

November 14, 2023

Board of Adjustment and Appeals
Town of Highland Beach
Town Hall

Dear Board Members,

My husband Dr. Frank Troiano and I are requesting that the parcel, addressed 4611 S Ocean Blvd., to the west of A1A be recognized by the Town of Highland Beach as a separate lot, than the lot, addressed 4611 S Ocean Blvd., to the east of A1A. We would like to build a family home on the west side parcel in the future.

Due to the construction of A-1-A and the adoption of the Highland Beach Comprehensive Plan the lots became separate and distinct lots.

Both lots have always been given different land use and zoning classifications in the Highland Beach Comprehensive Plan. RMI - multi family land use on the west side and single family land use on the east side.

Palm Beach County recognizes the lots as being separate on our/their county record card, specifically, lot size designation, tax billing and zoning.

The zoning for the lot is complimentary and in keeping with the zoning of all the other lots around it (north, south and west).

There has been some question regarding non-conformity which calls for conforming lots to be 80' wide. Our lots are 68.06' wide which is considered non-conforming; however, this non-conformity is benign and does not have a negative impact on the health and safety of the public. Our lots are less than 12 feet shy of the 80' conformity. Another reason to further our case, was pointed out by Mr. Labadie and that is our lots are the only lots in Highland Beach that are of this particular type and therefore they are unique and the situation is unique. No case law has been discovered that would negatively apply to our circumstance.

Conclusion: The two separate lots are physically divided by A-1-A. Both lots have separate zoning classifications. The county record card recognizes the lots as being separate as defined by lot size, tax billing and zoning classification.

All of the other lots around our west side lot are zoned the same as ours. There is no negative impact on the health and safety of the public by recognizing the lots as distinct and separate. By recognizing that the lots are separate our family would potentially be able to build a beautiful home on the west side lot.

Thank you for this opportunity to meet with you. Respectfully,

Laura and Frank Troiano



[PAPA Home](#)

Search by Owner, Address or Parcel



[View Property Record](#)

Owners

TROIANO LAURA
TROIANO FRANK P &

Property Detail

Location 4611 S OCEAN BLVD
Municipality HIGHLAND BEACH
Parcel No. 24434709000010040
Subdivision
Book 24308 [Page 585](#)
Sale Date DEC-2010
Mailing Address 4611 S OCEAN BLVD
 BOCA RATON FL 33487 5300
Use Type 0100 - SINGLE FAMILY
Total Square Feet 3291

Sales Information

Sales Date	Price
DEC-2010	10
DEC-2010	10
SEP-2005	10
JUN-2005	10
JUN-2005	10

1 [2](#)

Appraisals



Search by Owner, Address or Parcel



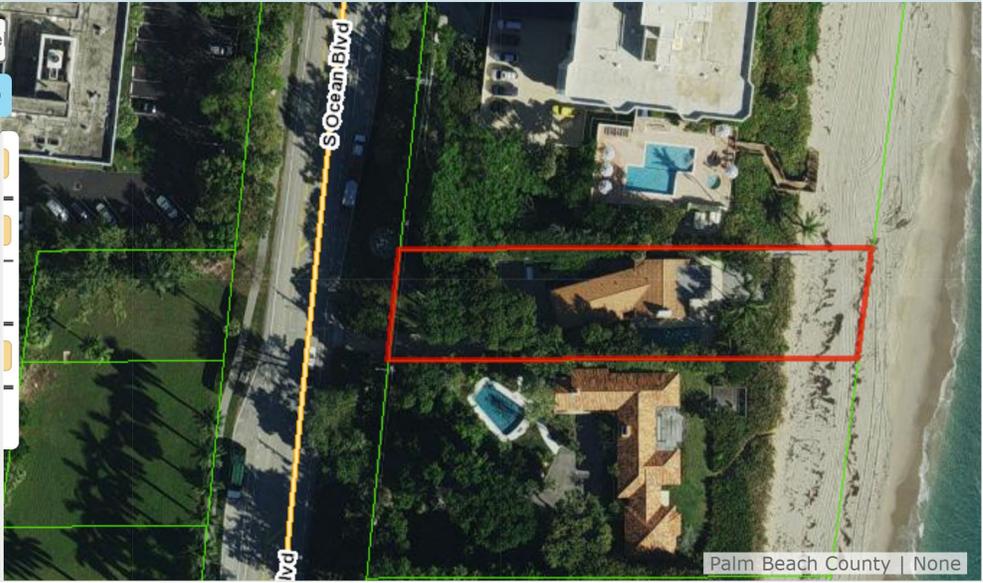
[View Property Record](#)

Owners

TROIANO LAURA
TROIANO FRANK P &

Property Detail

Location 4611 S OCEAN BLVD
Municipality HIGHLAND BEACH
Parcel No. 24434709000010040
Subdivision
Book 24308 **Page** 585
Sale Date DEC-2010
Mailing 4611 S OCEAN BLVD



Palm Beach County | None

PALM BEACH COUNTY PROPERTY RECORD CARD

TAX YEAR 2021

LOCATION & OWNER INFORMATION
PARCEL ID 24-43-47-09-00-001-0040
NBHD 240200RS
PARCEL ADDR 4611 S OCEAN BLVD
LEGAL 9-47-43, S 67.38 FT OF N 367.38 FT OF N 1/2 OF GOV LT 1 (LESS RD RW) AKA CITY LOT NO 12
TAX DISTRICT 24984
OWNER TROIANO FRANK P & TROIANO LAURA
ADDRESS 4611 S OCEAN BLVD
 BOCA RATON FL 33487-5300



