



**CITY OF BELLE ISLE, FL**  
**PLANNING & ZONING BOARD MEETING**  
Held in City Hall Chambers 1600 Nela Avenue  
Held the 4th Tuesday of Every Month  
Tuesday, July 27, 2021 \* 6:30 PM  
**AGENDA**

**Planning and Zoning Board Members**

District 1 member – David Woods, VChair | District 2 member – Christopher Shenefelt | District 3 member – Michael Statham  
District 4 member – Randy Holihan, Chair | District 5 member – Rainey Lane | District 6 member – Andrew Thompson  
District 7 member – Dr. Leonard Hobbs

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Welcome to the City of Belle Isle Planning & Zoning meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's website at [cityofbelleislefl.org](http://cityofbelleislefl.org). Any person desiring to appeal a recommended action of the Board should observe the notice regarding appeals below. CAUTION: Untimely filing by any appellant shall result in an automatic denial of the appeal.

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1. **Call to Order and Confirmation of Quorum**
2. **Invocation and Pledge to Flag – Board Member Hobbs**
3. **Approval of Minutes**
  - a. Approval of the May 25, 2021 minutes
4. **Public Hearings**
  - a. PUBLIC HEARING CASE #2021-07-001 - PURSUANT TO BELLE ISLE CODE SEC. 50-73 (A), SEC. 50-102 (A) (4), (5), AND (8) AND SEC. 42-64, THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO ALLOW A BUILDING ENCROACHMENT WITHIN 50 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY, SUBMITTED BY APPLICANT ALAN LEOW LOCATED AT 2802 ALSACE COURT, BELLE ISLE, FL 32812 ALSO KNOWN AS PARCEL #18-23-30-4385-04-241.
5. **Other Business**
  - a. Review and Discussion: Comp Plan Amendment Private Property Rights Element ORDINANCE NO. 21-09 - AN ORDINANCE OF THE CITY OF BELLE, FLORIDA, AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF BELLE ISLE TO ADOPT A PRIVATE PROPERTY RIGHTS ELEMENT TO COMPLY WITH SECTION 163.3177, FLORIDA STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE.
  - b. Discussion of Accessory Dwelling Units
6. **Adjournment**

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APPEALS: "If a person decides to appeal (Belle Isle's City Code Section 42-71) any decision made by the Board with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." (F. S. 286.0105). A notice of appeal to the City Clerk should be submitted within fifteen (15) days after such recommendation or decision is made "Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office (407-851-7730) at least 48 hours in advance of the meeting. --Page 1 of 1



## CITY OF BELLE ISLE, FL PLANNING & ZONING BOARD MEETING

Tuesday, May 25, 2021, \* 6:30 pm

### MINUTES

The Belle Isle Planning & Zoning Board met in a regular session on May 25, 2021, at 6:30 pm at the City Hall Chambers located at 1600 Nela Avenue, Belle Isle, FL 32809.

Present was:

Chairman Holihan  
Board member Woods  
Board member Statham  
Board member Lane  
Board member Shenefelt  
Board member Thompson  
Board member Hobbs

Absent was:

Also present was City Manager Bob Francis, City Planner April Fisher, Attorney Dan Langley, and City Clerk Yolanda Quiceno.

**1. Welcome New Board Member - Michael Statham, District 3**

**2. Call to Order and Confirmation of Quorum**

Chairman Holihan called the meeting to order at 6:30 pm. City Clerk confirmed quorum.

**3. Invocation and Pledge to Flag – Board Member Hobbs**

Board member Hobbs gave the invocation and led the Pledge to the Flag.

**4. Approval of Minutes**

- a. Approval of the March 23, 2021 minutes
- b. Approval of the April 27, 2021 minutes

**Board member Woods moved to approve the minutes as presented**

**Board member Lane seconded the motion, which passed unanimously 7:0**

**5. Public Hearings**

- a. PUBLIC HEARING CASE #2021-04-016- PURSUANT TO BELLE ISLE CODE SEC. 50-102 (B) (5), SEC. 50-102 (B) (16) AND SEC. 42-64, THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO PLACE A FENCE IN THE FRONT YARD OF A RESIDENTIAL PROPERTY AND WITHIN A PORTION OF CITY RIGHT-OF-WAY, SUBMITTED BY APPLICANT KEVIN KEENEY LOCATED AT 5428 PARKWAY DRIVE, BELLE ISLE, FL 32809 ALSO KNOWN AS PARCEL # 18-23-30-8856-02-100.

April Fisher, City Planner, presented the staff report and said the applicant seeks a variance to allow a four-foot-high aluminum decorative fence in the front yard for the safety and containment of a pet. However, there are two single-family homes on one lot, predating the current code, and there is no space in the back or side yard to have a fence.

Based on the applicant's identification that this variance request is for the containment of a pet, the staff is requesting denial of the variance. These reasons are not consistent with meeting the criteria established in Sec. 50-102 (b) (16) (3), which the Board may consider as justifying criteria according to the code.

Mr. Keeney, the property owner of 5428 parkway Drive, said he asks for permission to allow the fence and keep his pets contained. Board member Woods said it had been eight years since he has lived on the property and asked why the

request for the variance. If the applicant just recently purchased a dog, then he should have considered the concern. Mr. Keeney said he has wanted a fence for quite some time but could not afford it.

Board member Woods also asked if the applicant is aware that the fence will encroach on the City right-of-way. The Board asked if the applicant would be able to install alternative measures such as an electronic fence. Mr. Keeney said he does not feel that it is fail-proof, and the right-of-way sits 17 feet away from the side of the house. Discussion ensued on the purpose and setback of a City right-of-way.

Attorney Langley said the Board could condition the variance on the modification of the perimeter of the fence or modify the applicant's request and reschedule the hearing. He does not believe the Board's granting of the variance would allow a fence to be constructed on a City right-of-way; that is a Council level decision. The request would probably be one that the City Attorney would not recommend because public right-a-ways are not be used for personal private use and could be deemed an act of vacating the public use. If the City Council were opened to the idea, the City Attorney would opt to enter into an agreement between the City and the property owner and clarify that it can be removed at any time to the City and utility provider.

After discussion, the Board suggested the following options,

- Install an electronic fence; or
- Change the drawings to restrict to only the front yard and not the right-of-way, or
- Pursue the current applicant

Board member Woods said the applicant does not cite all the requested variances, including Section 50-102 c-6 (right-of-way), and should be re-advertised. Additionally, the Board does not have the authority to approve as advertised.

April Fisher said it might be beneficial to speak with staff and the City Manager and discuss other options before pursuing a modified request. Mr. Keeney agreed to meet with staff before the next hearing. Ms. Fisher noted that at this time, the City Manager is not in favor of having a fence on the City right-of-way and recommends denial of the variance.

**After discussion, Board member Statham moved to table the Public Hearing to July 27 or 60-days to modify the application for consideration. Board member Lane seconded the motion, which passed unanimously 7:0**

## 6. Other Business

### a. Discussion definition on Artificial Turf - Land Development Code language change

April Fisher said there are issues in the code that should be addressed, and one of the issues is artificial turf, which continues to be more widely used, both commercially and residentially. The Belle Isle Code is currently silent on this and does not provide any regulation or standards for application. Board member Woods provided a handout with some of his edits for discussion.

The staff has researched regulatory language that could be incorporated into the code to address this use. Therefore, we are asking that the Board consider discussing a draft ordinance to incorporate regulations into the code regarding the use of artificial turf.

Board member Statham spoke briefly on the installation of artificial turf, positives, and negatives. For a resident, there should be a standard that is detailed in the code.

Chairman Holihan shared his concern, including

- Drawbacks – Residents laying down cheap products in place of artificial turf due to cost.
- Section 2 – Defining Landscaping. Ms. Fisher said there is a cross-reference in the Ordinance that clarifies further.
- How will staff enforce it?

Attorney Langley said one of the items for discussion is whether artificial turf classifies at 100% impervious because, over time, it may not. Ms. Fisher said one of the changes made by Board member Woods is to create a particular set of standards and insert "Artificial turf meeting these standards shall be considered as 100% impervious area." to item (f) Pervious area.

Board member Woods shared his concerns with installing artificial turf and said initially, it looks great. However, over five years, the areas will experience pockets/divets, dust collection, permeability, and flooding. Additionally, if the artificial turf is used as an athletic field, it must have a hard border, which does not seem appropriate for the Wallace field. Discussion ensued.

Board member Statham said he would bring forward information on installation and types of turf to define what is acceptable for review at the next meeting.

