under the same ownership as of October 18, 1994. Ownership shall be determined by the property tax rolls on file in the Palm Beach County Property Appraiser's Office;
 - iii. At least one of the lots has insufficient lot frontage or insufficient lot area; and
 - iv. The total lot frontage or the total lot area of the adjoining parcels is equal to or greater than that which is required by the zoning district.
- (b) Lots subject to the R-1-A (Single Family Residential) zoning district standards are exempt from the requirements in subsection (B)(3)(a) above.
- (c) A waiver to the requirements in subsection (B)(3) above may be granted by the City Commission pursuant to the provisions of LDR Section 2.4.7(B). Notice of the request shall be provided pursuant to Section 2.4.2(B)(1)(n) to the owners of all property located within 500 feet of the perimeter of the property on which the waiver is being sought. The notice shall be mailed no later than 10 calendar days prior to the meeting before the City Commission.
- (4) **Variances for lot size, dimensions and frontage for historic structure relocation.** A variance may be granted for the relocation of a historic structure onto a lot to protect the structure. Such variances may also include building setbacks and minimum floor area. If the relocation lot is not an individually

designated historic property or located within a historic district, then an individual historic designation shall be required in accordance with Section 4.5.1(C) and shall be reviewed concurrently therewith for a variance to be granted. All variance requests for relocation of historic structures must be submitted to the Historic Preservation Board in accordance with Section 2.4.7(A).

(C) Rules and Regulations of Nonconforming Lots in Non-Residential Zoning Districts:

- (1) Conforming non-residential structures legally established on a nonconforming lot may be continued, enlarged, extended, reconstructed or structurally altered in any way that is in conformance with this Code.
- (2) Nonconforming non-residential structures legally established may be continued, enlarged or redeveloped in accordance with Section 1.3.5.

Section 1.3.3 Nonconforming Uses of 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 of Land shall mean any use of land 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 of Land.

- (1) Enlargement.** A nonconforming use of land shall not be enlarged, increased, nor extended to occupy a greater area of land.
- (2) Relocation.** A nonconforming use of 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 of 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 of 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 of land.

Section 1.3.4 Nonconforming Use 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 structure may be permitted to extend internally throughout any part of the structure. Notwithstanding this allowance, properties located on streets designated on the Regulating Plan with Required Retail Frontage within the Central Business District shall not be permitted to extend a nonconforming use internally throughout any part of the structure. Additionally, nonconforming uses shall not be extended to occupy any land outside the existing structure or within any additional structure or building on the same lot not used for such nonconforming use.
- (2) Discontinuance of use.** If any nonconforming use of structure ceases for any reason for a continuous period of 180 days, every subsequent use of the structure shall conform to the requirements specified for the zoning district in which it is located.

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

(a) **Damage up to 50% of Value.** If a structure or building 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 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 or building 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 Improvement Value (as determined by the Palm Beach County Property Appraiser) before the damage, the structure shall only be reconstructed for a conforming use.

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 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.

(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 1.3.8-9 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 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 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) — 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 2, 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

- (A) 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 ~~10%~~ 25% of the current ~~replacement cost of the structure~~ Improvement Value of the building or 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 2 shall apply. ~~In addition, the Site Plan Review and Appearance Board (SPRAB) or Historic Preservation Board (HPB) may approve exterior modifications to a nonconforming 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) 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) Nothing herein shall prevent the strengthening or restoring to a safe condition, any building or part thereof declared to be unsafe by the Chief Building Official.
- (D) 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 use which is now allowed as a conditional use in a zoning district but which, ~~prior to September 1, 1990~~ was once an 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 a permitted use, shall be subject to conditions as originally imposed thereon.

Section 1.3.89 Reconstruction Necessitated by An Act of God.

- (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.
- (B) 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) Approval for rebuilding pursuant to this section shall exempt applicants from compliance with the limitations as set forth in Section 1.3.5(B)(3) Reconstruction or Repair After Damage, Section 1.3.6 Repairs and Maintenance, and Section 1.3.7 Exterior Remodeling.