PALM BEACH COUNTY



ENTER INFORMATION
 TYPE DATE E I AP
 IMP 29-OCT-14 31 F 14
INCOME AG

0100 PROPERTY USE /SINGLE FAMILY
LIVING UNITS: 1
TOTAL CARDS: 1 **AUTOCAD:**

TOTAL PARCEL
 TYPE VALUE
 MASS 4,423,931
 OVERRIDE
 INCOME 0
 PRIOR YR VAL 3,913,771
 BUILDING 179,460
 OBY's 26,171
 LAND 4,218,300
 MARKET 4,423,931
 AG/NON AG LAND
 AG LAND & IMP
 LAND MKT VAL 0
 LB Ratio (value) 0.95
 SOH%
 1 CAMA VALUE

SALES INFORMATION

BOOK	PAGE	DC	QC	S	PRICE	DATE
05264	0843	WD	U	I	400,000	01-APR-87

AG INFORMATION

LINE	CA L#	CROP	LUC	ACRES	RATE	CODE	VALUE
TOTAL							

PERMIT INFORMATION

PERMIT #	PERMIT DT	TYPE	WHY	STAT	TAXYR	AMOUNT
30935-A-PAV	02-FEB-15	F	05	T	2016	16,350
30935	07-MAY-14	F	02	C	2015	211,500

NOTES
 4/87 PP \$100,000 PETN2020-2429 PETN2021-1834

OBY INFORMATION

CRD	L#	CODE	YRBLT	EFFYB	YRRMD	WDTH	LGTH	AREA	UNITS	GD	MODCDE	RATE	PC	FC	DEP	FUNC	RSN	ECN	RSN	SOH	VALUE
1	4	PAT	1959			0	0	125	1	C	3	10.89	A	A	25					100	340.00
1	5	WLL	1959			0	0	409	1	C		10.74	A	A	25					100	1,098.00
1	6	DCK	2014	2014				420	1	C		10.90	A	A	70					100	3,205.00
1	7	PL1	2014	2014		0	0	1	1	B		27,600.00	A	A	78				100	21,528.00	
OBY VALUE																					26,171.00

LAND INFORMATION

L#	LUSE	ZONE	AG	AGLND	TP	CDE	AFF	EFF	DEPTH	SQ FT	ACRES	UNITS	RATE	SIZE	NBHDF	INF	PCT	SOH	VALUE		
1	0120	RS			U	W6			217	14,569	0.33	1	3,400,000.00	T	1.2	MS	-5	100	3,876,000.00		
NOTES: SIDES MULTI																				REV: 39 A 22-APR-2021	
2	9950	RS			U	S1			71	4,826	0.11	1	300.00	T	1		0	0	300.00		
NOTES:																				REV: 39 A 22-APR-2021	
3	0100	RML			U	S5			0	8,185	0.19	1	300,000.00	T	1.2	MS	-5	100	342,000.00		
NOTES: SIDES MULTI																				REV: 39 A 22-APR-2021	
TOTAL ACRES										.6332	TOTAL LAND VALUE										4,218,300.00

why 2 parts

1.2 MS -5 100

ZONING PRACTICE

NOVEMBER 2009



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 11

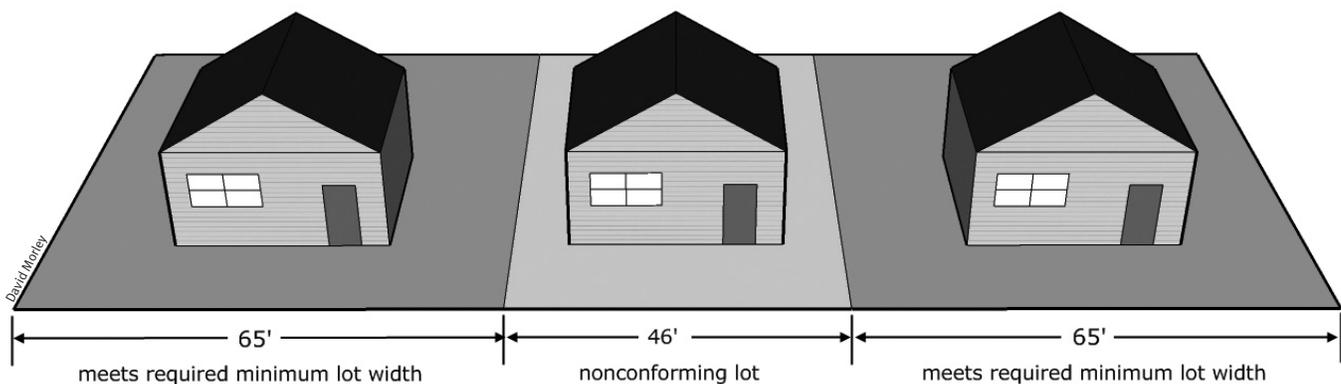
PRACTICE NONCONFORMITIES



Distinguishing Between Detrimental and Benign Nonconformities

By V. Gail Easley, FAICP, and David A. Theriaque

Local governments routinely adopt new or revised zoning regulations to establish minimum standards for the use of land and standards for development on the land.