Following the Board discussion, the Board agreed to table the discussion and reconvene talks at the next meeting.

b. Discussion definition on ISR - Land Development Code language change

April Fisher said the City receives applications for improvements to residential properties that sometimes trip the impervious surface ratio (ISR) threshold of 35%. The code allows mitigation up to 65% without needing to seek a variance from the Board. One out of four of the applications received requires mitigation. Ms. Fisher provided supporting documentation for the Board's review and consideration before taking formal action.

April Fisher said when mitigation is required, if there is no master stormwater pond system for the overall subdivision, each property must mitigate to compensate for stormwater runoff that must be maintained over 35%. There are jurisdictions in the surrounding area that have a base ISR of 45% or 50%. This seems to be standard. The staff has not been able to identify why the ISR was set at 35% for the City.

Ms. Fisher asked the Board if they would like to consider raising the City ISR maximum for residential properties to 50%. The mitigation is usually achieved through swales, drain systems, rain barrels, or rain gardens. If a property is already over 35%, then the code provides that the property owner is only required to mitigate the newly created percentage increase.

Chairman Holihan asked if the City is at 50% aren't we hurting the lake. Board member Woods said yes, we would be hurting it less, staying at 35%. If development is designed correctly, the runoff from all of the houses goes to the retention pond. Ms. Fisher said the subdivision standards would be reviewed and modified under a separate process if the ISR is increased.

**After discussion, Board member Woods moved to recommend that the 35% impervious ratio be maintained. Board member Hobbs seconded the motion, which passed 6:1 with Comm Statham, nay.**

c. Discussion definition of Kitchen and Wet Bar

The City receives applications for new single-family residential development with "wet bars" and sometimes proposes a second kitchen internal to the primary house, which the code prohibits. It is a safeguard against accessory dwelling units. Guest Cottages cannot have a kitchen, and you cannot have a guest cottage without the approval of a special exception.

To provide a clear, objective definition in the Land Development Code of what constitutes a kitchen, the staff proposes the following code definitions, as defined in Orange County, for discussion.

- Proposed Kitchen definition: Kitchen shall mean the facilities and equipment or rough in facilities used to prepare and serve food. This may include, but is not limited to, stoves, microwave ovens, hot plates, sinks, refrigerators, cabinets and pantry-like shelves, a 220 V outlet or any gas lines (natural gas or propane), a dishwasher, or other food preparation equipment, or any combination thereof; this may not include wet bars, outside grilling facilities, outside sinks or refrigerators, or other items determined by the zoning division manager as not constituting a kitchen.

- Proposed Wet Bar definition: Wet bar shall mean a hand sink and under-the-counter refrigerator with no overhead cabinets.

Ms. Fisher noted that the difference with a summer kitchen is that it does not have walls.

Board member Woods asked, what is the reason to avoid a second kitchen in a single-family home. Ms. Fisher said because single-family homes allow only one primary residence and not a secondary living unit.

Mr. Woods said another trend to consider is Elder Care for family members. He believes the focus should be not on what a kitchen is but on a secondary kitchen.

In an accessory structure, board member Shenefelt said he would agree with a second kitchen in the main dwelling.

Ms. Fisher said the City Council took up the discussion a couple of years ago and was not in favor of allowing the use because of the possibility of having a rental/secondary living unit. However, suppose the Board would like to incorporate these definitions into the code and open discussion on Elder Care at another meeting. In that case, staff will prepare a draft ordinance for formal consideration in a scheduled public hearing.

Ms. Fisher said she could provide a revised definition that pulls the sections of code that identify where it prohibits the scenarios discussed to allow for the opportunity for in-law suites or eldercare amenities.

#### 6. Other Business

The Board discussed canceling the July meeting due to vacation schedules. Ms. Fisher said she had not received any application to date.

**Board member Hobbs moved to cancel the meeting on June 22, 2021, and have the next meeting on July 27, 2021.**

**Board member Shenefelt seconded the motion, which passed unanimously 7:0.**

#### 7. Adjournment

There being no further business, Chairman Holihan called for a motion to adjourn the meeting, unanimously approved at 8:00 pm.

**July 9, 2021**

**Variance Application:** 2802 ALSACE COURT

**Applicant Request:** PUBLIC HEARING CASE #2021-07-001 - PURSUANT TO BELLE ISLE CODE SEC. 50-73 (A), SEC. 50-102 (A) (4), (5), AND (8) AND SEC. 42-64, THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO ALLOW A BUILDING ENCROACHMENT WITHIN 50 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY, SUBMITTED BY APPLICANT ALAN LEOW LOCATED AT 2802 ALSACE COURT, BELLE ISLE, FL 32812 ALSO KNOWN AS PARCEL #18-23-30-4385-04-241.

**Existing Zoning/Use:** Residential / Vacant (single-family home to be built)

The application requests a variance from the 50-foot building setback from the Normal High Water Elevation (NHWE) for portions of a new single-family home. The applicant has provided supporting documentation addressing the variance criteria.

**Staff Recommendation**

Staff provides an evaluation based on the variance criteria for the application below.

**1. Special Conditions and/ or Circumstances (Section 42-64 (1) d):**

This property is unique as it is a peninsula, surrounded on three sides by Lake Conway. With the 50-foot setback from the NHWE requirement, this leaves limited building footprint area. The applicant is seeking a 20-foot variance (setback would be 30 feet from the NHWE) along the Northeast corner only. This is to accommodate the garage, carport, and garage stairs for a new single-family home. With the configuration of property access, the applicant would like to be able to have a turnaround area for cars in front of the garage area that is wide enough.

**2. Not Self- Created (Section 42-64 (1) e):**

The request for a variance is not self-created as the property lines and lot configuration were created prior to the property owner seeking to develop the site for a single-family home.

**3. Minimum Possible Variance (Section 42-64 (1) f):**

The requested variance is the minimum possible variance to make reasonable use of the land. The application does not seek to extend the existing development footprint closer to the water on any of the other sides of the property.

**4. Purpose and Intent (Section 42-64 (1) g):**

The requested variance is in harmony with the general purpose and intent of the Land Development Code and therefore is not injurious to the neighborhood, nor detrimental to the public welfare, and will not be contrary to the public interest. This is because the applicant seeks to maintain the 50-foot NHWE setback on all other sides of the property fronting Lake Conway and will not be impeding any viewshed of adjacent lake properties.

Staff provides a recommendation to approve the requested variance based on meeting all the above criteria. The Land Development Code provides in Sec. 42-64 (1) h. that unless all criteria are met, a variance should not be approved.

**Additional Notes**

Please note that the Board may approve the proposed variance application as it is presented to them, approve with specific conditions, continue the application if additional information is being requested for consideration, or deny the application, citing which variance criteria are not met.

A decision by the Board may be appealed by an aggrieved person to the City Council pursuant to Code Sec. 42-71.

## MEMORANDUM

**TO:** Planning and Zoning Board

**DATE:** July 27, 2021

**PUBLIC HEARING CASE #2021-07-001 - PURSUANT TO BELLE ISLE CODE SEC. 50-73 (A), SEC. 50-102 (A) (4), (5), AND (8) AND SEC. 42-64, THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO ALLOW A BUILDING ENCROACHMENT WITHIN 50 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY, SUBMITTED BY APPLICANT ALAN LEOW LOCATED AT 2802 ALSACE COURT, BELLE ISLE, FL 32812 ALSO KNOWN AS PARCEL #18-23-30-4385-04-241.**

**Background:**

1. On July 1, 2021, the applicant, Alan Leow, submitted a request, application, and required paperwork.
2. A Notice of Public Hearing legal advertisement was placed on Saturday, July 17, 2021, in Orlando Sentinel.
3. Letters to the abutting property owners within 300 feet of the subject property were mailed on July 14, 2021.

The Board may adopt all, some, or none of these determinations as part of their findings-of-fact. The Board may also add any additional findings-of-fact that are presented at the public hearing. The Board will need to determine if the criteria set forth in Chapter 42, Article III, Section 42-64(1) of the Land Development Code have been met and approve, approve with conditions, or deny this request.

**SAMPLE MOTION TO APPROVE:**

"I move, pursuant to Belle Isle Code **SEC. 50-73 (A), SEC. 50-102 (A) (4), (5), AND (8) AND SEC. 42-64** of the Belle Isle Land Development Code having been met **TO APPROVE** A BUILDING ENCROACHMENT WITHIN 50 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY, SUBMITTED BY APPLICANT ALAN LEOW LOCATED AT 2802 ALSACE COURT, BELLE ISLE, FL 32812 ALSO KNOWN AS PARCEL #18-23-30-4385-04-241.

