

# POLK COUNTY DEVELOPMENT REVIEW COMMITTEE STAFF REPORT

<b>DRC Date:</b> October 17, 2024	<b>Level of Review:</b> 4
<b>PC Date:</b> November 6, 2024	<b>Type:</b> LDC Text Amendment
<b>BoCC Date:</b> November 19, 2024	<b>Case Numbers:</b> LDCT-2024-23
December 3, 2024	<b>Case Name:</b> Non-Conforming Number of Units on One Property
<b>Applicant:</b> Polk County	<b>Case Planner:</b> Erik Peterson, AICP

<b>Request:</b>	An LDC text amendment to Chapter 1, Section 120, Non-Conformities, Subsection 120.I Expansion of Residential Uses, to allow lots with multiple units in existence for over 20 years to subdivide regardless of the minimum lot size provided certain conditions can be met; amending Subsection 120.J Expansion of Non-Residential Development to correct a section reference; providing for severability; providing an effective date.
<b>Location:</b>	n/a
<b>Property Owner:</b>	n/a
<b>Parcel Size (Number):</b>	n/a
<b>Development Area:</b>	n/a
<b>Nearest Municipality:</b>	n/a
<b>DRC Recommendation:</b>	Approval
<b>Planning Commission Vote:</b>	Pending Hearing

**The changes to Chapter 1, Section 120.I, Expansion of (non-conforming) Residential Uses are:**

- Adding “or Subdivision” to the title.
- Deleting the current text referring to multiple units on one lot and replacing it with specific language to enable lots with multiple units on them to subdivide regardless of minimum lot size so long as they adhere to strict criteria:
  - Existed for more than 20 years,
  - Necessary for financing or grant funding,
  - Not in a mobile home park,
  - Not an accessory dwelling unit,
  - Meets side and rear setbacks, and,
  - Does not share a well or septic with another property.
- Land Development Director makes the determination and can grant setback relief administratively.

**The changes to Chapter 1, Section 120.J, Expansion of (non-conforming) Non-Residential Uses are:**

- Changing the reference of Section 120 I.1.c. to Section 120 J.1.c. because a previous amendment reordered the section without making adjustment to the references cited in the section.

## Summary:

The purpose of this ordinance is to provide acceptance of some non-conforming dwelling unit and property ownership situations that were created in the distant past due to varied code interpretations or mistakes by unknowing property owners. There are many properties throughout the County where there are multiple detached dwellings on a property, either single-family or mobile home, that are inconstant with Section 221.A of the Land Development Code (LDC) that states, “*In a residential land use district one single-family dwelling unit and accessory structures shall be permitted on a single lot meeting the minimum requirements of this Code.*” This standard has existed since the first zoning ordinance was amended in 1971, but not equally administered to all residential districts and in all situations throughout the many iterations of the ordinance. This policy change offers forgiveness to those who may have not been aware of the County zoning rules as well as accounting for inconsistencies of past ordinances with current regulations.

This amendment provides a very limited exception to the minimum lot size of a land use district and other subdivision regulations for units older than 20 years that have a need to subdivide to obtain a loan or grant for home improvements or unit replacement. It does not apply to mobile home parks or residences permitted as an accessory dwelling unit. Also, the units on the new and parent lots must be able to meet the setback requirements for the district and not share well or septic tank with separate lot.

## Data and Analysis Summary

Staff have reviewed past ordinances dating back to November 4, 1970, and noted ambiguities and inconsistencies with current regulations. Staff has reviewed past building permits and mobile home park permitting. Staff has researched the non-conforming use sections in the land development regulations of 12 similar or abutting counties and Polk’s two largest cities for how multiple units on one lot is addressed.

This amendment applies to residential and non-residential lots or parcels within the unincorporated areas of the County regardless of the Future Land Use Map district, including the Green Swamp Area of Critical State Concern. Florida Commerce requires a 45-day review on all policy changes affecting development in the Green Swamp Area of Critical State Concern regardless of whether it has a direct relationship to the primary purpose of the Critical Area, which is aquifer recharge and protection.

There are no conflicts with the Comprehensive Plan or Florida Statutes in the implementation of this amendment. POLICY 2.128-C1 of the Comprehensive Plan defers both nonconformities and subdivision standards to the Land Development Code. Chapter 163 and 177 of the Florida Statutes address state regulations and the process for subdividing land. Staff found no inconsistencies with these statutes.

