



MODIFICATION OF STANDARDS FOR SUBSTANTIAL IMPROVEMENTS

<p>Applicant</p> <p>City Staff</p> <p>Project Planner</p> <p>Mark Cechman, AICP Zoning Official</p>	<p>Description of the Request</p> <p>To add “existing nonconforming improvements” to the list of items that may be approved by the Zoning Official by a Modification of Standards.</p> <p>Staff’s Recommendation:</p> <p>Approval of the proposed Ordinance.</p> <p>Non Conforming Improvements — Whenever the City’s Land Development Code is changed, properties that do not comply with the new code are then rendered legally non conforming. The code allows for these non conforming improvements (i.e. gravel parking lots, inadequate setbacks, Special Plan issues, impervious surface ratios, etc.) to continue in perpetuity unless the owner decides to make changes to the improvements or use of the property. One of these changes that “triggers” compliance with the Code is a “Substantial Improvement.” At the time a Substantial Improvement is proposed, the Code requires the owner to bring many of the non-conforming improvements into compliance or seek a variance.</p> <p>Substantial Improvements—The Code defines a Substantial Improvement as a proposed improvement to the existing building that would cost more that 50% of the value of said building. Staff uses the Orange County Property Appraiser's “Building Value” in determining if a proposed improvement is a “Substantial Improvement.” Many times the</p>	<p>“Building Value” figure is lower than expected and a Substantial Improvement is determined.</p> <p>Issues—In order to avoid the delay of a variance, many times property owners will “down scale” their project to avoid triggering the Substantial Improvement threshold. This can result in a less desirable project for both the owner and the City. Removing or increasing the Substantial Improvement threshold would result in missed opportunities to bring a noncompliant property closer to compliance.</p> <p>Solution—Allow the Zoning Official to be able to issue a conditional administrative Modification of Standards upon request for projects in the Traditional City that trigger the Substantial Improvement threshold. This would allow more extensive improvements to existing non-conforming sites and buildings and avoid the longer delay of a full variance, but would allow the City to obtain reasonable code improvements as a condition of approval of the Modification.</p> <p>Public Comments—Since the adoption of this ordinance could affect all of the City of Orlando, no notices have been mailed. Staff did post this item on the City’s Bulletin Board, the City’s web site, and placed a classified ad in the Orlando Sentinel. No public comments have been received as of the date of the Staff Report.</p>
Updated: June 9, 2014		

PROJECT ANALYSIS

Project Description

Non-Conformities—Whenever the City Code is changed to address land development, existing properties that do not comply with the new code are then rendered “legally non conforming.” . The City Code defines “nonconformity” with the following:

Nonconformity (or Nonconforming): Any lot, structure, use, vehicular use area, sign, landscaping or other activity which was lawfully developed prior to the adoption or amendment of Chapters 58 through 66, but which now fails by reason of such adoption or amendment to conform to all of the applicable requirements of Chapters 58 through 66. When used in the context of the Airport Zoning Regulations set forth in Chapter 65 this term shall mean that which does not conform to an airport zoning regulation or rule or any amendment thereto, as of the effective date of such regulation, rule or amendment.

The code allows for these non conforming improvements (i.e. gravel parking, inadequate setbacks, Special Plan issues, impervious surface ratios, etc.) to continue in perpetuity unless the owner decides to do a Substantial Improvement. At that time, the entire site would need to be brought up to code or the owner would need to seek a variance. The Code sections that specifically address this issue are as follows:

Sec. 58.116L. Repairs to Nonconforming Building, Structure, or Vehicular Use Area.

*Substantial improvement to nonconforming buildings, structures, and vehicular use areas is prohibited unless such nonconforming conditions **are brought into compliance** with all applicable provisions of the Land Development Code and all other applicable provisions of City Code and general and special law, except in the following circumstances:*

Affordable Housing. .

Unsafe Buildings and Structures. Repairs

Certain Buildings and Structures Damaged by Force Majeure.

