

**ORDINANCE 2017 -**

**AN ORDINANCE RELATING TO ZONING, LAND USE AND HISTORIC PRESERVATION; AMENDING THE CITY OF NAPLES CODE OF ORDINANCES CHAPTER 2, ADMINISTRATION, ARTICLE V, BOARDS AND COMMISSIONS, DIVISION 4, DESIGN REVIEW BOARD, SECTIONS 2-473, JURISDICTION; POWERS AND DUTIES, AND 2-475, APPLICABILITY OF DESIGN REVIEW; PROHIBITIONS; SECTION 16-82, VARIANCES AND APPEALS TO FLOODPLAIN MANAGEMENT; AND SECTION 16-112, GOVERNING THE DEMOLITION OF HISTORIC STRUCTURES; APPROVING TEXT AMENDMENT 17-T4; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.**

**WHEREAS,** city council referred the proposal to the city manager for initiating Text Amendment 17-T4; and

**WHEREAS,** following a public hearing on October 11, 2017, the Planning Advisory Board has considered the recommendation of staff and public input and has recommended by a vote of 7 to 0 that Text Amendment 17-T4 be APPROVED; and

**WHEREAS,** after considering the recommendation of the Planning Advisory Board sitting as the local planning agency and City staff, following a public hearing on the subject, and providing the public an opportunity to comment, the City Council has determined that it is in the best interest of the City to approve Text Amendment 17-T4 to the extent consistent with codified language herein;

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPLES, FLORIDA:**

**Section 1.** That Chapter 2, Division 4, Sections 2-473 and 2-475 of the Code of Ordinances, City of Naples, Florida, are hereby amended as follows with words ~~stricken~~ indicating deletions and underlined indicating additions:

**CHAPTER 2. – ADMINISTRATION.**

**DIVISION 4 – DESIGN REVIEW BOARD.**

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**Sec. 2-473. - Jurisdiction; powers and duties.**

The board shall have the powers and duties set forth in this division and any other duties assigned to it by the city council by ordinance or resolution. Specifically, the board shall have the following powers and duties:

- (1) To review all petitions and associated architectural and landscape architectural plans that require design review under the standards established in this Code and to make recommendations to the city council or the planning advisory board, or both, as otherwise required in this Code;

- (2) To review current city regulations and provide advice and recommendations to the city council for improved regulations that will promote excellence in design of buildings, structures, landscaping, lighting and signage; and
- (3) To prepare, recommend adoption of, and keep up to date, a design review handbook that will provide guidelines for the design aspects of development.
- (4) To review petitions for compliance with historic preservation criteria for the repair, improvement or rehabilitation of historic buildings, pursuant to Section 16-82, providing a recommendation to the board of appeals that the proposed improvements will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building, based on consistency with Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, as may be amended from time to time.

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**Sec. 2-475. - Applicability of design review; prohibitions.**

- (a) The board shall review all petitions for design review, prior to, and as a prerequisite for, the issuance of a building permit for any of the following located in a commercial, industrial, planned development, or multifamily zoning district or PS, public service district:
  - (1) A new principal building or structure;
  - (2) An addition to an existing structure that is greater than 1,000 square feet; or
  - (3) A substantial change to the facade of any building or structure, and landscaping, lighting and signage associated with the foregoing buildings, structures or facades.
- (b) Buildings and structures located in single-family residential districts are excluded from this division.
- (c) The board may authorize approval of petitions for building permits for minor or insignificant development of property, which would not defeat the purposes and objectives of this section.
- (d) No building permit shall be issued for any building, structure or other development of property, or appurtenances, on any property described in this division, until plans and elevations for buildings, structures, or alterations to them, and associated landscaping, lighting and signage, have been approved by the board.
- (e) No certificate of occupancy, or final building inspection approval, for any property described in this division shall be issued until the designated official has certified that such construction has been found to be in compliance with the conditions and restrictions, if any, imposed by the board, and that the final construction is in conformity with the plans approved by the board.
- (f) The board shall review petitions for compliance with historic preservation criteria as set out in Sec. 2-473(4).