➔ A nonconforming lot does not comply with current dimensional standards such as minimum area, width, depth, or frontage.

With the adoption of new standards for use and development, many existing uses, structures, site design features, and lots may no longer meet the current standards.

The concept of nonconformities arises from adopting new codes for areas that already have some development, which is the case for almost every jurisdiction in the country. When land is used for activities that are no longer permissible under the zoning regulations, the local government typically allows the preexisting use to continue if it was permissible when it was first established. Likewise, when development is in place and the provisions of the zoning regulations render the lot or one or more site design features out of compliance with current standards, the local government typically “grandfathers” the development if it was in compliance when first established. Grandfathering is another word used to describe nonconformities, which means the local government is granting legal status to the use or development, but with limitations.

An existing use or development that was not in compliance when a local government enacts new regulations is not eligible for grandfathered status. Indeed, each claim of grandfathered status must meet this threshold question: Was the use or development in compliance with the existing regulations? If not, such use or development is not entitled to any protection from the new regulations. Rather, it is subject to code enforcement proceedings to bring it into compliance with the newly adopted regulations.

This issue of *Zoning Practice* addresses legal nonconformities of use and development standards, but does not address signs. There are many issues pertaining to signs, including First Amendment rights, which are too complex to include in this article. Code enforcement of unlawful uses is also a topic for another issue.

WHY DO LOCAL GOVERNMENTS GRANDFATHER USES AND STRUCTURES?

When zoning was in its infancy, planners expected that there would be few nonconformi-

ties and those that existed would naturally go away over time. Because of the nonconformities’ protected status as grandfathered uses, however, they continued to prosper due to the prohibition on other such uses in that zoning district. In essence, such nonconforming uses were provided with monopolies.

Additionally, zoning was perceived as a prospective matter that would not apply to uses which were already in existence. Moreover, in light of the uncertainty regarding whether the courts would uphold zoning regulations, any attempt to apply the new zoning regulations to existing uses and development was perceived as increasing the likelihood that a court would invalidate such regulations. Allowing nonconformities to continue also reduced the amount of public opposition to the concept of zoning regulations.

These concerns hold true today. From a public policy perspective, local governments are rightfully concerned about the public outcry that would occur if grandfathered status was not applied to existing uses and development. Imagine

ASK THE AUTHOR JOIN US ONLINE!

Go online from November 30 to December 11 to participate in our “Ask the Author” forum, an interactive feature of *Zoning Practice*. V. Gail Easley, FAICP, and David Theriaque will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and *Zoning Practice* will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

About the Authors

V. Gail Easley, FAICP, is an adjunct lecturer in the urban and regional planning program at the University of Florida. In her work as a local government and consulting planner, she has provided services to local, regional, and state governments for 30 years, including growth management, comprehensive planning, and the creation of award-winning land development regulations in unified codes and individual ordinances. She frequently provides training in seminars, conferences, and publications, and is the author of previous *Zoning Practice* articles.

David Theriaque is an attorney representing private-sector and governmental clients regarding land-use planning and growth management law at the state and federal levels. He has been an adjunct professor at Florida State University Department of Urban and Regional Planning and is a frequent lecturer at various conferences on planning and growth management issues. He is a charter life member of the Florida Wildlife Federation and was selected by 1000 Friends of Florida as a “Special Friend of Florida.”

the uproar that would occur if all existing nonconforming uses were required to cease immediately upon the adoption of new zoning regulations.

Similarly, even though the concept of zoning is well established in the court system, the courts protect existing uses and development from immediate compliance with the adoption of new zoning regulations through various legal doctrines such as takings law, vested rights, and concepts of equity and justice.

Despite these good reasons to allow nonconformities to continue, nonconformities often undermine what a community is seeking to achieve when it establishes specific allowable uses and development standards for a zoning district. Therefore, it is important to determine the best way to eliminate, reduce, or continue nonconforming situations.

UNDERSTANDING THE JARGON

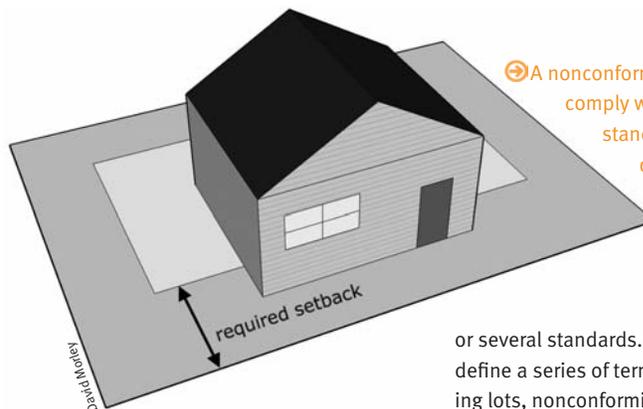
In order to be clear about the concepts, a few terms pertaining to nonconformities are explained here:

Nonconforming use. Use means the activity carried out on the land. When a use is nonconforming, it means that the existing use is not authorized for the zoning district in which it is located. However, even when the use is nonconforming, the structure housing the use is not necessarily nonconforming. In fact, there may be no structures involved at all. For example, a field in an agricultural zone might be used for parking although parking is not an authorized principle use.

