

LAND DEVELOPMENT CODE

ARTICLE 9 – NON-CONFORMING USES AND NON-COMPLYING STRUCTURES

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9.00.00. Intent.

This Article provides certain limitations, which restrict non-conforming uses and/or non-complying buildings and structures in order to realize the legislative intent and purpose of this Code and the adopted Comprehensive Plan of Escambia County. This Article is intended to assist in preserving the character of established districts in light of their suitability for particular uses, and thus to promote and protect public health, safety and general welfare. See Article 8 for provisions governing abandoned and non-conforming signs.

9.00.01. Non-conforming uses. The provisions governing non-conforming uses set forth in this Article are established to provide a gradual remedy for existing undesirable conditions resulting from such non-conforming uses. While non-conforming uses lawfully existing at the time of enactment of this Code are generally permitted to continue, this Article is designed to restrict action regarding such uses which would make them more permanent establishments. Note: Single-family site built houses and manufactured homes/mobile homes existing at the effective date of this amendment are considered to be conforming uses. (Ref. Comprehensive Plan Section 7.08.)

9.00.02. Non-complying buildings and structures. The provisions governing non-complying buildings and structures are established to prevent the creation of additional non-complying buildings and structures lawfully existing at the time of enactment of this Code. It also provides, wherever reasonable and practical, for a gradual remedy from non-compliance.

9.01.00. Continuance of a Non-conforming Use or Non-conforming Building or Structure.

- A. *Existing non-conforming use.* A non-conforming use lawfully existing at the time of the enactment of this Code may be continued subject to the provisions of this Code and any other applicable County land development regulations. The lawful use of a non-complying building or structure may be continued subject to provisions of this Code and any other County land development regulations.
- B. *Illegal use.* Nothing in this Code shall be interpreted as authorization for, or approval of, continuation of any illegal use of a building, structure, premises or land, in violation of any ordinance in effect at the time of the passage of this Code. The casual, intermittent, temporary, or illegal use of land, building or structure for any length of time shall not be sufficient to establish the existence of a non-conforming use.

- C. *Previously approved use.* Any planned building or structure for which a lawful building permit was issued prior to the enactment of this Code, and construction of which is or will be in conformity with approved site plans, if applicable, said building plans shall not be affected by this Code if the planned building or structure is built in full compliance with County land development regulations as they existed at the time of the issuance of the building permit. However, if such building or structure does not conform to the provisions of this Code that cause such planned building, structure or use to be non-conforming or non-complying, then it shall be non-conforming or non-complying, or both, as the case may be, by applying this Code to the building, structure or use.

9.02.00. Expansion of Non-conforming Use Prohibited.

A non-conforming use shall not be extended, expanded, enlarged, or increased in intensity. Such prohibited activities apply to both complying and non-complying buildings or structures and shall include without being limited to:

- A. *Extension to other land or structure.* Extension of a non-conforming use to any land or structure other than the specific land or structure that was actually and directly occupied by such use on the effective date of this Code (or on the effective date or subsequent amendment thereto that causes such use to become non-conforming).
- B. *Extension within buildings.* Extension of a non-conforming use within a building or other structure to any portion of floor area on the same or another floor that was not actually and directly occupied by such use on the effective date of this Code (or on the effective date of a subsequent amendment thereto that causes such use to become non-conforming); provided, however, that a non-conforming use may be extended throughout any part of such building or other structure if same is extended without structural alteration to the building or structure, such extension does not require additional parking spaces, such extension does not add any additional dwelling units, and the existing non-conforming use and the proposed extension complies with bulk regulations, landscape requirements and other provisions of this Code.
- C. *Increase of nonconformity of performance standards.* Operation of a non-conforming use in such manner as to conflict with or to further conflict (if already conflicting on the effective date of this Code or, on the effective date of a subsequent amendment thereto that results in such use becoming non-conforming), with any performance standards established for the district in which the use is located.
- D. *Parking and landscaping.* Nothing contained in this Article shall in any way prohibit a non-conforming use from acquiring additional off-street parking area, subject to applicable landscape requirements.
- E. *Additions.* No additions that increase the area of non-conforming use or a conforming use shall be made to any building or structure occupied, in whole or in part, by a non-conforming use.
- F. *Alterations.* No alterations shall be made to any building or structure occupied by a

non-conforming use, except as permitted by this Code.