Consider moving the definition below to (A) and renumbering to be consistent

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

- (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 1.3.10 Nonconformities Created by Governmental Eminent Domain Action.

(A) General Provisions.

- (1) Where an eminent domain action causes the creation of nonconformities, and/or increases in the degree of nonconformity of existing nonconformities, such nonconformities shall be considered legal and conforming subject to the provisions of this Section.
- (2) Nonconformities created by eminent domain actions that are declared conforming pursuant to this Section shall not be subject to the standards in Section 1.3 and the structures, land uses, and characteristics of uses may continue to exist in the configuration remaining after the condemnation.
- (3) Certain nonconformities that are created or increased in nonconformity by eminent domain proceedings may be deemed to be conforming pursuant to the rules and regulations below.
- (4) To certify the nonconformities recognized as conforming pursuant to the provisions of this Section, an Eminent Domain Conformity Certification or a Site Cure Plan, as applicable, may be submitted. The process and procedures are described in the section (D) below.

(B) Rules and Regulations.

- (1) **Lots with Insufficient Lot Area, Width or Depth.** Any lot reduced in size which results in the lot being insufficient in lot area, width, or depth in accordance with the requirements for the zoning district, shall be deemed to be a conforming lot for the purposes of continuing an existing use, redevelopment of the property, or new development.
- (2) **Lots with Insufficient Setbacks.** Any lot reduced in size which results in the lot being insufficient in setback(s) shall be deemed to be a conforming lot for the purposes of continuing an existing use or continuing structure. New construction and additions shall be in compliance with the following:

 - (a) Any new construction, other than an addition to an existing structure, shall meet setback standards of the applicable zoning district.
 - (b) The setbacks for new additions to existing structures may be measured from the property line existing prior to the eminent domain proceedings.
- (3) **Lots with Insufficient Open Space or Excess Lot Coverage.** Any lot reduced in size which results in the lot being insufficient in open space or

exceeding the threshold for lot coverage shall be deemed to be a conforming lot for the purposes of continuing an existing use or continuing structure. Any new construction shall meet the standards of the applicable zoning district.

(4) Lots with Insufficient Landscaping. Any reduction in perimeter landscape buffers, buffers along rights-of-way and interior parking lot landscaping requirements shall be deemed to be conforming to the Land Development Regulation requirements.

(5) Lots with Insufficient Parking or Vehicular Use Area. Any reduction in parking or vehicular use area, which because of the taking do not comply, shall not be required to be reconstructed to meet such requirements and shall be deemed to be conforming to the Land Development Regulation requirements.

(6) Reconstruction Necessitated by An Act of God. If any structure which was rendered nonconforming as a result of an eminent domain action and/or there was an increase in the degree of nonconformity of an existing nonconforming structure as a result of an eminent domain action, and after the eminent domain action the structure is damaged or destroyed by an Act of God (the event), the owner shall be permitted to rebuild the structure to their pre-taking condition setback, size, and height. 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) Eminent Domain Conformity Certification. As to exemptions in subsection (B)(2) above, the landowner may apply in writing to the City for a determination that the granting of the exemption will not result in a condition dangerous to the health, safety, or welfare of the general public. The Planning Director, or designee, shall, within 30 days of the filing of application, determine whether or not the exemption to the setback granted by this section will endanger the health, safety or welfare of the general public. If it is determined that the granting of the exemption under this section will not constitute a danger to the health, safety, or welfare of the general public, the Planning Director shall issue a signed letter to the owner of the remainder parcel and the condemning authority granting the exemption. The letter shall specify the details of the exemptions in a form that is recordable in the public records of Palm Beach County, Florida. If the application is denied, the Planning Director shall issue a signed

letter to the owner of the remainder parcel and the condemning authority specifying the specific health or safety ground upon which the denial is based. An appeal of the Planning Director's decision may be made to the Planning and Zoning Board pursuant to Section 2.4.7(E).

