



DEVELOPMENT SERVICES

David L. Recor, ICMA-CM, Development Services Director
E: david.recor@copbfl.com | P: 954.786.4664 | F: 954.786.4504

ADMINISTRATIVE MEMORANDUM NO. 20-045

TO: Planning and Zoning Board
VIA: David L. Recor, ICMA-CM, Director of Development Services
FROM: Jennifer Gomez, AICP, Assistant Development Services Director
SUBJECT: Text Amendments to Chapter 155, Zoning Code
Article 5 & Article 7 – Nonconforming Site Features
DATE: February 5, 2020

The Development Services Department continuously strives to fulfill the City's Strategic Plan objectives to strengthen Pompano Beach as a "Preferred Place to do Business" and to enhance the City's reputation as being "business friendly." The proposed simple text amendment will address two specific action items in the 2019 Strategic Plan (1) Complete "applicability related" amendments, and (2) Complete landscape code amendments. These Strategic Planning action items are intended to ensure the City's processes are both clear and streamlined.

Article 7, Part 5 of the city's zoning code addresses "nonconforming site features." This section provides a means whereby the city can require certain nonconforming site features (i.e. landscaping, parking, screening, and lighting) to be brought into compliance with the zoning code when properties undergo either interior remodeling projects or when additions are constructed. The requirement for properties to come into compliance with landscape codes for *interior remodels* was added during a Comprehensive Code rewrite in 2012. Over the years, staff has received input from both owners and the development community that the requirement for exterior upgrades during interior renovation projects was adding significant unanticipated extra costs. The concern was that it necessitated the additional step of having to hire landscape and other design professionals to both design and upgrade the exterior of the property when they were otherwise only improving the interior.

The proposed text amendment removes the requirement to upgrade the exterior of the property for interior renovations only. This text amendment attempts to modify a zoning regulation that could create a potential barrier to reinvestment into existing buildings. The text amendment also strives to remove a potential barrier that could result in property owners completing interior work without permits.

Please note, the city's retroactive landscape standards will remain in place, as will the requirement for additional landscaping to serve any expanded or enlarged part of a structure. The requirements to upgrade the nonconforming site features will still be required with all additions greater than 15%. This text amendment extends this requirement to duplex - four family dwellings, which were previously exempted. The text amendment also adds the requirement that all properties going for Minor or Major Site Plan approval demonstrate compliance with the approved Landscape Plan on file, in addition to any requirements necessitated by the zoning code. These additional text provisions help ensure those properties that are making exterior changes to their properties are also addressing and improving the existing site features.

Staff recommends approval.

G:\Zoning 2009\Code Rewrite\Code Amendments\Article 5\Applicability for Code Requirements\2020

ARTICLE 5: DEVELOPMENT STANDARDS

...

PART 2 LANDSCAPING AND TREE PRESERVATION

...

155.5203. LANDSCAPING

A. Applicability

1. New Development

Except where expressly provided otherwise in this Code, the requirements in this section shall apply to all new development in the city.

2. Existing Development

a. Development Without a Prior Landscape Plan Approved on Record, or Existing Prior to 1974

i. Any development, other than a single-family dwelling, without an approved landscape plan on record, or that was existing prior to 1974 shall comply with the following retroactive standards.

(A) Sod shall be provided within the right-of-way swale to the edge of the paved travel lane except where in areas the Development Service Director finds are developed as a loading area or provide necessary access to loading or parking areas. One street tree per 40 lineal feet of sodded swale area shall be provided. Placement of street trees is subject to prior approval of the City Engineer.

(B) A landscaped area at least five feet wide and containing a continuous hedge or one tree per 40 lineal feet of frontage shall be provided adjacent to a building wall facing a public street, except those parts of such wall providing necessary access to building entrances, loading docks, overhead doors, garages or parking spaces.

(C) A landscape strip with an average width of five feet shall be provided between any parking area or driveway and a front or street side lot line. The development shall provide the following landscaping within the planting strip:

(1) A continuous hedge at least 24 inches in height at planting along the length of the landscape strip.

(2) One tree per 30 lineal feet along the length of the landscape strip.

(3) Grass or other ground cover in the remaining area of the landscape strip.

(D) Ground-mounted mechanical equipment shall be screened in accordance with Section 155.5301.A.2.

(E) Exterior commercial containers shall be screened in accordance with Section 155.5301.C.1.b.

ii. No requirement in subsection a. above shall apply if the Development Services Director determines that compliance with the requirement will cause a property to be nonconforming or will increase an existing nonconformity with respect to the number of parking spaces or accessway requirements required under this Code.

iii. General and procedural requirements of this landscaping subchapter shall apply to the design and submittal of plans, installation of material and inspections. Submission and approval of a landscape plan shall be required for compliance with this section.

iv. Where full compliance with the requirements of this section is precluded by a lack of sufficient developable areas due to the size and layout of existing development or the presence of significant wetlands, floodplains, watercourses, or other significant environmental constraints on development, the applicant shall comply with the requirements of this section to the maximum extent practicable, as determined by the Development Services Director.

