

**LDCT-23-11 / ORDINANCE NO 23-93
COUNTY-INITIATED LAND DEVELOPMENT CODE TEXT AMENDMENT
NONCONFORMITIES CREATED BY GOVERNMENT ACQUISITION
PLN2305-0040**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA; AMENDING THE MANATEE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FINDINGS; CHAPTER 1, GENERAL PROVISIONS, SECTION 107.2, LEGALLY EXISTING NONCONFORMING USES, STRUCTURES AND LOTS CLARIFYING THE MEANING OF THE TERM “ANOTHER GOVERNMENTAL AGENCY” AND IMPLEMENTING SOME GRAMMATICAL CHANGES; SECTION 107.5, NONCONFORMING USES, UPDATING THE REVIEW PROCESS RELATING TO CONDITIONAL USES; SECTION 107.6, NONCONFORMING STRUCTURES, EDITING TO CONFORM TO THE NEW TITLE TO SECTION 107.8, NONCONFORMING LOTS, AND IMPLEMENTING “ANOTHER GOVERNMENTAL AGENCY” MODIFICATION; AND SECTION 107.9., NONCONFORMITIES RESULTING FROM EXERCISE OF POWER OF EMINENT DOMAIN, REVISING THE TITLE OF THIS SECTION AND EXTENDING PROTECTIONS FROM NONCONFORMITIES RESULTING FROM ALL TYPES OF GOVERNMENTAL ACQUISITIONS; PROVIDING FOR OTHER AMENDMENTS AS MAY BE NECESSARY FOR INTERNAL CONSISTENCY; PROVIDING FOR CODIFICATION; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED by the Board of County Commissioners of Manatee County, Florida:

Section 1. Purpose and Intent. This Ordinance is enacted to carry out the purpose and intent of, and exercise the authority set out in, the Community Planning Act, Part II of Chapter 163, Florida Statutes, and Chapter 125, Florida Statutes, as amended.

Section 2. Findings. The Board of County Commissioners relies upon the following findings in the adoption of this Ordinance:

1. The proposed text amendment includes Chapter 1 – General Provisions, Section 107.9., Nonconformities Resulting from Exercise of Power of Eminent Domain. Currently, property owners are only protected from nonconformities resulting from government acquisitions when said acquisitions are under the threat of eminent domain or through the exercise of eminent domain.
2. The County has initiated LDC Text Amendment No. LDCT-23-11 (the “LDC Text Amendment”) to extend protections from nonconformities resulting from all acquisitions, whether said acquisitions are by gift, purchase, or through the exercise or threat of exercise of eminent domain and afford the same protections to property owners who are willing to sell or gift to the County or other government entity before eminent domain powers are exercised.

3. Section 163.3174(4)c, Florida Statutes, provides that the Local Planning Agency shall review proposed land development regulations and make recommendations to the governing body as to consistency of the proposed land development regulations with the adopted Comprehensive Plan.
4. Section 301.1.D., Land Development Code, authorizes the Planning Commission to hold public hearings and make recommendations as to the proposed amendment to the text of the Land Development Code.
5. The Planning Commission, acting in its capacity as the Local Planning Agency, held a duly noticed and advertised public hearing on October 12, 2023, as to the proposed LDCT Amendment and found it to be consistent with the Manatee County Comprehensive Plan and the standards for review in Section 341, Land Development Code and has recommended their adoption to the Board.
6. The Board of County Commissioners held a duly noticed and advertised public hearings on November 2, 2023, and December 7, 2023, to receive public comments and consider the recommendation of the Planning Commission as to the LDC Text Amendment.
7. The adoption of the LDC Text Amendment will foster and preserve the public health, safety and welfare and aid in the harmonious, orderly, and progressive development of Manatee County and thus will serve a valid public purpose.