A review of the Planning Advisory Service Report 521/522, *A Planners Dictionary*, reveals that many local governments include structures, lots, and site design features within the definition of nonconforming use. However, we make a clear distinction between use and site design or development standards when

- accessory structures, such as dumpsters, pools, pool enclosures, sheds, recreational facilities, or greenhouses.

When new design standards are adopted to govern the location, height, dimensions, number, or other design requirements, existing development may no longer conform to one



applying the term *nonconformity*. We believe it is important to distinguish between the activity (use) and the design standards that apply to buildings, structures, site features, and lots.

Nonconforming development standards.

Site development standards pertain to:

- lots, meaning the area or dimensions;
- structures, primarily the principal building(s) on a site;
- required design features, such as parking lots, loading areas, or stormwater facilities; and

or several standards. Local governments often define a series of terms, such as nonconforming lots, nonconforming parking, nonconforming dimensional requirements, and so forth. The key factor is that all such nonconformities pertain to development or design standards, as distinguished from use.

Detrimental nonconformities. Many people believe that nonconformities are inherently detrimental or cause harm in some way. However, based on our experiences and discussions with practitioners over the last several years, it seems clear that nonconformities may or may not be detrimental. Consequently, we believe that nonconformities should be separated into two categories—“detrimental” and “benign.”

Detrimental nonconformities are those that have a negative impact on the health and safety of the public. Examples include uses involving hazardous materials, such as gasoline stations in single-family neighborhoods; uses that produce significant noise, such as body shops or paint shops; uses that have been deemed incompatible, such as adult entertainment establishments near schools; or uses that have large trip generation characteristics, such as drive-through restaurants.

Detrimental nonconformities clearly have the potential for harm and should be subject to limitations leading to their eventual removal or

not a single concept to be routinely cited as the basis of regulation. Rather, health and safety are the basis of protection from injury, illness, danger, and other harm. Public welfare is concerned with nuisance, economic interests, convenience, and community character. While benign nonconformities may have some negative impact, the local government has determined that the negative impact is small and does not threaten the public health and safety. For example, the amount of deviation from a dimensional requirement may be so small as to be unnoticeable, such as an encroachment of only a few inches into

compliance with all remaining development standards. Such exceptions are not consistent with the idea that the nonconformity should be eliminated eventually.

- *Prohibiting or limiting a change of use* except when the new use is considered conforming or less nonconforming, often based on development standards to support the use. In this latter situation, a good example is parking. When the use requires the same or fewer parking spaces, the impact from the change of use is not increased.
- *Requiring the combination of adjacent nonconforming lots.* When a lot has less area than



Photos by John Svoboda

➔ Detrimental nonconformities threaten the public welfare. Nearby residents no longer have the quiet enjoyment of their homes due to noise, lights, odor, or increased traffic.

modification into compliance with current standards. This concept forms the basis for most regulation of nonconformities.

Benign nonconformities. When development fails to meet current design standards but the nonconformity is not harmful, there is little or no need to limit the development from expansion, redevelopment, or other activities. Local governments often struggle with this issue because, in most cases, *all* nonconformities are treated alike. The authors recommend that local governments establish a second category of nonconformities—benign nonconformities—with different standards that do not necessarily lead to eventual removal of the nonconforming situation. A nonconformity is considered benign when it does not have a negative impact on the health and safety of the public but may have a negative impact on the public welfare. Examples may include a lack of landscaping, too few parking spaces, or minimal deviations from dimensional standards.

The separation of nonconformities into detrimental and benign is based on the idea that “public health, safety, and welfare” is

a required setback. A benign nonconformity can also arise from inconvenience, such as too few parking spaces. The local government should categorize a nonconformity as benign when there is no need to eliminate it to protect the public from harm.

CURRENT APPROACHES TO REGULATING NONCONFORMITIES

Most regulation of nonconformities is based on the eventual elimination of the situation. This approach leads to regulations such as the following:

- *Prohibiting or limiting the expansion of a building* when the building itself is nonconforming or when the building, even though meeting the development standards, houses a nonconforming use. The idea is that, while routine maintenance is permissible, such a limitation will prevent continued investment into a situation that should not exist. However, many local governments allow a building’s expansion if it does not increase the degree of nonconformity. An example is a building with a nonconforming front setback where an expansion is proposed to the rear of the building in

required for development, and the same owner has two or more contiguous lots, a typical regulation requires the lots to be combined to create one conforming lot. On the other hand, many regulations allow the development of a lot that is nonconforming as to area, provided that all other standards for development are met. This latter situation is a good example of the concept of a benign nonconformity.

- *Providing that a discontinued nonconforming use cannot resume.* Local governments set a time limit on the ability of an owner to resume a nonconforming use. Typical regulations allow six months or one year of cessation; at the end of this time only a conforming use is permissible. During the latest economic downturn, however, many nonconforming uses went out of business. To avoid empty properties and encourage another similar—even if nonconforming—business to move in, some local governments have looked for ways to extend that time limit. One way is to consider the use “continuing” if the property is actively offered for sale or rent.
- *Providing that a nonconforming building that is vacant for a specified period of time is*

not reoccupied until the nonconformity is eliminated and the entire site is brought into compliance with the standards. Again, typical regulations allow six months or one year of vacancy before requiring that the building or other development features are brought up to current standards. Similar to the cessation of use situation, many local governments are extending the time limit if properties are actively offered for sale or rent.

