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ARTICLE 13

NONCONFORMING DEVELOPMENT, VARIANCES, SPECIAL EXCEPTIONS AND CHANGING LAND USE (REZONING)

13.00.00 PURPOSE

The purpose of this Article is to provide mechanisms for obtaining relief from the provisions of this Code where hardship would otherwise occur. Two forms of hardship are addressed: (1) A hardship that would be caused if nonconforming development were required to immediately come into compliance with this Code; (2) A hardship that may be caused in particular cases by the imposition of the Code's development design standards.

13.00.01 Findings /Legislative Intent, Ordinance Number 2003-01

WHEREAS, the development residential uses within the City of Lake Helen have a significant impact upon the well-being of the citizens of the City of Lake Helen, the quality of life in the City, the compatibility and harmonizing of land uses, and the protection of the historic nature of the City as well as the small town ambiance that is very much enjoyed by the citizens of the City; and

WHEREAS, the application of sound planning principles has resulted in the conclusion that the minimum square footage for residential dwellings should be appropriately addressed; and

WHEREAS, the application of existing land development regulations of the City with regard to minimum square footage for residential dwellings require amendment in order to comport with sound land use practices and principles and in order to improve the unique character of the City and to maintain compatibility between land uses; and

WHEREAS, the appropriate consideration of land development issues and the implementation of proper planning and zoning principles and practices are, therefore, vital to the health, safety, and welfare of the residents of the City of Lake Helen; and

WHEREAS, the City Commission, based upon the foregoing and the contents of the various documents presented to and deriving from the deliberations of the Planning and Land Development Regulation Commission finds that adopting an amendment to the Code of Ordinances of the City of Lake Helen is appropriate and will further the interests of the City and its citizens.

(Whereas, Ord. No. 2003-01, §1, 4-3-2003)

13.00.02 Legislative Findings, Ordinance Number 2004-15

WHEREAS, the development of residential uses within the City of Lake Helen has a significant impact on the well being of the citizens of the City of Lake Helen, the quality of life in the City and the compatibility and harmonizing of land uses; and

WHEREAS, the City Commission of the City of Lake Helen has concluded that property owners can alter, expand or enlarge existing nonconforming residential dwelling structures without harm to the public welfare if said alteration, expansion or enlargement is restricted in such a manner so as not to be considered by the City to be detrimental to the general public; and

WHEREAS, the application of existing land development regulations require amendment in order to comport with sound land use practices and principles when conducting development activities related to nonconforming residential dwelling structures; and

WHEREAS, the City Commission of the City of Lake Helen, based upon the foregoing, finds that adopting an amendment to the Code of Ordinances of the City of Lake Helen is appropriate and will further the interests of the City and its citizens.

(Whereas, Ord. No. 2004-15; § 1; 9-2-2004)

13.01.00 EXISTING NONCONFORMING DEVELOPMENT

13.01.01 Defined

Legal nonconforming development is development that does not conform to the use regulations in Article 4 and that portion relating to parking in Article 5 and nonconforming sign regulations in Article 8.

13.01.02 Continuation of Nonconforming Development

Subject to the provisions below for terminating legal nonconforming development, such development may remain in use in its nonconforming state, subject to the following:

A. Unsafe Structures or Buildings

Any structure or building or portion thereof declared unsafe may be restored to a safe condition in accordance with this Code.

B. Construction Approved Prior to this Code

Nothing herein 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 diligently carried on within six (6) months of the date of such permit.

C. Alteration

A nonconforming building may be maintained and repairs and alterations may be made, except that in a building which is non-conforming as to the Code, no structural alterations shall be made except those required by law. Notwithstanding the foregoing, however, nonconforming residential dwellings may be maintained and repairs and alterations may be made, so long as said maintenance, repairs and alterations 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. Alteration of buildings within Lake Protection areas shall be in accordance with the provisions of Subsection 3.02.04B. of the Code. Repairs such as plumbing or the changing of partitions or other interior alterations are permitted.

