

ORDINANCE NO. 1549 - 2010

AN ORDINANCE OF THE CITY OF ROCKLEDGE, BREVARD COUNTY, FLORIDA, AMENDING PART IV OF THE ROCKLEDGE LAND DEVELOPMENT REGULATIONS BY ADDING SECTION 26.01 "REVIEW OF EMINENT DOMAIN WAIVERS, EXCEPTIONS AND VARIANCES BY THE DEVELOPMENT REVIEW COMMITTEE" TO REDUCE ADVERSE IMPACT ON PROPERTY IN CASES WHERE EMINENT DOMAIN POWERS ARE EXERCISED FOR A PUBLIC PURPOSE; DECLARING THAT INVALIDITY OF ANY PORTION HEREOF SHALL NOT AFFECT THE REMAINING PORTIONS OF THIS ORDINANCE; PROVIDING FOR THE EFFECTIVE DATE HEREOF AND FOR OTHER PURPOSES.

WHEREAS, the Rockledge Planning Commission has recommended that to lower adverse impact to property involved in eminent domain actions, the Development Review Committee (DRC) be authorized to grant waivers and exceptions to the Rockledge Land Development Regulations, or to seek such from the appropriate boards; and

WHEREAS, the Rockledge City Council has reviewed the recommendations of the Planning Commission and found that granting to the DRC the authority to approve waivers and exceptions, and/or to seek such from appropriate boards, which would lessen the impact on property that is the subject of eminent domain actions, would be in the best interest of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCKLEDGE, FLORIDA, AS FOLLOWS:

SECTION 1. That PART II of the Rockledge Land Development Regulations is amended by adding Section 26.01 as follows:

26.01 REVIEW OF EMINENT DOMAIN WAIVERS, EXCEPTIONS AND VARIANCES BY DRC

A. Findings of Fact.

The Rockledge City Council finds that the acquisition of private property by various governmental or public agency entities, so authorized by law through the eminent domain process through trial or negotiations prior thereto, is an extremely costly and burdensome process. Allowing the appropriate city staff, pursuant to established guidelines, procedures and criteria, to grant waivers and exceptions from certain city land development regulations or to apply for variances on behalf of affected property owners, serves a valid public purpose and promotes the general safety and welfare of the citizens and landowners of the City.

B. Intent.

It is the intent of this section to establish a fair procedure by which the appropriate city staff can grant waivers and exceptions to city land development, signage, and engineering regulations, or to seek such waivers or variances before the appropriate boards, in order that property owners who have been subjected to the condemnation process have a viable and fair alternative in preventing any adverse impact upon their property as a result of the condemnation process and allow the continued use of their property in a manner similar to its pre-condemnation condition. Further, it is the intent of this section to establish procedures which will reduce the cost of acquisitions of real property needed for public improvements.

C. Authority of Development Review Committee.

The DRC, which oversees land development, signs and engineering codes, ordinances, regulations, or resolutions, shall have the authority to grant waivers or exceptions, or to seek variances on behalf of owners of

property from applicable codes, ordinances, regulations, or resolutions. The Chairman of the DRC shall provide a copy of the determination letter to the City Attorney's office if the property is in a condemnation lawsuit, or to the real estate management department in pre-suit negotiations, that the waiver or exception does not adversely affect the public health, safety or welfare.

D. Application for waivers, exceptions and variances.

1. The condemning authority, or the landowner, may apply in writing to the DRC for a determination that the granting of the waiver or exception will not result in a condition which adversely affects the health, safety or welfare of the general public.

The DRC shall, within thirty (30) days of receipt of the application, issue a signed letter to all parties granting or denying the waiver or exception.

3. If the waiver or exception is denied by the DRC, the owner or condemning authority may apply for, at no cost to the owner, a variance before the Board of Adjustment.

E. Waivers, exceptions and variances.

If, as a result of a governmental taking either by negotiation or condemnation, existing lots, parcels, structures, or uses of land become nonconforming with the provisions of the Land Development Regulations, the following provisions shall apply:

1. Existing characteristics of use which become nonconforming or increase in nonconformity as a result of a taking, including, but not limited to, minimum lot size, setbacks, open space, off-street parking, landscape requirements, drainage and retention shall be required to meet code requirements to the greatest extent possible, to the satisfaction of the appropriate department manager or his designee. Thereafter, the existing characteristics of use shall be deemed conforming. Any further expansion or enlargement thereof shall be in

accordance with all applicable code requirements.