- *Requiring that buildings and other development features that are destroyed are reconstructed only in compliance with current standards.* Most local governments allow reconstruction to the current conditions if there is a determination that the loss of the building is not due to an act of nature and that the loss is less than 50 percent of the value of the building. Therefore, a partially destroyed building can be rebuilt in its same nonconforming situation.
- *Amortizing the nonconformity.* In some instances, a local government establishes a time frame within which the nonconformity must cease. The basis for doing so is to allow the property owner an opportunity to recover his

A local government may wish to avoid the creation of nonconformities through greater attention to creating mixed use districts or the use of flexible design standards and overlay districts.

unsafe by the local government, with the result that elimination or reduction of the nonconformity is not the goal. Further, as planning practice moves away from the rigid separation of uses for the sake of strict uniformity within a district, we recognize that variation is not only acceptable but also is often desirable. Compatible development does not demand sameness. Rather, the public seeks and planners provide mixed use options in modern zoning codes. Increasingly, we see the need to focus on impact, character, compatibility, and urban form—which means that a nonconformity may not be unwelcome in a neighborhood.

A local government may wish to avoid the creation of nonconformities through greater attention to creating mixed use districts or the

standards are intended to reflect urban form rather than prescriptive and uniform dimensions. This contemporary approach avoids nonconforming uses and provides diversity and variation in design rather than the sameness planners and the public seek to avoid.

Another approach that we often use is to create an overlay for a specific neighborhood. A typical example is an older subdivision, established when lots and yards were smaller. The current residential zoning district requires a larger lot area, greater lot width, and larger setbacks; all the older houses and lots become nonconforming. Under typical nonconforming standards, additions to the houses are not allowed because the purpose of the nonconforming provisions is to eliminate, not continue



⊕ Some nonconforming uses create detrimental impacts to their neighborhoods due to noise, traffic, electronic interference, lights, and odors. These impacts can be compounded by structural nonconformities such as inadequate parking, setbacks, buffers, and landscaping.

economic investment before being required to cease the nonconformity. This approach has been used for many different types of uses, such as gas stations in residentially zoned areas, adult entertainment facilities, junk yards, concrete plants, commercial uses, and billboards. The length of the amortization period is based frequently upon the economic life of the nonconformity.

REGULATING BENIGN NONCONFORMITIES

The distinguishing characteristic of the benign nonconformity is that the type and degree of nonconformity are not considered harmful or

use of flexible design standards and overlay districts. A neighborhood or other identifiable geographic unit may contain uses that would be nonconforming in a traditional zoning district, which seeks uniform uses. However, when nonconforming uses are desirable, the government should consider a mixed use district. This avoids the creation of nonconforming uses and may also achieve a vibrant, diverse neighborhood that benefits the community.

Planning practices include many examples of flexible design standards, such as context-sensitive standards, performance standards, or compatibility standards. Such stan-

and expand, the nonconforming situation. Flexible standards may not be a good fit in this situation. However, the creation of the “old neighborhood overlay,” with standards that recognize the existing situation, keeps a stable neighborhood in conformance and allows property improvements with no special procedures or requirements other than compliance with the overlay standards.

Some practitioners have argued that flexibility is the necessary ingredient in regulating nonconformities. However, we believe that a local government does not need to examine nonconformity on a case-by-case basis. Instead,



Kris Morley

⊖ This message parlor in a low-density residential neighborhood is a detrimental nonconforming use. The traffic, lights, and noise generated by this use can have a harmful effect on the surrounding neighborhood.

the standards in a manner consistent with the public interest.

DISTINGUISHING BETWEEN DETRIMENTAL AND BENIGN NONCONFORMITIES IN THE REGULATIONS

Many local governments adopt regulations for nonconformities and include exceptions to those regulations, as described earlier. This approach does not establish clear bases for the exceptions, which are often added on a piecemeal basis to address a particular situation. We recommend the creation of two categories of nonconformities at the outset. Such distinctions make it clear when the nonconformity must be eliminated to protect the public health and safety and can provide a basis for amortizing the nonconformity. The second category, benign nonconformities, still requires specific consideration, but is not intended for elimination.

Regulations that are adopted after a deliberative process can clearly describe those situations which are both nonconforming and detrimental. In such cases, it should be the policy and goal of the local government to eliminate such nonconformities. A detrimental nonconformity is presumed to be harmful to the abutting properties, the surrounding neighborhood, or the community as a whole. If this is the case, regulations should clearly lead to elimination of the nonconformity for the protection of the public.

Therefore, appropriate regulations for detrimental nonconformities would do the following:

- Prohibit *any expansion* of the principal building, accessory buildings, or site features. Continued investment in the property is contrary to the intent to eliminate the nonconformity.

it can decide up front which situations are detrimental and which, even if not sought out, are at least benign in their impact on the neighborhood. Again, the distinction is that detrimental nonconformities are harmful to the public health and safety while benign nonconformities have a potential negative impact on the public welfare.