b. All Existing Development

Irrespective of the special requirements applicable to development existing before October 30, 1973, the landscaping requirements in this section may apply to existing development in accordance with the following.

i. Expansion

Except as otherwise provided in subsection iii below, if an existing structure or use is expanded or enlarged (in terms of the number of dwelling units, floor area, number of employees, seating capacity, or other size unit), additional landscaping shall be provided in accordance with the requirements of this section to serve the expanded or enlarged part of the structure or use.

ii. Upgrading Of Nonconforming Landscaping

Nonconforming landscaping on the site of a ~~remodeled structure or~~ expanded structure or use area shall comply with the requirements of this section in accordance with the standards of Part 5 (Nonconforming Site Features) of Article 7: Nonconformities.

iii. Minor or Major Site Plan Approval

Any proposed development subject to the review of a Minor or Major Site Plan approval shall demonstrate compliance with the approved Landscape Plan on file, in addition to any requirements necessitated by this code.

ARTICLE 7: NONCONFORMITIES

Part 1 General Applicability

- 155.7101. Purpose and Scope
- 155.7102. Applicability
- 155.7103. Continuation Allowed
- 155.7104. Determination of Nonconformity Status
- 155.7105. Change of Tenancy or Ownership

Part 2 Nonconforming Uses

- 155.7201. General
- 155.7202. Extension, Expansion, or Relocation
- 155.7203. Change in Use
- 155.7204. Discontinuance of Use
- 155.7205. Conforming Structure Used for Nonconforming Use

Part 3 Nonconforming Structures

- 155.7301. Relationship with Nonconforming Uses
- 155.7302. Enlargement or Alteration
- 155.7303. Relocation
- 155.7304. Reconstruction or Repair after Damage
- 155.7305. Exceptions for Nonconforming Structures in Redevelopment Districts

Part 4 Nonconforming Lots of Record

- 155.7401. General
- 155.7402. Status of Structures on Nonconforming Lots of Record
- 155.7403. Development of Nonconforming Lots
- 155.7404. Governmental Acquisition of Land in a Residential District

Part 5 Nonconforming Site Features

- 155.7501. Purpose
- 155.7502. Applicability
- 155.7503. Nonconforming Fences on Vacant Lots
- 155.7504. ~~Interior and Exterior Remodeling of Structures—Reserved~~
- 155.7505. Additions and Expansions
- 155.7506. Compliance to Maximum Extent Practicable on Constrained Properties

ARTICLE 7: NONCONFORMITIES

...

PART 5 NONCONFORMING SITE FEATURES

155.7501. PURPOSE

The purpose of this section is to provide a means whereby the city may require certain nonconforming site features to be brought into compliance with the standards of this Code as part of remodeling or expansion of a structure.

(Ord. 2012-64, passed 9-11-12)

155.7502. APPLICABILITY

- A. For purposes of this section, the term "nonconforming site features" includes the following:
 - 1. Nonconforming off-street parking;
 - 2. Nonconforming landscaping (including perimeter buffers);
 - 3. Nonconforming screening;
 - 4. Nonconforming landscaping of walls or fences; and
 - 5. Nonconforming exterior lighting.
- B. Nonconforming site features, as provided for in this section, shall be addressed for all two-family and multi-family developments ~~with five or more units~~ and non-residential development if the following conditions are met:
 - 1. The development site contains one or more nonconforming site features identified in subsection A above; and
 - 2. ~~An application is filed for a Building Permit for the remodeling or expansion of a structure and the value of the proposed improvement totals at least 25 percent of the current fair market or assessed value of the existing structure (at the option of the applicant); or~~
 - 3. An application is filed for a Building Permit for an addition or expansion to a structure or use and the addition or expansion increases the gross square footage of the structure or use area by 15 percent in any continuous five-year period.
- C. The Development Services Director may develop administrative guidelines to assist in the implementation of this section, including guidelines for the resolution of conflicts when it may not be possible for one or more types of nonconforming site

features to be brought into compliance with the requirements of this Code because of particular site constraints or impacts on adjacent properties.

D. The provisions in this Part apply in addition to the requirements applicable to certain existing developments as set forth in Section 155.5203.A.2.a, Development Without a Prior Landscape Plan Approved on Record, or Existing Prior to 1974, for landscaping, in Section 155.5301.A.1.b Existing Development Screening Standards, for screening of mechanical equipment, and in Section 155.5301.C.1.b, Existing Multifamily and Nonresidential Development, for screening of dumpsters.

(Ord. 2012-64, passed 9-11-12; Am. Ord. [2013-73](#), passed 7-23-13; Am. Ord. [2014-16](#), passed 1-28-14)

155.7503. NONCONFORMING FENCES ON VACANT LOTS

Any fence existing on a vacant lot as of January 1, 2013 that is made nonconforming by Section 155.5302.C.1, Fences Prohibited on Vacant Lots, shall be removed or made conforming within two years after that date.

