



## Legislation Text

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**File #:** 18-759, **Version:** 1

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**TO:** Mayor and Commissioners  
**FROM:** Timothy Stillings, Development Services Department  
**THROUGH:** Mark R. Lauzier, City Manager  
**DATE:** November 27, 2018

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. (SECOND READING)

**Recommended Action:**

Approve Ordinance No. 20-18 the amendments to Land Development Regulations regarding Article 1.3, as presented.

**Background:**

The proposed Ordinance is a City-initiated amendment to the Land Development Regulations to amend Article 1.3 "Nonconforming Uses, Lots and Structures", repealing and replacing Article 1.3 to provide amended regulations regarding nonconforming lots, uses of lands, 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).

The LDRs regulate use and changes to nonconforming structures, and use of land and structures which were lawful before the passage of certain code amendments which rendered such uses and structures either 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 for

nonconforming structures. The idea of providing these limitations is to prevent the continued investment into a structure or a structure containing a nonconforming use.

The proposed LDR amendment was initially considered by the Planning and Zoning Board (P&ZB) on April 17, 2017. The P&ZB 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, and recommended approval (7-0) 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 regarding Section 1.3.10, 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; and, (iv) that the amendment allows the vesting of nonconformities created by the eminent domain action. This section is not included in the proposed ordinance under consideration by the City Commission at this time.

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

- Removing the changes to relocate Section 4.1.4 "Uses of Lots of Record" to Article 1.3. The 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" 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.

The "major" changes proposed are as follows:

1. LDR Section 1.3.3 Nonconforming Uses of Land: This Section was revised to incorporate the following:
  - i. 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.
  - ii. 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". An examples of nonconforming uses of land include, but are not limited to, commercial parking lot in a single family residential zoning district.
  - iii. 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.
2. 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:
  - i. 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".
  - ii. The section is restructured to provide for rules and regulations for Enlargement, Discontinuance of Use and Reconstruction or Repair After Damage.
  - iii. 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.
  - iv. Clarifies regulations regarding the discontinuance of use.
3. 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:
  - i. 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.
  - ii. This Section is restructured to provide for rules and regulations for Enlargement or Alteration, Relocation, Reconstruction or Repair After Damage.
  - iii. 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.

4. 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:
  - i. 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.
5. 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.
6. 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.

#### Review by Others:

On September 17, 2018, the Planning and Zoning Board recommended approval to the City Commission of Ordinance No. 20-18 with the condition that non-conforming uses shall not be allowed to extend internally throughout the structure. This recommendation has been incorporated into the proposed ordinance.

The proposed ordinance has been revised to incorporate the Board's comments. The complete analysis of the proposed amendment is provided in the attached Planning and Zoning Board Staff Report of September 17, 2018.

#### Attachments:

- Ordinance No. 20-18
- Planning and Zoning Board Staff Report of September 17, 2018
- Planning and Zoning Board Staff Report of July 17, 2017

#### City Attorney Review:

Approved as to form and legal sufficiency.

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

N/A