Examples of benign nonconformities include:

- De minimis (i.e., negligible) deviations from a dimensional requirement, such as encroaching a few inches into a required setback, with no resulting negative impact on neighborhood character.
- A lot that fails to meet a dimensional or area requirement, but the deviation is small enough that the shortfall does not affect the neighborhood character.
- A change in the list of permissible or conditional uses, or eliminating an existing use that is not, in fact, objectionable. It may seem that the change in listed uses is an indication that those not listed are now objectionable. However, unless every existing lot with its existing use is examined during revision to the list of permissible uses, it is often the case that uses become nonconforming not as a matter of policy, but as a matter of oversight. Often, a use considered objectionable at adoption is no longer considered objectionable in later years as times, customs, and lifestyles change.
- Nonconformities arising from a government action, such as the loss of a required front yard for road widening. While the district regulations may require the yard, most properties along the road have the same situation, so the encroachment does not negatively impact that portion of the neighborhood.

- De minimis deviations from a standard, such as required parking spaces, which do not create a negative impact on the surrounding area.

A local government must decide for itself the degree of deviation from a standard that is de minimis. It must also decide how to define the character of a neighborhood and how much change to a lot, its use, or development would have a negative impact. All such determinations are based on impact to public welfare and not public safety or health, where a stricter standard applies.

Such a determination is not unusual for a local government, as the consideration of impact on neighborhood character and deviation from required standards is routine in variance requests and consideration of conditional uses. In fact, we believe that benign nonconformities are similar to variances in that the end result authorizes a deviation from



John Svoboda

⊕ Benign nonconformities are often unnoticed because the nonconformity is so similar to surrounding uses. Thus, there is no harm to the public in the continuation of the nonconforming situation.

- Prohibit *any addition* of site features, unless such features actually reduce the nonconformity. An example of this would be adding parking when part of the nonconformity is that there are too few parking spaces. Another example is the addition of landscaping, either to the parking lot or the entire site, when part of the nonconformity is failure to have required landscaping.
- Prohibit *any extension* of the use to other parts of buildings or the site that were not occupied by the nonconforming use at the time the regulations changed.
- Prohibit a change of use to any use that is not permissible in the zoning district.
- Establish the shortest feasible time for vacancy before new occupancy requires compliance with the current standards.
- Establish the strictest feasible limit on reconstruction after a disaster to ensure that the reconstruction conforms to current standards.
- Establish the strictest feasible limit on reconstruction following voluntary demolition to ensure that the reconstruction conforms to current standards.

Increasingly, we see the need to focus on impact, character, compatibility, and urban form—which means that a nonconformity may not be unwelcome in a neighborhood.

In contrast, the local government may determine that a benign nonconformity is not harmful to the abutting properties or surrounding neighborhood, but is contrary to the public welfare in some way. Just as a variance is a process to authorize a deviation from development standards, recognition of a benign nonconformity authorizes a deviation from development standards and does not require elimination of the nonconformity.

We further recommend that changes to benign nonconformities should not be permissible by right, but rather must be authorized by a board of adjustment, similar to the process for authorizing a variance. The justification for granting a variance is different than the justification for changes to benign nonconformities. Therefore, a change to property categorized as a benign nonconformity should not be authorized as a variance. However, we recommend that the *process* for the two situations, variances and modifications to benign nonconformities, could be similar.

This procedure ensures an opportunity for public participation and allows for the addition of conditions to approval. For example, a property that is nonconforming due to a de minimis setback deviation and lack of adequate landscaping is eligible for expansion. However, the board can require that the landscaping be brought to current standards as a condition of approval of the building expansion. The setback nonconformity continues unchanged. The public welfare is improved and the property owner can make economic use of the property.

Thus, appropriate regulations for benign nonconformities would do the following:

- Allow expansions of the principal building, accessory buildings, or site features, provided that the expansions are conforming to current standards.
- Allow the addition of site features that conform to current standards.
- Allow extension of the use to other parts of buildings or the site.

- Allow a change of use to a permissible or conditional use in the zoning district.
- Allow vacancy of the property for any period of time, provided that the property is properly maintained to ensure safety.
- Allow reconstruction to restore existing conditions following a disaster.

The idea of categorizing nonconformities as detrimental and benign is a new way of labeling nonconformities, but it is not an altogether new idea. For example, Cape Canaveral, Florida, allows some nonconformities to be modified through a special permit. In establishing this provision, the city recognizes that some nonconformities do not have a detrimental impact on the community. San Leandro, California, has a list of exceptions to nonconformity provisions along with an overlay district for nonconforming situations. Identifying exceptions to the nonconformity provisions is a typical method of addressing benign, or nondetrimental, nonconforming situations. Lowndes County,

Georgia, also has an overlay district to avoid creation of nonconformities, although it is not labeled a nonconforming overlay, as is the case in San Leandro. Lompoc, California, classifies nonconformities into groups A and B to distinguish detrimental from nondetrimental situations.

CONCLUSIONS

This article makes the case for two categories of nonconformities—detrimental and benign—with separate regulations for each category. While the initial basis for nonconformities continues to exist, many local governments are seeking ways to retain and even encourage the continuance of nonconformities that are not harmful or unsafe. The distinction between nonconformities that are detrimental and destined for elimination and nonconformities that are benign and even desirable renders the regulations more meaningful for property owners and easier to administer by the local government.

Cover photo collage designed by Lisa Barton; photos (clockwise): gas sign, © iStockphoto.com/Paul Hart; house, © iStockphoto.com/jtc215; liquor store, John Svoboda; auto repair shop, Kris Morley.

