

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director

PREPARED BY: Daniel J. Stallone, Esq., Code Compliance Official

SUBJECT: ORDINANCE - Existing Nonconforming vehicular access ways

AFFECTED DISTRICT: All

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE TOWN OF DAVIE, FLORIDA CODE OF ORDINANCES BY SPECIFICALLY AMENDING CHAPTER 12, SECTION 12-292 ENTITLED “STREET STANDARDS” BY AMENDING SECTION 12-292 (D) TO PROVIDE FOR A PROCEDURE TO OBTAIN APPROVAL FOR EXISTING NONCONFORMING VEHICULAR ACCESSWAYS; BY CREATING A DEFINITION FOR “EXISTING NONCONFORMING VEHICULAR ACCESSWAYS” TO BE INCLUDED IN CHAPTER 12, SECTION 12-503, DEFINITIONS; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: Development Services staff is proposing a text addition and amendment to the Land Development Code that shall establish a procedure whereby existing nonconforming vehicular accessways may gain approval from the town with appropriate conditions and amortization schedules as applicable. Currently, the town code section 12-292 entitled “Street Standards” does not provide for such a procedure that will identify nonconforming vehicular accessways and provide a method to permit town approval of the same while formulating a method to achieve conformity through establishing conditions of approval and amortization.

The intent and purpose of this section is to address the existing nonconforming vehicular accessways that may serve affected residential property owners and to create a procedure that will allow for the development of vacant residential property parcels and permit the improvement of existing residential property parcels. In recognition of the nature of and existence of such nonconforming vehicular accessways, this proposed code amendment provides a method to achieve conformity to town street standards and encourage residential development along such routes.

The proposed code additions and amendments set forth definitions of the existing nonconforming vehicular accessways; establishes the procedure for town approval; and, sets minimum standards and criteria required of applicants seeking relief through this procedure in the application process applicable thereto.

PREVIOUS ACTIONS:

CONCURRENCES: The Local Planning Agency heard this matter at their August 8, 2007 meeting. The Agency was opposed to the ordinance and felt that it should be provided for by a variance request and determined on a case by case basis. Chair, Michael Bender, passed the gavel and made a motion, seconded by Ms. Turin, to make this a variance request. In a roll call vote, the vote was as follows:
Chair Bender – yes; Vice-Chair Stevens – yes; Mr. Busey – yes; Mr. Pignato – absent; Ms. Turin – yes.
Motion carried 4-0.

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Complete and suitable for transmittal to the Town Council for further consideration.

Attachment(s): ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE TOWN OF DAVIE, FLORIDA CODE OF ORDINANCES BY SPECIFICALLY AMENDING CHAPTER 12, SECTION 12-292 ENTITLED "STREET STANDARDS" BY AMENDING SECTION 12-292 (D) TO PROVIDE FOR A PROCEDURE TO OBTAIN APPROVAL FOR EXISTING NONCONFORMING VEHICULAR ACCESSWAYS; BY CREATING A DEFINITION FOR "EXISTING NONCONFORMING VEHICULAR ACCESSWAYS" TO BE INCLUDED IN CHAPTER 12, SECTION 12-503, DEFINITIONS; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie deems it appropriate to amend the Code of Ordinances to provide a procedure whereby existing nonconforming vehicular accessways may be used for such public or private purposes necessary until compliance with applicable Town standards shall be achieved and to apply certain restrictions upon such existing nonconforming vehicular accessways; and

WHEREAS, the Town Council expresses its intent through the enactment of this ordinance to preserve and maintain the unique lifestyle enjoyed by the residents of Davie.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The foregoing "Whereas" clause is hereby ratified and confirmed as being true and correct and is incorporated herein by this reference.