**SAMPLE MOTION TO DENY:**

"I move, pursuant to Belle Isle Code **SEC. 50-73 (A), SEC. 50-102 (A) (4), (5), AND (8) AND SEC. 42-64**, the justifying criteria of the Belle Isle Land Development Code, **having NOT been met; [use only if NONE of the justifying criteria have been met]** the requirements of, Subsections: [STATE ONLY THE SUBSECTIONS BELOW THAT ARE NOT SATISFIED] **having NOT been met; [may be used in addition to above or alone]** **TO DENY** A BUILDING ENCROACHMENT WITHIN 50 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY, SUBMITTED BY APPLICANT ALAN LEOW LOCATED AT 2802 ALSACE COURT, BELLE ISLE, FL 32812 ALSO KNOWN AS PARCEL #18-23-30-4385-04-241.

**SUBSECTION (D)**, a literal enforcement of the provisions of the zoning ordinances would result in unnecessary hardship and that said hardship is created by special conditions and circumstances peculiar to the land, structure or building involved, including but not limited to dimensions, topography or soil conditions.

**SUBSECTION (E)**, personal hardship is not being considered as grounds for a variance since the variance will continue to affect the character of the neighborhood after title to the property has passed and that the special conditions and circumstances were not created in order to circumvent the Code or for the purpose of obtaining a variance.

**SUBSECTION (F)**, the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

**SUBSECTION (G)**, the granting of the variance will be in harmony with the general purpose and intent of the Code, will not be injurious to the neighborhood, will not be detrimental to the public welfare, and will not be contrary to the public interest.



**City of Belle Isle**

1600 Nela Avenue, Belle Isle, Florida 32809 \* Tel 407-851-7730 \* Fax 407-240-2222

a.

**APPLICATION FOR VARIANCE / SPECIAL EXCEPTION**

DATE: 1 July 2021 P&Z CASE #: 2021-07-001

☒ VARIANCE ☐ SPECIAL EXCEPTION ☐ OTHER DATE OF HEARING: \_\_\_\_\_

Applicant <u>ALAN LEOW</u>	Owner <u>Same</u>
ADDRESS <u>2802 ALSACE CT</u>	<u>SAME</u>
PHONE: <u>407-286-6695</u>	
PARCEL TAX ID #: <u>18-23-30-4385-04-241</u>	

LAND USE CLASSIFICATION: 0030 ZONING DISTRICT: R-1-AA

**DETAILED VARIANCE REQUEST:** Existing code requires a 50' lake setback. Applicant requests a variance to reduce the setback to 30' for garage, carport and garage stair. The variance will apply to a maximum of 85' of lakefront and will apply only along the Northeast corner of the property (applicant will have the flexibility to determine the exact location).

**SECTION OF CODE VARIANCE REQUESTED ON:** Section 50-73 (50' Lake Setback)

- The applicant hereby states that the property for which this hearing is requested has not been the subject of a hearing before the Planning and Zoning Board of the kind and type requested in the application within a period of nine (9) months prior to the filing of the application. Further that the requested use does not violate any deed restriction of the property.
- By submitting the application, I authorize City of Belle Isle employees and members of the P&Z Board to enter my property, during reasonable hours, to inspect the area of my property to which the application applies.
- Applicant shall provide a minimum of ten (10) sets of three (3) photographs in support of this application as follows: at least one (1) photograph of the front of the property and at least two photographs (from different angles) of the specific area of the property to which the application applies.
- **Sec. 42-64. - Variances.** The board shall have the power to approve, conditionally approve or deny applications for variance from the terms of the Land Development Code.
  - o Criteria. The board shall not approve an application for a variance from terms of the Land Development Code unless and until:
    - a. A written application for a variance is submitted to the city manager or the city manager's designee on a form provided by the city clerk setting forth all of the special conditions and circumstances that exist in favor of the granting of the variance and addressing the requirements of subsections (1)d—g of this section of the criteria set forth in this section. Upon submission of the properly completed application and the appropriate fee, the city manager or the city manager's designee shall refer the application to the board.
    - b. Notice of public hearing for the variance shall be given as required by the article for hearing before the board.
    - c. The public hearing on the application for the variance shall be held. The applicant, the applicant's agent as evidenced by a signed writing, or the applicant's attorney shall appear before the board.
    - d. It is determined that literal enforcement of the provisions of the zoning ordinances would result in unnecessary hardship and that said hardship is created by special conditions and circumstances peculiar to the land, structure or building involved, including but not limited to dimensions, topography or soil conditions.
    - e. It has been determined that personal hardship is not being considered as grounds for a variance since the variance will continue to affect the character of the neighborhood after title to the property has passed and that the special conditions and circumstances were not created in order to circumvent the Land Development Code or for the purpose of obtaining a variance.
    - f. It is determined that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
    - g. It is determined that the granting of the variance will be in harmony with the general purpose and intent of the Land Development Code, will not be injurious to the neighborhood, will not be detrimental to the public welfare, and will not be contrary to the public interest.

The board shall find that the preceding requirements have been met by the applicant for a variance.

a.

(2) *Violations of conditions.*

- a. In granting any variance, the board may prescribe appropriate conditions and safeguards to ensure compliance with the Land Development Code. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Land Development Code and punishable in accordance with this article. At the discretion of the board, such variance may be revoked for violation of the condition and/or safeguards.
- b. The board may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. Under no circumstances, except as permitted above, shall the board grant a variance to permit a use not generally or by special exception permitted in the zoning district involved, or any use expressly or by implication prohibited by the terms of the Land Development Code in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the same zoning district, and no permitted use of land, structures or buildings in other zoning districts, shall be considered grounds for the authorization of a variance.

Alan Leow

APPLICANT'S SIGNATURE

Alan Leow

OWNER'S SIGNATURE

FOR OFFICE USE ONLY:

FEE: \$300.00

7/1/21  
Date Paid

CK#  
1402  
Check/Cash

Hkp  
Rec'd By

Determination

Appealed to City Council: ☐ Yes ☐ No

Council Action:

# Variance Request – Application Supplement

## Special Conditions and/or Circumstances

Belle Isle code requires a 50' lake setback. The purpose of this setback is to prevent builders from constructing a home too close to the lake, thus blocking the lake views of the neighbors.

This property is very unusual because it is a peninsula with the lake on 3 sides. Most properties are subject to the lake setback on only 1 side. The requirement of the lake setback on 3 sides imposes a very severe restriction on buildable land on this property and forces a home design that is unnaturally long and thin.

Ironically, the lake setback requirement is not even needed on this property because there is no way for any building on this property to block the views of its neighbors. The lake setback requirement was intended for properties with lakefront on 1 or 2 sides. It makes no sense for a property like this with 3 sides of lakefront.

## Not Self Created

The circumstances of this property are inherent to the property and not created by the applicant or anybody else.