(Ord. No. 2003-01; §III, 4-3-2003)(Ord. No. 2004-15; § III, 9-2-2004)

D. Expansion

Buildings, structures or uses of land which are non-conforming shall not be extended or enlarged, provided, however, that any non-conforming use may be extended if such extension will make such use conform with the Code. Notwithstanding the foregoing, however, nonconforming residential dwellings may be expanded, so long as such expansion is made: (1) 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, (2) along the sides of the dwelling, so long as a new non-conformity, or an extension of an existing nonconformity, is not created. Expansion of buildings within Lake Protection areas shall be in accordance with the provisions of Subsection 3.02.04 B. of the Code.

(Ord. No. 2003-01; §III, 4-3-2003)(Ord. No. 2004-15; § III, 9-2-2004)

E. Change to Another Use

A nonconforming use now cannot be changed to another nonconforming use unless it is approved by the PLDRC subject to the following conditions:

1. The new nonconforming use is a permitted use in a more restrictive zoning classification.
2. The new nonconforming use would improve the character of the immediate neighborhood.

F. Nonconforming Lots of Record

A lot of record platted on or before the adoption of this Code may be used as permitted in the zoning district subject to all requirements of the zoning district that applies, with the exception of that which makes it nonconforming.

- G. Any structure which has been in the same ownership, family ownership or family-inherited ownership or a combination of either, since November 1, 1977, and used for single family residential purposes and maintained as a nonconforming use may be enlarged or replaced, if destroyed, with a similar structure so long as the enlargement or replacement does not create new nonconforming property. The City shall no longer permit said structure, if owned by a non-family member, to be replaced with a similar structure. If destroyed it shall conform with current regulations for the district in which it is located. ;

13.01.03 Termination of Nonconforming Development

A. General

Nonconforming development must be brought into full compliance with the use regulations in Article 2 of this Code in conjunction with the following activities and in accordance with Article 8 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.

2. Restoration

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. 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. 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.

(Ord. No. 2003-01; §III, 4-3-2003)(Ord. No. 2006-01; §II, 2-2-2006)

B. Special Provisions for Specific Nonconformance

1. Nonconforming with the parking and loading requirements of this Code.

In addition to the activities listed in Section 13.01.03 A, 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.

2. Nonconforming signs

All nonconforming signs, legally permitted and in place on April 16, 2009, shall, until April 16, 2012, only be made to conform with Article 8 of the *Code of Ordinances*, and the signage provisions of the Gateway Corridor Standards Ordinance, when replaced, when structurally altered, or when destroyed or damaged by wind, fire, or other means to be the extent of sixty (60) percent or more of their sign copy area. All nonconforming signs shall be required to be in compliances with the provisions of Article 8, and the signage provisions of the Gateway Corridor Standards Ordinance, by April 16, 2012.

(Ord. No. 2009-04; § 2, 4-16-2009)

3. Nonconforming Vehicle Use Areas

a. 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.

b. When the square footage of a vehicle use area is increased, compliance with this Code is required as follows:

(1) 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.

(2) 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.

(3) 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.

c. 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:

(1) The area shall be reconfigured to comply with requirements in this Code.

(2) 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:

(a) Conform the area(s) to comply with this Code and continue to use them for parking.

(b) 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 Development Review Board.

13.02.00 VARIANCES

13.02.01 General

A. Granted by the City Commission

The City Commission, after considering a recommendation by the Planning and Land Development Regulation Commission, may grant a variance from the strict application of this Code as indicated, provided the following procedures are followed and findings made.

B. Variances to Be Considered As Part of Development

Any person desiring to undertake a development activity not in conformance with the Code may apply for a variance in conjunction with the application for development review. The variance shall be granted or denied in conjunction with the application for development review.

C. Notice of Public Hearing²⁰

Notification and advertisement of a public hearing for a variance request shall be in accord with the requirements of this Code.

