

## **Article 6. Nonconforming Situations.**

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### **6.00.00 Legal nonconforming lots, structures and uses**

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Within the districts established by these regulations and/or amendments thereto, there exist lots, structures, and uses which were lawful before these regulations were adopted but which would be classified as nonconforming under these Land Development Code (LDC) regulations. These lots, structures and uses are then classified as legally nonconforming.

These legal nonconformities shall be permitted to continue until they are removed, but they are not encouraged to remain in existence since they are declared to be incompatible with the current LDC regulations. These legal nonconformities shall not be expanded or extended, nor be used as grounds for adding other prohibited structures or uses.

It is the purpose of these regulations to bring nonconforming lots, structures and uses into compliance with the city's regulations. Casual, temporary or illegal use of a lot, structure or use shall not be sufficient to set a precedent or establish the existence of a nonconforming use or to create rights for the continuance of such use.

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### **6.01.00 Continuation of Nonconforming Uses and Structures**

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1. Subject to the provisions in this section, the lawful use of land or buildings existing on the date of enactment of this Land Development Code (LDC) shall be allowed to continue.
2. Nothing in this article shall be construed to prevent the ordinary and routine maintenance and repair of nonconforming structures.
3. The legal nonconforming structure, land, or use shall not be further extended or enhanced by the placement of additional signage on the property.
4. Nothing in this section shall require any change in plans, construction, or designated use of a building or structure for which a building permit has been issued and the construction of which shall have been commenced within six (6) months of the date of that permit.
5. A nonconforming building or structure which is damaged or destroyed to the extent of fifty percent (50%) by fire, wind, hurricane or other calamity or act not attributable to the owner, the owner's agents or employees may not be reconstructed or restored for use, except as described below, unless such reconstruction or restoration is accomplished in compliance with this Code. If there are multiple principal structures on a site, the cost of reconstruction shall be compared to the combined fair market value of all the structures.
6. Residential dwellings that were in existence on April 3, 2003, or which were constructed in compliance with a building permit that was issued as of April 3, 2003, shall be permitted to be restored, enlarged or expanded so long as the restoration, enlargement or expansion does not create a new nonconformity or extend an existing nonconformity, other than the nonconforming size of a residential dwelling.
7. Accessory buildings that were in existence on August 13, 2004, shall be permitted to be reconstructed or restored so long as the restoration or reconstruction does not create a new nonconformity or extend an existing nonconformity.

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### **6.02.00 Expansion or Modification of Nonconforming Uses or Structures**

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Nonconforming structures shall not be expanded except in compliance with this section.

1. An expansion in square footage shall be permitted where such expansion meets all requirements of this LDC.
2. Normal repairs and maintenance are permitted during any calendar year to an extent not exceeding ten percent (10%) of the current replacement cost and are made: (1) within the existing footprint of the dwelling; or, (2) along the front or rear of the dwelling within an area that represents a parallel extension of the footprint of an existing room, porch or portico that is under roof, and so long as a new nonconformity is not created; or, (3) along the sides of the dwelling, so long as a new nonconformity, or an extension of an existing nonconformity, is not created.
3. Nonconforming Historic Structures.  
Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a nonconforming historic structure may be permissible when authorized by the Historic Preservation Board in the form of a Certificate of Appropriateness (as outlined in Article 5), provided:
  - a. The structure lies within the Historic District;
  - b. Any unsafe conditions are corrected;
  - c. The use(s) therein shall be in conformance with all applicable provisions of this article.
4. Change to Another Use.  
A nonconforming use cannot be changed to another nonconforming use unless it is recommended by the Planning and Land Development Regulation Commission (PLDRC) and approved by the City Commission subject to the following conditions:
  - a. The new nonconforming use is a permitted use in a more restrictive zoning classification.
    - i. Failure to have active utility accounts or an active local business tax receipt shall mean that the use has been discontinued.
  - b. The new nonconforming use would improve the character of the immediate neighborhood.
5. An expansion of a nonconforming structure is permissible when required by law or ordered by the Chief Building Official (CBO) or his/her designee, City Administrator or his/her designee or Volusia County Fire Department to secure the safety of the building.
6. A non-conforming structure which was lawfully erected on a lot of record may be reconstructed if it is substantially damaged or destroyed, provided that:
  - a. The reconstruction does not result in an increase in the nonconformity of the lot area, yards, setbacks or density;
  - b. The number of dwelling units in such reconstructed structure does not exceed the number of units in existence at the time of damage or destruction;
  - c. The repair or reconstruction is substantially completed within twelve (12) months of the date of such damage.
7. An expansion may be permitted where such expansion is solely to extend an existing use throughout the building in which the use occurs on the date of enactment of this LDC. Such

expansion shall not be extended to occupy any land outside the building, including parking and other impervious surfaces.

8. Any non-conforming use shall be brought into full compliance with all provisions of this Code if any of the following activities occur:
  - a. When the non-conforming use has been discontinued for a period of 180 days;
  - b. If a non-conforming structure or portion of any structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by any duly authorized official of the city to be an unsafe building, it shall not thereafter be repaired or rebuilt except in conformity with this Land Development Code.

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#### **6.03.00 Exceptions for Affordable Housing and Historic Buildings**

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In accordance with, and in furtherance of the comprehensive plan, certain lots are exempt from the provision of this article regarding nonconforming buildings.