## Minimum Possible Variance

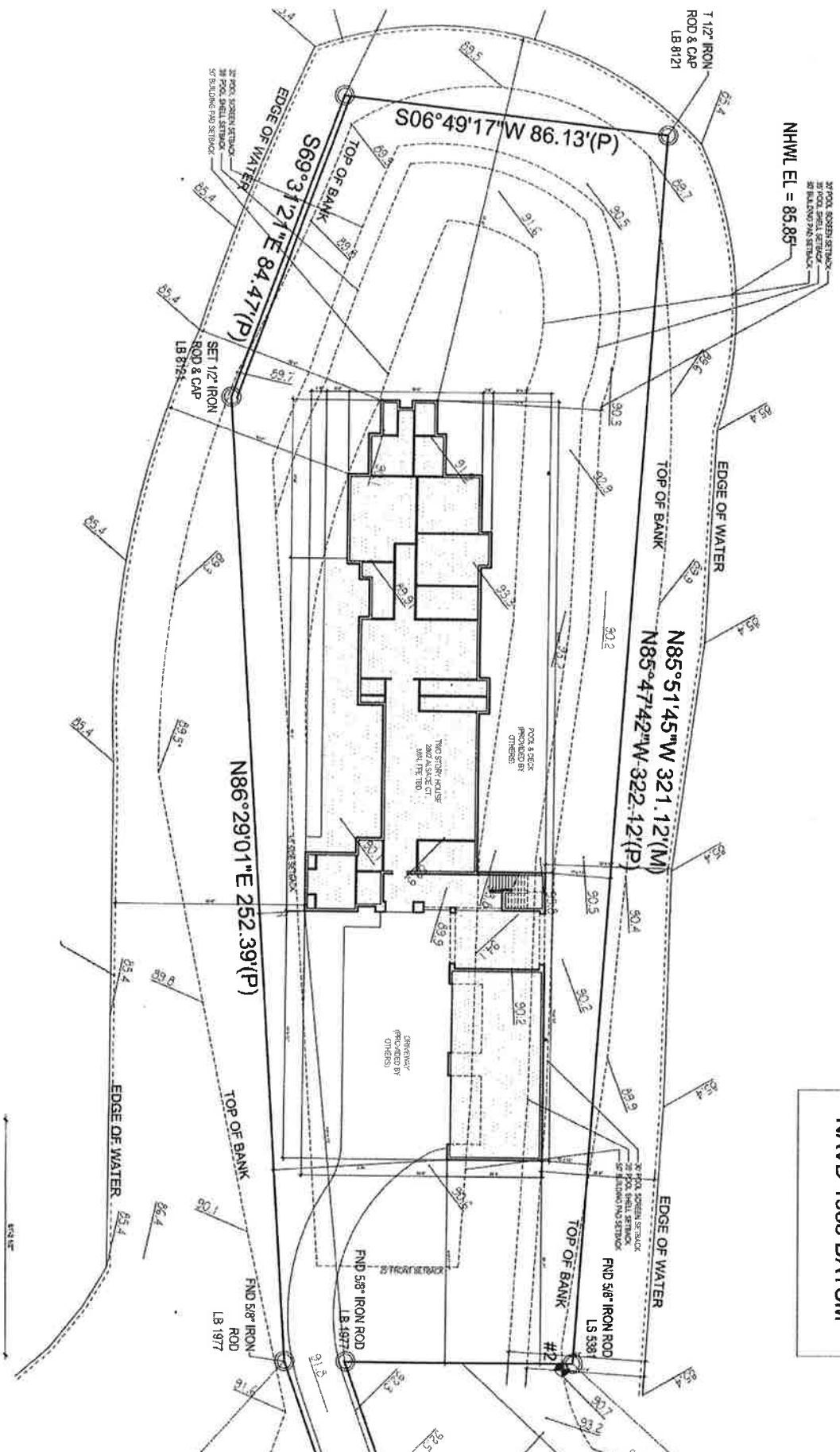
I ask for this variance so that I can build a home whose front entrance is wide enough to turn cars around. I will use the variance to build a garage (with carport and stairs) so that it will leave enough room in the driveway to turn cars around. The buildable area of this property is so narrow that it is not possible to have a reasonable turn-around space for cars without the variance. All the alternatives are tight and inconvenient.

## Purpose and Intent

The approval of this variance will have little of no impact on adjacent properties or the surrounding neighborhood. The house of the nearest neighbor is at least 100' away. A dense forest of trees will be on the North and East side of the garage so that, even after the variance, the garage will be mostly behind trees and invisible from everyone.



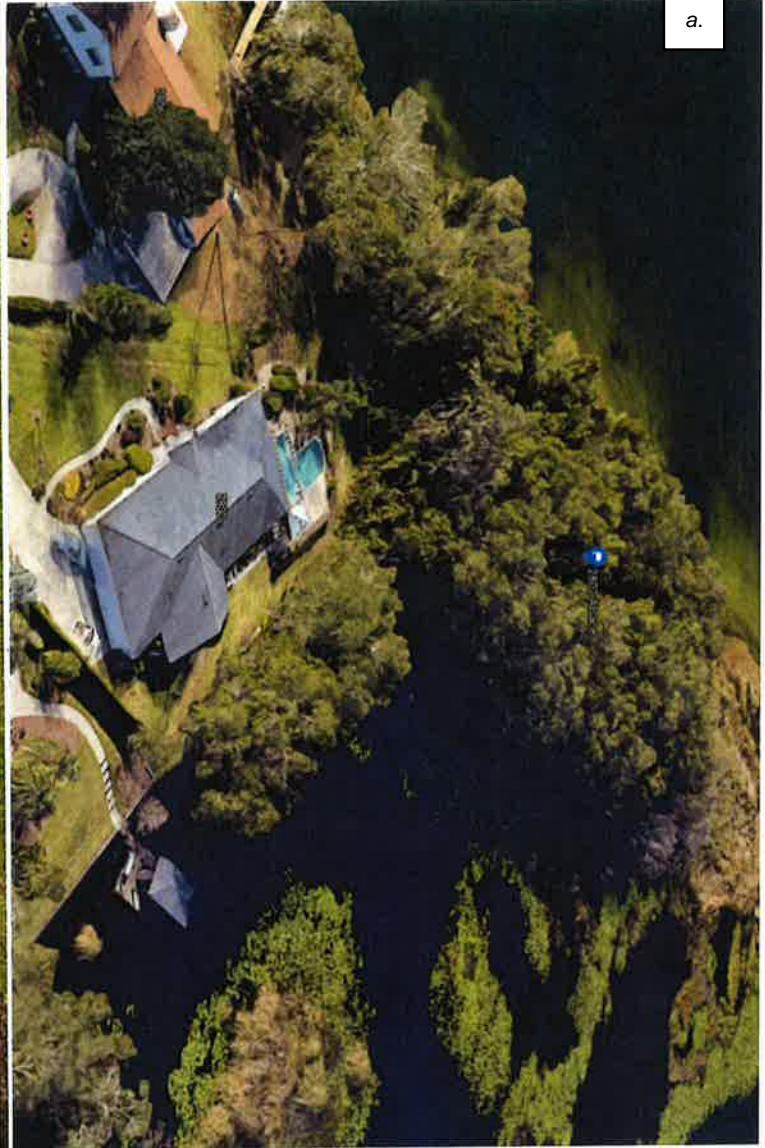
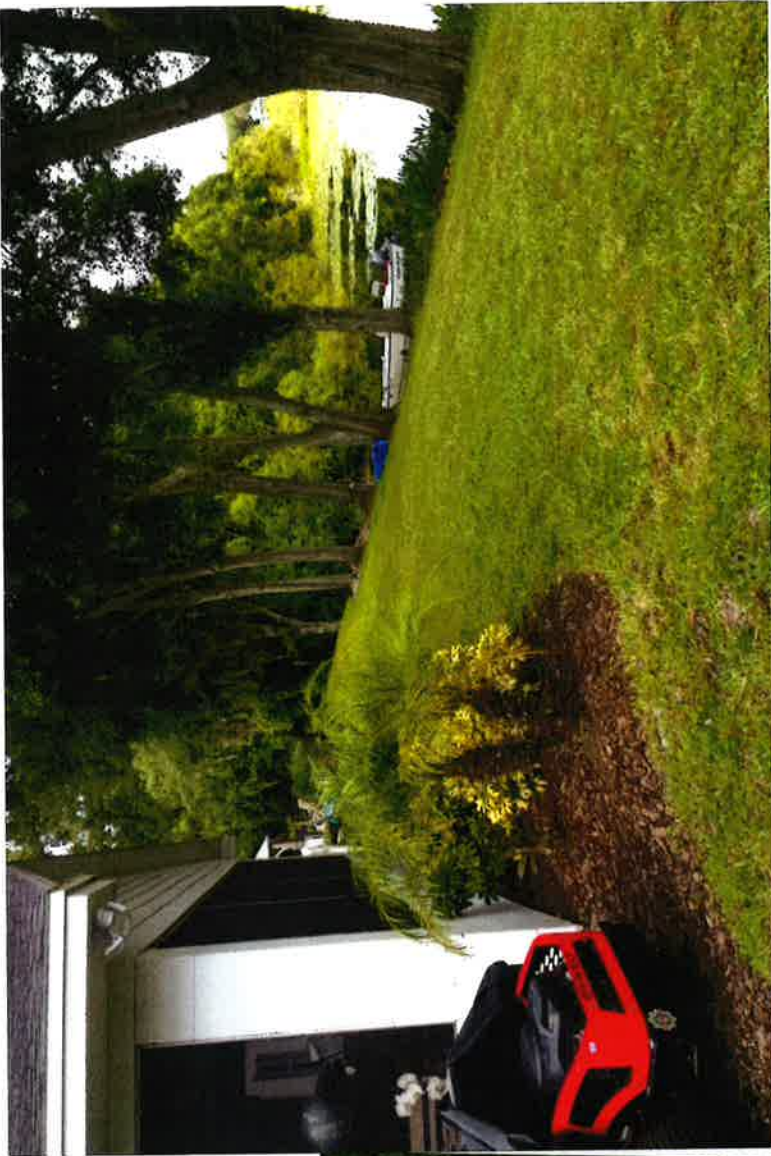
NHWL ELEVATION  
PER BELLE ISLE  
OF 85.85' IS IN  
NAVD 1988 DATUM



PARCEL ID#  
13-23-29-0000-00-044









*April Fisher, A* a.  
PRESIDENT  
407.494.8789  
fisherpds@outlook.com

**July 19, 2021**

**Discussion Item: Comprehensive Plan Amendment- Private Property Rights Element**

The Florida Legislature passed a bill that is effective as of July 1st that requires all cities and counties to have a Private Property Rights Element in their Comprehensive Plans. Local governments will not be able to process other Comprehensive Plan Amendments without first having adopted the required Private Property Rights Element.