SECTION 2. Chapter 12 entitled "Land Development Code" of the Code of Ordinances of the Town of Davie, be, and the same is hereby amended by creating Section, 12-292 (D); and creating within Section 12-503, Definitions, the following definition of an "existing nonconforming vehicular accessway" to read as follows:

Section, 12-503, Definitions: "Existing nonconforming vehicular accessway" shall be defined as "a way intended for vehicular traffic, whereby ingress and egress to and from lots or units shall be achieved over and upon a common or private parcel, primarily by the owners or occupants of said lots or units, but which may also be used to facilitate the entry thereupon of necessary public service and emergency vehicles."

Section, 12-292 (D) An "existing nonconforming vehicular accessway" may gain Town Council approval by following the procedures found herein and meeting the applicable prerequisites and conditions imposed thereby:

1. An “existing nonconforming vehicular accessway” shall be defined as found in section 12-503, Definitions;

2. The use of such an “existing nonconforming vehicular accessway” does not in its present state conform to the existing code requirements imposed under section 12-292(B), 12-292(C), 12-288 or any other applicable town code sections;
3. The “existing nonconforming vehicular accessway” was in use by resident(s) prior to the passage of the existing code restrictions applicable thereto;
4. The ~~affected residents~~ petitioner shall submit to the Town Council ~~through its designee~~ a petition request, upon a form to be provided by the town, and a copy of the petition request shall be sent and signed via certified mail with return receipt card to by all affected residents at the mailing address for the affected property as may be found in the most recent Broward County Property Appraiser’s records, in order to obtain relief from the applicable code regulations as provided herein;
5. Said relief shall be authorized by the Town Council, and such approval shall be in the form of an ordinance approved by a majority of the Town Council;
6. Town Council ordinance approval may include, but not be limited to the following: staff recommendations, conditions, and requirements;
7. Such conditions shall include the approval and grant of all required governmental ingress and egress easements or similar licenses or covenants that shall run with the land; said document(s) shall be recorded in the Broward County public records upon their execution by the parties, either as an individual covenant running with the land of each affected resident or when an Association of residents exist as a part of the documents and covenants applicable thereto;
8. No part of this code section shall preclude the town or its residents upon the town’s approval, from initiating any further action, including but not limited to special assessment, condemnation or creation of a special improvement district as may be necessary to bring said “existing nonconforming vehicular accessway” into a conforming state with codes and standards applicable to other public roads;
- ~~9. All improvements and modifications to the “existing nonconforming vehicular accessway” required to achieve compliance with applicable road standards under the applicable town code section(s) as determined by the Town Engineer shall be completed within an amortization period of fifteen (15) years; said amortization period shall be deemed accepted upon application for the relief encompassed within this code section; said amortization period shall be tolled upon the passage of the Town Council ordinance approving the relief found herein;~~
- ~~10~~ 9. In order for the Town Council to evaluate the effects of the relief found within this code section upon the health, safety and welfare of all residents affected thereby, the following minimum criteria shall be provided in a form proscribed by the Development Services Director or his designee (unless waived by the Town Council):
 - a. Number of affected residential lots or units currently serviced;
 - b. Number of potential residential lots or units that may be serviced;
 - c. Dimensions of existing nonconforming vehicular accessway (length, width, surface type, depth, etc.);
 - d. Device(s) to be executed in approved dedication of affected parcels (rights of way, easements, etc.);
 - e. Title search shall be performed and submitted to the town (said records shall provide all documentation and records comprising a diligent and reliable

search for prior ownership and previously-executed documents related to the existing nonconforming vehicular accessway);

- f. Property identification numbers, folio numbers, and tax identification numbers shall be provided for all affected real property parcels;
- g. A pre-approval public safety inspection shall be required to be performed by the Police and Fire Department designees;
- h. A pre-approval engineering inspection shall be required to be performed by the Town Engineer or its designee;
- i. A pre-approval Public Works and Utility Department inspection(s) shall be required to be performed by the Public Works and Utility Department designees;
- j. An alternative route analysis may be conducted by the Town Engineer or its designee;
- k. All such required criteria shall be presented to the Development Services Director or his designee prior to presentation to the Town Council.

SECTION 3. All Ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 5. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2007.

PASSED ON SECOND READING THIS _____ DAY OF _____, 2007.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2007.

