

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, RELATING TO THE LAND DEVELOPMENT CODE; AMENDING SECTION 58.1161, ORLANDO CITY CODE, RELATING TO WORK TO NONCONFORMING BUILDING, STRUCTURE, OR VEHICULAR USE AREA; PROVIDING THAT CERTAIN LONGSTANDING NONRESIDENTIAL BUILDINGS MAY UNDERGO SUBSTANTIAL IMPROVEMENT WITHOUT CONFORMING TO CERTAIN DEVELOPMENT STANDARDS; PROVIDING STANDARDS OF REVIEW, APPLICATION PROCEDURES, DEFINITIONS, AND PENALTIES; PROVIDING FOR SEVERABILITY, CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, section 163.3202(1), Florida Statutes, requires that the City of Orlando, Florida (the "City"), adopt or amend and enforce land development regulations that are consistent with and implement the City's adopted comprehensive plan; and

WHEREAS, section 163.3203(3), Florida Statutes, encourages the use of innovative land development regulations and requires that all land development regulations be combined into a single land development code for the City; and

WHEREAS, from time to time, amendments and revisions to the City's adopted comprehensive plan (the "Growth Management Plan"), progress in the field of planning and zoning, or changes to state law make it necessary or desirable to amend the land development regulations of the City; and

WHEREAS, at its regularly scheduled meeting of June 17, 2014, the Municipal Planning Board recommended to the City Council of the City of Orlando, Florida (the "Orlando City Council"), that the provisions of this ordinance are consistent with the applicable provisions of the City's adopted Growth Management Plan, are in the best interest of the public health, safety, and welfare, are in harmony with the purpose and intent of the Land Development Code of the City of Orlando, Florida (the "Land Development Code"), will not result in disorderly and illogical development patterns, and will not result in incompatible land uses; and

WHEREAS, the Orlando City Council hereby finds and determines that this ordinance is consistent with the applicable provisions of the City's adopted Growth Management Plan, is in the best interest of the public health, safety, and welfare, is in harmony with the purpose and intent of the City's Land Development Code, will not result in disorderly and illogical development patterns, and will not result in incompatible land uses; and

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, AS FOLLOWS:

SECTION 1. SECTION 58.1161, AMENDED. Section 58.1161, Code of the City of Orlando, Florida, is hereby amended as follows:

Sec. 58.1161. Repairs 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. Legally existing nonconforming buildings, structures, and vehicular use areas constituting part of a City certified affordable housing development and undergoing a substantial improvement are hereby made exempt from current parking and stormwater regulations enacted by City ordinance.

(b) Unsafe Buildings and Structures. Repairs Work constituting a substantial improvements may be made to legally existing nonconforming buildings and structures without bringing the building or structure into compliance with current regulations of the Land Development Code if such building or structure is declared to be unsafe and unsuitable for human habitation by a government authority having jurisdiction, but only to the extent necessary to make the building or structure safe and suitable for human habitation as determined by the government authority having jurisdiction.

(c) Certain Buildings and Structures Damaged by Force Majeure. Repairs constituting substantial improvements may be made to legally existing nonconforming buildings, structures, and vehicular use areas constituting part of either (1) a one family dwelling, (2) a two family dwelling, or (3) a multifamily dwelling certified by the City as an affordable housing development, without bringing the building, structure, or vehicular use area into compliance with current regulations of the Land Development Code if such building or structure is being repaired due to damage caused by force majeure, but only under the following conditions:

(1) Relief pursuant to this part may be granted only by written determination of the zoning official.

(2) The property owner must provide evidence that the buildings, structures, and vehicular use areas proposed for repair were legally existing.

(3) The repaired buildings, structures, and vehicular use areas will be no larger than the original.

(4) Relief pursuant to this part is only available if the property owner receives a building permit for the subject building, structure, or vehicular use area within 1 year of the damage caused by force majeure.

(5) Continuation of the nonconforming condition is not inconsistent with applicable provisions of the Growth Management Plan, nor inconsistent with the public health, safety, or welfare.

For the purposes of this section, the term "force majeure" means any overwhelming event or act of God, nature, or people, that is exceptional, unusual, inevitable, and irresistible, the effects of which cannot be prevented or avoided by the exercise of due care or foresight, examples of which include, but are not limited to, hurricanes, tornadoes, tropical storms, tropical depressions, lightning, and other grave meteorological events, sinkholes, earthquakes, and other grave geologic events, floods, water damage, and other grave hydrologic events, accidents caused by automobile or machinery, fire, riot, civil unrest or commotion, terrorist attack or activity, acts of war, and acts of a public enemy. Events or conditions specifically excluded from the meaning of the term "force majeure" for the purposes of this section include termite damage, deterioration due to poor maintenance or neglect, and purposeful acts or omissions by or on behalf of the property owner.

(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. 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 provided at Part 6, Chapter 62 of this Code.

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. That the proposed work will not increase or expand a nonconforming aspect of the building, structure, 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.

SECTION 2. SECTION 66.200, AMENDED. Section 66.200, Code of the City of Orlando, Florida, is hereby amended as follows:

Substantial Enlargement:

(a) The following shall be deemed to be a substantial enlargement: an increase in the size of a building, structure or building site by more than twenty-five percent (25%) of its existing area prior to such enlargement.

(b) The following shall not be deemed to be a substantial enlargement: an increase in the size of a building, structure or building site by twenty-five percent (25%), or less of the existing area prior to such enlargement.

Notwithstanding the foregoing, any proposed enlargement which is more than twenty-five (25%) percent of the building, structure or building site, but which is less than 500 square feet, shall be presumed to be a non-substantial enlargement.

~~*Substantial Improvement:*~~ *Substantial improvement* means any repair, reconstruction, rehabilitation, or improvement of a structure over the preceding 5 years when the actual and aggregate cost of the improvements or repairs of the structure ~~to its pre-damage condition~~ equals or exceeds 50% percent of the ~~total just~~ present replacement value of the structure ~~either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred.~~

For the purposes of this definition, "~~substantial improvement~~" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, ~~however~~, include ~~either any project for improvement of a structure, work needed to comply with existing state or local health, sanitary, or safety codes, specifications which are solely necessary to assure safe living conditions, nor any alteration of work to a structure listed on the National Register of Historic Places, or the State Inventory of Historic Places, or is an Orlando Historic Landmark, or a contributing structure in an Orlando Historic Preservation Overlay District.~~

For purposes of this definition, the "present replacement value" of the structure shall mean the present replacement value arrived at by the Orange County Property Appraiser in accordance with section 193.011(5), Florida Statutes. If such value is not provided by the Orange County Property Appraiser, then the present replacement value shall be as determined by the City building official. Also for purposes of this definition, the value of improvements shall be determined by the City building official.

Surface Water Body: Any lake, stream, sinkhole or other water area, whether natural or man-made, but not including any wetland as defined by Chapter 65.

SECTION 3. CODIFICATION. The City Clerk and the City Attorney shall cause the Code of the City of Orlando, Florida, to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 4. SCRIVENER'S ERROR. The City Attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the City Clerk.

SECTION 5. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 6. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE FIRST READING, by the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2014.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Orlando, Florida, by the City Clerk of the City of Orlando, Florida, this _____ day of _____, 2014.

DONE, THE SECOND READING, A PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of a majority of a quorum present of the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2014.

BY THE MAYOR/MAYOR PRO TEMPORE
OF THE CITY OF ORLANDO, FLORIDA:

Mayor / Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE
CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA:

City Clerk

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

ORDINANCE NO. 2014-33

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City Attorney

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