MEMORANDUM

Agenda Item No. 7(A)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	**DATE:**	May 6, 2014
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Ordinance relating to zoning and other land development regulations; amending regulations governing nonconforming uses, structures, and lots; amending Section 33-35 and deleting Sections 33-34 and 33-35.1 of the Code

A substitute was presented and forwarded to the BCC with a favorable recommendation at the 4-10-14 Land Use & Development Committee. This substitute differs from the original in that it provides additional methods by which a property or use can be deemed "legally established"; references additional procedures through which variances relating to nonconforming lots can be approved; clarifies standards regarding discontinuation or enlargement of nonconforming uses; adds standards governing uses that existed prior to October 1957; and clarifies what evidence may be submitted to demonstrate square footage of structure.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum

MIAMI-DADE COUNTY

Date: May 6, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance relating to zoning and other land development regulations; amending regulations governing nonconforming uses, structures, and lots; amending section 33-35 and deleting sections 33-34 and 33-35.1 of the code of Miami-Dade County

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This proposed ordinance updates zoning and other land development regulations governing nonconforming uses, structures, and lots. It amends section 33-35, deleting sections 33-34 and 33-35.1 of the Code. Implementation of this ordinance will not have a fiscal impact to the County.

Jack Osterholt
Deputy Mayor

Fis4814

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: May 6, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 7(A)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 7(A)

5-6-14

ORDINANCE NO. _____

ORDINANCE RELATING TO ZONING AND OTHER LAND DEVELOPMENT REGULATIONS; AMENDING REGULATIONS GOVERNING NONCONFORMING USES, STRUCTURES, AND LOTS; AMENDING SECTION 33-35 AND DELETING SECTIONS 33-34 AND 33-35.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 33-34 of the Code of Miami-Dade County, Florida, is hereby deleted as follows:[1]

[[~~**Sec. 33-34. Existing uses.**~~

~~(a) Nothing contained in this chapter shall be deemed or construed to prohibit a continuation of the particular lawful use or uses of any land, building, structure, improvement or premises legally existing in the respective districts at the time this chapter becomes effective; provided, however, that if any such existing lawful use is changed to a different use after the date of the adoption of this chapter* such different use shall conform to the provisions of this chapter regulating the particular district in which said premises are situated.~~

~~(b) If any legally existing use or occupancy of a building or premises conflicts with any requirement of this chapter or any of its amendments, such building shall not be moved,~~

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

~~structurally altered or added to, except after approval after public hearing.~~

~~(c)~~ ~~All future buildings, structures, repairs, alterations or other improvements shall comply with all district requirements contained herein and such structural provisions of the building code and other regulations as have been incorporated herein and made a part hereof, including any building on which construction was suspended at the time this chapter* was adopted and any building for which foundations were not completed at said time.~~

~~(d)~~ ~~If, after the adoption of this chapter* the aggregate cost of the repairs or alterations, during the ensuing ten-year period, exceeds fifty (50) percent of its current value, any building not conforming in use and occupancy with the provisions of this chapter shall be arranged or altered to conform as to use and occupancy with the requirements of this chapter and its subsequent amendments; provided, however, that this paragraph shall apply only to such buildings as were so used or occupied legally prior to August 2, 1938.~~]]

Section 2. Section 33-35 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

[[~~**Sec. 33-35. Nonconforming uses.**~~

~~(a)~~ ~~A nonconforming use shall not be extended in any direction nor shall such use be replaced by another use not specifically permitted in the district concerned.~~

~~(b)~~ ~~No building or premises wherein or whereon a nonconforming use is discontinued for a period of at least six (6) months, or is superseded by a use permitted under the provisions of this chapter in the district in which said building or premises are situated, shall again be devoted to any use prohibited by this chapter in the district.~~

~~(c)~~ ~~Any building which does not conform in use, occupancy or construction, or in some other way, with the provisions of this chapter (said structure, use of occupancy having existed prior to the adoption of these regulations) which becomes damaged as to roof and/or structure to an extent of~~

~~fifty (50) percent or more of its reasonable market value at the time, by fire, flood, explosion, wind, war, riot or any other act of God or man, shall not be reconstructed or used or occupied as before said damage, but, if damage to an extent of less than fifty (50) percent of the reasonable market value at the time of the damage, the building may be reconstructed or used as before, provided such reconstruction is completed or such use is started within six (6) months of the date of such damage.~~

~~(d) When a nonconforming building is vacated, the Director may attach, or have attached, a notice to the effect that new occupancy shall require conformance to this chapter, but the absence of such notice shall not relieve the owner of full compliance with this chapter.~~