In addition to this general code requirement, the code specifically requires the following non-conforming improvements to be brought into compliance with a Substantial Improvement

- Platting (when required) (Sec 65.272) (Note: Waiver listed in 65.272 no change to parking area of additional s.f.)
- Parking lot landscaping (Sec 58.1180)
- Bufferyards (Sec 58.1181) Mods available for Substantial Improvements (Sec 60.202 and 60.203)
- Traditional City AR Review (Sec 62.300 , 62.604, and Sec 62.608)
- Traditional MU and AC City Street Walls (Sec 62.611 and 62.622)
- Traditional City parking requirements (Sec 62.613)
- Traditional City Building orientation in front in MU and AC (Sec 62.609 and 62.619)
- Traditional City Transparency (Sec 62.600; The transparency/translucency requirement shall apply

only to new construction or to those areas of a structure which are altered as part of a substantial enlargement or improvement

- Access management requirements (Sec 61.213), and
- Sidewalks (61.225)

Issues—Many times property owners will “down scale” their project to avoid triggering the Substantial Improvement threshold and avoid the 2 1/2 month variance process. This can result in a less desirable project. Removing or increasing the Substantial Improvement threshold would result in missed opportunities to bring a noncompliant property closer to compliance. These projects are generally located in the older, Traditional City section of Orlando and in for buildings that are more than 30-years old.

Solution—Allow the Zoning Official to be able to issue Modification of Standards for projects in the Traditional City that are older than 30-years old that trigger the Substantial Improvement threshold for existing legal non conformities.

Modification of Standards—Currently, Section 65.302 of the City’s Code allows the Zoning Official to approve a Modification of Standards (minor “waivers”) to the Land Development Code for setbacks, driveway aisle width, ISR etc. The current list of Modification of Standards includes:

1. *Principal Building Setbacks. Up to 20% of the setback requirement. ****
2. *Accessory Building Location Standards. Up to 20% of the setback requirement. The maximum floor area of accessory structures may be increased from 400 sq. ft. up to 500 sq. ft. without meeting principal building setbacks.*
3. *Fence Height. Up to 2 ft. above the maximum fence height permitted ****
4. *Parking, Loading, and Driveways. Up to 10% of the number of required parking spaces or 2 spaces, whichever is greater. ******

Modification of driveway and driving aisle width, parking space width and depth, and loading berth requirements shall be permitted.

Driveway and driving aisle width modifications shall also require approval by the Public Works Director or designee.

5. *Landscaping and Bufferyards. Locational and dimensional requirements of required landscaping areas may be reduced up to 50% of the required width. Required plantings shall be provided but may be relocated.*
6. *Air Conditioning Units Location. Air conditioning compressors may be located in the street side yard but shall not be located in the required front yard.*
7. *Lot Depth. Minimum lot depth may be reduced, but not in a manner that would reduce the lot area below the requirements of the zoning district.*
8. *Certain Additions to Principal Buildings. Additions to existing principal buildings which do not have heating, ventilation or air conditioning may be constructed using the accessory structure setback standards contained in Chapter 58.*

Standards for Approval—If Substantial Improvements are added to the list of possible Modification of Standards, the Zoning Official will be required to use the following standards for approval :

Sec. 65.310. Specific Standards.

No modification shall be granted unless the applicant clearly shows the existence of the following circumstances:

- ♦ *Superior Alternatives. Where the development will provide an alternative which will achieve the purposes of the requirement through clearly superior design.*
- ♦ *Technical Impracticality. Where the strict application of the requirements would be technically impractical in terms of design or construction practices or existing site conditions. The degree of existing nonconforming conditions and the extent to which the proposed modification would lessen the nonconforming condition shall be specifically considered.*
- ♦ *Adjacent Development Conditions. Whether the proposed modification is consistent with the positive design elements of the existing adjacent development. Positive design elements shall be those identified by the Urban Design Element of the Growth Management Plan and the Urban Design Elements of Chapter 62, Historic Preservation and Architectural Design.*
- ♦ *Tree Protection Requirements. As specified in Chapter 60, Part 2.*

Cost and Time—Modification of Standards application fee is the same as a Variance (between \$250 for a home owner / Non profit to \$500 for a non-home owner) but the time to process is only 10 to 12 days verses two to three months for a full variance.

