

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

TO: Jason E. Brown; County Administrator

THROUGH: Phillip J. Matson, AICP; Community Development Director

FROM: Ryan Sweeney; Chief, Current Development

DATE: January 11, 2021

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

It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its regular meeting of January 19, 2021.

BACKGROUND

On April 3, 2020, Mr. Jacob Allenbaugh filed an appeal of County staff's determination that a single-family home could not be built on a property containing a nonconforming communications tower. On July 23, 2020, the Planning and Zoning Commission (PZC) made a finding that staff's determination did not fail any of the three areas outlined in LDR Section 902.07(4), denied the appeal, and wholly affirmed staff's determination by a vote of 5-2 (see Attachment 1). While affirming staff's determination, several members of the PZC, in acknowledgement of the unique set of facts regarding the subject property, discussed the appellant's options for further appeal.

On September 22, 2020, the Board of County Commissioners (BCC) made a finding that the PZC's determination did not fail any of the three areas outlined in LDR Section 902.07(4), denied the appeal, and wholly affirmed staff and the PZC's determination by a vote of 4-1 (see Attachment 2). As part of the approved motion, the BCC directed staff to revisit the current applicable County land development regulations (LDRs), and to return back with an LDR amendment that would allow a maximum of two single-family homes to be constructed on the subject property. The BCC also provided specific direction on other criteria that should be included in the proposed amendment (see the analysis section of this report for more details).

In response to the direction provided by the BCC, Community Development staff has coordinated with the County Attorney, and prepared a narrowly focused amendment to Section 904.05 of the County LDRs (the Nonconformities Chapter). If adopted, the proposed amendment will allow construction of a maximum of two single-family homes on a property containing a nonconforming communications tower, and provides for additional criteria (see Attachment 4).

The BCC is now to consider the proposed LDR amendment and is to adopt, adopt with modifications, or deny the proposed amendment.

PLANNING AND ZONING COMMISSION (PZC) RECOMMENDATION:

At its meeting of December 10, 2020, the PZC voted 5-0 to recommend that the BCC adopt the proposed amendment (see Attachment 3).

ANALYSIS

Per Section 904.05 of the County LDRs: *[D]evelopment...of structures on property with site-related nonconformities...may be permitted provided that such additions...do not increase the degree of the existing site-related nonconformity.* Staff's original determination was that the property in question contained an existing site-related nonconformity (i.e. a 500 foot tall communications tower) because the current County LDRs prohibit commercial communications towers 150 feet and taller in the A-1 zoning district. Furthermore, the current LDRs require that communications towers be located (setback) a distance more than equal to three hundred (300) percent of the tower height from the nearest residential dwelling (existing or under construction). Therefore, the proposal to construct a new residential dwelling that was less than the currently required 300% setback was an increase in the degree of the site-related nonconformity which is not permitted under Section 904.05.

Based on direction provided by the BCC, staff has prepared a narrowly focused amendment to the Nonconformities Ordinance (Chapter 904) to accommodate a fairly unique nonconforming situation. The proposed amendment does not include any changes to the County's current tower regulations. It should also be noted that the proposed LDR amendment includes certain criteria and safeguards, as outlined during the BCC's deliberations. Those criteria are as follows:

- No more than two single-family homes shall be constructed on a property containing a nonconforming tower;
- All applicable zoning district criteria (allowable uses) and other zoning requirements (density, setbacks, lot size, etc.) shall be met;
- Any new single-family home shall be setback a minimum of 250 feet from the nonconforming tower; and
- The property owner (and successors and assigns) shall enter into a hold harmless agreement with the County through an appropriate instrument acceptable to the County Attorney's Office.

If adopted, the proposed LDR amendment will implement the above-referenced criteria. Staff acknowledges that the proposed amendment will only apply to very few nonconforming tower properties within the County, and supports the proposed LRD amendment.

RECOMMENDATION

Staff recommends that the Board of County Commissioners adopt the proposed amendment to the nonconformities ordinance Section 904.05.

ATTACHMENTS

1. Excerpt from July 23, 2020 PZC Minutes
2. Excerpt from Draft September 22, 2020 BCC Minutes
3. Excerpt from Draft December 10, 2020 PZC Minutes
4. Proposed Ordinance