Section 3. Adoption of the Land Development Code Text Amendment. The Land Development Code Text Amendment attached to this Ordinance and incorporated herein as Exhibit "A" is hereby adopted as an Amendment to the Land Development Code of the County. The Land Development Code Text Amendment shall consist of the following Chapter and Section of the Land Development Code as set forth in the following Exhibit "A", with deleted text indicated by ~~strikethrough~~ and added text indicated by underline:

CHAPTER 1, GENERAL PROVISIONS

- Section 107.2., *Legally Existing Nonconforming Uses, Structures and Lots.*, grammatical clean-up to address "another governmental agency" besides state agencies which may exercise their power of eminent domain on the acquisition of real property within unincorporated Manatee County;
- Section 107.5., *Nonconforming Uses.*, amend text to remove an outdated review process related to Conditional Uses;
- Section 107.6., *Nonconforming Structures.*, grammatical clean-up to address the new title to Section 107.8., *Nonconforming Lots.*, grammatical clean-up to address "another governmental agency" besides state agencies which may exercise their power of eminent domain on the acquisition of real property within unincorporated Manatee County;
- Section 107.9., *Nonconformities Resulting From Exercise of Power of Eminent Domain.*, to revise the title of this section and to extend protections from nonconformities resulting from all acquisitions, whether said acquisitions are by gift, purchase, or through the exercise or threat of exercise of eminent domain and afford the same protections to property owners who are willing to sell or gift to the County or other government entity before eminent domain powers are exercised. Remove outdated references/processes (i.e., notice of severance).

Section 4. Codification. The publisher of the County's Land Development Code, Civic Plus, is directed to incorporate the amendment in Section 3 of this Ordinance into the Land Development Code.

Section 5. Applicability. The amendment set forth in this Ordinance shall apply to all applications, decisions or controversies pending before the County upon the effective date hereof or filed or initiated thereafter.

Section 6. Severability. If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

Section 7. Effective Date. This Ordinance shall become effective as provided by law.

PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of County Commissioners of Manatee County, Florida, this the 7th day of December 2023.



**BOARD OF COUNTY COMMISSIONERS OF
MANATEE COUNTY, FLORIDA**

By: 
Kevin Van Ostenbridge, Chairman

ATTEST: ANGELINA COLONNESO
Clerk of the Circuit Court and Comptroller

By: 
Deputy Clerk

EXHIBIT “A”

TEXT AMENDMENT

The proposed text amendment is provided and shown in ~~strikethrough~~ or underline formatting.

CHAPTER 1 – GENERAL PROVISIONS

[***]

Section 107 - Nonconformities

[***]

107.2. Legally Existing Nonconforming Uses, Structures and Lots.

Any nonconforming use, structure, or lot which lawfully existed as of the effective date of this Code and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of this Code, or any subsequent amendment to this Code, or as a result of an acquisition of real property by Manatee County or other governmental agency ~~a state agency through the exercise or threat of exercise of its power of eminent domain~~ may be continued or maintained only in accordance with the terms of this Section.

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107.5. Nonconforming Uses.

A. Change or expansion of nonconforming use.

1. A legally existing nonconforming use may be changed to a permitted use ~~or conditional use~~ for the zoning district in which the property is located, in accordance with the procedures of Chapter 3 of this Code. A nonconforming use shall not be changed to another nonconforming use.
2. A lawful nonconforming use shall not be changed, intensified, expanded, extended or enlarged in any manner that increases its nonconformity to current development standards. Exceptions from this provision include:
 - a. Residential Accessory Uses and Home Occupations provided they otherwise comply with this Code.
 - b. Legally established light industrial uses located within the R/O/R future land use category may change to a different light industrial use or may be enlarged provided the change or expansion is approved through the Special Permit approval process. However, should the operation cease for a period of six (6) months, it may not be re-established.
3. A legally existing nonconforming use classified as a "Special Permit" in the zoning district in which it is located, is hereby deemed a lawful Special Permit use for the purpose of this Code and shall be subject to the following:

- a. Such use shall not be replaced or expanded, except in accordance with the provisions of Section 316, Special Permit and this Section.
 - b. The structure occupied by such use may be expanded or enlarged by not more than one thousand (1,000) square feet within any period of three (3) years without requiring an additional Special Permit approval, and provided that all dimensional requirements can be met, unless this Code or the Special Permit approval specifically prohibits such expansion or enlargement.
4. A lawfully existing nonconforming use that would now require administrative approval shall be deemed to have administrative approval and shall be subject to the following:
 - a. The structure occupied by such use may be expanded or enlarged by not more than one thousand (1,000) square feet or ten (10) percent of the gross floor area, whichever is greater, not to exceed two thousand (2,000) square feet in area within any period of three (3) years without requiring administrative approval, and provided that all dimensional requirements can be met, unless this Code or previous approvals specifically prohibit such expansion or enlargement. An existing or new administrative approval shall not authorize or otherwise exempt a project from these square foot provisions.
- B. *Change to Conforming Use.* If any nonconforming use is changed to a conforming use, it shall not thereafter be put into any nonconforming use.
- C. *Discontinuation of Nonconforming Use.* If a nonconforming use is discontinued for a period of one (1) year or more, including any period of discontinuation before the effective date of this Code except where governmental action impedes, such use, then that use shall not be renewed or re-established thereafter and any subsequent use of the lot or structure shall conform to the use regulations of the zoning district in which it is located.

