

**SPONSORED BY:**

**Councilor Diamond**



**ORDINANCE NO. 2017-24**

**A BILL TO BE ENTITLED**

**AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA AMENDING CHAPTER 27, UNIFIED LAND DEVELOPMENT REGULATIONS; ARTICLE XVIII, NONCONFORMING LOTS, STRUCTURES, USES AND SIGNS, SECTION 27-701, INTENT; SECTION 27-703, PURPOSE; SECTION 27-705, NONCONFORMING LOTS OF RECORD; SECTION 27-706, NONCONFORMING DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.**

**Whereas**, the City Council of the City of Neptune Beach, Florida has determined that it is necessary to amend the following:

**Now, Therefore**, be it ordained by the City Council of Neptune Beach, Florida:

**Section 1.** Chapter 27, Unified Land Development Regulations; Article XVIII, Nonconforming Lots, Structures, Uses and Signs; Section 27-701, Intent; Section 27-703, Purpose; Section 27-705, Nonconforming Lots of Record; Section 27-706, Nonconforming Development, shall be amended as follows:

**Section 27-701. Intent.**

It is the intent of this article to permit nonconformities to continue until they are removed or otherwise discontinued. Existing nonconformities shall not be enlarged upon, expanded, intensified, nor be used as grounds for adding other structures (except replacement of existing nonconforming decks and/or balconies, provided such structures do not encroach on any City right-of-way, or development meeting requirements set forth in 27-229-1 and 27-705(a)(1)) or uses prohibited elsewhere in the same district.

(Ord. No. 2004-10, § 1, 10-4-04)

**Section 27-703. Purpose.**

- (a) The provisions of this article shall be implemented to achieve the following purposes and intentions of the City Council:

(1) To permit nonconformities until such time as they are removed, discontinued or enlarged (except replacement of nonconforming existing decks and/or balconies, provided such structures do not encroach on any City right-of-way, or development meeting requirements set forth in 27-229-1 and 27-705(a)(1);

(2) Nonconforming uses are declared by this chapter to be *inherently* incompatible with permitted uses in the districts involved.

(b) Notwithstanding the provisions of subsection (a) above, it is intended that the enforcement of this section shall not unduly restrict the right to reconstruct substantially damaged or destroyed residential structures, in residential districts, where nonconformities exist only in regard to densities, yards, and lot areas.

(Ord. No. 2004-10, § 1, 10-4-04)

**Section. 27-705. Nonconforming lots of record.**

(a) Notwithstanding limitations imposed by the provisions of this chapter, nonconforming lots of record may be developed and used for any use permitted in the district, provided:

- (1) That all other density control requirements are met; and are nonconforming solely due to requirements set forth in Sec. 27-226(f)(2)b; and
- (2) That such lots shall have a minimum width throughout their length of at least forty (40) feet; and
- (3) That any new development shall conform to the required setbacks, lot coverage limitations and off-street parking requirements for the district in which it is located.

(b) Wherever there exists a structure which by itself or with accessory structures exists on a parcel containing more than one (1) nonconforming lot of record, said building site shall not henceforth be reduced or diminished in dimension or area below the minimum requirements set forth in this chapter for the district in which it is located (regardless of whether the structure or accessory structures have been demolished, destroyed or removed therefrom, in whole or in part).

(c) If two (2) or more lots or combinations of lots and portion of lots with continuous frontage are under single ownership at any time after August 1, 1994, and if all or part of the individual lots do not meet the requirements for minimum lot width or area imposed by any provision of this chapter, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter, and no division of said parcel shall be made thereafter which leaves

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remaining any lot or parcel with width or area below the minimum requirements stated in this chapter.

(Ord. No. 2004-10, § 1, 10-4-04)

**Section . 27-706. Nonconforming development.**

(a) *Continuance of nonconforming development.* Subject to the provisions below for terminating nonconforming development, nonconforming development may remain in its nonconforming state, in accordance with the following:

- (1) The nonconformity was otherwise lawful and in existence on the effective date of this Code, although such use does not now conform to the provisions hereof.
- (2) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building, if a building permit was issued prior to the adoption or amendment of this Code causing the nonconformity provided that construction commences within six (6) months of issuance and continues in good faith, as per article I. Otherwise, the issued building permit shall become invalid and shall not be renewed except in conformity with all provisions of this Code.
- (3) Where open land, i.e., improved or unimproved vacant land, is being used for nonconforming use, such use shall not be extended or enlarged either on the same or adjoining property.
- (4) On any nonconforming structure or portion of a structure and on any structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, including but not limited to replacement of existing nonconforming decks and balconies, provided such structures do not encroach on any City right-of-way and provided that the cubic content of the structure existing after the date it became nonconforming shall not be increased.
- (5) If characteristics of use, including off-street parking and loading or other matters pertaining to the use of land, structure or premises are made nonconforming by this chapter as adopted or amended, no change shall thereafter be made in such characteristics of use which increases nonconformity with the regulations set out in this chapter; however, changes may be made that do not increase or that decrease such nonconformities.
- (6) Additions may be made to a nonconforming structure provided all additions shall conform to Chapter 27 in the Code of Ordinances.

(b) *Terminating nonconforming development.* Except as otherwise provided herein, nonconforming development shall be brought into full compliance with all provisions of this Code, in conjunction with the following activities:

- (1) The gross floor area of the development is expanded, except for development meeting requirements set forth in 27-229-1 and 27-705(a)(1).
- (2) Reconstruction of the principal structure after the structure has been substantially destroyed. A structure is "substantially destroyed" if the cost of reconstruction is fifty (50) percent or more of the fair market value of the structure before the damage. If there are multiple principal structures on a site, the cost of reconstruction shall be compared to the combined fair market value of all the structures. If a structure is damaged but not substantially destroyed, and is not substantially repaired or reconstructed, or used as before the time of damage within twenty-four (24) months of the date of such damage, such building shall thereafter comply with all provisions of this Code.
- (3) Whenever a nonconforming use, building or portion thereof has been discontinued, as evidenced by the lack of use or a vacancy for a period of at least twenty-four (24) months, or if a conforming use is substituted, such nonconforming use shall not thereafter be reestablished; and the future use shall be in conformity with the provisions of the district in which it is located.
- (4) If a nonconforming structure or portion of any structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by any duly authorized official of the city to be an unsafe building, it shall not thereafter be repaired or rebuilt except in conformity with the regulations of the district in which it is located.

(c) *Reconstruction of substantially damaged or destroyed nonconforming structures.* Notwithstanding the other provisions of this section, a nonconforming structure which was lawfully erected on a lot of record may be reconstructed if it is substantially damaged or destroyed, provided that:

- (1) The reconstruction does not result in an increase in nonconformity of a lot area, yards or setbacks;
- (2) The number of dwelling units in such reconstructed structure does not exceed the number of units in existence on the effective date of the ordinance from which this section derives; and
- (3) The repair or reconstruction is substantially completed within twenty-four (24) months of the date of such damage.

Ord. No. 2004-10, § 1, 10-4-04; Ord. No. 2009-04, § 1, 6-1-09)

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**Section 2.** This Ordinance shall become effective after passage by the City Council.

**VOTE RESULTS OF FIRST READING:**

Mayor Elaine Brown	YES
Vice Mayor Scott Wiley	YES
Councilor Richard Arthur	YES
Councilor Rory Diamond	YES
Councilor Fred Jones	YES

Passed on First Reading this 2<sup>nd</sup> day of October, 2017.

**VOTE RESULTS OF SECOND AND FINAL READING:**

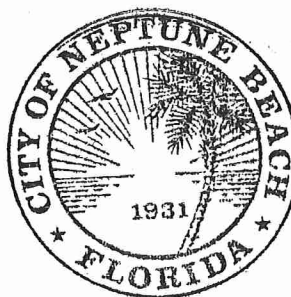
Mayor Elaine Brown	YES
Vice Mayor Scott Wiley	YES
Councilor Richard Arthur	YES
Councilor Rory Diamond	YES
Councilor Fred Jones	YES

Passed on Second and Final Reading this 6<sup>th</sup> day of November, 2017.

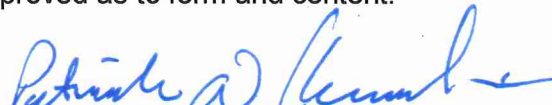
  
Elaine Brown, Mayor

ATTEST:

  
Catherine Ponson, City Clerk



Approved as to form and content:

  
Patrick Krechowski, City Attorney