

## **ARTICLE IX. - HARDSHIP RELIEF**

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### **Sec. 33-101. - General intent.**

This Land Development Code establishes separate zoning districts, each of which is an appropriate area for the location of a specific group of uses. Within each of the zoning districts established by this Code or its later amendments, there exist lots, structures, and uses of land which were lawful before this Code was adopted, but which would be prohibited, restricted, or regulated under the terms of this Code.

Uses, which are not permitted in a zoning district as outlined in this Code, shall be deemed "nonconforming uses." Such nonconforming uses are declared incompatible with the intent and purpose of the districts. It is consistent with this Code that such nonconforming uses not be permitted to continue without restriction.

This Code also establishes appropriate dimensional requirements, building setbacks, minimum lot dimensions, building dimensions, lot coverage, minimum landscape buffer requirements, and other requirements for each zoning district. Buildings, which do not comply with these dimensional requirements, are deemed "nonconforming structures." The distinction between nonconforming uses and nonconforming structures is that nonconforming uses shall eventually be phased out or eliminated whereas nonconforming structures are regulated.

It is necessary that nonconformities not be perpetuated or increased. The intent of this article is to provide for the regulation of nonconformities and to specify those circumstances under which nonconformities shall be permitted to continue (i.e.: variances granted). It is also the intent of this section to allow for a reduction in the nonconformity when the condition cannot be corrected or eliminated altogether. However, this reduction does not waive the city's desire to eventually have the property come into compliance.

(Ord. No. 2008-39, § 22, 9-3-08)

33-101.01. *Purpose.* The purpose of this chapter is to provide mechanisms for obtaining relief from the provisions of this section where hardship would otherwise occur. Three forms of hardship are addressed:

- (a) Hardship that would be caused if nonconforming development were required to immediately come into compliance with this Code as addressed in section 33-102

- (b) Hardship caused in particular cases by the imposition of the development standards as addressed in section 33-103; and
- (c) Hardship caused in particular cases by the city's resource protection standards as addressed in section 33-104.

It is not, however, the purpose of this article to encourage or otherwise allow development to occur which does not meet the minimum standards or achieve the intent of the regulations set forth in this Code. Further, the city does not consider the cost of compliance with these regulations an unnecessary hardship since the regulations apply equally to all development within the city.

### 33-101.02. Types of nonconformities.

(a) *Building and structure nonconformities.* A building or structure nonconformity is hereby defined as a building which does not meet the city's requirements as to:

1. Minimum building or structure setback;
2. Minimum building dimensions;
3. Minimum lot dimensions;
4. Minimum landscape buffer requirements;
5. Maximum lot coverage or impervious area;
6. Maximum height for structures; or
7. Other similar building or structural requirements or limitations.

(b) *Nonconforming use.* Use nonconformities are hereby defined as the presence on a lot of a use not permitted on said lot by this Code. The presence on a lot of more dwelling units than this development code permits shall be deemed a nonconforming use.

(c) *Parking, loading, landscaping, and other nonconformities.* Parking, loading, and other site improvement nonconformities are hereby defined to be noncompliance with such city requirements as:

1. Required number or size of parking spaces;
2. Required number or size of loading dock spaces;
3. Required dumpster location or screening;
4. Required stacking spaces for drive-in services;
5. Required access and maneuvering area in vehicular areas;
6. Required landscaping and screening;

7. Required sidewalk and pedestrian circulation;
8. Limitations on amount and area of signs; or
9. Other similar site improvement requirements or limitations.

(d) *Structures.* Structures are hereby defined to be any building or other structure which is part of the ground, attached to the ground, or attached to another structure which has size or other characteristics which restrict mobility. Such structures shall include:

1. Earth;
2. Buildings;
3. Signs of all types except portable signs;
4. Fences;
5. Mechanical equipment;
6. Utility equipment; or
7. Paving.

(Ord. No. 2002-09, §§ 1, 2, 2-18-02)

**Sec. 33-102. - Nonconforming development.**

*Defined.* Nonconforming development is development that does not comply to either the permitted use or development design standards outlined in this Code.

33-102.01. *Continuation of nonconforming development.*

- a. *Generally.* Subject to the provisions of this article, the lawful use of any building, structure, or land existing at the time of the adoption of this article may continue although such use does not conform to the provisions of this Code. However, the nonconformities, which would be prohibited, restricted, or regulated under the terms of this Code, shall not continue without limitation. Further, such nonconformities shall not be enlarged upon, extended, expanded, or reconstructed to continue the nonconformity after major damage, or used as grounds for adding other structures or uses prohibited by this Code. Any nonconforming building or structure may be altered to decrease its nonconformity.
- b. *Unsafe structures or buildings.* Any structure or building or portion thereof declared unsafe may be restored to a safe condition.
- c. *Construction approved prior to enactment of chapter.* Nothing in this article shall require any change in any city-approved plans, construction details, or designated use of a building or structure for which a building

permit has been issued and the construction of which has been diligently pursued within one year of the site plan approval date.

