



INDIAN RIVER COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT
1801 27th Street, Vero Beach FL 32960
www.ircgov.com

March 17, 2023

Scott Parker
Managing Partner
1400 10th Avenue, LLC

RE: Confirmation of Continuous Use at 1400 10th Avenue (Parcel ID 33391200000300000009.0)

Mr. Parker,

Thank you for your letter dated March 10th, 2023, regarding the history of operations at the concrete batch plant (FKA Russell Concrete) located at 1400 10th Avenue. The history of this site includes the operation of a concrete plant, established prior to its most recent County site plan approval in March of 1984 (for the addition of an aggregate reclaimer to the existing site). Based on the length of operations at this property, there are existing site-related nonconformities present.

County Code Chapter 904 allows for the continuation of nonconformities subject to the provisions in that section. One of these provisions is that site-related nonconformities cannot cease operations entirely for a continuous period of (1) year or more. If that happens, the nonconformity shall be considered terminated and shall not be reestablished. Based on the backup documentation provided to County staff for the concrete plant located at 1400 10th Avenue, its operation has not entirely ceased for a period of (1) year or more, and as such, may continue subject to the provisions of County Code Chapter 904.

Please note that any future substantive changes to the site may require site plan approval, and any changes to the equipment onsite may require building permits.

A copy of this letter will be included in the County's Community Development records for the subject property.

Thank you, and please feel free to contact me with any questions.

Sincerely,

Andrew Sobczak
Assistant Community Development Director

Attachments:

1. County Code Section 904

CHAPTER 904. - NONCONFORMITIES

<u>Sec. 904.01.</u>	Short title.
<u>Sec. 904.02.</u>	Purpose and intent.
<u>Sec. 904.03.</u>	Definitions referenced.
<u>Sec. 904.04.</u>	Continuation of nonconformities.
<u>Sec. 904.05.</u>	Expansion, increase, or change of nonconformities.
<u>Sec. 904.06.</u>	Repair or alteration of nonconformities.
<u>Sec. 904.07.</u>	Reconstruction of nonconformities.
<u>Sec. 904.08.</u>	Cessation of nonconformities.
<u>Sec. 904.09.</u>	Nonconforming parcels of record.

Section 904.01. - Short title.

This chapter shall be known and may be cited as the Indian River County Nonconformities Ordinance.

(Ord. No. 90-16, § 1, 9-11-90)

Section 904.02. - Purpose and intent.

It is the purpose and intent of this chapter to permit the continuation of those parcels, structures, uses, characteristics of uses or combinations thereof which were lawful when established, but which would be prohibited, regulated, or restricted under the terms of present regulations or future amendments. It is the further purpose and intent of this chapter to promote the phasing out of nonconforming structures, uses, and characteristics of uses and combinations thereof, via specific conditions and limitations as set forth in this chapter.

(Ord. No. 90-16, § 1, 9-11-90)

Section 904.03. - Definitions referenced.

The definitions of certain terms used in this chapter are set forth in Chapter 901, Definitions, of the County Land Development Code.

(Ord. No. 90-16, § 1, 9-11-90)

Section 904.04. - Continuation of nonconformities.

- (1) Nonconformities may be continued so long as they remain otherwise lawful, subject to the remaining provisions of this chapter.
- (2) Existing nonconforming structures shall be deemed to be legal nonconformities if said structure(s):
 - (a) Was properly permitted for construction or was constructed prior to permitting requirements; and
 - (b) Was constructed prior to formboard survey requirements or did not require submission of a formboard survey prior to construction; and
 - (c) Was issued a certificate of occupancy, or passed a final (last) inspection if a certificate of occupancy was not required or was constructed prior to any applicable final (last) inspection or certificate of occupancy requirement.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 92-11, § 2, 4-22-92)

Section 904.05. - Expansion, increase, or change of nonconformities.

- (1) *Generally.* No nonconformity shall be enlarged, increased, or changed to a different nonconformity, except upon a determination by the director of community development or his designee that the change results in lessening of the degree of the nonconformity.
- (2) *Additions to nonconforming structures.* Additions to nonconforming structures containing conforming uses shall be permitted, if the additions to the structure(s) comply fully with setback and other applicable site-related regulations.
- (3) *Additions to, and development or re-development of, establishments with site-related nonconformities.* Additions to, and development or redevelopment of, structures on property with site-related nonconformities, where the structural additions and associated improvements do not warrant the submittal of a major site plan, may be permitted provided that such additions are in conformance with all applicable laws and ordinances of the county, do not create nonconforming uses or structures, and do not increase the degree of the existing site-related

nonconformity. Where an addition or redevelopment proposal warrants the submittal of a major site plan application, all site-related nonconformities shall be terminated and brought into compliance with all applicable regulations of the county, with the following exceptions:

- (a) Site-related nonconformities pertaining to building encroachments into required setback areas, and
 - (b) Site-related nonconformities created by public right-of-way acquisition.
- (4) *Verifying post right-of-way acquisition status.* Nonconformities, including nonconformities on single-family residential sites, created or increased in degree on a site by public right-of-way acquisition may be authorized by the community development director or his designee upon issuance of a letter verifying the post-acquisition legal nonconformity status of the site.
- (5) *Cure plan required for commercial and multi-family sites where impacts of nonconformities created by right-of-way acquisition require mitigation.* Where right-of-way acquisition by a governmental agency such as Indian River County or the State of Florida from a commercial (includes multi-family) site will result in a nonconformity related to setbacks, open space, stormwater management, parking, landscaping, or buffer width, or will result in an increase in the degree of such a nonconformity that existed prior to the acquisition, such nonconformity or increase in the degree of nonconformity shall be allowed upon approval of a "cure plan" site plan.
- (a) A cure plan site plan shall identify the following:
 - 1. Site design changes and site improvements necessary to accommodate the right-of-way acquisition and reduce the degree of or mitigate the impacts of nonconformities. Such design changes and improvements may include but are not limited to parking and driveway additions and modifications, pedestrian and hardscape improvements, landscape and buffer plantings, sign relocations and modifications, and stormwater management system changes.
 - 2. The parties responsible for installing the cure plan improvements, along with timeframes for completion of the changes and improvements.
 - (b) The cure plan site plan shall be accompanied by a document, in a form approved by the county attorney's office, providing written acknowledgment of cure plan related responsibilities by the parties involved in the acquisition.
 - (c) The community development director or his designee is authorized to approve cure plan site plans and may attach approval conditions to reduce the degree of or mitigate the impacts of nonconformities and/or ensure implementation of the cure plan site plan.

These regulations are intended to authorize non-conformities resulting from right-of-way acquisitions and provide for cure plans used in conjunction with the right-of-way acquisition process. These regulations are not intended to create any obligations beyond those obligations addressed in the right-of-way acquisition process.

- (6) *Single-family home non-conformities created by county-initiated rezoning.* For a legally established non-conforming single-family home that became non-conforming due to a county initiated rezoning action occurring after January 1, 1980, a setback non-conformity may be extended for an attached accessory structure such as a screen enclosure provided such extension does not exceed the degree of setback non-conformity of the single-family residence.
- (7) *Single-family homes on properties with existing nonconforming communications towers.* No more than two (2) single-family homes, if otherwise permitted in the applicable zoning district, can be allowed to be built, subject to all other zoning requirements, on property with a nonconforming communications tower, so long as the homes are set back at least two hundred fifty (250) feet from the communications tower and the property owner, and the property owners' successors and assigns hold the county, and its commissioners, officers, employees, and agents, harmless from any claims or damages relating to the granting of such authority.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 91-23, § 3, 5-15-91; Ord. No. 2012-015, § 1, 7-10-12; Ord. No. 2017-013, § 1, 10-3-17; Ord. No. 2021-003, § 2, 1-19-21)

Section 904.06. - Repair or alteration of nonconformities.

Repairs, maintenance and improvements of nonconformities may be carried out, provided that such work does not increase the cubic content of the building or the floor or ground area devoted to the nonconforming use and does not in any way increase or create a site-related nonconformity. Moreover, such work shall not conflict with the reconstruction provisions of section 904.07. The requirements of this section shall not be construed to prevent compliance with applicable laws or requirements relative to the safety and sanitation of a building occupied by a nonconforming use.

(Ord. No. 90-16, § 1, 9-11-90)

Section 904.07. - Reconstruction of nonconformities.

- (1) If any nonconforming structure or use or an establishment containing a site-related nonconformity is damaged by causes including but not limited to fire, flood, explosion, collapse, wind, neglect, age, or is voluntarily razed or disassembled to such an extent that the cost of repair or reconstruction will exceed fifty (50) percent of the market value of the structure before the damage occurred, then the nonconformity shall be deemed terminated and shall not thereafter be reestablished. The cost of repair or reconstruction used in calculations under this "50 percent rule" shall be the hard cost(s) of reconstruction, alteration, rehabilitation, or other improvements to the nonconformity conducted over a total period of ten (10) years. For purposes of calculating repair, reconstruction, and replacement costs, FEMA (Federal Emergency Management Agency) "50 percent rule" policies, as represented in the chapter 901 definition of "substantial improvement", shall be used. In the event that a nonconformity may be repaired by

an investment of less than fifty (50) percent of the market value of the structure before the damage occurred, then such repair or reconstruction shall be permitted, and the nonconformity may continue.

For purposes of applying these regulations, the property owner shall be responsible for providing repair cost, reconstruction cost, and market value information consistent with "market value" as defined in the chapter 901 definition of "substantial improvement," as required by the building official or his designee. The building official or his designee shall be responsible for reviewing such information and determining whether or not the fifty (50) percent of market value threshold is exceeded.