(Ord. 2012-64, passed 9-11-12)

155.7504. INTERIOR AND EXTERIOR REMODELING OF STRUCTURES RESERVED

~~A. Remodeling Costing 25 Percent or Less of Structure Value~~

~~Remodeling of a structure that costs 25 percent or less of the current fair market or assessed value of the structure (at the option of the applicant) shall not require any upgrading of the nonconforming site features identified in Section 155.7502.A.~~

~~B. Remodeling Costing Between 25 and 75 Percent of Structure Value~~

~~Remodeling of a structure that costs more than 25 percent, but less than 75 percent, of the current fair market or assessed value of the structure (at the option of the applicant) shall require nonconforming site features identified in Section 155.7502.A to be upgraded towards compliance with the standards of this Code by a corresponding percentage of full compliance, up to achievement of 100 percent compliance.~~

~~Example: Under this Code's minimum off-street parking space standards, an existing building, if built today, would be required to provide at least 40 off-street parking spaces, but the building site only includes 20 spaces. If the building is remodeled such that the cost of remodeling equals 30 percent of the building's value, the remodeling project must add 12 parking spaces (30% x 40 required spaces). This increases the development's degree of compliance with off-street parking standards from 50 percent (20 of 40 required spaces) to 80 percent (32 of 40 required spaces). A subsequent remodeling whose cost also equals 30 percent of building value might seem to call for the addition of another 12 spaces (30% x 40 required spaces), but actually only 8 new spaces would be required to achieve 100% compliance (32 + 8 = 40 spaces).~~

~~C. Remodeling Costing 75 Percent or More of Structure Value~~

~~Remodeling of a structure that costs 75 percent or more of the current fair market or assessed value of the structure (at the option of the applicant) shall require all nonconforming site features identified in Section 155.7502.A to be upgraded to achieve 100 percent compliance with the standards of this Code.~~

~~D. When Additional Parking Spaces Required~~

~~When this subsection calls for a remodeling project to install additional off-street parking spaces totaling less than ten percent of the total number of existing off-street parking spaces on the site, such additional off-street parking is not required to be installed, except that any accessible parking spaces required in accordance with Section 155.[] shall be provided.~~

~~E. Determination of Building Cost and Structure Value~~

~~For purposes of determining if upgrading of nonconforming site features is required by this subsection, the cost of the remodeling shall be as shown on the approved Building Permit application. Fair market value of a structure shall be based on a market appraisal performed by a certified appraiser, at the applicant's expense. On determining that the applicant's market appraisal is inaccurate, the Development Services Director may reject it and base the structure's value on the average of values determined by the applicant's market appraisal and a second market appraisal performed by a certified appraiser at the city's expense.~~

~~Assessed value shall be based on the most recently available Broward County tax rolls.~~

~~(Ord. 2012-64, passed 9-11-12)~~

155.7505. ADDITIONS AND EXPANSIONS

A. Additions and Expansion Less than 15 Percent

Additions or expansions to a structure or use area in any continuous five-year period that increase the gross square footage of the structure or use area (measured at the beginning of the five-year period) by 15 percent or less shall not require any upgrading of the nonconforming site features identified in Section 155.7502.A.

B. Additions and Expansions Between 15 and 50 Percent

Additions or expansions to a structure or use area in any continuous five-year period that increase the gross square footage of the structure or use area (measured at the beginning of the five-year period) by more than 15 percent but less than 50 percent shall require nonconforming site features identified in Section 155.7502.A to be installed or upgraded towards compliance with the standards of this Code by a corresponding percentage of full compliance, up to achievement of 100 percent compliance.

Example: Under this Code's minimum landscaping standards, an existing development, if built today, would be required to provide 10 canopy trees, but the site only contains 5 canopy trees. If a building in the development is expanded by 30 percent of the gross floor area within the development, the expansion project must add 3 canopy trees (30% x 10 required caliper inches), increasing compliance from 50 percent (5 of 10 required canopy trees) to 80 percent (8 of 10 required canopy trees). A subsequent addition whose size also equals 30 percent of existing building size might seem to call for addition of another 3 canopy trees (30% x 10 required spaces), but actually only 2 new canopy trees would be required to achieve 100% compliance (8 + 2 = 10 canopy trees).

C. Additions and Expansions Greater than 50 Percent

Additions or expansions to a structure or use area in any continuous five-year period that increase the gross square footage of the structure or use area (measured at the beginning of the five-year period) by more than 50 percent shall require all nonconforming site features identified in Section 155.7502.A to be installed or upgraded to achieve 100 percent compliance with

the standards of this Code.

D. Additions and Expansions of Outdoor Use Areas Only

When only outdoor operations, storage, and display areas are being added or expanded on a site, the percentage increase in the gross square footage of the outdoor operations, storage, and display areas shall require perimeter buffers and screening to be installed or upgraded towards compliance with the standards of this Code by a corresponding percentage of full compliance. The increased perimeter buffer and screening shall be located so as to achieve the performance objectives in Section 155.5203, Landscaping, and Section 155.5301, Screening with priority given to screening the impacts of outdoor operations.
(Ord. 2012-64, passed 9-11-12)