13.02.02 Limitations on Granting Variances

A. Initial Determination

The Zoning Enforcement Officer shall first determine whether the need for the proposed variance arises out of the land, structures, building, or other physical or environmental conditions that are unique to the specific property involved. The Zoning Enforcement Officer shall refer a copy of the application to the PLDRC at least one (1) week prior to the meeting of the PLDRC before which the application is to be heard. The PLDRC shall recommend the following required findings based on the granting of the variance for that site alone. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the PLDRC shall recommend to the City Commission the required findings based on the cumulative effect of granting the variance

²⁰ **Cross-reference** - Article 14, Administration and Enforcement

to all who may apply.

Under no circumstances shall the City Commission grant a variance to permit a use not generally or by special exception permitted in this Code or any use expressly or by implication prohibited by the terms of this Code. Further, under no circumstance shall the PLDRC or City Commission offer or accept any negotiation to grant a variance in exchange for any other land use alterations on the affected parcel or any other parcel of land.

No nonconforming use of neighboring lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of the variance.

B. Required Findings

The PLDRC or City Commission shall not vary the requirements of any provision of this Code unless a positive finding, based on substantial competent evidence, is made on each of the following:

1. There are practical difficulties in carrying out the strict letter of the regulation that the requested variance relates to a hardship due to characteristics of the land and not solely on the needs of the owner.
2. The variance request is not based exclusively upon a desire to reduce the cost of developing the site.
3. The proposed variance will not substantially increase congestion on surrounding public streets.
4. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.
5. The effect of the proposed variance is in harmony with the general intent of this Code and the specific intent of the relevant subject area(s) of the Code.
6. Special conditions and circumstances do not result from the actions of the applicant.
7. That the variance granted is the minimum variance which will make possible the reasonable use of the land, building or structure. The proposed variance will not create safety hazards and other detriments to the public.

C. Imposition of Conditions

In recommending a development approval involving a variance to the City Commission, the PLDRC may recommend such conditions and restrictions upon the premises benefitted by a variance as may be necessary to allow a positive finding to be made on any of the foregoing factors or to minimize the injurious effect of the variance. Final approval of all variance requests shall be made by the City Commission.

D. Record of Variances to Be Maintained

The city shall maintain a record of all variances including the justification for their issuance and copy of the notice of the variance.

E. Historic Properties

Notwithstanding the foregoing requirements, special variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on, or classified as contributing to a district listed on the National Register of Historic Places, the local register of historic places or the State Inventory of Historic Places. The special variance shall be the minimum necessary to protect the historic character and design of the structure. No special variance shall be granted if the proposed construction, rehabilitation or restoration will cause the structure to lose its historical designation.

13.02.03 Appeals and Fees

Procedures to be followed in appealing decisions are specified in Article 14 of this document.

Any fees imposed shall be collected at the time of application and shall be set by the City Commission by Resolution.

13.03.00 SPECIAL EXCEPTIONS

13.03.01 General

A. Granted by the City Commission

The PLDRC shall recommend to the City Commission those special exceptions specifically authorized in the land use ordinance. The City Commission cannot grant a special exception that is not included in this Land Development Code.

B. Written Petition, Application Procedure

A written petition for a special exception shall be submitted to the zoning enforcement officer. The petition shall include any information or exhibits necessary to demonstrate that the granting of a special exception will be in harmony with the general intent and purpose of the land development regulations and comprehensive land use plan. Such information or exhibits may include:

1. Site plans to scale, showing proposed placement of structures on the property; Provisions for vehicular ingress and egress, off-street parking and loading areas; refuse and service areas; required yards, and other open spaces.
 2. Utilities
 3. Landscaping and buffer areas
 4. Proposed signs and lighting of signs
 5. Any additional information deemed necessary by the zoning enforcement officer or any reviewing department officer or review agency.
- C. The zoning enforcement officer shall refer a copy of the application to the PLDRC at least seven (7) days prior to the meeting of the board before which the application is to be heard. The PLDRC shall not, under any circumstances, accept an application after the required seven (7) days.
- D. Notice of Public Hearing
- Notification and advertisement of a public hearing for a special exception request shall be in accord with the requirements of this Code.

