

**ORDINANCE NO. 14-07**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS,” ARTICLE V “SCHEDULE OF DISTRICT USE AND DEVELOPMENT STANDARDS,” DIVISION 3 “NONCONFORMITIES,” SECTION 30-732 “DEFINITIONS”, SECTION 30-739 “NONCONFORMING STRUCTURE” AND SECTION 30-741 “CRITERIA FOR ADMINISTRATIVE VARIANCE FOR SPECIFIED CHANGES TO NONCONFORMITIES” OF THE VILLAGE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY**

**WHEREAS**, Islamorada, Village of Islands, Florida (the “Village”) finds that amending the regulation of nonconforming structures within the Village will assist in preserving the character of the residential and commercial areas of the Village, while protecting private property rights regarding existing structures; and

**WHEREAS**, the Local Planning Agency has reviewed this Ordinance in accordance with the requirements of Chapter 163, *Florida Statutes*; and

**WHEREAS**, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the Principles for Guiding Development in the Florida Keys Area of Critical State Concern.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

**Section 1. Nonconformity Regulations.** Chapter 30 “Land Development Regulations,” Article V “Schedule of District Use and Development Standards” Division 3 “Nonconformities,” Sections 30-732 “Definitions,” 30-739 “Nonconforming structure” and 30-741 “Criteria for administrative variance for specified changes to nonconformities” of the Village Code are hereby amended to read as follows:

Additional text is shown as <u>underlined</u> ;	deleted text is shown as <del>striketrough</del>
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**DIVISION 3. NONCONFORMITIES\***

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**Sec. 30-732. Definitions.**

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*Substantial damage* ~~shall~~ means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the ~~adjusted replacement cost~~ market value of the structure, ~~as assessed through current Marshall & Swift construction cost data publications~~ before the damage occurred.

*Substantial improvement* means any repair, reconstruction, rehabilitation, addition, or improvement of a structure, the cost of which equals or exceeds 50 percent of the ~~pre-destruction~~ market value of the structure before the “start of construction” of the improvement. ~~as determined by the office of the county property appraiser, either before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred.~~ The total cost does not include nonstructural interior finishing, including, but not limited to, ~~finish flooring and floor coverings, base molding, nonstructural substrates, drywall,~~

~~plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters, or roof coverings, except when determining whether the structure has been substantially improved as a result of a single improvement or repair, or substantially damaged as a result of a single event. 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 dimension of the structure. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. ~~The~~ This term does not, however, include either:~~

- (a) Any project for improvement of a structure to ~~comply with~~ correct existing violations of state or local village health, sanitary, or safety code specifications which ~~are necessary~~ solely have been identified by the village code official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure” listed on the national register of historic places or the state inventory of historic places.

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**Section 30-739. Nonconforming structure.**

Any nonconforming structure (or portion thereof) in the Village may be continued so long as it remains otherwise lawful, provided it meets all of the following requirements:

- (1) ~~The nonconforming structure or portion thereof shall not be enlarged or altered in a way which increases its nonconformity, unless it meets the criteria specified in Section 30-741 and obtains an administrative variance permit for such expansion pursuant to Section 30-222.~~ Enlargement or extensions to nonconforming structures shall be allowed, provided that:
- a. The improvement complies with chapter 6, article III, Floodplain Management Standards;
  - b. A nonconforming use is not located in the nonconforming structure; and
  - c. The nonconformity is not further increased.
- (2) Should such structure be moved for any reason for any distance whatever, other than as a result of governmental action, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.
- (3) Notwithstanding subsections (1) and (2) of this section, enlargements or alterations to a nonconforming historic structure listed in the National Register of Historic Places or the Florida Inventory of Historic Places shall be permitted provided that:
- a. ~~The enlargement or alteration does not exceed the nonconforming yard or height established by the existing structure and is otherwise in compliance with all other applicable land development regulations; and~~
  - b. A certificate of appropriateness for the enlargement or alteration has been obtained as required by this chapter.
- (4) ~~If a nonconforming structure is discontinued for 365 consecutive days, then such structure shall be removed or converted to a conforming structure.~~ Substantially

damaged or destroyed nonconforming structures may be reconstructed within the pre-destruction footprint provided that:

- a. Compliance with all required setbacks would result in a structure with a lesser floor area than the pre-destruction structure of reasonable configuration, as determined by the director of planning and development services;
- b. There is proof that the reconstruction will not cause negative impacts on environmental resources; and
- c. Provided that the structure complies with chapter 6, article III, Floodplain Management Standards

(5) *Damage or destruction of nonconforming structures in the Commercial Fishing (CF) or Marine Use (MR) zoning districts:* Nonconforming structures in which commercial fishing or water dependent uses have been in continuous operation since December 6, 2001, may be rebuilt even if 100% destroyed, provided that they are rebuilt in the same building footprint and the pre-existing commercial fishing or water dependent use is re-established, and provided that the structure complies with chapter 6, article III, Floodplain Management Standards. A determination as to the continuity of the use shall be at the sole discretion of the director of planning and development services.