- d. *Alteration.* A building housing a nonconforming use may be maintained and repairs and alterations may be made, except that no building which is nonconforming as to use regulations, no structural alterations shall be made except those required by law, including eminent domain proceedings. Repairs such as plumbing or changing of partitions or other interior alterations are permitted.
- e. *Extension.* Buildings or structures or uses of land which are nonconforming shall not be extended or enlarged in a manner that extends, enlarges, or increases the degree of nonconformity.

For example, if the front yard setback required in the P-1 zoning district used to be 20 feet and someone built a structure 20 feet from the property line under those regulations, then it was a conforming structure. Ten years later, the city adopts new zoning laws, which require a 30-foot setback in the P-1 zoning district. After those laws are adopted, the building is a nonconforming structure. If the owner decides to build an addition, then the building addition must meet the new 30-foot front yard setback or obtain a variance.

- f. *Abandonment.* A nonconforming use of land or of a building which has been vacated or abandoned for 365 days shall not thereafter be occupied by any nonconforming use.
- g. *Change to another use.* A nonconforming use now existing may not be changed to another nonconforming use.
- h. *Destruction by fire or other act.* Nothing in this article shall be taken to prevent the restoration of a building destroyed to the extent of not more than 50 percent of its assessed value by fire, explosion or other casualty, or act of God, or the public enemy, nor the continued occupancy of such building or part thereof which existed at the time of such partial destruction, provided that such restoration is made within 180 days for residentially zoned property and 365 days for commercially zoned property.
- i. *Nonconforming due to maximum building size.* Any building made nonconforming by the enactment of this chapter with respect to maximum building size restrictions may be reconstructed in the event of destruction or damage by fire, collapse, explosion, casualty, acts of God or the public enemy, regardless of cost or assessed valuation, provided that said building and the use of said building shall conform in all other respects with all current zoning and other Land Development Regulations.
- j. *Platted subdivision lots.* Where a lot was a subdivided lot of record and the lot was useable as a conforming single-family residential building site,

the lot may be used and occupied by a single-family dwelling and its accessory buildings provided the minimum yard regulations of the district are complied with.

33-102.02. *Regulations pertaining to nonconforming uses.*

a. *Alteration, maintenance, repair of structures housing nonconforming uses.* Any alterations which increase conformance with the parking, loading, landscaping, and other site improvement requirements that would apply to the use if it were located in a district where it would be a conforming use will be allowed but not encouraged by the city. In such cases, the owner would have to submit a letter to the planning department acknowledging the following:

1. That the owner understands that it is the city's long-term goal to relocate the use to an appropriate zoning district;
2. That if the owner sells the property that after 365 days of vacancy the nonconforming use would no longer be permitted; and
3. That if the structure shall be destroyed or require repairs exceeding 50 percent of the assessed value of the structure, then the nonconforming use shall not be continued.

33-102.03. *Special provision[s] relating to the central business district.*

a. *Applicability of requirements.* The provisions and requirement of section 33-91 (parking regulations) and section 33-92 (landscaping regulations) of this chapter shall not apply to the C-2AH zoning district, and shall not apply, except as otherwise hereinafter provided, to those businesses and buildings that are in existence and situated, by March 31, 1993, within the C-2A zoning district.

b. *Renovation.* A building in the C-2A zoning district may be remodeled, renovated, restored, should it be more than 50 percent destroyed by fire or other occurrence as set out in section 33-102.01, provided:

1. That the use is a permitted use in the C-2A zoning district;
2. That there is no increase or extension of the usable square footage of floor area.

c. *New development.* New development, rebuilds and expansions must meet the provisions and requirement of section 33-91 (parking regulations).

(Ord. No. 2010-16, §§ 14, 15, 9-7-10)

33-102.04. *Special provisions for specific nonconformities.*

(a) *Nonconformity with the stormwater management requirements of this*

*chapter.* In addition to the limitations in section 33-102.01, an existing development that does not comply with the stormwater management requirements of this chapter shall address the stormwater runoff created by the intensification of development.

(b) *Nonconformity with the parking and loading requirements of this chapter.* Full compliance with the parking and loading requirements of this chapter shall be required where the seating capacity or other factor controlling the number parking or loading spaces required by this chapter is increased by 25 percent or more.

(c) *Nonconforming vehicle use areas.*

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 chapter is required as follows:

a. *Expansion by less than 25 percent.* When a vehicle use area expands less than 25 percent, only the expansion area must be brought into compliance with this Code.

b. *Expansion by more than 25 percent.* When a vehicle use area expands 25 percent or more, the entire vehicle use area shall be brought into compliance with this chapter.

c. *Repeated expansions.* Repeated expansions of paving of a vehicle use area over a five-year period commencing with the effective date of this Code shall be combined in determining whether the threshold has been reached.