## Findings of Fact

1. *The request is a Land Development Code text amendment to Chapter 1, Section 120, Non-Conformities, Subsection 120.I Expansion of Residential Uses, to allow lots with multiple units in existence for over 20 years to subdivide regardless of the minimum lot size provided certain conditions can be met, and amending Subsection 120.J Expansion of Non-Residential Development to correct a section reference.*
2. *This amendment applies to parcels in the unincorporated area that have had multiple detached residential dwellings for more than 20 years.*
3. *POLICY 2.128-C1 of the Comprehensive Plan states “Through the implementation of its Land Development Code, Polk County shall regulate the subdivision of land in a manner consistent with the requirements of Florida Statutes to ensure:*
  - a. *Legal access to public rights-of-way;*
  - b. *Proper designation of rights-of-way and easements for roads, public utilities, and other public uses;*
  - c. *The orderly provision of community services including police, fire, and emergency medical services, and;*
  - d. *Compliance with local land use policies and regulations.”*
4. *POLICY 2.128-C5 of the Comprehensive Plan states “except for multiple-family structures either under one ownership or as a condominium or plat or detached residential structures under one management company used for rental purposes, there shall be no more than one dwelling unit permitted per parcel or lot.”*
5. *Section 221.A of the Land Development Code states “in a residential land use district one single-family dwelling unit and accessory structures shall be permitted on a single lot meeting the minimum requirements of this Code.”*
6. *Chapter 163.3179 of the Florida Statutes states that “a local government may include in its comprehensive plan a provision allowing the use of a parcel of property solely as a homestead by an individual who is the grandparent, parent, stepparent, adopted parent, sibling, child, stepchild, adopted child, or grandchild of the person who conveyed the parcel to said individual, notwithstanding the density or intensity of use assigned to the parcel in the plan. Such a provision shall apply only once to any individual.”*
7. *POLICY 2.132-E12 of the Critical Area Resource Management Plan states that “all development within the TSDA, UGA, and UEA shall be required to connect to a centralized regional sewer system at the time of development, with lots of record being exempt from this requirement. Where septic tanks are permitted within the CARMP, the minimum lot size shall be no smaller than 40,000 sq. ft”*
8. *This amendment changes the regulations of residential properties in the Green Swamp Area of Critical State Concern but does not permit a lot smaller than 40,000 square feet unless connected to a public wastewater service.*
9. *Planning staff has reviewed the land development requirements of 12 central Florida counties that bear commonalities with Polk and the two largest municipalities in the County. Staff found only one jurisdiction that allowed for a non-conforming subdivision if there were multiple units on a property, and that was only under an agricultural family estate. Only two jurisdictions gave exception for substandard lots that resulted from imminent domain.*

## **Development Review Committee Recommendation:**

The Land Development Division, based on the information provided with the proposed text amendment application, finds that the proposed text change request is **CONSISTENT** with the Polk County Land Development Code and the Polk County Comprehensive Plan. Staff recommends **APPROVAL** of LDCT-2024-23.

## **Analysis**

### **Introduction**

Section 120.I of the Land Development Code addresses almost every question regarding the expansion non-conforming residential uses, structures, and properties. However, the regulations regulating multiple units on one property are contradictory and do not address the potential for subdividing. The policy states that properties with multiple units on them can add more units if the land use district permits but it must be consistent with Section 221.A and Chapter 8 which specifically prohibit multiple units on one property. It also requires any lots created to meet the minimum standards of the district. Therefore, staff recommends this section of the code be removed and replaced with new language that is meaningful and fulfills the direction of the Board.

The County has many properties with multiple detached dwellings on them that have been in existence prior to the codes that prohibit them. Staff is recommending new language that provides a remedy for these properties so that the extra units can be maintained and improved in the future. Many lending institutions and government grant and loan programs will not provide funds to properties with multiple dwellings on them. However, many times the owner cannot legally subdivide the property due to the Future Land Use Map designation minimum lot size requirements. The units on these properties have often aged significantly since they were originally allowed. Therefore, repairs and sometimes replacement is needed. To afford repairs or replacement, financing or sometimes grants are needed. Many grant and loan programs require the home to be on a separate parcel. Without use of these financial mechanisms, the units may fall into disrepair and dilapidation. Since such blight is never in the County's best interest, staff believes that it is furthering the County's higher goals to accommodate a better process for remedy than what currently is provided in the code.

Homes that have thrived for over 20 years on a property are assimilated into the existing infrastructure and have been excepted by the surrounding property owners. Merely recording deeds and drawing lot lines does not change that reality. The homes are there. People live in them. They are not a burden to the community. It is in the public's best interest that they are given the opportunity for improvement. A narrow exception should be made to allow the subdividing of these properties so that they are able to qualify for needed grants and loans to be maintained and improved.