(D) Site Cure Plan

- (1) **Intent.** The impacts of an eminent domain action may be mitigated, either wholly or in part, through the submittal and approval of a Site Cure Plan by the voluntary action of the property owner prior to the final eminent domain action. The Site Cure Plan is intended to address off-street parking spaces, perimeter landscaping, interior landscaping, street trees, and other site conditions that may be impacted by the eminent domain action. The Site Cure Plan should conform to the minimum Land Development Regulations requirements to the maximum extent practicable; but may include an increase in the percentage of compact parking spaces relative to standard spaces, reduction in drive aisle width dimensions, increased allowance of palm trees or non-canopy trees, reduction in the width of landscape buffer areas, or other applicable allowances primarily due to the circumstances of the property after the eminent domain action.
- (2) **Submittal requirements.** The following shall be submitted:

 - (a) The legal description of the subject parcel;
 - (b) The name and address of the owner of the remainder parcel;
 - (c) The name and address of the condemning authority including the name and address of the condemning authority's representative;
 - (d) Evidence of the institution of eminent domain proceedings;
 - (e) A recent certified survey of the remainder parcel or of a sufficient portion thereof to determine the extent of the acquisition and the location and nature of all affected structures located on the remainder parcel;
 - (f) A site plan of the property subject to the eminent domain proceeding or sold under the threat of an eminent domain proceeding at a scale of no greater than one inch equals 30 feet, showing the location of all structures and improvements on the property and the extent of the condemner's acquisition;

- (g) Evidence that the condemning authority in the eminent domain proceedings is aware of the application;
 - (h) A table that compares pre-take, post-take (without proposed Cure Plan modifications) and proposed site modifications relative to the following, where applicable: lot area and width; building square footage, coverage, and floor area ratios; impervious surface ratio and percent of open space; sign face area and setback; number of signs; number of parking spaces and typical parking space and drive aisle dimensions; and landscape buffer width and percent of interior parking lot landscaping;
 - (i) An application fee established by resolution of the City Commission shall be paid to the City prior to the commencement of review; and,
 - (j) Any other material reasonably requested by the Planning Director which is relevant and material to the application.
- (3) **Approval.** The Site Cure Plan shall be approved as follows and shall render the property as conforming:
- (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.
- (4) **Vesting.** The Site Cure Plan shall constitute a covenant of compliance running with the land provided that the property owner executes the Site Cure Plan within 24 months of the approval date or seek an extension of the approval pursuant to Section 2.4.4(F).

Notwithstanding the above, any nonconformities created after the approval of the Site Cure Plan which are not as a result of the eminent domain actions, shall be subject to the provisions of Sections 1.3.3 through Section 1.3.9.

Section 3. That CHAPTER FOUR “ZONING REGULATIONS” at Section 4.1.4 “Use of Lots of Record” of the Land Development Regulations of the City of Delray “Beach, Florida, is repealed and shall hereby be amended to read as follows:

Section 4.1.4 Use of Lots of Record: Any lot, or parcel, which qualifies as a lot of record as set forth in these Regulations, but which does not comply with respect to minimum lot area and minimum lot dimensions specified for the zoning district in which it is located, may nevertheless be used (for purposes as allowed in that zoning district), as long as it complies with all other requirements of that zoning district, subject to the following limitations: ~~[Amd. Ord. 78-94 10/18/94]~~

— (A) Duplex and multiple family structures may not be constructed on a lot which has an area less than that provided for as the minimum lot area within the zoning district. ~~[Amd. Ord. 78-94 10/18/94]~~

— (B) A residential structure shall not be constructed on any lot, within a residential zoning district, which has frontage of less than fifty feet (50'). However, this provision shall not prevent construction of a residential structure on a Single Family Lot (or Parcel) of Record which conforms with all other aspects of minimum lot size requirements but which has no frontage. Further, such a Lot of Record with no suitable access may achieve private access for a single family residence and similar uses by means of a nonpublic (private) access easement. ~~[Amd. Ord. 78-94 10/18/94]~~