- (2) If Indian River County or a portion thereof is declared a disaster area by the Governor of the State of Florida or the President of the United States, as a result of a natural disaster such as a hurricane, tornado, flood, or other similar act of God, then the provisions of subsection 904.07(1) shall generally not apply, and nonconforming structures substantially damaged or destroyed by the declared disaster may be replaced or reconstructed on or in the location of the pre-disaster building footprint within five (5) years of the disaster declaration unless the deadline is extended beyond five (5) years by resolution of the board of county commissioners. This provision to allow the replacement or reconstruction of nonconforming structures, however, shall have no effect upon the application and enforcement of state or federal laws and agency regulations regarding replacement or reconstruction of nonconforming structures. Under this provision, nonconforming residential mobile homes may be replaced by larger, standard size residential mobile homes if applicable setbacks are satisfied or pre-existing setback encroachments are not increased, and if applicable building codes are satisfied.
 - (a) For a structure located east (seaward) of the county's dune stabilization setback line (DSSL), the rebuilding allowance of this section is limited as follows. Where damage sustained from a declared natural disaster is greater than fifty (50) percent of MAI (Member of Appraisal Institute) assessed current market value, the structure shall, when possible, be relocated upland (landward) of its pre-disaster location to the extent that the pre-disaster footprint can be relocated upland (landward) and be in compliance with applicable building setbacks.
- (3) Use of an accessory structure serving a principal structure rendered unusable or unoccupiable due to damage or destruction of the principal structure shall be governed by the regulations found in section 917.04.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 93-8, § 20, 3-18-93; Ord. No. 2012-015, § 2, 7-10-12; Ord. No. 2012-038, § 1, 12-4-12)

Section 904.08. - Cessation of nonconformities.

- (1) *Cessation of a nonconformity for one (1) year.* If, for any reason, except as specified in subsection (a) below, a nonconforming use of land, a nonconforming structure or an establishment having a site-related nonconformity ceases operation entirely for a continuous period of one (1) year or

more, all nonconformities shall be considered terminated and shall not thereafter be reestablished. This provision shall not apply to nonconforming single-family residential homes and nonconforming residential mobile homes.

Where a nonconforming use is required to have a local, state, or federal license in order to operate and where a nonconforming use fails to maintain a valid required license for a continuous period of one (1) year or more, the use may be deemed to have ceased for that period during which a valid license was not maintained if other evidence of cessation of use is found to be credible.

Evidence supporting a continuous period of use may include, but is not limited to: copies of required local, state, or federal licenses, documents showing payment of telephone and/or utility bills, dated transaction receipts, and business tax filings. Such evidence shall be considered along with any evidence supporting a determination of cessation.

(a) If the operation of a nonconformity ceases entirely or the lawful re-establishment of a nonconformity is delayed due to damage resulting from a declared disaster as referenced in [subsection] 904.07(2), above, and the extent of damage is determined by the community development director or his designee to delay timely re-use of the nonconformity after the disaster, then the cessation for one (1) year regulation threshold of this section (904.08) shall be increased to three (3) years, unless the deadline is extended beyond three (3) years by resolution of the board of county commissioners.

(2) *Replacement of nonconforming mobile homes.* Where mobile home use constitutes a nonconforming use of land, no mobile home may be replaced with another mobile home, except when the mobile home is located in a legal nonconforming mobile home park whereby the mobile home is maintained in conformance with the originally approved mobile home park site plan (as may be amended). The setbacks established in subsection 911.09(8), including footnotes, are applicable to mobile homes within nonconforming mobile home parks.

(3) Any written determination from the community development director or his designee regarding continuation of a nonresidential nonconforming use in a residentially designated area shall be sent by regular mail to owners of adjacent properties and shall state that staff's determination may be appealed as provided in section 902.07. A copy of section 902.07 shall accompany staff's written determination and mailed notice to owners of adjacent property.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 93-8, § 30, 3-18-93; Ord. No. 2012-015, § 3, 7-10-12)

Section 904.09. - Nonconforming parcels of records.

(1) When a parcel has an area smaller than the requirements of the zoning district in which it is located, but was a parcel of record when this regulation was adopted, the permitted use of the zoning district will be allowed, providing all requirements, other than minimum parcel size, are

satisfied. This provision shall not be construed to permit more than one dwelling unit on a parcel with less parcel area per unit than required for the district in which such parcel is located.

- (2) Side yard requirements notwithstanding, all existing parcels of record shall be permitted to have side yards reduced in order to allow a minimum buildable width of thirty (30) feet. The thirty-foot width shall be located so that the buildable area is centered in relation to the width of the lot, and that side yards of equal width are maintained.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 94-1, § 6A, 1-5-94)