9.02.01 Mobile home policy.

- A. *Replacement.* Any non-conforming mobile home may be replaced by another larger mobile home provided that:
1. Replacement mobile homes must meet the setback requirements of the zoning district; and comply with the most recently adopted installation standards of the State of Florida as well as all applicable American Society of Civil Engineers (ASCE) 7-88 Standards.
 2. Replacement mobile homes must meet Department of Housing and Urban Development (HUD) certification standards and have a HUD seal attached to the replacement unit. Any such replacement unit shall have been manufactured after July 13, 1994.
- B. *Mobile home parks.* In addition to the above requirements, such replacements are authorized in a mobile home park only if the replacement unit is located 10 feet or more from any other mobile home and can meet the property line setback standards.

9.03.00. Change of Non-conforming Use.

If no structural alterations are made, a non-conforming use of a building or structure may be changed to another non-conforming use of similar classification under the following conditions:

- A. *Classification of uses.* The use to which the building is to be put is, at the time of the proposed change, classified as a similar use in the zoning district where the existing non-conforming use is permitted. If the existing non-conforming use is an unconditionally permitted use (not a conditional use) in more than one zoning district, the most restrictive zoning district where the use is unconditionally permitted shall be the zoning district referenced to determine whether the proposed new non-conforming use is classified as a use similar to the existing non-conforming use.
- B. *Impact of change.* The change in use shall not intensify or enlarge the basic use of the building or premises by increasing the need for more parking facilities; by increasing vehicular or pedestrian traffic; by creating more noise, vibration, fire hazard, smoke, dust or fume, by increasing ground coverage or adversely impacting drainage; or otherwise result in a more intensive use of the building or premises unless the change is to make the building and premises more nearly conform to the requirements of the zoning of the district in which the building or structure is located.
- C. *Subsequent changes.* When a non-conforming use of all or any part of a building, structure or premises is changed to another non-conforming use of a more restricted character, the new use may not thereafter be changed to any less restricted use.

- D. *New non-conforming use.* When a non-conforming use of all or any building, structure or premises has been changed to a conforming use, the conforming use shall not thereafter be changed to any non-conforming use.
- E. *Compliance.* No alterations shall be made to any building or structure occupied by a non-conforming use except as permitted in this Code.
- F. *Change to lesser non-conforming use.* A change from one non-conforming use to another non-conforming use shall not be permitted if the change results in an extension of a non-conforming use, except as would be permitted pursuant to Section 9.02.00 (B) above.

9.04.00. Alterations to Non-conforming Uses or Non-conforming Buildings or Structures.

9.04.01. Incidental alterations to non-conforming or non-complying buildings or structures. Repairs and alterations shall be limited to incidental alterations as defined below:

- A. Minor interior structural improvements that do not extend the non-conforming use or increase the non-compliance and are consistent with all applicable provisions of this Article.
- B. Replacement of, or minor changes in capacity of utility pipes, ducts, conduits, or other utility system components.
- C. Improvements to exterior facade, including windows or doors.
- D. No incidental alteration shall include an extension or addition which permits the non-conforming use to occupy any additional land or which increases any non-compliance.
- E. Any single family residential structure, including manufactured/mobile homes, used for residential occupancy only, located in any district may make unwallled additions limited to the following: porches, patios, decks, and carports, provided the more restrictive setbacks, open space, and other bulk regulations governing single family dwelling units are applied to the entire parcel. Accessory buildings are permitted in accordance with Section 2.10.06.

9.04.02. Non-incidental alterations to non-conforming uses or structures.

- A. Change of use or increase in floor area with no exterior addition. Provided non-compliance is not intensified, extended or increased, a change from one conforming use to another conforming use, or an increase in the area of a conforming use, within a non-complying building or structure, with or without structural alterations, is permitted only under the following conditions:
 - 1. All uses to which said building or structure is put conform to the applicable use provisions of the zoning district in which the building or structure is located.