It is equally important that this proposed amendment not condone problematic subdivision of mobile home parks or enable accessory dwelling units to become primary units. It is also important that any lots created be in compliance with district setbacks and have the necessary roadway easement access or roadway frontage in accordance with current codes. Most of all, it is vital that these new lots are able to function independently through their own water and wastewater source or connected to a public source. Therefore, six standards are recommended to assure that this amendment serves the residents it is intended to serve and not be a caveat for circumventing other land development codes and rules. These six criteria are as follows:

- Multiple units have been present on the property for at least 20 years.
- Subdividing of the property is necessary to secure financing or qualify for grants for improvement or replacement of the dwelling.
- The property is not part of a mobile home park.
- The unit in question was not originally permitted as an accessory dwelling unit.
- Interior side and rear setbacks of the Future Land Use Map district are met by all properties (residual and created).
- Each property created has public road frontage or access easement, source of potable water, and septic waste disposal or be able to connect to public sources.
- No lot created in the Green Swamp Area of Critical State Concern may be less than 40,000 square feet unless it can connect to a public wastewater system.

These criteria are intentionally narrow to provide assurance that all other Comprehensive Plan, Land Development Code, state and regulatory agency rules will be followed. Each request will be reviewed by the Land Development Director, or a staff member directly assigned to assure that all criteria are met.

### **Benefit-cost Analysis of the Amendment**

#### *Who does it help?*

This ordinance will help homeowners with multiple dwelling units on their property that need financial assistance to improve one or more of their dwellings. It will also assist family members living on parcels with multiple dwelling units who desire to have independent ownership of a dwelling they share with their relative. Throughout Polk County there are an extensive number of properties where families have housed their children, parents, or siblings on their property in an independent separate dwelling without subdividing. This practice was once permitted in certain residential districts and under past land use codes.

#### *Who does it hurt?*

This exception will only apply to properties with multiple residential dwellings that have historically existed on a property for over 20 years which is a point where the community and neighboring property owners around them have accepted their existence. Twenty years is considered a generation. It will not create a new burden on public infrastructure.

#### *What is the cost?*

A Business Impact Estimate pursuant to FS 125.66 (3)(a) has been prepared as an attachment to the casefile. Staff has analyzed potential costs to the public, environment, and visual aesthetics. It does not appear that any individual or organization will be burdened by creating this exception in the code.

### **Regulatory History**

The first zoning restriction limiting the number of units on a single-family lot became effective on May 20, 1971 (Ord. 1971-001). Prior to that, it was not uncommon for some areas to have more than one home on a single property. Also, this provision only applied to Residential certain “RD” districts later to be referred to as RE-1, RE-2, R-1, R-2, and R-3 districts, The Rural Conservation (RC) or R-4 districts allowed multiple units on one property provided the density limits were not exceeded. This multiple units per lot exception continued through to the 1983 rewrite of the zoning

ordinance (Ord. 1983-002) with the addition of the multifamily districts which was in effect until September 1, 2000. Also, there was another exception created with the adoption of the Minimum Development Standards Ordinance for Mobile Home, Recreational Vehicle, and Camping Accommodations Ordinance 72-13 in December of 1972. This ordinance established development and operational standards for a mobile home park of four or more units. Therefore, it was assumed that any accumulation of three or fewer mobile homes on a single property was acceptable.

### Limits of the Proposed Ordinance

This amendment applies to all properties located in the unincorporated area of the County with multiple residential dwelling units on them that have existed for more than twenty (20) years regardless of the Future Land Use Map district. It does not apply to mobile home parks or parcels where an accessory dwelling unit had been permitted in accordance with LDC Section 206.A.

Since this amendment applies to residential lots or parcels within the unincorporated areas of the County regardless of the Future Land Use Map district, it includes the Green Swamp Area of Critical State Concern. Staff has observed that there are some properties that may qualify for this proposed exemption in the Green Swamp. However, a condition remains that no property may be less than 40,000 square feet unless it is served by a public wastewater system. Florida Commerce requires a 45-day review on all policy changes affecting development in the Green Swamp Area of Critical State Concern regardless of whether it has a direct relationship to the primary purpose of the Critical Area, which is aquifer recharge and protection. Therefore, this request will be reviewed by the Florida Commerce Community Planning Department Areas of Critical State Concern Program. Staff believes that this amendment will have no impact on the Critical Area since it does not allow the creation of new dwelling units.