13.03.02 Limitations on Granting Special Exceptions

A. Conditions and Safeguards

The PLDRC may recommend to the City Commission to impose on the grant of any special exception any conditions or safeguards not otherwise required if deemed necessary or desirable. Violation of such conditions or safeguards which have been approved by The City Commission shall be deemed a violation of this article and may result in a revocation of any special exception permit in addition to any other remedies for such violation provided in this article or by law.

B. Reasons for Denial

The PLDRC may recommend denial or the City Commission may deny

any application for a special exception for one (1) or more of the following reasons.

1. It is inconsistent with the purpose of intent of this article
2. It is inconsistent with the purpose and intent of the zoning code
3. It is inconsistent with any element of the comprehensive land use plan
4. It will adversely affect the public interest
5. It does not meet the expressed requirements of the applicable special exception
6. The applicant will not be able to meet all requirements imposed by federal, state or local government.
7. It will generate undue traffic congestion.
8. It will create a hazard, a public nuisance, or be dangerous to individuals or to the public.
9. It will materially alter the character of surrounding neighborhoods, or adversely affect the value of surrounding land, structures, or buildings.
10. It will adversely affect an adjoining property.
11. It will diversely affect the natural environment, natural resources, existing trees, or cause negative impacts with the scenic beauty of the area.

C. Expiration or Abandonment of Special Exception Uses

If a special exception does not begin to serve the purpose for which it was granted within six (6) months from the date of rendition, or if its use is abandoned for six (6) consecutive months from the date of rendition, it shall expire.

D. Preservation of Uses Previously Granted Under the Terms of the Zoning Code

A particular use of structure which was legally authorized under the terms of the zoning code in effect at the time of the adoption of this document which would logically be permitted as a special exception under this article may be continued after the effective date of the Land Development

Regulations.

E. Imposition of Conditions

In recommending a special exception to the City Commission, the PLDRC and/or City Commission may impose such conditions and restrictions upon the premises benefitted by the special exception as may be necessary to allow a positive finding to be made on any of the foregoing factors or to minimize the injurious effect of the special exception. Final approval of all special exception requests shall be made by the City Commission.

F. Record of Special Exceptions to be Maintained

The City shall maintain a record of all special exceptions including the justification for their issuance and copy of the notice of the special exceptions.

13.03.03 Appeals and Fees

Procedures to be followed in appealing decisions are specified in Article 14 of the document.

Any fees imposed shall be collected at the time of application and shall be set by the City Commission by Resolution.

13.04.00 CHANGING LAND USE (REZONING)

13.04.01 General

A. Granted by the City Commission

The City Commission, after considering a recommendation by the Planning and Land Development Regulation Commission, may grant a change in land use from the strict application of Article 2 of these regulations, provided the following procedures are followed and findings made.

B. Property Owner Action

Any owner of property desiring a change in land use (rezoning) to the Land Development Regulations, shall file a written petition with the city clerk. The petition shall contain:

1. The applicants interest in the property in question.
2. The legal description of the property.

3. The present land use designation.
4. The land use requested.
5. The reason for the requested change.
6. A map (sketch) of the property.

C. Notice of Public Hearing

Notification and advertisement of a public hearing for a change of land use request shall be in accord with the requirements of this Code.

D. Imposition of Conditions

In recommending a change in land use to the City Commission, the PLDRC and/or City Commission may impose such conditions and restrictions upon the premises benefitted by the change in land use as may be necessary to allow a positive finding to be made on any of the foregoing factors or to minimize the injurious effect of the change in land use. Final approval of all special exception requests shall be made by the City Commission.

E. Record of Changes in Land Use to be Maintained

The City shall maintain a record of all changes in land use including the justification for their issuance and copy of the notice of the change in land use.

13.04.02 Appeals and Fees

Procedures to be followed in appealing decisions are specified in Article 14 of the document.

Any fees imposed shall be collected at the time of application and shall be set by the City Commission by Resolution.