For the Board's review and discussion, attached is a draft Comprehensive Plan Amendment ordinance that adopts the language from this new statute. A copy of the enacting legislation, House Bill 59, is attached.

The ordinance will need to be adopted through the formal public hearing process.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BELLE, FLORIDA,  
AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF  
BELLE ISLE TO ADOPT A PRIVATE PROPERTY RIGHTS  
ELEMENT TO COMPLY WITH SECTION 163.3177, FLORIDA  
STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY,  
CODIFICATION, AND EFFECTIVE DATE.**

**WHEREAS**, pursuant to Chapter 163, Part II, Florida Statutes, the City of Belle Isle, Florida (the “City”) proposes to amend the City’s Comprehensive Plan (the “Comprehensive Plan”) to adopt a Private Property Rights Element as set forth herein; and

**WHEREAS**, the Florida Legislature changed statutory provisions of chapters 163, Florida Statutes effective on July 1, 2021 to ensure that private property rights are considered in local decision making and requiring the adoption of a Property Rights Element into the Comprehensive Plan; and

**WHEREAS**, the City Council of the City of Belle Isle desires to update the Comprehensive Plan consistent with such statutory changes by adopting a “Property Rights Element”; and

**WHEREAS**, the Planning and Zoning Board as the City’s Land Planning Agency reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes, and made a recommendation to the City Council; and

**WHEREAS**, the City determines that the Comprehensive Plan amendment set forth herein complies with the law and is in the best interest of the City.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA, AS FOLLOWS:**

**SECTION 1:** RECITALS. The above recitals are true, correct and incorporated herein by this reference.

**SECTION 2:** ADOPTION. The Comprehensive Plan of the City of Belle Isle is hereby

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amended to adopt a new Property Rights Element to read as follows:

**PROPERTY RIGHTS ELEMENT**  
**Goals, Objectives, and Policies**

**GOAL 1:**

The purpose and overall goal for the Property Rights Element is to signify respect for judicially acknowledged and constitutionally protected private property rights, and to ensure that those rights are considered in the City of Belle Isle’s decision-making concerning land use and zoning matters.

**Objective 1.1:**

The following objective provides a framework for ensuring that private property rights are considered in local decision-making concerning land use and zoning matters.

**Policy 1.1.**            **The following rights shall be considered in decision-making by the City of Belle Isle concerning land use and zoning matters:**

- 1)        The right of a property owner to physically possess and control their interests in property, including easements, leases, or mineral rights.
- 2)        The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
- 3)        The right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property.
- 4)        The right of a property owner to dispose of his or her property through sale or gift.

**SECTION 3:** SEVERABILITY. The provisions of this Ordinance are declared to be separable and if any section, paragraph, sentence or word of this Ordinance or the application thereto any person or circumstance is held invalid, that invalidity shall not affect other sections or words or applications of this Ordinance. If any part of this Ordinance is found to be preempted or otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent permitted by the severance of such preempted or superseded part.

**SECTION 4:** CONFLICTS. If any ordinance or part thereof is in conflict herewith, this Ordinance shall control to the extent of the conflict.

**SECTION 5:** CODIFICATION. Any goal, objective, and policy number, letter and/or any



heading may be changed or modified as necessary to effectuate the foregoing and/or to be consistent with the numbering system within the Comprehensive Plan. Grammatical, typographical, and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the Comprehensive Plan may be freely made.

**SECTION 6:** EFFECTIVE DATE. This Ordinance shall become effective pursuant to a Notice of Intent issued by DEO finding the Comprehensive Plan amendment (“Amendment”) set forth in this Ordinance to be in compliance as defined in Section 163.3184(1)(b), Florida Statutes. If timely challenged, the Amendment shall not become effective until DEO or the Administration Commission enters a final order determining the adopted Amendment to be in compliance.

**FIRST READING AND TRANSMITTAL READING:** \_\_\_\_\_

**SECOND READING AND ADOPTION:** \_\_\_\_\_

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021, by the City Council of the City of Belle Isle, Florida.

**City of Belle Isle**

\_\_\_\_\_  
**Nicholas Fouraker, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Yolanda Quiceno, CMC-City Clerk**



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1  
2       An act relating to growth management; amending s.  
3       163.3167, F.S.; specifying requirements for certain  
4       comprehensive plans effective, rather than adopted,  
5       after a specified date and for associated land  
6       development regulations; amending s. 163.3177, F.S.;  
7       requiring local governments to include a property  
8       rights element in their comprehensive plans; providing  
9       a statement of rights which a local government may  
10      use; requiring a local government to adopt a property  
11      rights element by the earlier of its adoption of its  
12      next proposed plan amendment initiated after a certain  
13      date or the next scheduled evaluation and appraisal of  
14      its comprehensive plan; prohibiting a local  
15      government's property rights element from conflicting  
16      with the statement of rights contained in the act;  
17      amending s. 163.3237, F.S.; providing that the consent  
18      of certain property owners is not required for  
19      development agreement changes under certain  
20      circumstances; providing an exception; amending s.  
21      337.25, F.S.; requiring the Department of  
22      Transportation to afford a right of first refusal to  
23      certain individuals under specified circumstances;  
24      providing requirements and procedures for the right of  
25      first refusal; amending s. 380.06, F.S.; authorizing

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26 certain developments of regional impact agreements to  
27 be amended under certain circumstances; providing  
28 retroactive applicability; providing a declaration of  
29 important state interest; providing an effective date.  
30

31 Be It Enacted by the Legislature of the State of Florida:  
32

33 Section 1. Subsection (3) of section 163.3167, Florida  
34 Statutes, is amended to read:

35 163.3167 Scope of act.—

36 (3) A municipality established after the effective date of  
37 this act shall, within 1 year after incorporation, establish a  
38 local planning agency, pursuant to s. 163.3174, and prepare and  
39 adopt a comprehensive plan of the type and in the manner set out  
40 in this act within 3 years after the date of such incorporation.  
41 A county comprehensive plan is controlling until the  
42 municipality adopts a comprehensive plan in accordance with this  
43 act. A comprehensive plan for a newly incorporated municipality  
44 which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and  
45 all land development regulations adopted to implement the  
46 comprehensive plan must incorporate each development order  
47 existing before the comprehensive plan's effective date, may not  
48 impair the completion of a development in accordance with such  
49 existing development order, and must vest the density and  
50 intensity approved by such development order existing on the

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effective date of the comprehensive plan without limitation or modification.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)–(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

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2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of the date of its adoption of its next proposed plan amendment that is initiated after July 1, 2021, or the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by

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mutual consent of the parties to the agreement or by their successors in interest. A party or its designated successor in interest to a development agreement and a local government may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or cancellation directly modifies the allowable uses or entitlements of such owners' property.

Section 4. Subsection (4) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(4) The department may convey, in the name of the state, any land, building, or other property, real or personal, which was acquired under subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than \$10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)–(d). The department may afford a right of first refusal to the local government or other political subdivision



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126 in the jurisdiction in which the parcel is situated, except in a  
127 conveyance transacted under paragraph (a), paragraph (c), or  
128 paragraph (e). Notwithstanding any provision of this section to  
129 the contrary, before any conveyance under this subsection may be  
130 made, except a conveyance under paragraph (a) or paragraph (c),  
131 the department shall first afford a right of first refusal to  
132 the previous property owner for the department's current  
133 estimate of value of the property. The right of first refusal  
134 must be made in writing and sent to the previous owner via  
135 certified mail or hand delivery, effective upon receipt. The  
136 right of first refusal must provide the previous owner with a  
137 minimum of 30 days to exercise the right in writing and must be  
138 sent to the originator of the offer by certified mail or hand  
139 delivery, effective upon dispatch. If the previous owner  
140 exercises his or her right of first refusal, the previous owner  
141 has a minimum of 90 days to close on the property. The right of  
142 first refusal set forth in this subsection may not be required  
143 for the disposal of property acquired more than 10 years before  
144 the date of disposition by the department.