— (C) Except for single family residences subject to the R-1 A (Single Family Residential) zoning district standards, if two (2) or more adjoining lots (or combination of lots and portions of lots) of record were under the same ownership as of October 18, 1994, and if the total frontage and the total area is equal to or greater than that which is required by the zoning district regulations, said property shall not be developed except in accordance with the minimum frontage and lot area requirements of the district. Ownership shall be determined by the property tax rolls on file in the Palm Beach County Property Appraiser's Office as of October 18, 1994. ~~[Amd. Ord. 11-00 5/16/00]; [Amd. Ord. 78-94 10/18/94]~~

— Notwithstanding the above, a waiver to this requirement may be granted by the City Commission pursuant to the provisions of LDR Section 2.4.7(B). Notice of the request shall be provided pursuant to Section 2.4.2(B)(1)(n) to the owners of all property located within five hundred feet (500') of the perimeter of the property on which the waiver is being sought. The notice shall be mailed no later than ten (10) calendar days prior to the meeting before the City Commission. ~~[Amd. Ord. 11-00 5/16/00]~~

— For properties located within designated historic districts, or designated as historic sites, or properties listed on the Local Register of Historic Places, the Historic Preservation Board shall review the request prior to the City Commission meeting and shall forward its recommendation

~~on the request to the City Commission. Notification of the request shall be as described above, except that the mailing of the notices shall occur no later than ten (10) calendar days prior to the meeting before the Historic Preservation Board. [Amd. Ord. 11-00 5/16/00]~~

~~— (D) Within the R-1-A, RL and RM zoning districts, lots of record having at least forty (40) feet of frontage may be used for Workforce Housing, as long as the workforce housing unit meets the typical designs represented by the sketches set forth in Section 4.7.12(a), the lot is a minimum of 4,000 square feet and conforms to setbacks; provided, however, the minimum side setback may be reduced to a minimum five feet (5') if necessary to accommodate the designs set forth in Section 4.7.12(a) and meets other development standards in the zoning district. The Workforce Housing unit on a lot with frontage as herein described must include rear access via an alley, if available. The unit must also contain design features such as, but not limited to, front porches, eyebrows, outriggers, gables, dormers, arbors, trellises, shutters, balconies, decorative vents, siding, textured stucco finishes, undulating facades and other such appropriate architectural features. [Amd. Ord. 20-06 4/4/06]~~

~~— (E) Variances for lot size, dimensions and frontage, and building setbacks and minimum floor area may be granted for the relocation of a historic structure onto a lot in order to protect the structure. If the relocation lot is not individually designated historic or located within a historic district, then an individual historic designation shall be required in accordance with Section 4.5.1(C) and shall be reviewed concurrently therewith in order for a variance to be granted. All variance requests for relocation of historic structures must be submitted to the Historic Preservation Board in accordance with Sections 4.5.1 (D) and (J) for consideration. [Amd. Ord. 38-07 2/5/08]~~

Section 4. That ARTICLE 4.5, “OVERLAY AND ENVIRONMENTAL MANAGEMENT DISTRICTS”, at Section 4.5.1 “Historic Preservation: Designated Districts, Sites, and Buildings.”, at Subparagraph 4.5.1(E)(6)(c)(4)(e) “Relocation Review”, of the Land Development Regulations of the City of Delray “Beach, Florida, shall hereby be amended to read as follows:

Section 4.5.1 Historic Preservation: Designated Districts, Sites, and Buildings.

...

(c) Relocation of Eligible Historic Structures into a Historic District or on an Individually Designated Site: (First Paragraph shall remain in full force and effect as previously adopted)

(1)– (3) (These subparagraphs shall remain in full force and effect as previously adopted.)

(4) **Relocation Review:** Applications for the relocation of eligible historic structures, whether into a historic district or onto an individually designated site, may be administratively approved subject to compliance with the following:

a.- d. (These subparagraphs shall remain in full force and effect as previously adopted)

e. The relocation of eligible historic structures to non-conforming properties shall be considered in accordance with LDR Section 4.1.4 (E) Section 1.3.2 (B)(4).