1. Development may be permissible when a lot meets the following conditions:
  - a. The lot complies with the standards set forth in the LDC except that the lot size is less than the standard required for the zoning district in which the lot is located; and
  - b. Evidence is provided that development will provide affordable housing for very-low, low, or moderate-income persons or families, as the same are defined in Section 420.602, F.S.
2. Development is permissible where development is necessary for the preservation of historically significant building, in compliance with the provisions of the comprehensive plan and the LDC.

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#### **6.04.00 Termination of Nonconforming Development**

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Nonconforming development must be brought into full compliance with the use regulations in this Code in conjunction with the following activities and in accordance with Article 6.05.00 for signs:

1. Abandonment

When a nonconforming use of land or building has been discontinued for one hundred eighty (180) days or more, its future use shall revert to the uses permitted in the district in which said land is located with burden of proof of use to be documented and submitted by applicant. The new use shall be conforming.
2. When a portion of a nonconforming structure is removed or demolished to an extent which exceeds more than fifty percent (50%) of the current replacement cost of the entire structure, as determined by a cost estimate provided by a contractor licensed to do said work, and as approved by the City Administrator or his/her designee, said structure, if reconstructed, shall be done so in full conformance with current city and building codes.
3. If any portion of two (2) or more lots or combinations of lots with continuous frontage under single ownership existed on or before April 3, 2003, which do not meet these regulations for lot width and area, these lots shall be considered to be an undivided parcel and no portion of said parcel shall be used, divided or sold, which does not meet the minimum lot width and area requirements of these regulations.
4. Restoration

If a structure located within the city receives storm damage or other structural damage in excess of fifty (50%) of the appraised value of the structure, such structure may be replaced in compliance with current laws and ordinances, including those enacted since the construction of the subject structure. If the structure was non-conforming based on density or zoning, it may be re-constructed at no greater non-conformity than prior to when it was damaged. In no instance may the non-conformity be expanded.

5. Special Provisions for Specific Nonconformance

- a. Nonconforming with the parking and loading requirements of this Code.

In addition to the activities listed in Article 11, full compliance with the requirements of this Code shall be required where the seating capacity or other factor controlling the number of parking or loading spaces required by this Code is increased by ten percent (10%) or more.

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**6.05.00 Nonconforming signs**

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All signs lawfully in existence which do not conform to the provisions of this article are declared nonconforming signs. It is the intent of this article to eliminate nonconforming signs expeditiously and fairly, and to avoid any unreasonable invasion of property rights. No nonconforming sign shall be changed, expanded or altered in any manner which would increase the degree of its nonconformity, or be structurally altered to prolong its useful life, or be moved in whole or in part to any other location where it would remain nonconforming.

1. Termination by abandonment or close of business:

Any nonconforming sign structure determined to have been abandoned due to the business closing down or relocating shall be presumed to be abandoned and cannot be reestablished except in compliance with this article, excluding any such period caused by actions or events not caused by the property owner, such as natural disaster, government actions, or other acts of God. Signs related to a business which has closed or relocated shall be terminated on the date the business moves out. In the case of multi-tenant signs advertising more than one (1) business, the property administrator or owner shall work with the City Administrator or his/her designee to make any changes to the messages on said signage, and a sign permit shall be required.

2. Termination by damage or destruction:

Any nonconforming sign damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of its current replacement cost, as determined by a cost estimate provided by the sign contractor at the time of application, and as approved by the City Administrator or his/her designee, shall be terminated and shall not be restored, except in compliance with this article.

3. Termination by redevelopment, maintenance or repairs:

Whenever any revisions, modifications, maintenance or repairs are made which affects the signage on a building or a site, to the extent of more than fifty percent (50%) of the signs' current replacement cost, as determined by a cost estimate provided by a sign contractor licensed to do said work at the time of application, and as approved by the City Administrator or his/her designee, then all affected signs and sign structures shall be brought into compliance with the current city and building codes, or be removed.

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**6.06.00 Nonconforming Vehicle Use Areas**

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1. A vehicle use area is any portion of a development site used for circulation, parking and/or display of motorized vehicles except junk or automobile salvage yards.
2. When the square footage of a vehicle use area is increased, compliance with this Code is required as follows:
  - a. Expansion by Ten Percent (10%) Or Less  
When a vehicle use area is expanded by ten percent (10%) or less, only the expansion area must be brought into compliance with this Code.
  - b. Expansion by More than Ten Percent (10%)  
When a vehicle use area is expanded by more than ten percent (10%), the entire vehicle use area shall be brought into compliance with this Code.
  - c. Repeated Expansions  
Repeated expansions of a vehicle use area over a period of time commencing with the effective date of this Code shall be combined in determining whether the above threshold has been reached.
  - d. Any vehicle use area in existence on the date of enactment of this Code which must be brought into conformity with this Code, and which has more than the number of parking spaces required by this Code shall be treated as, follows:
    - i. The area shall be reconfigured to comply with requirements in this Code.
    - ii. If, after the reconfiguration, a paved area or areas that are not needed to comply with the requirements of this Code remain, the developer may do any one or combination of the following:
    - iii. Conform the area(s) to comply with this Code and continue to use them for parking.
    - iv. Remove the paving and use as grassed overflow parking, as additional landscaped transitional zone or for any other purpose consistent with the land use plan and approved by the City.

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**6.07.00 Variances**

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The City Commission may grant variances as outlined in Article 13.