145 (a) If the property has been donated to the state for  
146 transportation purposes and a transportation facility has not  
147 been constructed for at least 5 years, plans have not been  
148 prepared for the construction of such facility, and the property  
149 is not located in a transportation corridor, the governmental  
150 entity may authorize reconveyance of the donated property for no

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151 consideration to the original donor or the donor's heirs,  
152 successors, assigns, or representatives.

153 (b) If the property is to be used for a public purpose,  
154 the property may be conveyed without consideration to a  
155 governmental entity.

156 (c) If the property was originally acquired specifically  
157 to provide replacement housing for persons displaced by  
158 transportation projects, the department may negotiate for the  
159 sale of such property as replacement housing. As compensation,  
160 the state shall receive at least its investment in such property  
161 or the department's current estimate of value, whichever is  
162 lower. It is expressly intended that this benefit be extended  
163 only to persons actually displaced by the project. Dispositions  
164 to any other person must be for at least the department's  
165 current estimate of value.

166 (d) If the department determines that the property  
167 requires significant costs to be incurred or that continued  
168 ownership of the property exposes the department to significant  
169 liability risks, the department may use the projected  
170 maintenance costs over the next 10 years to offset the  
171 property's value in establishing a value for disposal of the  
172 property, even if that value is zero.

173 (e) If, at the discretion of the department, a sale to a  
174 person other than an abutting property owner would be  
175 inequitable, the property may be sold to the abutting owner for

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the department's current estimate of value.

Section 5. Paragraph (d) of subsection (4) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before April 6, 2018, and may be amended pursuant to the processes adopted by the local government for amending development orders. Any such agreement or amendment may authorize the developer to exchange approved land uses, subject to demonstrating that the exchange will not increase impacts to public facilities. This paragraph applies to all such agreements and amendments effective on or after April 6, 2018.

Section 6. The Legislature finds and declares that this act fulfills an important state interest.

Section 7. This act shall take effect July 1, 2021.

**ORDINANCE NO. 21-09**

**AN ORDINANCE OF THE CITY OF BELLE, FLORIDA,  
AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF  
BELLE ISLE TO ADOPT A PRIVATE PROPERTY RIGHTS  
ELEMENT TO COMPLY WITH SECTION 163.3177, FLORIDA  
STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY,  
CODIFICATION, AND EFFECTIVE DATE.**

**WHEREAS**, pursuant to Chapter 163, Part II, Florida Statutes, the City of Belle Isle, Florida (the “City”) proposes to amend the City’s Comprehensive Plan (the “Comprehensive Plan”) to adopt a Private Property Rights Element as set forth herein; and

**WHEREAS**, the Florida Legislature changed statutory provisions of chapters 163, Florida Statutes effective on July 1, 2021 to ensure that private property rights are considered in local decision making and requiring the adoption of a Property Rights Element into the Comprehensive Plan; and

**WHEREAS**, the City Commission of the City of Belle Isle desires to update the Comprehensive Plan consistent with such statutory changes by adopting a “Property Rights Element”; and

**WHEREAS**, the Planning and Zoning Board as the City’s Land Planning Agency reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes, and made a recommendation to the City Council; and

**WHEREAS**, the City determines that the Comprehensive Plan amendment set forth herein complies with the law and is in the best interest of the City.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA, AS FOLLOWS:**

**SECTION 1:** RECITALS. The above recitals are true, correct and incorporated herein by this reference.

---

**SECTION 2:** ADOPTION. The Comprehensive Plan of the City of Belle Isle is hereby amended to adopt a new Property Rights Element to read as follows:

**PROPERTY RIGHTS ELEMENT**  
Goals, Objectives and Policies

**GOAL 1:**

The purpose and overall goal for the Property Rights Element is to signify respect for judicially acknowledged and constitutionally protected private property rights, and to ensure that those rights are considered in the City of Belle Isle’s decision-making concerning land use and zoning matters.

**Objective 1.1:**

The following objective provides a framework for ensuring that private property rights are considered in local decisionmaking concerning land use and zoning matters.

**Policy 1.1.**            **The following rights shall be considered in decision-making by the City of Belle Isle concerning land use and zoning matters:**

- 1)        The right of a property owner to physically possess and control their interests in property, including easements, leases, or mineral rights.
- 2)        The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
- 3)        The right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property.
- 4)        The right of a property owner to dispose of his or her property through sale or gift.

**SECTION 3:** SEVERABILITY. The provisions of this Ordinance are declared to be separable and if any section, paragraph, sentence or word of this Ordinance or the application thereto any person or circumstance is held invalid, that invalidity shall not affect other sections or words or applications of this Ordinance. If any part of this Ordinance is found to be preempted or otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent permitted by the severance of such preempted or superseded part.

**SECTION 4:** CONFLICTS. If any ordinance or part thereof is in conflict herewith, this Ordinance shall control to the extent of the conflict.

**SECTION 5:** CODIFICATION. Any goal, objective, and policy number, letter and/or any

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heading may be changed or modified as necessary to effectuate the foregoing and/or to be consistent with the numbering system within the Comprehensive Plan. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the Comprehensive Plan may be freely made.

**SECTION 6:** EFFECTIVE DATE. This Ordinance shall become effective pursuant to a Notice of Intent issued by DEO finding the Comprehensive Plan amendment (“Amendment”) set forth in this Ordinance to be in compliance as defined in Section 163.3184(1)(b), Florida Statutes. If timely challenged, the Amendment shall not become effective until DEO or the Administration Commission enters a final order determining the adopted Amendment to be in compliance.

**FIRST READING AND TRANSMITTAL READING:** \_\_\_\_\_

**SECOND READING AND ADOPTION:** \_\_\_\_\_

**ADOPTED** this \_\_\_\_day of \_\_\_\_\_, 2021, by the City Council of the City of Belle Isle, Florida.

**City of Belle Isle**

\_\_\_\_\_  
**Nicholas Fouraker, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Yolanda Quiceno, CMC-City Clerk**



July 19, 2021

**Discussion Item: Land Development Code Language Change- Accessory Dwelling Units**

At the May 2021 Planning and Zoning Board meeting, the Board discussed adding the definition of kitchen and wet bar to the Land Development Code as these terms are not currently defined in the Code.

These are the definitions that were discussed:

Proposed Kitchen definition: Kitchen shall mean the facilities and equipment or rough in facilities, used in the preparation and serving of food. This may include, but is not limited to, stoves, microwave ovens, hot plates, sinks, refrigerators, cabinets and/or pantry-like shelves, a 220 V outlet, or any gas lines (natural gas or propane), a dishwasher, or other food preparation equipment, or any combination thereof; this may not include wet bars, outside grilling facilities, outside sinks or refrigerators, or other items determined by the zoning division manager as not constituting a kitchen.

Proposed Wet Bar definition: Wet bar shall mean a hand sink and under-the-counter refrigerator with no overhead cabinet.

The Board did not take any action on these definitions but asked staff to come back with information on a broader focus of accessory dwelling units. These types of units are not currently allowed in Belle Isle in single-family zoning districts. The Code also prohibits more than one kitchen in single-family homes.

The Board discussed the possibility to amend the Code to allow for accessory dwelling units so that families may be able to care for family members in need in their own homes, while still maintaining some level of independence.

For the Board's review and discussion, attached is an example of accessory dwelling unit code language from the City of Miramar, Florida. Also included is an article regarding the use of accessory dwelling units as a growth management tool.

Staff is seeking direction from the Board as to whether they would like an ordinance prepared for formal consideration regarding accessory dwelling units.

The specific conditions set out below shall be applied to each proposed use during site plan and/or conditional use review (if applicable).

*405.1.1 Types.* An Accessory Dwelling Unit (ADUs) is an ancillary or secondary living unit, that has a separate kitchen, bathroom(s), and sleeping area(s), existing either within the same structure, or on the same lot, as the primary dwelling unit.

*405.1.2 Where Permitted.* ADUs are allowed as an accessory use to a single-family detached dwelling, as per TABLE 402-1, Principal Use Table for Single-family and Multi-family zoning Districts, and providing that such structure meets the development and use standards as follows, and all other applicable standards of this Land Development Code, as amended from time to time.