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**Sec. 30-741. Criteria for administrative variance for specified changes to nonconformities.**

- (a) Notwithstanding the foregoing, an administrative variance permit may be obtained for the following changes to nonconformities, if the criteria specified in this section are met:
  - (1) ~~Limited~~ Expansion of a nonconforming nonresidential use;
  - (2) Resumption of a nonconforming use ~~or structure~~ following damage or destruction;

- ~~(3) Enlargement or extension of a nonconforming structure; and~~
- (4) Reduction of required setbacks for a damaged or destroyed ~~noneonforming single family home~~ or water dependent use.
- (b) The Applicant shall submit a completed application for an administrative variance permit pursuant to Section 30-222. The director of the planning and development services department shall determine whether the application should be subject to a public hearing.
- (c) The criteria for granting an application for an administrative variance permit to allow ~~limited~~ expansion of a nonconforming nonresidential use ~~or to allow resumption of a noneonforming use or structure~~ following damage or destruction shall be as follows:
- (1) The use is consistent with the community character; and
- (2) The application for the expansion or resumption of a nonconforming use demonstrates sufficient mitigation of impacts, including but not limited to nuisance impacts on surrounding residential properties, impacts on community character, environmental impacts, traffic impacts, and impacts on buffering; ~~and~~
- ~~(3) The application for resumption of a nonconforming structure or use following damage or destruction must demonstrate that the reduction of applicable regulations is consistent with the intent of the comprehensive plan.~~
- ~~(d) The criteria for granting an application for an administrative variance permit to continue noneonforming commercial fishing uses shall be a finding that continuance of the use will not have a negative impact on adjoining properties or on environmental resources.~~
- ~~(e) The criteria for granting an application for an administrative variance permit to enlarge or extend a nonconforming structure shall be:~~

~~(1) The improvement does not constitute a substantial improvement as defined in section 30-732 (excepting improvements to historic sites and to meet health, sanitary or safety code specifications);~~

~~(2) A nonconforming use is not located in the nonconforming structure; and~~

~~(3) The nonconformity is not further increased.~~

~~(fe) The criteria for granting an application for an administrative variance permit to reduce the required setbacks for a damaged or destroyed nonconforming single family home shall be that strict compliance would result in a structure with a footprint no greater than the pre-destruction footprint of the house.~~

(gd) Granting an application for an administrative variance permit to replace a damaged or destroyed nonconforming water-dependent use in the same footprint, which requires a reduction in a shoreline or other setback, shall require proof that the reduction in setbacks will not cause negative impacts on environmental resources.

**Section 2. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 3. Repeal of Conflicting Provisions.** All Code provisions, ordinances, resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

**Section 4. Inclusion in the Code.** It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of Ordinances of Islamorada, Village of Islands; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word “Ordinance” may be changed to “Section” or other appropriate word.

**Section 5. Transmittal to the Florida Department of Economic Opportunity.** The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the Village Clerk is authorized to forward a copy of this Ordinance to the Florida Department of Economic Opportunity (“DEO”) for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**Section 6. Effective Date.** This Ordinance shall not be effective until approved pursuant to a final order by DEO, pursuant to Chapter 380.05, Florida Statutes; or if the final order is challenged, until the challenge to the order is resolved pursuant to Chapter 120, Florida Statutes.

The foregoing Ordinance was offered by Councilwoman Deb Gillis who moved for its adoption on first reading. This motion was seconded by Councilman Mike Forster and upon being put to a vote, the vote was as follows:

Mayor Ken Philipson	YES
Vice Mayor Ted Blackburn	YES
Councilman Mike Forster	YES
Councilwoman Deb Gillis	YES
Councilman Dave Purdo	YES

PASSED on the first reading this 26<sup>th</sup> day of September, 2013.

The foregoing Ordinance was offered by Vice Mayor Deb Gillis, who moved its adoption on second reading. The motion was seconded by Councilman Ken Philipson, and upon being put to a vote, the vote was as follows:

Mayor Ted Blackburn	YES
Vice Mayor Deb Gillis	YES
Councilman Mike Forster	YES
Councilman Ken Philipson	YES
Councilman Dave Purdo	YES

PASSED AND ADOPTED on the second reading this 8th day of May, 2014.

  
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TED BLACKBURN, MAYOR

ATTEST:

  
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SYNTHIA LANKFORD, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF ISLAMORADA,  
VILLAGE OF ISLANDS ONLY

  
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ROGET V. BRYAN, VILLAGE ATTORNEY