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**Section 2.** That Section 16-82 of the Code of Ordinances, City of Naples, Florida, is hereby amended as follows with words ~~stricken~~ indicating deletions and underlined indicating additions:

**Sec. 16-82. - Variances and appeals to floodplain management regulations.**

- (a) *Generally.* The board of appeals shall hear and decide requests for appeals and requests for variances from the strict application of article IV of this chapter. Pursuant to section F.S. § 553.73(5), the board of appeals shall also hear and decide appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code. The article does not apply to Section 3109 of the Florida Building Code, Building. General requirements for variances to floodplain management regulations are as follows:
- (1) *Historic buildings.* A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 44 12 Historic Buildings, upon determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.
  - (2) *Restrictions in floodways.* A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in section 16-148(3).
  - (3) *Functionally dependent uses.* A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in article IV of this chapter, provided the variance meets the requirements of section 16-82(a)(2) of this chapter, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.
  - (4) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
- (b) *Method of approval.* The board of appeals, as established in chapter 2, article II, division 3, shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this article.
- (c) *Standards for approval.*
- (1) In passing upon such applications, the board of appeals shall consider all technical evaluations, all relevant factors, all standards specified in article IV of this chapter, all other applicable provisions of the Florida Building Code, this section, including without limitation:
    - a. The danger that materials may be swept onto other lands resulting in further injury or damage;
    - b. The danger to life and property due to flooding or erosion damage;
    - c. The susceptibility of the proposed development and its contents to flood damage and the effects of such damage on current and future owners;
    - d. The importance of the services provided by the proposed development to the community;
    - e. The necessity to the facility of a waterfront location, where applicable;

- f. The availability of alternative locations for the proposed development that is subject to lower risk of flooding or erosion;
  - g. The compatibility of the proposed development with existing and anticipated development;
  - h. The relationship of the proposed development to the comprehensive plan and floodplain management program for that area;
  - i. The safety of access to the property in times of flooding for ordinary and emergency vehicles;
  - j. The expected height, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (2) Upon consideration of the factors listed in subsection (c)(1) of this section and the purposes of article IV of this chapter, the board of appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of article IV of this chapter.
- (3) *Conditions for variances are as follows:* Variances shall only be issued upon all of the following:
- a. Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site render any provision of article IV of this chapter or the elevation standards of the Florida Building Code inappropriate;
  - b. Determination by the board of appeals that:
    1. The variance is the minimum necessary, considering the flood hazard to afford relief.
    2. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship. Exceptional hardship means the hardship associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended; and
    3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- c. Receipt of a signed statement by the applicant that the variance, if granted, shall be placed upon an instrument that will be recorded in the office of the clerk of the court in such a manner that it appears in the chain of title of the affected parcel of land; and
- d. If the request is for a variance to allow construction of the lowest floor of a building, or substantial improvement of a building, below the required elevation, receipt and submission of a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced flood elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

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**Section 3.** That Section 16-112 of the Code of Ordinances, City of Naples, Florida, is hereby amended as follows with words ~~stricken~~ indicating deletions and underlined indicating additions:

**Sec. 16-112. - Florida Building Code adopted; amendments.**

- (a) There is hereby adopted by reference the Florida Building Code, Fifth Edition (2014), and any amendments to it as may be adopted from time to time pursuant to general law or regulations. The council hereby retains its authority to establish fees for all permitting under this Code.
- (b) Except as may be otherwise provided by law or elsewhere in this Code, the provisions of chapter 1 of the Florida Building Code, Administration, shall govern the administration and enforcement of the Florida Building Code, with the following amendments:

*104.1 Demolition permits for contributing buildings.*

- 1. Permits to demolish ~~of~~ or remove contributing buildings identified within the city historic district in the Naples Historic District Map appended to section 56-84(b)(1) of the Naples City Code shall not be issued until the expiration of 180 days from the date of the completed and accepted permit application in order to allow consideration of alternatives to demolition or removal. No work may be commenced or completed related to demolition or removal of structures including clearing, site preparation, and removal of landscaping on the subject property until after the effective date of the permit. Upon receipt of an application for a demolition permit for contributing buildings identified in section 56-84(b)(1) of the Naples City Code, the city manager shall provide written notice of sufficiency to the applicant and shall provide written notice to all property owners within 500 feet of the subject site. Failure to notify all property owners within 500 feet of the subject site shall not render the notification void.
- 2. This section does not apply to properties for which the building official or fire marshal has issued an order to demolish.

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**Section 4.** That Text Amendment 17-T4 is approved to the extent provided herein.

**Section 5.** That if any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional, invalid, or ineffective, the same shall not affect the validity of any remaining portions of this ordinance. In such event, the pre-existing word, phrase, clause, subsection or section, shall be revived.

**Section 6.** That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

**Section 7.** This ordinance shall take effect immediately upon adoption at second reading.

**APPROVED AT FIRST READING THE 1<sup>ST</sup> DAY OF NOVEMBER, 2017.**

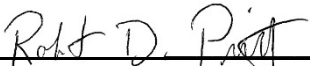
**SCHEDULED FOR SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA THE 15<sup>TH</sup> DAY OF NOVEMBER, 2017.**

Attest:

\_\_\_\_\_  
Patricia L. Rambosk, City Clerk

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Bill Barnett, Mayor

Approved as to form and legality:

  
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Robert D. Pritt, City Attorney  
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Date filed with City Clerk: \_\_\_\_\_