### Comparisons to other Jurisdictions:

Staff commonly survey counties on the I-4 corridor for regulatory comparisons because they are most closely similar to Polk. Some of the abutting counties are reviewed along with the two largest cities within the County (Lakeland and Winter Haven). Alachua and Duval counties are also reviewed because of similar demographic and urban-rural mixtures to Polk County. This method of selection creates a survey of 14 total local jurisdictions. Staff found only one jurisdiction that allowed for a non-conforming subdivision if there were multiple units on a property, and that was only under an agricultural family estate. Only two jurisdictions gave exception for substandard lots that resulted from eminent domain.

**Table 1**

Jurisdiction <i>(Code citation)</i>	Are non-conforming multiple units on one lot addressed?	Is subdivision of the lot allowed?	What other exceptions to lot size are allowed?
<b>Alachua County</b> <i>Section 408.22</i>	Yes.	Yes, if it is in Agriculture and part of a family estate.	Imminent Domain
<b>Brevard County</b> <i>Sub. II</i>	No.	No.	The owner may make application for a waiver of up to but not exceeding ten percent of the required lot size.
<b>Duval County</b> <i>Section 656.7</i>	No.	No.	None.
<b>Hardee County</b> <i>Sec. 7.16.00</i>	No.	No.	None.
<b>Highlands County</b> <i>Section 12.06</i>	No.	No.	Imminent Domain

**Table 1**

<b>Jurisdiction</b> <i>(Code citation)</i>	<b>Are non-conforming multiple units on one lot addressed?</b>	<b>Is subdivision of the lot allowed?</b>	<b>What other exceptions to lot size are allowed?</b>
<b>Hillsborough County</b> <i>Section 11.03</i>	Yes.	No.	Certification of mobile home park is now required regardless of how many but does not mean that it can get proper zoning. Connection to sewer required.
<b>Lake County</b> <i>Sec. 1.08.00</i>	No.	No.	Non-conforming lots without 40' of public road frontage are not replaceable unless the property owner(s) agrees to be subject to a special assessment for road improvements.
<b>Manatee County</b> <i>Section 107</i>	No.	No.	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>Orange County</b> <i>Article 3, Section 38</i>	No.	No.	No.
<b>Osceola County</b> <i>Article 1.4</i>	Yes.	No.	Land that accommodates nonconforming uses may only be subdivided if the subdivision does not increase or intensify the extent or size of the nonconforming use.
<b>Seminole County</b> <i>Sec. 30.3.10</i>	No.	No.	Mobile homes may not be replaced more than two time unless in a mobile home park.
<b>Volusia County</b> <i>Section 72-206</i>	Yes.	No.	Nonconforming lots must apply for a variance to build or rebuild.
<b>City of Lakeland</b> <i>Article 13Fi</i>	Yes.	No.	Lots and parcels created prior to July 18, 1950, that do not meet the minimum lot area, lot width and/or lot depth requirements of this Code, may be built upon without recourse to a variance, provided that all height, setback and other applicable dimensional requirements are met.
<b>City of Winter Haven</b> <i>Sec. 21-435</i>	No.	Only with Special Magistrate Review.	No.

While a few more jurisdictions addressed multiple units on a single parcel, they were not accommodating to subdivision of them. In all cases the extra unit cannot be replaced if a calamity occurs. Staff believes this to be a rather harsh policy and not in keeping with the Board’s intentions for growth management.

**Consistency with the Comprehensive Plan**

Throughout the Comprehensive Plan overall density is addressed for each Future Land Use Map and Overlay District. However, minimum lot size is not directly addressed in any future land use map district except in reference to the Family Farm minimum lot area in the Agricultural/Residential Rural (A/RR) districts and in reference to the Family Homestead density exception provided under Chapter 163.3179 of the Florida Statutes.

OBJECTIVE 2.128-C and its six policies address the subdivision of land. POLICY 2.128-C5 states “*there shall be no more than one dwelling unit permitted per parcel or lot*” with the exception of

multifamily structures, fractional ownership, or condominium. Allowing the subdivision of land for lots with multiple dwelling units will result in greater conformance with this policy.

### **Consistency with the Florida Statutes**

The Florida Statutes designates the minimum lot size of a residential dwelling to the local jurisdiction in most cases unless there is a public health and safety reason. This request does not run afoul with Chapter 163 of the Florida Statutes or the Green Swamp Area of Critical State Concern rules in the Florida Administrative Code because it requires a minimum of 40,000 square feet of land for any parcel that is supported by a septic tank.

**Comments from Other Agencies:** None.

**Draft Ordinance:** under separate attachment