In granting any waiver or exception to code requirements, the DRC shall:

- a. Determine that the requested exception or waiver will not adversely affect visual, safety, aesthetic or environmental concerns of neighboring properties.
 - b. Determine that the requested exception or waiver shall not adversely affect the safety of pedestrians or operators of motor vehicles.
 - c. Preserve code-required off-street parking requirements to the greatest extent practicable. The reconfiguration, reduction, or removal of landscape and/or open space requirements may be considered to preserve off-street parking.
3. If any legally existing structures (principal or accessory) or vehicular use area must be relocated as a direct result of the governmental taking, or as a result of safety concerns, if allowed to remain after the taking, then the appropriate department manager, or his designee, and the building official may allow the relocation of the structure on the remaining property, so as to comply with all applicable regulations to the greatest extent practicable, as determined by the appropriate department manager or designee. If the relocation results in substandard characteristics of use, it shall be deemed thereafter to be conforming. Any future expansion or enlargement thereof shall be in accordance with all applicable code requirements.
 4. Legally existing structures (principal or accessory) or vehicular use areas that become nonconforming or increase in nonconformity according to subsection (1), which are thereafter damaged or destroyed, other than by

voluntary demolition, to an extent of more than seventy-five percent (75%) of assessed value at the time of destruction can be restored but only to pre-destruction condition. Any expansion or enlargement that does not increase the nonconformity of a characteristic of use shall be permitted in accordance with all applicable code requirements. Where expansion or enlargement increases the nonconformity of a characteristic of use, relief from appropriate city board(s) is necessary.

5. If the structure to be relocated harbors a nonconforming use, DRC may permit the relocation pursuant to this section, if it is determined that public harm will not result.
6. Where part of a principal structure is taken, the reconstruction of the taken structure (same size and use) may be permitted. The reconstruction must meet code to the greatest extent possible, to the satisfaction of the majority of the DRC. The reconstructed structure shall thereafter be deemed conforming.
7. Any alterations, repairs or rehabilitation work necessitated by a governmental or public agency acquisition or condemnation of real property may be made to any existing structure, building, electrical, gas, mechanical or plumbing system without requiring the building, structure, plumbing, electrical, mechanical or gas system to comply with all the requirements of the technical codes, provided that the alteration, repair or rehabilitation work conforms to the requirements of the technical codes for new construction. The DRC shall determine the extent to which the existing system shall be made to conform to the requirements of the technical codes for new construction.

F. Signs

A sign which is located on a parcel that is subject to condemnation action by a governmental or public agency

may be allowed to be relocated on the remaining portion of the parcel in accordance with the following:

1. The sign is to be relocated on the remaining parcel in such a manner as to meet the setback and distance separation requirements. If, due to the size and/or configuration of the remaining parcel, setback and distance separation requirements cannot be met, subject to the discretion of the DRC, the sign may be relocated so as to comply with such regulations to the greatest extent practicable as determined by the DRC.

Any existing nonconformity of a sign, other than setback or distance separation, shall not be increased upon relocation.

3. If the sign to be relocated is a nonconforming sign, upon proof submitted by the applicant and subject to the determination by the DRC that public harm would not occur, then such sign may be relocated pursuant to this subsection. Such sign shall be considered conforming upon the granting of a waiver or variance.

G. Authority for staff to testify at judicial proceedings on the likelihood of variances.

1. The Chairman of the Development Review Committee is hereby authorized to testify in judicial proceedings as to the likelihood of whether a variance from city's land development regulations would be granted or the reasons the department manager has granted the waiver or exception.

In testifying, the department manager or his designee is specifically authorized to employ the following criteria:

- a. History of similar variances, waivers or exceptions being granted by the appropriate boards in and for the City of Rockledge, Florida.
- b. Analysis of why the variance, waiver or

exception would not adversely affect surrounding property owners.

- c. Analysis of the hardship imposed by the condemnation action initiated by the governmental or public agency.
- d. Analysis of any and all other criteria normally considered by the appropriate boards or departments in granting similar variances, waivers or exceptions and how those criteria relate to the subject and neighboring properties.
- e. That the granting of a variance, waiver or exception would not adversely affect the public health, safety or welfare.

H. Code violations threatening public health, safety and welfare.

- 1. The provisions of this section shall not be interpreted to allow for the continued existence of building or other safety code violations that are determined to be an immediate threat to the public health, safety or welfare.

The appropriate building officials and inspectors are hereby authorized to take any and all necessary steps to enforce all applicable building and safety codes, even though the subject property is part of a condemnation action.

SECTION 2. The provisions of this Ordinance are severable, and if any section, sentence, clause, or phrase hereof is for any reason held to be unconstitutional, invalid, or ineffective, such holding shall not affect the validity of the remaining portions of this Ordinance, it being expressly declared to be the City Council's intent that it would have

passed the valid portions of this Ordinance without the inclusion therein of any invalid portion or portions.

SECTION 3. This Ordinance shall become effective ten (10) days following its adoption and signed by the Chairman of the City Council.

ADOPTED at a regular meeting of the City Council of the City of Rockledge, Florida, this 19th day of May 2010.

/s/ Colleen M. Stuart
Chairman, City Council of the
City of Rockledge, Florida

ATTEST:

/s/ Betsi Beatty Moist
City Clerk

1st Reading: May 5, 2010

2nd Reading: May 19, 2010