2. If only parking is deficient at the time of the proposed change under the provisions of this Code and the change does not require any additional parking space which would increase the existing parking deficiency and its attendant landscaping are corrected to the extent sufficient land is available on the site to accommodate some or all of the deficient parking spaces. Increases in floor area which result in additional required parking may be permitted up to the square footage that would still allow for the accommodation of the additional required parking.
 3. If only landscaping is deficient at the time of the proposed change under the provisions of this Code, and the change does not require additional parking spaces, the change is permitted providing the existing landscaping deficiency is corrected to the extent sufficient land is available on the site to accommodate some or all of the deficient landscaping.
 4. If the parking area is deficient at the time of the proposed change under the provisions of this Code and the proposed change requires additional parking spaces over the existing parking deficiency, the change is prohibited unless the net additional parking area and its attendant landscaping are provided and any deficiencies are corrected under the same criteria in this Article.
 5. If both existing parking and landscaping are deficient at the time of the proposed change under the provisions of this Code and the change does not require any additional parking, or any additional landscaping which would increase the requirement for parking or landscaping over the existing deficiencies, the change is permitted provided the deficiencies are corrected to accommodate some or all of the deficient parking or landscaping. If sufficient land is not available on the site to allow correction of all of the parking and landscaping deficiencies (at the time of the proposed change), priority of correction to the landscaping and parking deficiencies shall be determined on a case-by-case basis by the Director. The Director shall determine if the proposed change is a minor change in site plan pursuant to Section 2.09.00 et. seq., or if the change requires full site plan review.
 6. If parking and landscaping are in compliance at the time of the proposed change under the provisions of this Code and the proposed changes do not render either the parking or landscaping deficient, the change is permitted. If the proposed change would render either the parking or landscaping, or both, to become deficient, and therefore non-complying, the change is prohibited unless the required additional parking and landscaping are provided.
- B. Change of use or floor area with exterior additions. Provided non-compliance is not intensified, extended or increased, an increase in the area of a conforming use by the addition to a non-complying building or structure, or by the addition of another building or structure on the site, is permitted only under the following conditions:
1. All uses to which all buildings or structures are put conform to the applicable use provisions of the zoning district in which the building or structure is located.

2. In every case any additional parking required by the addition shall be provided, unless such additional required parking is provided already.
3. In every case any additional landscaping required by the addition shall be provided, unless such additional landscaping is provided already.
4. If only parking space is deficient at the time of the proposed addition under the provisions of this Code, the deficiency shall be corrected by applying the following formula: Divide the gross floor area of the existing building(s) or structure(s) into the gross floor area of the proposed addition to establish a percentage; then multiply the percentage times the existing building prior to the proposed addition. The result rounded at the next highest whole number shall be the minimum number of parking spaces required (with attendant landscaping) to correct the deficiency. If insufficient land remains to fully accommodate both the remaining parking deficiency and the landscaping required by the parking spaces to accommodate the remaining parking deficiency, the priority of parking spaces vis-à-vis landscaping shall be determined on a case-by-case basis as provided above.
5. If only landscaping is deficient under the provisions of this Code at the time of the proposed addition, and the addition does not require additional parking, the landscaping deficiency shall be corrected to the extent sufficient land was available on the effective date of this Code on the site to accommodate the landscaping.
6. If both parking and landscaping are deficient at the time of the proposed addition, and the minimum requirements of paragraphs (1), (2), (3), and (4) above are complied with and additional land area was available on the site on the effective date of this Code or at the time of the proposed addition, whichever land area is greater, to accommodate both the parking and landscaping deficiencies, the parking and landscaping provisions of this Code shall be complied with. If, under this situation sufficient land was not available on the effective date of this Code on the site to accommodate full correction of both deficiencies, and sufficient land is not available on the site at the time of the proposed change, whichever land area is greater, the priority of corrections shall be determined as provided in Section 9.04.02 A.(5) above.

9.04.03. Provisions for determining the required corrections of deficiencies.

- A. *Intent.* It is the intent of this Section to require the corrections of deficiencies to the extent sufficient land is available on site to accommodate such corrections.
- B. *Subdivision.* A reduction in the amount of land containing a non-conformity is prohibited. No subdivision of any parcel containing a non-conforming use, structure or performance standard is permitted.
- C. *Involuntary transfers.* Involuntary transfers of, or restrictions on, the land which occurred after the effective date of this Code, shall not be held against the proposed addition as to the existing deficiencies only and, in such event, the provisions

relating to existing deficiency shall be complied with to the extent possible at the time, subject to full compliance with the provisions of this Article relating to changes of additions which require additional parking or landscaping, or both over and above any existing deficiency.