Standard agriculture practice which results in allowing a field to lie fallow will not be considered a discontinuation of a nonconforming use. Said nonconforming use is subject to verification by the property owner and County staff as deemed appropriate.

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107.6. Nonconforming Structures.

- A. **Repair or Reconstruction of Nonconforming Structure.** Only ordinary repairs and maintenance as defined by this Code may be made to a nonconforming structure, unless exempted below.
 1. If a nonconforming structure is damaged by a fire, flood, windstorm, or similar event, and the cost of restoring the structure to its condition immediately prior to the event is not considered a substantial improvement or repair of substantial damage, then the structure may be restored to its original nonconforming condition, provided that:
 - a. A building permit is secured;
 - b. Reconstruction is started within one (1) year from the date of the damage; and
 - c. Such reconstruction is diligently pursued to completion.
- Cost of restoration shall be determined in the manner established by the Department Director.

2. If a nonconforming structure is destroyed or damaged by a fire, flood, windstorm, or similar event, and the cost of restoring the structure to its condition immediately prior to the event constitutes a substantial improvement, then the structure shall not be restored unless the structure as restored, and the use thereof, will thereafter conform to all requirements of the zoning district in which it is located, this Code, and the Manatee County Building Code. Structures subject to the exception provision in Section 107.6 and/or Section 107.9.C may be restored pursuant to Section 107.9.C regardless of the cost of restoration. Cost of restoration shall be determined in the manner established by the Department Director.
3. All structures located in the one hundred (100) year floodplain, shall adhere to the provisions of the Floodplain Management Ordinance.
4. If Manatee County is declared a disaster area as a result of a storm, hurricane, tornado, flood or other similar act of God, by the Governor of the State of Florida or the President of the United States, then the provisions of Section 107.6.A.1 for the repair or reconstruction of a nonconforming structure shall be hereby modified to allow the replacement or reconstruction of the structure on the original foundation, in compliance with the Floodplain Management Ordinance, if applicable, and the Manatee County Building Code. This exception shall be allowed only if all of the following conditions are met:
 - a. The original structure was a multifamily residential building, mobile home in a mobile home park or subdivision, single-family detached home that is located in the Cortez Fishing Village HA Overlay District, or a single-family attached dwelling;
 - b. The necessary building permits and final site plans are issued within one (1) calendar year of the aforementioned storm, hurricane, tornado, flood or other similar acts of God; and
 - c. The repair or reconstruction is done in a manner substantially consistent with the prior development approvals for those structures in regards to height, area, type of structures, setbacks and density. Other Code and Comprehensive Plan provisions not inconsistent with the foregoing must be met.

Any Building Permits issued under this modification may be allowed a maximum of one time extension not to exceed ninety (90) days as may be allowed by the Manatee County Building Code.

This modification shall not exempt developments from meeting the minimum floor elevation or other provisions of Section 403.8.H (Coastal High Hazard Area Overlay District/Reconstruction of Structures), the Floodplain Management Ordinance, and Manatee County Building Codes.

- B. **Alteration or Enlargement of a Nonconforming Structure.** Except as provided in this Section or in Section 107.9 (Nonconformities Resulting From Exercise of Power of Eminent Domain or Other Acquisition by Governmental Agencies), a nonconforming structure shall not undergo any substantial improvement or be enlarged or moved in any manner unless provided below:
1. The enlargement, movement, or alteration itself conforms to the requirements of this Code and the Manatee County Building Code; and/or such alteration or enlargement makes the structure conforming;
 2. The use of the structure is conforming; and
 3. The property owner or developer secures the Department Director's approval for the enlargement or addition in accordance with this Code and other applicable regulations.