Suggested code changes— The Assistant City Attorney has suggested the below code changes.

Sec. 58.1161. Work to Nonconforming Building, Structure, or Vehicular Use Area.

Substantial improvement to nonconforming buildings, structures, and vehicular use areas is prohibited unless such nonconforming conditions are brought into compliance with all applicable provisions of the Land Development Code and all other applicable provisions of City Code and general and special law, except in the following circumstances:

*(a) Affordable Housing. ****

*(b) Unsafe Buildings and Structures. ****

*(c) Certain Buildings and Structures Damaged by Force Majeure. ****

(d) Longstanding nonresidential buildings. Legally existing nonconforming nonresidential or mixed-use buildings, structures, and their associated vehicular use areas, originally built more than 30 years ago, may undergo substantial improvement without meeting the following existing development standards of this Code:

1. Building Setbacks

2. Maximum height

3. Maximum impervious surface area

4. Minimum and maximum density and intensity

5. Minimum lot size

6. Landscaping standards

7. Parking standards

8. Traditional City Design Standards, and

9. Other Land Development Code Standards considered by the Zoning Official to be de minimis in the redevelopment of the property.

Relief may be granted under this subsection only by official determination of the zoning official. The zoning official may grant relief under this subsection only if he or she finds as follows:

1. Complying with the development standards presents a practical hindrance to beneficial redevelopment.

2. Complying with the development standards presents a clear and unreasonable financial hardship.

3. The project is located within the Traditional City overlay zoning district.

4. Continuation of the nonconformity will not result in the continuation of a nonconforming use.

5. That the preponderance of the evidence supports the legal existence of the nonconformity.

6. Continuation of the nonconformity is not inconsistent with applicable provisions of the Growth Management Plan, nor inconsistent with the public health, safety, and welfare.

7. Continuation of the nonconformity is reasonably compatible with existing and reasonably foreseeable neighboring development pattern.

8. That the proposed work will retain and rehabilitate the preponderance of the existing nonconforming building, structure, or vehicular use area.
9. Notwithstanding other Modifications of Standards that are allowed be granted as per Section 65.302, that the proposed work will not increase or expand a nonconforming aspect of the building, structure, parking, or vehicular use area.
10. That the work does not exceed 400% of a substantial improvement.

Recognizing that relief under this subsection will prolong a condition not conforming to the development standards of this Code, the zoning official may impose one or more of the conditions of development provided by section 65.334 of this Code. Conditions of development must be reasonably calculated to mitigate identifiable land use impacts of the nonconformity. Violations of development conditions constitute a violation of this subsection. Relief under this subsection does not exempt the property from section 58.1184, or any other applicable provision of this Code, except as expressly provided in this subsection.

Denial of a Modification of Standards—If, the Zoning Official's opinion, the requested Modification does not comply with the above approval standards, the owner would still have the options of applying for a regular zoning variance. The owner may even appeal the denial of the Modification. Both an appeal or a variance would be reviewed by the Board of Zoning Adjustment and approved or denied by the City Council.

Illegal Improvements— Improvements that were not allowed by code at the time of construction (i.e. not constructed with the benefit of a Building Permit) are illegal non-conforming improvements and are not eligible for the proposed Modification of Standards for Substantial Improvements and are subject to code enforcement procedures.

Changes of Use— The Owner of a property undergoing a Change of Use (as defined by Sec 58.1184) will be required to bring the property into full code compliance or seek variances or a regular Modification of Standards.

Non-Conforming Uses—As proposed, no Modification of Standards for a Substantial Improvement shall be issued for the continuation of a non-conforming use.

Parking— The Owner of a property that is increasing the parking requirements due to a use change will be required to bring the property into full code compliance or seek variances or a regular Modification of Standards.