

**ORDINANCE NO. 24-\_\_\_\_\_**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS, POLK COUNTY, FLORIDA, LAND DEVELOPMENT CODE AMENDMENT **LDCT-2024-23**, AMENDING ORDINANCE NO. 00-09, AS AMENDED, THE POLK COUNTY LAND DEVELOPMENT CODE, AMENDING 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.

**WHEREAS**, pursuant to Article VIII, Section I(g) of the Constitution of the State of Florida and the Local Government Comprehensive Plan and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes (FS), as amended, (the Act) Polk County is authorized and required to adopt a Land Development Regulations consistent with the Polk County Comprehensive Plan; and

**WHEREAS** the Board of County Commissioners adopted said Land Development Regulations on March 1, 2000, titled the Polk County Land Development Code; and

**WHEREAS**, Chapter 9, Section 903 of the Land Development Code requires Land Development Code Amendments to be a Level 4 Review; and

**WHEREAS**, Chapter 9, Section 907 sets forth the purpose and review process for Level 4 Reviews; and

**WHEREAS**, pursuant to Section 125.67 of the Florida Statutes, every ordinance shall embrace but one subject and matter properly connected therewith; and

**WHEREAS**, pursuant to Section 163.3164 of the Florida Statutes, the Polk County Planning Commission conducted a public hearing, with due public notice having been provided, on the proposed Land Development Code Amendment on November 6, 2024; and

**WHEREAS** the proposed text amendment to the Polk County Land Development Code is intended 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

**WHEREAS**, the Board of County Commissioners, reviewed and considered all comments received during said public hearing, and provided for necessary revisions; and

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Polk County, Florida that:

*NOTE: The underlined text indicates proposed additions to the current language. The ~~strikeout~~ indicates text to be removed from the current ordinance.*

**SECTION 1: FINDINGS** The findings set forth in the recitals to this Ordinance are true and correct and hereby adopted. In addition, the Board hereby adopts and incorporates herein the staff report and makes the following findings based upon the staff report, testimony, and exhibits presented during the hearing:

- a) The Planning Commission, acting in its capacity as the Local Planning Agency for the County, held a public hearing on November 6, 2024. to consider the LDC text amendment contained within the Application and found it to be consistent with the Comprehensive Plan and recommended that the Board adopt the LDC text amendment contained within the Application.
- b) Pursuant to Section 907.D.10 of the LDC, the Board shall, in the review of the Application, consider the following factors:
  - a. Whether the proposed text amendment is consistent with all relevant requirements of the Code;
  - b. Whether the proposed text amendment is consistent with all applicable policies of the Comprehensive Plan; and
  - c. Any other matter which the BoCC may deem appropriate and relevant to the text amendment proposal.
- c) The Application is consistent with all relevant requirements of the Comprehensive Plan.
- d) The Application is consistent with all relevant requirements of the LDC, including without limitation, Section 907.

**SECTION 2:** Section 120 Non-conformities, subsection 120.I Expansion of Residential Uses, of the Polk County Land Development Code, Polk County Ordinance No. 00-09, as amended, is hereby amended in the following manner:

**I. Expansion or Subdivision of Residential Uses (Rev. 2/21/12 - Ord. 12-006)**

Non-conforming residential development may not be intensified, enlarged, or expanded except as provided in this Section.

1. One and Two Family Residential including Mobile Homes
  - a. Expansion - Expansion of a single-family, duplex, or mobile home development may not exceed the maximum density limits of the Future Land Use Map district. In districts where a minimum density is required and the legally non-conforming development does not meet the minimum density, additional units may be developed even if the resulting density remains below the minimum provided that all other required development standards are met. Individual residential units may be expanded provided such units meet district setback, height limits, and the standards in Chapter 6 of the Code.
  - b. Planned Approval Status - Planned Development and Planned Unit Developments that have constructed a portion, or phase may be expanded consistent with the provisions in Section 906 E. and F. of this Code and the Future Land Use Map district densities. In the event that the development does not meet the minimum density of the district, additional units may be developed even if the resulting

density remains below the minimum provided that all other required development standards are met, and the PD or PUD is modified or abrogated.

c. ~~Multiple Units (on one lot) – Properties with more than one detached dwelling unit may be permitted to add additional units if the Future Land Use Map district allows such density; however,~~

~~i. – The land for which the additional units are placed shall be consistent with Section 221 A. and Chapter 8 of this Code; and,~~

~~ii. – The residual parent parcel shall meet the minimum lot size standards.~~

Subdivision – properties with multiple detached units on one parcel may be subdivided below the district minimum lot size under the review of the Land Development Director (or designee) and meeting all of the following conditions:

i. the number of units on the parent parcel has been consistent for over 20 years;

ii. subdividing is necessary to secure financing or qualify for grants for improvement or replacement of the dwelling;

iii. is not part of a mobile home park;

iv. was not permitted as an accessory dwelling unit;

v. interior side and rear setbacks\* of the district are met by all properties (residual and created); and,

vi. each property created, and any residual lot, shall have its own public road frontage or access easement meeting Section 705, source of potable water, and septic waste disposal or be able to connect to public sources.

vii. Properties located in the Green Swamp Area of Critical State Concern may not be less than 40,000 square feet unless connected to a public wastewater system.