*405.1.3 Use.* An ADU may be rented, or may be utilized by family members, guests and/or persons employed on site by the resident family of the principal dwelling;

*405.1.4 Utilities.* The ADU must share utilities with the primary residence and separate utility meters are not permitted.

*405.1.5 Affidavit.* The owner(s) of the parcel shall provide an affidavit attesting that the ADU will be in compliance with all applicable requirements of the City Code of Ordinances, the minimum housing standards of the Broward County Code of Ordinances, as well as the provision of Section 163.31771, FS, as amended from time to time.

*405.1.6 Development Standards.*

- (a) *Number.* No lot shall contain more than one accessory dwelling unit.
- (b) *Location.* Any proposed detached ADU must be located to the side or rear of the primary dwelling, to the best extent physically possible.
- (c) *Square Footage.* An ADU must not exceed 50% of the total square footage of the primary dwelling unit including unairconditioned areas, but in no case be greater than 1,200 square feet and in no case shall be less than 300 square feet in area.
- (d) *Plot Coverage.* Where applicable, any proposed ADU shall be within the plot coverage requirement of the zoning district where it is located.
- (e) *Height.* The maximum height of an ADU shall be two (2) stories. In no event, shall the height of the ADU exceed that of the primary dwelling.
- (f) *Architecture.* An ADU shall be architecturally compatible with the primary dwelling.
- (g) *Parking.* One (1) off-street parking space must be provided for a proposed ADU with two (2) sleeping areas or less. Two (2) off-street parking spaces must be provided for a proposed ADU with more than two (2) sleeping areas.
- (h) *Setbacks.*
  - Any proposed attached ADU shall be subject to the same front, side, side street and rear setbacks as the primary dwelling.
  - Any proposed detached ADU shall be subject to the following setback requirements:
    - Side and side street setbacks: same as the primary dwelling
    - Rear setback (detached): 10 feet for a one-story structure, and 15 feet for a two-story structure.
- (i) *Entrances.* An attached ADU may either share a common entrance with the primary dwelling unit and/or use a separate entrance, which shall be located only to the side or rear. A separate front entrance for an attached ADU shall be prohibited unless it is located within a personal courtyard area not visible from the right-of-way



- (j) *Easements*. Shall be located outside any dedicated easements. This may include but is not limited to a Lake Ma b. Easement, Drainage Easement, Utility Easement, and Landscape Easement.
- (k) *Nonconformity*. In no event shall the establishment of an ADU create a new nonconformity or expand an existing nonconformity. Conversion of detached garages or other accessory buildings and structures for the purpose of creating an accessory dwelling unit shall be permitted only if the newly created dwelling unit is permitted and all code requirements are satisfied.
- (l) *Impact Fees*. Impact fees shall be assessed for the police and fire protection, water and sewer capacity, and park and recreation fees that are created by the additional unit.

#### 405.2. Adult Entertainment Uses and Establishments.

*405.2.1. Intent*. This subsection shall be liberally construed to accomplish its purpose to regulate and provide proper and adequate locations that would be compatible for proposed adult entertainment uses and establishments while keeping consistent with the city's comprehensive plan and vision. Adult entertainment uses as defined in section 201 shall be a permitted use within the PID district, subject to distance separation requirements as noted below.

It is the intent of the city commission, in adopting this subsection, to establish reasonable and uniform regulations that will reduce the adverse secondary effects that adult entertainment establishments have upon the residents of the city and protect the health, safety, aesthetics, morals and general welfare of the people of the city. It is further intended to provide for the proper location of adult entertainment uses in the city; to require a separation between such uses to avoid clustering; and to require separation from and thereby protect the integrity of incompatible uses in nearby neighborhoods, including residences, schools, places of worship, public parks and other commercial enterprises. Proper separation of adult entertainment uses prevents the creation of skid row areas in the city, which otherwise result from the concentration of these establishments and their patrons. This subsection has neither the purpose, nor the effect, of limiting or restricting access by adults to sexually-oriented, non-obscene materials protected by the First Amendment to the U.S. Constitution, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is instead the intent to limit the secondary effects of regulated uses through content-neutral regulation as set out in this subsection. Furthermore, the commission has found that the location of residential uses within viable, un-blighted and desirable areas supports the preservation of property values and promotes the health, safety, aesthetics, and welfare of the city and the public at large.

*405.2.2. Conflicts with Other Laws*. Whenever the regulations and requirements are in conflict or at variance with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances or laws, the most restrictive shall apply.

*405.2.3. Penalty for Violation of Subsection*. Any person violating the provisions shall, upon conviction by a court of competent jurisdiction of any offense involving moral turpitude in connection with the operation of such adult entertainment establishment, be subject to the penalties of the LDC, city code, or by any other means authorized by law including, but not limited to, the revocation of a zoning certificate of use. The city code compliance officer shall immediately issue a written notice of intent to revoke the local business licenses and permits.

*405.2.4. District and Distance Separation Regulations*. See Tables 405-1 and 405-2.

TABLE 405-1  
DISTRICT REGULATIONS\*.

District Type	
All Residential Zoning Districts as described in section 401.1	Not Permitted

# Accessory Dwelling Units:

## A Smart Growth Tool for Providing Affordable Housing

By Jaimie Ross, President & CEO of the Florida Housing Coalition

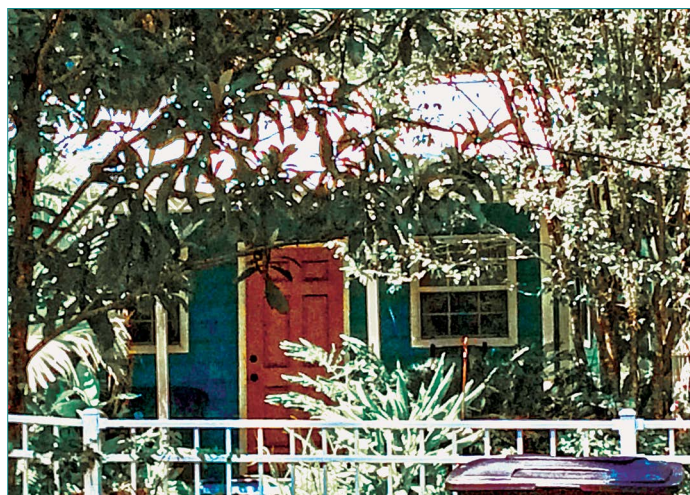
An accessory dwelling unit (ADU) is a residential unit that is secondary to the primary residence of the homeowner. It can be an apartment within the primary residence or it can be an attached or freestanding home on the same lot as the primary residence. The concept of an accessory dwelling unit is to have an additional complete residence, meaning a place for sleeping, bathing, and eating independent of the primary home. An ADU is a tool for providing affordable rental housing and promoting smart growth. These smaller housing units are typically infill units built where there is existing infrastructure, making greater use of the already developed land.

### The Value of an Accessory Dwelling Unit

An accessory dwelling unit creates affordable housing in two ways: the secondary (accessory) dwelling is a small rental unit that will ordinarily rent at a price within the means of lower income persons; at the same time, the rental income from the accessory dwelling unit can render the primary residence more affordable by virtue of the income it generates for the resident owner of the primary residence.

Ordinarily, the accessory dwelling unit is smaller than the primary residence of the homeowner. But, if permitted by the local government, the owner may choose to live in the smaller unit and rent out what was the primary residence. At first blush this arrangement may seem odd, but in the case of a family that now has a single elderly member living on a fixed income, this arrangement can provide the perfect affordable living solution; a more appropriately sized living space and a higher rental income.

AARP engaged the American Planning Association (see resources sidebar on page 20) to develop a model state act and local ordinance as a resource for meeting the affordable needs of elder Americans. ADUs are particularly well suited for lower income elderly because in addition to increasing affordability, the elderly homeowner may also obtain companionship and needed services from the tenant in the ADU. The use of ADUs can assist the elderly to “age in place”. An example of this cited in the Public Policy Institute publication is from Daly City, California:



This cottage is an example of a detached accessory dwelling unit built in the side/backyard with roof lines, colors, and architectural design that matches the larger primary home.



“One homeowner with Alzheimer’s was able to trade ADU quarters for medical services from an ADU tenant, a nurse, who was also delighted by the arrangements.”

Permitting accessory dwelling units is a way for government to create an environment in which the private sector can produce affordable housing, without having to invest public dollars. Removing the land use barriers which prevent accessory dwelling units from being built may be all that local government needs to do for affordable accessory dwelling units to be built. This is an example of how regulatory reform can increase the supply of affordable housing.