~~(e) Where any premises, whereon a building containing a nonconforming use is located, is partially acquired by an official public body for a public purpose, the use shall be permitted to continue on remaining portion of the premises under the following conditions:~~

~~(1) Where part of the structure is taken, an amount equal to that portion required may be added to the remaining structure.~~

~~(2) If the entire structure is acquired, a new structure may be erected on the remaining portion of the premises, if such premises conform to the requirements of this chapter, providing said new structure does not exceed in size the original structure that was taken.~~

~~(3) If such existing structure does not warrant remodeling or relocating, then a new structure may be erected on the remaining portion of the premises, providing the same does not exceed in size the original structure and providing that the new structure can be erected on the site in accordance with applicable zoning regulations.~~

~~(4) If the existing structure is such that it can be relocated on the portion of premises remaining, then the same can be relocated providing it complies with applicable zoning and building regulations.~~

~~(5) Where a new structure is erected for several uses and it is desired to reestablish a nonconforming use, the same shall be permitted providing the area to be devoted to the nonconforming use shall not exceed the original area devoted to the nonconforming use.~~

~~(f) In the event a nonconforming use is created by resolution pursuant to an application filed by the Director, an application requesting a nonuse variance or special exception pursuant to Section 33-304 of the Code which furthers the original purpose and intent of the nonconforming use may be filed at no fee to the applicant. The application filed under this subsection must be filed within twelve (12) months of the date the zoning resolution is transmitted to the Clerk of the Commission and shall only apply to those nonuse variances and special exceptions which are necessitated by a change of zoning and that would not have been required under the prior zoning district.~~]]

>>**Sec. 33-35. Nonconforming Lots, Uses and Structures.**

(A) Purpose/Applicability

(1) Nothing contained in this Chapter shall be deemed or construed to prohibit the continuation of a legally established nonconforming use, structure or occupancy, as those terms are defined herein. The intent of this Section is to encourage nonconformities to ultimately be brought into compliance with current regulations.

(2) The terms "nonconformity" and "nonconforming" shall refer to a use, building, or lot that does not comply with the regulations of the applicable zoning district. Only legally established nonconformities shall have rights under this Section.

(3) For the purpose of this Section, the term "expansion" shall mean an improvement, addition, enlargement, extension, or modification to a structure that increases the square footage of the structure.

(4) For the purposes of this Section, "legally established" shall apply to the following circumstances:

(a) A lot that does not meet the lot frontage, lot width, lot depth, and/or lot area requirements of the applicable zoning district, provided that such lot met the regulations in effect at the time of platting<< >>or at the time the lot was otherwise lawfully created<<[2] >>.

(b) A site or improvement that is rendered nonconforming through the lawful use of eminent domain, an order of a court of competent jurisdiction, or the voluntary dedication of property.

(c) An existing use which conformed to the code at the time it was established.

(d) A building and/or site improvement that was permitted in accordance with regulations in effect at the time of permitting or that was approved pursuant to a public hearing.

(e) A building and/or site improvement that had received final site plan approval through a public hearing pursuant to this chapter or though administrative<< >>approval<< [[~~site plan review~~]] >>or had a valid building permit<< >>or is otherwise determined by the Director to have been legally authorized<< >>.

(f) A vested right has been established pursuant to Sections 2-114.1 to 2-114.4 of this Code.<<

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[2] The differences between the substitute and the original item are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.

>>(g) A legal residential use (including but not limited to a mobile home or manufactured home) that: existed on August 23, 1992; and was allowed to be rebuilt either in compliance with all plans approved and of record as of August 23, 1992, or in accordance with any use and number of units permitted by a certificate of occupancy then in existence; and for which an application for a building permit had been submitted prior to August 30, 1993.<<

>>(5) This Section shall not apply to nonconforming lots, structures or uses located within an Urban Center District or Urban Area District. These areas shall be governed by Article XXXIII(K) (Standard Urban Center District Regulations).

(B) Nonconforming Lots, Uses and Structures

(1) Nonconforming Lots

(a) Development on a legally established, nonconforming lot that does not meet the lot frontage and/or lot area requirements of the applicable zoning district shall be permitted, provided that the development meets all other requirements of the applicable zoning district.

(b) Expansions of structures on legally established, nonconforming lots shall be permitted in accordance with this section.

(c) Variances from other applicable zoning requirements shall<< [[~~require~~]] >>be approved only through:<< >>a public hearing, pursuant to Section 33-311 of this Code<< >>; or through administrative procedures authorized by this chapter<< >>.

(2) Nonconforming Uses

(a) A legally established nonconforming use may continue.