*\*At the discretion of the Land Development Director, setbacks may be reduced but to no less than five (5) feet from a property line.*

d. Accessory Uses - On any property where a legally non-conforming single-family, duplex, or mobile home is located, accessory structures and uses customary to a residence may be permitted as well. Such uses and structures include, but are not limited to, swimming pools, sheds, and home occupations.

f. Individual Unit Expansion - Whether single-family, two-family or mobile home, an individual unit may be expanded so long as it does not change the unit type or violate the development standards of the district including, but not limited to setbacks, height limits, and flood zone requirements.

**SECTION 3:** Section 120 Non-conformities, subsection 120.I Expansion of Non-Residential Development, of the Polk County Land Development Code, Polk County Ordinance No. 00-09, as amended, is hereby amended in the following manner:

**J. Expansion of Non-residential Development** (Rev. 2/21/12 - Ord. 12-006)

1. Onsite Expansion - Legal non-conforming non-residential establishments may expand under the following parameters:
  - a. The addition or expansion of structures, impervious surface, or outdoor storage or display areas less than 20% (cumulatively) of the total amount existing onsite since the September 1, 2000, effective date of the Land Development Code may be approved administratively through Level 2 Review.
  - b. The total or cumulative addition or expansion of structures, impervious surface, or outdoor storage or display areas of more than 20% of the total amount existing onsite since the September 1, 2000, effective date of the Land Development Code may be approved by the Planning Commission through a through Level 3 Review as a conditional use. The Planning Commission shall consider the evaluation criteria listed in ~~Section 120 I.1.e.~~ Section 120 J.1.c. to follow.
  - c. Evaluation Criteria.

The Planning Commission shall evaluate the expansion of legal non-conforming use rights with consideration of the following criteria:

    - i. The degree to which the non-conformity can become more conforming;
    - ii. The extent of a government's obligation or liabilities including, but not limited to, infrastructure improvement, infrastructure maintenance, and public safety;
    - iii. The potential impact that the expansion may pose to neighboring properties;
    - iv. The extent of the use's longevity (i.e., how long has it been there and how long is it to continue at its location);
    - v. The applicant's future plans for the property relative to the County's plans; and,
    - vi. The improved development standards or infrastructure that may result from expansion of the use.
2. Land Expansion - The addition of land to support an addition or expansion of structures, storage, or activity of a legally non-conforming use shall require a Level 4 Review. The Planning Commission shall make recommendation, and the Board shall render a decision based on the evaluation criteria set forth in ~~Section 120 I.1.e.~~ Section 120 J.1.c. Land expansions are allowed for the purpose of meeting local, state or federal requirements that do not expand or introduce activities, vertical structures, or storage area onto the property addition. Such development including drainage structures, stormwater ponds and wastewater lift stations may be approved administratively through Level 2 Review.
3. Effect of Approval - Legally non-conforming uses, once approved for expansion by the Planning Commission or the Board of County Commissioners, are considered Conditional Uses and may be modified consistent with the provisions in Section 906 E. and F. of this Code provided that such expansion is consistent with the Future Land Use Map district floor-area-ratio (FAR) requirements or limitations. If final approval of the legally non-conforming use expansion was granted by the Board of County Commissioners either through Level 4 Review or De Novo appeal, expansion of such

use beyond a minor modification (see Section 906 E.) shall require Board of County Commissioner approval through a Level 4 Review. This shall apply to all non-conforming use expansions approved through a public hearing process since the adoption of the first zoning ordinance (11/4/70).

4. Addition of Permitted Uses - The addition of uses otherwise permitted by right in the Future Land Use Map district, as well as uses that are conditional through administrative approval (C1 or C2 in Table 2.1 et al.), may be approved onsite of a legally non-conforming use without jeopardizing the development entitlements of the property.

#### **SECTION 4: SEVERABILITY**

If any provision of this Ordinance is held to be illegal, invalid, or unconstitutional by a court of competent jurisdiction the other provisions shall remain in full force and effect.

#### **SECTION 5: EFFECTIVE DATE**

This ordinance shall become effective upon filing with the Department of State.

**ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY,**

**FLORIDA** this \_\_\_\_\_ day of \_\_\_\_\_, 2024.