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ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

122 S. Michigan Ave.
Suite 1600
Chicago, IL 60603

1776 Massachusetts Ave., N.W.
Washington, D.C. 20036



DOES YOUR COMMUNITY DISTINGUISH
BETWEEN DETRIMENTAL AND BENIGN
NONCONFORMITIES?

11



CFN 20110012763
 CR BK 24308 PG 0585
 RECORDED 01/11/2011 15:49:54
 Palm Beach County, Florida
 AMT 10.00
 Doc Stamp 0.70
 Sharon R. Bock, CLERK & COMPTROLLER
 Pgs 0585 - 586; (2pgs)

Prepared by and return to:

Derek C. Hamilton
 Florida Attorney #0032899
 Bingham McHale LLP
 2700 Market Tower
 10 West Market Street
 Indianapolis, IN 46204-4900
 Tel: 317-968-5325

Parcel Control #: 24-43-47-09-00-001-0040
 Municipality: Highland Beach, FL

QUITCLAIM DEED

This Indenture, made this 30th day of December, 2010, at 8:15 a.m. EST, between (i) Frank P. Troiano, as Trustee of the Frank Troiano Revocable Trust dated September 1, 2008 and Laura Troiano, as Trustee of the Laura Troiano Revocable Trust dated September 1, 2008 (the "Grantors"), both of which have as their post office address 290 Breakwater Drive, Fishers, Indiana 46038 and (i) Frank P. Troiano and Laura Troiano, as husband and wife (the "Grantees"), both of whom have as their post office address 290 Breakwater Drive, Fishers, Indiana 46038:

Witnesseth: That said Grantors, for no consideration do hereby remise, release, and quit-claim unto the Grantees forever, all the right, title, interest, claim, and demand which both the said Grantors have in and to the following described lot, piece of parcel of land, situate, lying and being in the County of Palm Beach, State of Florida, to wit:

The North 67.38 feet of the South 367.38 feet of the North Half of the North Half of Government Lot 1, Section 9, Township 47 South, Range 43 East, Palm Beach County, Florida, subject to right-of-way of State Road A-1-A.

Subject to the easements, restrictions, and reservations of record, if any; zoning ordinances, matters of survey; and taxes payable in the year 2011 and thereafter.

More commonly known as: 4611 South Ocean Blvd., Highland Beach, Florida.

To Have and to Hold the same together with all and singular appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity, and claim whatsoever of the Grantors, either in law or equity, to the only proper use, benefit, and behalf of the Grantees.

[Remainder of page intentionally left blank; signature page follows]

1548264 / 13243-64054

2

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed as of the day and year set forth above.

Signed, sealed and delivered in the presence of:

"GRANTORS"

Print Name Frank D Troiano
Print Name Derek C Hamilton

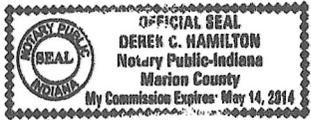
[Signature]
FRANK P. TROIANO, as Trustee of the FRANK TROIANO REVOCABLE TRUST DATED SEPTEMBER 1, 2008

Print Name Frank D Troiano
Print Name Derek C Hamilton

[Signature]
LAURA TROIANO, as Trustee of the LAURA TROIANO REVOCABLE TRUST DATED SEPTEMBER 1, 2008

STATE OF INDIANA)
COUNTY OF MARION) SS.:

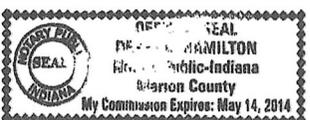
The foregoing instrument was acknowledged before me this 30th day of December, 2010, by FRANK P. TROIANO, in his capacity as Trustee of the FRANK TROIANO REVOCABLE TRUST DATED SEPTEMBER 1, 2008, who is personally known to me or who has produced [Signature] as identification.



[Signature]
Signature of Notary Public
Print Name: _____
State of: _____
My County of Residence: _____
My Commission Expires: _____

STATE OF INDIANA)
COUNTY OF MARION) SS.:

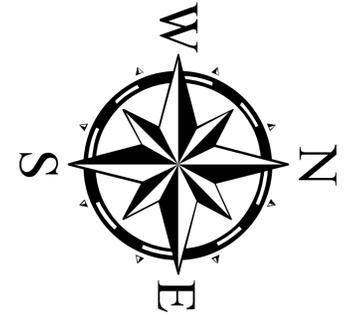
The foregoing instrument was acknowledged before me this 30th day of December, 2010, by LAURA TROIANO, in her capacity as Trustee of the LAURA TROIANO REVOCABLE TRUST DATED SEPTEMBER 1, 2008, who is personally known to me or who has produced [Signature] as identification.