- D. *Applicant responsibility.* The landowner or his representative shall be required to prove the size and shape of the site on the effective date of this Code, plus the size and location of all buildings and structures, including parking lots, on the effective date of this Code, plus the net addition to or subtraction from the land area or buildings or structures, or both, at the time of the proposed addition, to enable the County to properly determine the legality and propriety of the proposed change or addition; and the corresponding required corrections of the existing deficiencies, if any, in parking and landscaping.

9.05.00. Discontinuance of a Non-conforming Use.

- A. If a non-conforming use is discontinued, removed or abandoned for a continuous period of 365 days, every future use of the premises shall be in conformity with the use provisions of this Code.
- B. Where the cessation of the use is involuntary or the result of acts of God, the non-conforming use shall not be declared discontinued until six months after the initial 365-day period. Extensions to the time period may be granted by the BOA if the landowner proves a cessation of use was due to circumstances beyond his control and that he exerted a continuing good faith effort to put the building or structure to use during the prescribed period.

9.06.00. Destruction of Non-conforming Uses and Non-conforming Buildings.

With the exception of structures that are nonconforming with respect to the requirements of Article 11, nothing in this Code shall prevent either:

- A. The restoration (to the same or lesser floor area square footage and in conformance with current site and building standards to the extent possible) of a building destroyed by fire, explosion or other casualty, or act of God, or public enemy, or
- B. If partially damaged or destroyed, the continued occupancy or use of such building or part thereof which existed at the time of such partial destruction, if the undamaged portion is determined safe for the intended use or occupancy.

9.06.01. Reconstruction. Any reconstruction undertaken pursuant to this part must conform to all applicable laws, rules and regulations governing building and construction, including, but not limited to, Chapter 161 FS and all applicable performance standards contained herein.

9.07.00. Governmental Right-of-way Takings.

- A. *Non-conformity due to taking.* Existing building and vehicular use areas which are not within the part taken but, because of the taking, do not comply with any development standard of this ordinance, shall not be required to be re-constructed

to meet such development standards and the remainder shall be deemed thereafter to be conforming properties. The exemption thus created, at the owner's request, shall constitute a covenant of compliance running with the land;

- B. *Relocation on parcel.* Any building or vehicular use areas taken either totally or partially may be relocated on the remainder of the site without being required to comply with any development standard of this ordinance except that the relocated building or vehicular use areas shall be set back as far as is physically feasible without reducing the utility or use of the relocated building or vehicular use areas below its pretaking utility or use. The exemption thus created shall constitute a covenant of compliance running with the land;
- C. *Act of God or fire.* Any properties exempt according to paragraphs (A) and (B) above which are thereafter destroyed, other than by voluntary demolition, to an extent of less than 60 percent of the value at the time of destruction, may be restored but only to the pre-destruction size and location; and, in the case of voluntary demolition, no rights of restorations are conferred except in compliance with the applicable standards of this Code;
- D. *Administrative variance.* In order to secure the exemptions in paragraphs (A) and (B) above, either the condemning authority, or the landowner or both, shall apply in writing to the Director of the Department of Growth Management for determination that the granting of the exemption will not result in a condition dangerous to the health, safety or welfare of the general public. The Director, or staff designee, will meet with the applicant initially to determine the evidence needed to assure that such an exemption will not result in a condition which will endanger the health, safety, or welfare of the general public. Within 30 days of submittal of the necessary evidence, the Chief or staff designee shall confer a second time with the applicant to discuss whether or not the application is to be granted. If the application is granted, the Chief shall issue a signed letter to the applicant(s) granting exemption. The letter shall specify the details of the exemption in a form recordable in the Public Records of Escambia County, Florida. If the application is denied, the Chief shall issue a signed letter to the applicant specifying the specific health, safety, or welfare grounds upon which the denial is based.
- E. *Appeal.* A party may appeal the determination of the Director of the Department of Growth Management to the Board of Adjustment by filing said appeal in writing and standing the grounds for the appeal within 30 days of receipt of the letter of action.