- C. **Movement of a Nonconforming Structure.** Except as provided in this Section or in Section 107.9 (Nonconformities Resulting From Exercise of Power of Eminent Domain), a nonconforming structure shall not be moved in whole or in part to any other location unless every portion of such structure and the use thereof is made to conform with all requirements for the zoning district to which such structure is moved. The relocation of the structure shall also comply with the Manatee County Building Code and other applicable County regulations.
- D. **Nonconforming Structures in the Cortez Fishing Village HA Overlay District.** Single-family historic structures in the Cortez Fishing Village HA Overlay District which are legally nonconforming structures due to setbacks may be renovated and expanded at existing side yard setbacks for corner lots, or rear yard setbacks, provided that the renovation, expansion or addition meets the standards of other sections of this Code and the following additional standards:
1. Any addition or renovation must receive a Certificate of Appropriateness by the Historic Preservation Board;
 2. The structure for which the renovation or addition is requested is residentially used;
 3. The existing side yard setbacks for corner lots on one side, must be no less than two (2) feet and no less than ten (10) feet on the other side;
 4. The addition or expansion shall be located no closer than ten (10) feet to another existing structure on an adjacent lot;
 5. No fill shall be used to elevate the addition; and
 6. The addition or renovation must comply with the Cortez Design Guidelines.
- E. **Unsafe Structure.**
1. Any nonconforming structure determined to be unsafe by the Department Director may be restored to a safe condition, subject to the regulations for nonconforming structures. Such work on any nonconforming structure shall not place it in greater nonconformity.
 2. If a nonconforming structure or portion of a structure contains a nonconforming use and becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by the Department Director to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations for nonconforming structures and district in which it is located. (Refer also to the Manatee County Unsafe Structure Ordinance and Section 106, Enforcement, Violations, and Penalties).

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107.8. Nonconforming Lots.

- A. **Applicability.** The establishment of a use on a nonconforming lot shall be allowed provided that the lot:
1. Was a legally created lot of record on the effective date of this Code;
 2. Was not created in violation of this Code; and
 3. Was not part of a series of two (2) or more vacant lots which:
 - a. Were in a single ownership, and

- b. Share continuous street frontage along their front lot lines, and,
- c. Are sufficient when taken together to meet the minimum lot area and width requirements of the zoning regulations of this Code or prior zoning Codes which first made the lot nonconforming.

In the event that a nonconforming structure is located on a lot which is contiguous to one (1) or more vacant lots, all under the same ownership, then the vacant lot(s) may be separated from the lot with a structure provided the lot with the structure maintains minimum district setbacks adjacent to the lot being separated.

- B. **Reduction in Size Prohibited.** Except where necessitated by government action, a lot which is nonconforming by reasons of area shall not be reduced by area, and a lot which is nonconforming by width shall not be reduced by width. No lot shall be reduced in width or area where such reduction will make such lots nonconforming, unless necessitated by government action.
- C. **Use of Nonconforming Lots.** Nonconforming lots may be developed notwithstanding the failure of the lot to meet minimum lot area or minimum lot width requirements specified in the applicable district regulations, provided that the proposed development is a permitted use in the applicable district. All other regulations of this Code, including required yards, shall be met.
 - 1. Nonconforming lots which were legally created and are in single ownership, sharing continuous street frontage, if taken together would meet the minimum zoning district regulations, do not have to combine lots to meet the zoning district regulations if all of the lots are developed as affordable housing.
 - 2. Nonconforming lots created prior to this Code that contained more than one (1) dwelling unit, were not in violation of previous Codes, and did not increase the density within the approved subdivision may now gain access by easement per Section 1001.1.B.3.
 - 3. Nonconforming lots which were legally created and are in single ownership, sharing continuous street frontage, if taken together would meet the minimum zoning district regulations, do not have to combine lots to meet the zoning district regulations if the nonconformity exists only as a result of the exercise of eminent domain powers by the County or other governmental agency. ~~a state agency.~~
- D. **Procedure.** As part of the application for a building permit for a nonconforming lot, the applicant shall file the following documents with the Department Director:
 - 1. *Drawing.* Scaled drawing with dimensions and distances showing boundary lines of the lot and the proposed location, size and use of the structure.
 - 2. *Certificate.* Certificate of apparent ownership, or title opinion, stating that the Nonconforming lot of record is exempted from the minimum lot area and width requirements of this Code or prior zoning ordinances which made the lot nonconforming, the date and identification of the instrument by which the lot was created, and the basis for claiming nonconforming status.
- E. **Lots in Nonconforming Mobile Home, Recreational Vehicle Parks and Subdivisions.** In Mobile Home and Recreational Vehicle Parks without recorded lots or lot lines, the midpoint of the shortest line that can be drawn between two (2) structures shall be employed as the lot line for the purpose of this Code.