(b) If a nonconforming use is discontinued for a period of more than one year, the use may not be reestablished. A use shall be considered discontinued once the activities and commerce, essential to the continuation of the use are abandoned<< >>, unless the property owner is able to demonstrate that there was no intent to abandon the use<< >>. Discontinuance due to acts of force majeure shall not constitute abandonment provided a good faith effort is made to reestablish the use.

(c)<< >>No such nonconforming use shall be enlarged or increased to occupy a greater area of land or structure, except that expansions<< [[~~Expansions~~]] >>of nonconforming single-family and two-family residences shall be permitted.<<

>>(d) *Existing Uses.* Notwithstanding any other provision of this chapter to the contrary, an existing use that conflicts with any requirement of this chapter may be enlarged or increased to occupy a greater area of land or structure, only if approved after public hearing. For purposes of this section, an "existing use" is the use of any land, building, structure, improvement, or premises that legally existed on or before October 22, 1957.<<

>>(3) Nonconforming Structures

(a) To prevent changes in regulation from unduly burdening property owners, legally-established, nonconforming structures may continue to be used and maintained. Expansions, repairs, alterations, and improvements to nonconforming structures shall be permitted only in accordance with the following provisions:

(i) Internal and external repairs, alterations, and improvements that do not increase the square footage of the nonconforming structure shall be permitted.

(ii) Expansions to a nonconforming structure shall be permitted as follows:

(a) If the total square footage of the proposed improvement is less than fifty (50) percent of the structure's net square footage at the time it became nonconforming, the improvement shall comply with current regulations.

(b) If the total square footage of the proposed improvement is equal to or exceeds fifty (50) percent of the structure's net square footage at the time it became nonconforming, the entire structure and site improvements shall be brought into compliance with current regulations.

(c) Once the cumulative total of additional square footage of improvements equals to fifty (50) percent of the structure's net square footage at the time it became nonconforming, no additional expansions shall be permitted and the entire structure and site improvements shall be brought into compliance with current regulations.

(d) For the purposes of this Section, net square footage

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shall refer to the square footage indicated on the building permit or determined through equivalent evidence<< >>, such as aerial photographs, tax roll information, certificates of use or occupancy, or design professional certifications<< >>.

(b) If a nonconforming structure is damaged by fire, flood, explosion, wind, war, riot or any other act of force majeure, repairs shall be subject to the following provisions:

(i) If the repair/replacement cost is less than fifty (50) percent of the value of the structure based upon the average of two (2) independent appraisals, the structure may be reconstructed up to the same building height and within the same building footprint existing prior to the damage, provided that an application for final building permit has been submitted within twelve (12) months of the date of such damage unless extended by the Board of County Commissioners.

(ii) If the repair/replacement cost is equal to or exceeds fifty (50) percent of the building's value based upon the average of two (2) independent appraisals, the building and site improvements shall be brought into compliance with current regulations.

(iii) Routine internal and external maintenance, repairs and material replacement such as re-roofing, painting, window or door replacement, mechanical equipment

repair and replacement, plumbing and electrical maintenance, and similar repair, maintenance, and replacements shall be permitted.

(c) If a nonconforming building is deemed to be unsafe, pursuant to Chapter 8 of this Code, and demolition is required, the building shall be rebuilt in accordance with current regulations.

(d) In addition to the requirements of this Section, all repairs, improvements, and expansions to a nonconforming building shall comply with the Florida Building Code.<<

Section 3. Section 33-35.1 of the Code of Miami-Dade County, Florida, is hereby deleted as follows:

[[~~Sec. 33-35.1. Hurricane relief regarding existing and nonconforming residential uses.~~

~~Notwithstanding any other provisions of Chapter 33 to the contrary, including but not limited to Sections 33-34 and 33-35, all legal, nonconforming residential uses and legal existing residential uses (including but not limited to mobile homes and manufactured housing) which existed on August 23, 1992, shall be permitted to rebuild in compliance with all plans approved and of record as of August 23, 1992 or in accordance with any use and number of units permitted by a certificate of occupancy then in existence. It is provided however that no structure or portion thereof shall be rebuilt in a zoned road right-of-way except in a zoned right-of-way adjacent to a five-acre fractional line waived by the Director and the Director of the Public Works Department, prior to August 23, 1992. All rebuilding shall be in compliance, and conformity, with all other provisions of the Code of Miami-Dade County other than Chapter 33. All building permits shall be applied for no later than August 30, 1993. The authorization provided in this section shall terminate on August 31, 1993.~~]]

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Dennis A. Kerbel

Prime Sponsor: Commissioner Jose "Pepe" Diaz