

**INDIAN RIVER COUNTY, FLORIDA**  
**M E M O R A N D U M**

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**TO:** Jason E. Brown; County Administrator

**THROUGH:** Stan Boling, AICP; Community Development Director

**FROM:** John W. McCoy, AICP; Chief, Current Development

**DATE:** September 22, 2017

**SUBJECT:** Consideration of a Proposed Land Development Regulation Amendment to Chapter 904 (Nonconformities)

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It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its regular meeting of October 3, 2017.

**BACKGROUND**

At its meeting of July 11, 2017, the Board of County Commissioners (BCC) directed staff to draft an amendment to the Nonconformities Ordinance (Chapter 904) to allow non-conforming accessory structure additions to non-conforming structures under certain circumstances (see attachment #2). BCC discussion related to an appeal of a variance request by Hal & Martha McAdams which was denied by the Planning & Zoning Commission consistent with staff's recommendation for denial (see attachment #1). During that discussion, staff presented an alternative for a narrowly focused code change that would allow the addition of an accessory structure to a legally established nonconforming single-family home whereby, under certain circumstances, the addition could use the same setbacks as the non-conforming home.

Under the current code, additions to non-conforming structures are allowed provided the addition is completely conforming with the current land development regulations (LDRs). Thus, a building addition meeting the setback and all other zoning criteria could be added to a non-conforming structure. Presently, the nonconformities criteria prohibit any addition that would expand the degree of non-conformity.

If adopted, the proposed amendment (see attachment #5) will allow for accessory structure additions to single-family homes made non-conforming by a County-initiated rezoning actions to be located using the same setback as the non-conforming home.

**PZC ACTION**

At its August 24, 2017 meeting, the PZC conducted a public hearing and considered the proposed ordinance. The PZC voted 4-0 to recommend that the BCC adopt the proposed ordinance (see attachment #3).

The BCC is now to conduct a public hearing, consider the proposed ordinance, and approve, approve with modifications, or deny the proposed ordinance.

## **ANALYSIS**

A nonconforming structure, as provided for in the County's LDRs, is a structure that does not meet some aspect of the current land development regulations, as opposed to a conforming structure which does meet applicable LDR criteria. For single-family homes, typical non-conformities involve lot dimensions or setbacks smaller than current requirements. Non-conformities regulations, found in LDR Chapter 904, generally allow non-conformities to continue but not to be expanded. The proposed amendment will allow a narrowly focused exception to that general rule based on special circumstances.

A general zoning practice is to amortize and eliminate non-conformities over time, so that sites and structures become conforming when sites are redeveloped under current regulations. To that end, the County LDRs prohibit additions that would expand the degree of the non-conformity and sets limitations on repairs to and reconstruction of non-conforming structures. Those code provisions are in place in order to help amortize non-conforming structures. Consequently, any allowance to use a legally established non-conformity to justify an additional structure located consistent with a non-conforming setback needs to be narrowly focused. In the case of the proposed amendment, only homes made non-conforming by County-initiated rezoning action occurring after 1980 would qualify for the proposed special allowance. The 1980 date is proposed as an easy to reference date that will capture any County-initiated rezoning actions that may have created non-conformities.

Large scale county wide County-initiated rezonings occurred in 1985 and 1991. When those county-wide rezonings occurred, staff made an effort to limit the number of non-conformities created by those rezoning actions. Generally, areas that had larger lots were rezoned to districts that require larger front, rear, and side yard setbacks. While some smaller lots (less than the RS-3 district standard of 80' wide and 12,000 sq. ft. in area) were rezoned, the zoning ordinance was amended to provide for reduced setbacks for legally created non-conforming lots of record created prior to April 11, 1985 and June 18, 1991 (see attachment #4). Those provisions for legally established non-conforming lots addresses the vast majority of setback issues created by the 1985 and 1991 county-wide rezonings. However, rare cases such as the McAdams situation are not currently addressed in the code but will be under the proposed amendment. While it is not possible to quantify the number of rare cases similar to the McAdams situation, staff believes there are relatively few properties that have house placement circumstances, County-initiated rezoning effects, and pool placement circumstances similar to the McAdams.

If the LDR amendment is approved, the McAdams and those with similar circumstances would be allowed to go through the regular permitting process to allow an attached structure such as a screen enclosure with a reduced setback provided such addition is located with a setback that does not exceed the degree of setback non-conformity of the single-family residence.

## **RECOMMENDATION**

Staff recommends that the Board of County Commissioners adopt the proposed ordinance.

## **ATTACHMENTS**

1. July 11, 2017 BCC Staff Report
2. July 11, 2017 BCC Minutes
3. August 24, 2017 Draft PZC Minutes
4. 911.07 Excerpts
5. Proposed Ordinance