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Section 107.9. - Nonconformities Resulting From Exercise of Power of Eminent Domain or Other Acquisition by Governmental Agencies.

- A. **Applicability.** The provisions of this Section shall apply to real property of which a portion is acquired by Manatee County or other governmental agency. ~~a state agency through the exercise or threat of exercise of eminent domain powers on or after February 1, 2006.~~ This Section shall apply without regard to whether the real property acquisition is acquired pursuant to an order of a court of competent jurisdiction, pursuant to a gift, or ~~is~~ pursuant to a ~~process~~ of negotiated purchase. This Section shall apply without regard to whether the acquisition was initiated by Manatee County or other governmental agency. ~~a state agency.~~
- B. **Existing Nonconformities Preserved.** A nonconformity of any nature whatsoever which existed at the time of the real property acquisition shall not be deemed to be permitted, exempted, or reduced, in any manner, nor to any extent, by the application of this Section.
- C. **Nonconformities Created by Government Acquisition. ~~Eminent Domain Proceedings.~~**
1. A nonconformity created through the conveyance of real property to Manatee County or other governmental agency as described herein ~~exercise of eminent domain powers~~ shall not constitute a violation of this Code, and the owner of any property that is the subject of such nonconformity shall not be required to cure such nonconformity.
 2. Any structure or site improvement subject to this Section may be rebuilt, relocated on site, or reconstructed to cure the adverse impacts that result from the exercise of eminent domain powers, even if such rebuilding, relocation on site, or reconstruction does not conform to this Code with respect to area, width, depth, setbacks, required yards, landscape buffer, location of improvements, location of signs, or parking, so long as the following criteria are met:
 - a. The proposed rebuilding, relocation on site, or reconstruction is necessary to allow use of the property consistent with or similar to the pre-acquisition use of the property;
 - b. The size or intensity of the structure or use is not expanded in violation of Section 107.5.A or 107.6.B hereof; and
 - c. The rebuilding, relocation on site, or reconstruction will not result in a violation of the Comprehensive Plan.
 3. Either Manatee County or other governmental agency ~~the state agency~~ exercising its eminent domain powers, as the case may be, is authorized to apply for such permits or approvals necessary to carry out the rebuilding, relocation, or reconstruction of a structure or site improvement pursuant to this Section 107.9.C.
 - ~~4. Following any acquisition of a portion of real property subject to this Section by Manatee County, the County shall endeavor to record with the Clerk of the Circuit Court a notice of severance on the remainder of the real property not acquired. The failure to record such notice shall not limit or prevent the application of this Section to the subject property.~~
 4. When Manatee County or other governmental agency acquires real property and this creates a nonconformity, other than use, the department director or designee is authorized to certify the nonconformity subject to the following conditions:
 - a. Minor amendments to the nonconformity may be permitted allowing reasonable use of the nonconformity and maintenance of its legal nonconforming status.

b. The nonconformity must be brought into compliance with the standards of this Code at the time of redevelopment or if the substantial improvement threshold is reached.

- D. **Future Right-of-Way and Fire Safety Regulations.** The provisions of Sections 107.9.A to 107.9.C shall not apply nor be interpreted to waive or alter the provisions of this Code pertaining to future right-of-way lines, nor shall the provisions of this Section waive or alter the application of any fire prevention code or fire prevention requirements, either current or in the future, or applicable provisions of the Manatee County Building Codes.



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

December 12, 2023

Honorable Angelina Colonnese
Clerk of the Circuit Court
Manatee County
Post Office Box 25400
Bradenton, FL 34206

Dear Honorable Angelina Colonnese:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Manatee County Ordinance No. 23-93, which was filed in this office on December 7, 2023.

Sincerely,

Anya Owens
Administrative Code and Register Director

ACO/wlh