[Signature]
Signature of Notary Public
Print Name: _____
State of: _____
My County of Residence: _____
My Commission Expires: _____



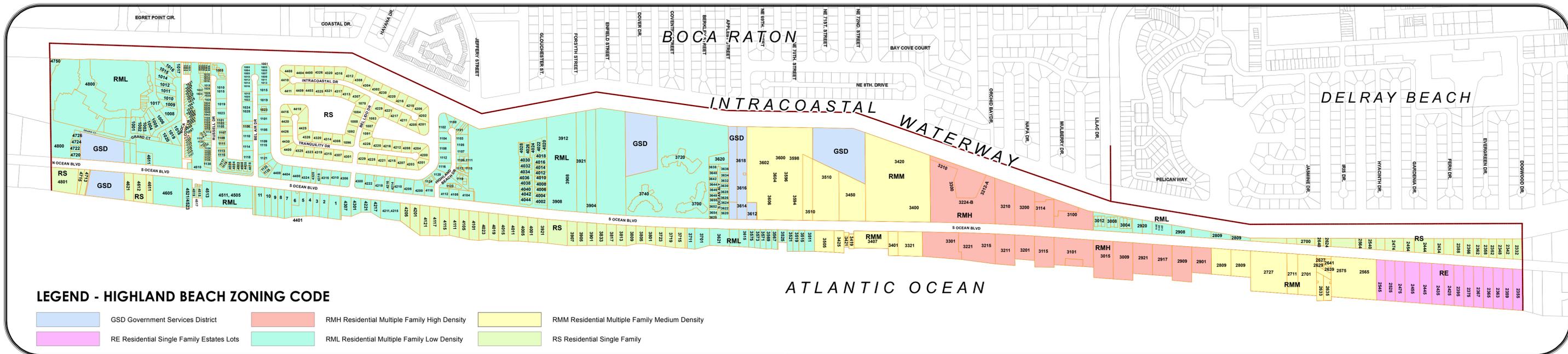
TOWN OF HIGHLAND BEACH OFFICIAL ZONING MAP



SCALE



1 inch = 500 feet



LEGEND - HIGHLAND BEACH ZONING CODE

	GSD Government Services District		RMH Residential Multiple Family High Density		RMM Residential Multiple Family Medium Density
	RE Residential Single Family Estates Lots		RML Residential Multiple Family Low Density		RS Residential Single Family

THIS IS TO CERTIFY THAT THIS IS THE OFFICIAL ZONING MAP OF THE TOWN OF HIGHLAND BEACH AS ADOPTED BY ORDINANCE NO. 594, AND IS AN AMENDMENT OF THE OFFICIAL ZONING MAP REFERRED IN SECTION ONE OF ORDINANCE NO. 503 OF THE TOWN OF HIGHLAND BEACH, FLORIDA.

TOWN COMMISSION

BERNARD FEATHERMAN, Mayor

WILLIAM WEITZ, PhD, Vice Mayor

LOUIS P. STERN, Comm.

CARL FELDMAN, Comm.

RHODA ZELNIKER, Comm.

PLANNING BOARD

CAROL STERN, Chair

ILYNE MENDELSON, Vice Chair

RONALD CLARK

STEPHEN GOLDING

HARVEY MART

CHARLES SHANE

WILLIAM SVENSTRUP

ATTESTATION

VALERIE OAKES, Town Clerk

ADOPTED _____

ORDINANCE NO. _____



DOROTHY JACKS
CFA, AAS
Palm Beach County Property Appraiser

Governmental Center - Fifth Floor
301 North Olive Avenue
West Palm Beach, FL 33401
tel 561.355.3230
fax 561.355.3963
pbcgov.org/papa

Geoprocessing Department
Governmental Center-Fifth Floor
301 north Olive Avenue
West Palm Beach, FL 33401
tel 561.355.1558
fax 561.355.3065
mymap@pbcgov.org

PARCEL SPLIT REQUEST

Requests for parcel splits may be submitted by property owners or agents. This request shall be submitted for review to the GIS/Mapping Department at mymap@pbcgov.org. The requirements that follow are minimal and granting the split will remain at the discretion of the Property Appraiser's Office. The split of this parcel may have an impact on taxable value, exemptions, capped value and/or taxes. This office does not determine whether a parcel/s meet legal requirements for development purposes.

- I. To qualify for a split, the parcel/owner must:
 - a) Be current on all property taxes
 - b) Have existed previously as individual parcels either recorded or unrecorded, that were combined at the owner's request, or
 - c) Provide legal descriptions and/or provide a survey if available for each parcel as they would appear after split
 - d) Have approval from the appropriate zoning/planning/community development agency of your jurisdiction
 - e) Have a release of Unity of Title, if applicable

(Note: GIS/Mapping will verify if the property is encumbered.)

II. Property Control Number: _____ Building Exemption
Yes/No Yes/No

Required: (check one and give support documentation)

_____ Prior existing parcel _____ Deed _____ Identified by survey

Additional Notes: _____

III. Current Owner(s) or Agent:

Signature: _____ Date: _____

Print Name/Title: _____ Contact Number: _____

Email address: _____

For questions regarding splits, please contact the GIS/Mapping Department at 561.355.1558 or submit form(s) to mymap@pbcgov.org.

Interoffice Recommendation to Proceed: Initials: _____ Dept: _____ Date: _____

Tax Roll Year: _____ Completed date: _____ Initials: _____

WEST COUNTY
SERVICE CENTER
2976 State Road 15
Belle Glade, FL 33430
tel 561.996.4890
fax 561.996.1661

NORTH COUNTY
SERVICE CENTER
3188 PGA Blvd., Suite 2301
Palm Beach Gardens, FL 33410
tel 561.624.6521
fax 561.624.6565

MID-WESTERN COMMUNITIES
SERVICE CENTER
200 Civic Center Way, Suite 200
Royal Palm Beach, FL 33411
tel 561.784.1220
fax 561.784.1241

SOUTH COUNTY
SERVICE CENTER
14925 Cumberland Drive
Delray Beach, FL 33446
tel 561.276.1250
fax 561.276.1278