

ORDINANCE 2017-\_\_\_\_\_

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA, CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENT TO CHAPTER 904, NONCONFORMITIES; BY AMENDING SECTION 904.05 EXPANSION, INCREASE, OR CHANGE OF NONCONFORMITIES; AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRs) CHAPTER 904, NONCONFORMITIES, BE AMENDED AS FOLLOWS:

**SECTION #1:**

**Amend LDR Section 904.05 Expansion, increase, or change of nonconformities; as follows:**

- (1) *Generally.* No nonconformity shall be enlarged, increased, or changed to a different nonconformity, except upon a determination by the director of community development or his designee that the change results in lessening of the degree of the nonconformity.
- (2) *Additions to nonconforming structures.* Additions to nonconforming structures containing conforming uses shall be permitted, if the additions to the structure(s) comply fully with setback and other applicable site-related regulations.
- (3) *Additions to, and development or re-development of, establishments with site-related nonconformities.* Additions to, and development or redevelopment of, structures on property with site-related nonconformities, where the structural additions and associated improvements do not warrant the submittal of a major site plan, may be permitted provided that such additions are in conformance with all applicable laws and ordinances of the county, do not create nonconforming uses or structures, and do not increase the degree of the existing site-related nonconformity. Where an addition or redevelopment proposal warrants the submittal of a major site plan application, all site-related nonconformities shall be terminated and brought into compliance with all applicable regulations of the county, with the following exceptions:
  - (a) Site-related nonconformities pertaining to building encroachments into required setback areas, and
  - (b) Site-related nonconformities created by public right-of-way acquisition.
- (4) *Verifying post right-of-way acquisition status.* Nonconformities, including nonconformities on single-family residential sites, created or increased in degree on a site by public right-of-way acquisition may be authorized by the community development director or his designee upon issuance of a letter verifying the post-acquisition legal nonconformity status of the site.

(5) *Cure plan required for commercial and multi-family sites where impacts of nonconformities created by right-of-way acquisition require mitigation.* Where right-of-way acquisition by a governmental agency such as Indian River County or the State of Florida from a commercial (includes multi-family) site will result in a nonconformity related to setbacks, open space, stormwater management, parking, landscaping, or buffer width, or will result in an increase in the degree of such a nonconformity that existed prior to the acquisition, such nonconformity or increase in the degree of nonconformity shall be allowed upon approval of a "cure plan" site plan.

(a) A cure plan site plan shall identify the following:

1. Site design changes and site improvements necessary to accommodate the right-of-way acquisition and reduce the degree of or mitigate the impacts of nonconformities. Such design changes and improvements may include but are not limited to parking and driveway additions and modifications, pedestrian and hardscape improvements, landscape and buffer plantings, sign relocations and modifications, and stormwater management system changes.
2. The parties responsible for installing the cure plan improvements, along with timeframes for completion of the changes and improvements.

(b) The cure plan site plan shall be accompanied by a document, in a form approved by the county attorney's office, providing written acknowledgment of cure plan related responsibilities by the parties involved in the acquisition.

(c) The community development director or his designee is authorized to approve cure plan site plans and may attach approval conditions to reduce the degree of or mitigate the impacts of nonconformities and/or ensure implementation of the cure plan site plan.

These regulations are intended to authorize non-conformities resulting from right-of-way acquisitions and provide for cure plans used in conjunction with the right-of-way acquisition process. These regulations are not intended to create any obligations beyond those obligations addressed in the right-of-way acquisition process.

**(6) *Single-family home non-conformities created by County-initiated rezoning. For a legally established non-conforming single-family home that became non-conforming due to a County initiated rezoning action occurring after January 1, 1980, a setback non-conformity may be extended for an attached accessory structure such as a screen enclosure provided such extension does not exceed the degree of setback non-conformity of the single-family residence.***

## **SECTION #2: SEVERABILITY**

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

**SECTION #3: REPEAL OF CONFLICTING ORDINANCES**

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

**SECTION #4: INCLUSION IN THE CODE OF LAWS AND ORDINANCES**

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

**SECTION #5: EFFECTIVE DATE**

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the 18<sup>th</sup> day of September, 2017, for a public hearing to be held on the 3rd day of October, 2017, at which time it was moved for adoption by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and adopted by the following vote:

Chairman Joseph E. Flescher	_____
Vice Chairman Peter D. O'Bryan	_____
Commissioner Bob Solari	_____
Commissioner Tim Zorc	_____
Commissioner Susan Adams	_____

BOARD OF COUNTY COMMISSIONERS  
OF INDIAN RIVER COUNTY

The Chairman there upon declared the ordinance duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BY: \_\_\_\_\_  
Joseph E. Flescher, Chairman

ATTEST: Jeffrey R. Smith, Clerk of Court and Comptroller

ORDINANCE 2017-\_\_\_\_

BY: \_\_\_\_\_  
Deputy Clerk

This ordinance was filed with the Department of State on the following date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

\_\_\_\_\_  
Dylan Reingold, County Attorney

APPROVED AS TO PLANNING MATTERS

\_\_\_\_\_  
Stan Boling, AICP; Community Development Director