Section 5. That ARTICLE 4.7, “FAMILY/WORKFORCE HOUSING”, at Section 4.7.12 “Other Incentives”, at Subsection a. of the Land Development Regulations of the City of Delray “Beach, Florida, shall hereby be amended to read as follows:

Section 4.7.12 Other Incentives

- a. In order to address a shortage of workforce housing units, incentives have been added to induce the construction of workforce housing units in the City. In addition to the other incentives contained within this article, lots of record that have at least 40 feet of frontage may be used for Workforce Housing, as long as the workforce housing unit meets the typical designs represented by the sketches set forth below and the additional requirements of 4.1.4(D) Section 1.3.2(B)(1)(b) as well as other applicable code provisions are met.

Note for Codification: Accompanying sketches following this subsection shall remain in full force and effect as previously adopted)

Section 6. That “Appendix A, Definitions”, of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended by adopting the following new definitions which shall be inserted alphabetically and shall read as follows:

NEW DEFINITION OF “LOT OF RECORD” THAT CONFORMS TO THIS ORDINANCE MUST BE ADOPTED FOR LEGISLATIVE CONSISTENCY PURPOSES.

Section 7. **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 8. **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 9. **Inclusion in Code.** This ordinance shall be codified in the Code of Ordinances of the City of Delray Beach, Florida.

Section 10. **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 _____, 2017.

Cary D. Glickstein, Mayor

ATTEST:

City Clerk

First Reading _____

Second Reading _____

CITY OF DELRAY BEACH

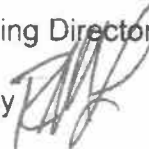
CITY ATTORNEY'S OFFICE



MEMORANDUM

DATE: January 31, 2017

TO: Tim Stillings, Planning & Zoning Director

FROM: R. Max Lohman, City Attorney 

SUBJECT: Lot of Record Issues, Code Interpretation and Applicability

You have requested a legal opinion from this office regarding the interpretation and applicability of the definition "lot of record" as it relates to certain platting and development/redevelopment requirements. You have also requested clarification of Section 5.3.1 of the Land Development Regulations related to the dedication of rights-of-way. Accordingly, I offer the following:

"Lot" is defined as follows:

A parcel of land of sufficient size to meet minimum zoning requirements for use, coverage, and area, and provide the required setbacks and other open space as are herein required. A lot shall have frontage on an improved public street or on an approved private street. LOT includes the words plot or parcel.

"Lot of record" is defined as follows:

A lot which is part of a subdivision recorded in the office of the Clerk of the Circuit Court of Palm Beach County, Florida. Whenever a portion of an existing lot of record is replatted and contained in a new plat, that portion of the lot on the original plat which has not been replatted and included in the new plat shall not be considered a lot of record and shall not be presumed to satisfy the definition of [a] lot as contained in this section or in 172.03 (sic)¹.

"Subdivision" is defined as follows:

¹ The correct statutory reference is 177.03, Fla. Stat., as Chapter 172, Fla. Stat. does not exist. Additionally, the second half of the second sentence, i.e., "...that portion of the lot..." should be stricken from this definition.

Any land, vacant or improved, which is divided or proposed to be divided into two or more lots, parcels, sites, units, or plots for the purpose of offer, sale, or development either on the installment plan or upon any and all other plans, terms, and conditions. The act "Subdivision" includes the division or development of residential and nonresidential zoned land, as well as the division of units, whether by deed, metes and bounds description, devise, intestacy, lease, map, plat, or other recorded instrument. For purposes of this chapter, "Subdivision" includes condominiums, cooperatives, and rental units. "Subdivision" includes resubdividing as replats.

When read together, as they must be, the definitions "lot", "lot of record", and "subdivision" mean, if a previously existing "lot" has been divided into two or more lots by recorded deed(s), those newly created lots are part of a subdivision. Accordingly, those newly created lots would then also be "lots of record."

Additionally, you have asked how a street (rights-of-way) might be dedicated if not platting. Pursuant to section 5.3.1., when development occurs absent platting, streets may be provided for through easements when the property being developed is privately owned. Therefore, if a private property owner wishes to or is required to dedicate right-of-way that dedication may be accomplished by grant of easement for perpetual public access for right-of-way purposes, which inures to the benefit of the City of Delray Beach.

Should you require any additional information, please don't hesitate to contact this office.