However, if the purpose in permitting accessory dwelling units is to increase the supply of affordable housing, local governments need to be thoughtful about the manner in which ADUs are permitted. Without conditions placed upon the use of ADUs, the garage apartment in an expensive or desirable area could end up an “illegal use” such as a Bed and Breakfast. If local governments want to encourage the production of ADUs for affordable housing, a loan program to assist the homeowner in developing the unit is an effective way of providing an incentive for development together with an assurance of affordability through a recorded land use restriction agreement made in conjunction with the loan.

### Obstacles to Accessory Dwelling Units

Traditional “Euclidian” zoning separates land uses in a way that prohibits more than one single residence on a platted lot, regardless of the acreage. If two or more residences are situated on a single lot, they would need to be in a more intensive residential zone, such as one that permits duplexes or multi-family housing.

Some single family zoning may permit an accessory dwelling unit, but require that special circumstances be shown to warrant the use, such as a unit limited to use as a “granny

flat” or “mother-in law” suite to accommodate immediate family members. The local zoning code may also limit the accessory dwelling use by proscribing separate metering of the accessory dwelling unit. In short, there may be a number of land use regulations to overcome. Another obstacle to ADUs may be neighborhood or community resistance. The owners of single family homes may object to having renters in their neighborhood; they may fear increased traffic and parking, or perceive a threat to their property value.

### Promotion of ADUs as an Affordable Housing Strategy

When the SHIP Legislation was adopted in 1992\*, included in the list of regulatory reform items for consideration by all SHIP jurisdictions (all counties and entitlement cities in Florida), was permitting accessory dwelling units in all residential areas. Most jurisdictions did not opt to include this incentive, but a number of jurisdictions in Florida do make some provision for accessory dwelling units.

In 2004, Chapter 163 Florida Statutes, was amended to include Section 163.31771 entitled “Accessory dwelling units.” The law encourages local governments in Florida, especially those in urban areas, to permit accessory dwelling units in all areas zoned for single-

family residential use. The purpose of this legislation is to increase the production of affordable rental housing. To that end, the statute provides that “an application to construct an accessory dwelling unit must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to extremely low income, very low income, low income or moderate income person or persons.” The statute also states that each affordable accessory dwelling unit shall apply toward satisfying the affordable housing component of the housing element in the local government’s comprehensive plan. Local governments in Florida are, of course, empowered to permit accessory dwelling units without this statute, but the statute brings this underutilized tool to the fore and makes

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**Permitting accessory dwelling units is a way for government to create an environment in which the private sector can produce affordable housing, without having to invest public dollars.**

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explicit the connection to local government comprehensive planning obligations.

### Considerations for ADU Ordinances

Accessory dwelling units could be permitted without adoption of a separate ordinance by simply having accessory dwelling units enumerated as a permitted use within the single family residential use category. It is unlikely, however, that this will be the chosen vehicle, as it fails to provide the parameters for the development and use of accessory dwelling units, which are key to successfully balancing the production of affordable rental housing with the concerns of the existing single family homeowners.

Virtually all ADU ordinances require that the owner reside in either the primary or the secondary unit. But there are a number of issues that can be decided differently depending upon community needs. All programs for the development of ADUs should consider the following:

- **Conditional use or “by right”** – If the ADU is a conditional use, a public hearing would be required – this makes the process more difficult for the applicant, but provides a forum for input from the neighborhood. If the ADU is “by right” it is a permitted use and, provided the application meets the requirements in the ordinance, it will be approved administratively, without public hearing.
- **Permitting process** – To encourage the development of ADUs, local government can create a user friendly process for construction which includes expedited processing (a requirement under the SHIP program), a manual to help the homeowner, and a staff person charged with overseeing the program.



This is an example of an attached accessory apartment in the back of this single family home. Neither the accessory apartment or the off-street parking are visible from the front of the house.

- **Size regulations** – ADU ordinances commonly have a minimum lot size for the total parcel and a maximum ADU size. The goal is to maintain the aesthetic integrity of the single family neighborhood. Performance standards rather than arbitrary size limitations may better address neighborhood concerns.
- **Design requirements** – To ensure compatibility and maintain the aesthetic character of the neighborhood, an ADU ordinance may set forth minimum design standards and have architectural review requirements.
- **Parking requirements** – To avoid parking problems in an urban area, the ordinance may require that there be sufficient on-street parking or off-street parking, or may require that parking be at the back of the residence.
- **Type of unit** – Different considerations may apply if the ADUs are within the primary residence, such as a basement apartment; attached to the primary residence, such as a garage apartment; or detached from the primary residence, such as a cottage.
- **Occupancy restrictions** – Some ordinances may prescribe the maximum number of people who can live in the ADU or the type of renters, such as limiting the rental to relatives or the elderly.
- **Incentives to produce ADUs** – Loans for the production of the ADU may make it easier to monitor for affordability and assist the local government in directing applicants on its rental waiting lists to affordable ADUs.
- **Monitoring** – Some ADU programs have an annual affidavit requirement or other means for monitoring whether the ADU continues to be used in accordance with the local ADU requirements.



ADUs do not have to be an afterthought. New construction of single-family homes could also include construction of an ADU. "Carriage houses" accessible from alleys are commonly found in the "New Urbanism" or Traditional Neighborhood Design. But without an ADU ordinance requirement that these units be affordable, the carriage houses in this "new urbanism" community exceed affordable rents, as the desirability of the traditional neighborhood design development drives housing prices out of the affordable range.

One of the keys to a successful program is the information and technical assistance provided to the community and the prospective developer/owner of an ADU. To ensure the success of its program, Montgomery County, Maryland has a guidebook to assist applicants through the permitting process for accessory apartments. The County also assists the applicant by having a staff person assigned to help applicants through the process.

In 2004, the Environmental Protection Agency gave the city of Santa Cruz California the National Award for Smart Growth Achievement for its Accessory Dwelling Unit Policies and Regulations, which includes a manual for developing ADUs, including architectural designs. You can access the Santa Cruz manual and ADU prototypes on line at: <http://www.cityofsantacruz.com/home/showdocument?id=8875>

If your local government would like technical assistance to help develop an accessory dwelling unit ordinance or navigate the issues to be addressed with accessory dwelling unit ordinances, contact the Florida Housing Coalition at (850) 878-4219, or Jaimie Ross at [ross@flhousing.org](mailto:ross@flhousing.org) **HNN**

\*Florida Statute 420.9076 (4) "At a minimum, each advisory committee shall make recommendations on affordable housing incentives in the following areas: (e) the allowance of affordable accessory residential unit in residential zoning districts.



JAIMIE ROSS

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## Resources for ADU Models

"Accessory Dwelling Units: Model State Act and Local Ordinance," Public Policy Institute, Rodney L. Cobb & Scott Dvorak, American Planning Association  
[http://assets.aarp.org/rgcenter/consume/d17158\\_dwll.pdf](http://assets.aarp.org/rgcenter/consume/d17158_dwll.pdf)

### Examples:

**Massachusetts Smart Growth Toolkit Bylaws**  
<http://www.horsleywitten.com/services/planning/smart-growth-low-impact-development/>

**Santa Cruz California ADU Manual**  
<http://www.cityofsantacruz.com/home/showdocument?id=8875>

**State of Georgia (Department of Community Affairs)**  
[http://www.dca.state.ga.us/intra\\_nonpub/Toolkit/ModelOrdinances/TND\\_ModOrd.pdf](http://www.dca.state.ga.us/intra_nonpub/Toolkit/ModelOrdinances/TND_ModOrd.pdf)

**Municipal Research & Service Center of Washington "Accessory Dwelling Units Issues and Options"**  
<http://mrsc.org/getmedia/54c058a5-4d57-4192-a214-15f2fa5ac123/ADU30.pdf.aspx>

**Vermont "Accessory Dwelling Units: A Guide for Homeowners"**  
[http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/housing/2013Edition\\_Accessory\\_Apts\\_Brochure.pdf](http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/housing/2013Edition_Accessory_Apts_Brochure.pdf)

**Accessory Dwelling Units: Model State Act and Local Ordinance**  
<http://www.docdatabase.net/more-accessory-dwelling-units-model-state-act-and-local-ordinance-577683.html>

**Accessory Dwelling Units Report to the Florida Legislature**  
[http://landuselaw.wustl.edu/Articles/ADU\\_Report.pdf](http://landuselaw.wustl.edu/Articles/ADU_Report.pdf)

**City of Santa Cruz Accessory Dwelling Unit Development Program**  
<http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program>