3. Any vehicle use area in existence on the date of enactment of this chapter which must be brought into conformity with this chapter, and which has more than the number of parking spaces required by this chapter, shall be treated as follows:

a. The area shall be reconfigured to comply with requirements in this chapter.

b. If, after the reconfiguration, a paved area or areas that are not needed to comply with the requirements of this chapter remain, the developer may do any one or combination of the following:

1. Improve the area(s) to comply with this chapter and  
continue to use them for parking; or

2. 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 commission.

(d) *Nonconforming signs.*

1. Any sign made nonconforming by the enactment of this chapter, and which has a replacement cost of less than \$300.00, and all signs prohibited by section 33-73 (prohibited signs) of this chapter, shall be removed or made to conform within 90 days of the enactment of this chapter.
2. All signs made nonconforming by original adoption of this chapter and its subsequent amendment shall be eliminated twenty years after May 17, 1999. Not less than 90 days before the expiration of the twenty-year period, May 17, 2019, the building official shall give written notice that nonconforming signs shall be removed. Upon failure to comply within the time specified, the building official is hereby authorized to cause removal of such sign and any expense incident thereto shall be paid by the person owning the building or structure to which such sign is attached. Creation of a nonconforming sign through approval of a new plat that reduces lot area or width shall be given five years from the date of plat approval to bring the sign(s) into conformance unless there are safety issues that require earlier compliance.
3. All nonconforming signs shall be made to conform with this Code when structurally altered, new copy is added, or when said signs are destroyed or damaged by wind, fire or other means to the extent of 60 percent or more of the replacement value.
4. Maintenance to a nonconforming sign shall be allowed as long as no wording is changed on the sign copy. If the name of the business changes or the new language is added to the sign, a sign maintenance permit will be required. If a nonconforming sign is removed from the base or disassembled without a sign permit; the sign shall not be allowed to be replaced without complying with article VII, Signs.
5. If a building is vacant and/or a sign is not in use for a period of 365 days, then the sign shall be required to be removed or come into compliance. A sign cannot be considered in use if the building is vacant.

(Ord. No. 2002-09, §§ 1, 2, 2-18-02; Ord. No. 2009-03, § 3, 1-5-09)

**Sec. 33-103. - Variances and appeals.**

33-103.01. *Generally.* Where there are hardships in the way of carrying out the strict letter of this chapter, appeals to the planning board may be taken by any person aggrieved or by any department of the governing body of the

city affected by any decision of the administrative official.

(Ord. No. 2008-39, § 23, 9-3-08)

33-103.02. *Exceptions.* The planning board may grant a variance from the strict application of any provision of this chapter except as follows:

- (a) No variance shall be granted to the concurrency management provisions or other provisions such that the variance would be inconsistent with state law.
- (b) The planning board shall not vary the type or density of uses allowed in zoning districts. The authority to determine the types and densities of uses allowed in zoning districts is specifically reserved to the city commission.

(Ord. No. 2008-39, § 23, 9-3-08)

33-103.03. *Review criteria.* In considering all proposed variations to this chapter, the board shall, before making any findings a specific case, will consider the following criteria:

- (a) Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures or buildings in the same zoning district;
- (b) Will literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the development code, and would work unnecessary and undue hardship on the applicant such as natural site conditions, size or shape of lot or existing structure(s);
- (c) Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same zoning district;
- (d) The granting of the variance will be in harmony with the general intent and purpose of this Code and the Comprehensive Plan, as amended, and will not be injurious to the surrounding properties or detrimental to the public welfare;
- (e) The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure; and
- (f) The special conditions or circumstances are not the result of actions of the applicant or owner.

(Ord. No. 2008-39, § 23, 9-3-08)

33-103.04. *Procedure.*

- (a) *Application.* All requests for variances shall be submitted in writing, using the form provided, to the planning department, together with all applicable fees as

set by resolution of the city commission. The planning department shall have five working days to review the application to determine if the contents are complete. If the application is found to be lacking information requested by the planning department or if the data and exhibits are inaccurate, the application will not be considered filed for the purpose of processing and shall not be placed on the planning board agenda. An application for a variance shall include the following:

1. Two current surveys (no older than two years) of the subject property, signed and sealed by a Florida-licensed and registered surveyor.
  2. Nine copies of a scaled site plan clearly illustrating the requested variances.
  3. Legal description of the property, if not contained on submitted survey.
  4. Typed mailing labels addressed to all property owners within the described distance under subsection (d), [below].
  5. A written petition demonstrating compliance with the conditions listed under section 33-103.03.
- (b) *Report to planning board.* The planning department shall submit a written report containing a description of the request and the facts of the case to the planning board. A copy of the report shall be made available to the applicant prior to the planning board meeting.
- (c) *Hearing.* In considering all proposed variations to this chapter the planning board shall, before making any finding in a specific case, or granting any variance, conduct a public hearing which will take place no sooner than seven days after the publishing of a notice of such proposed or requested variance. The notice shall be published one time in a newspaper of general circulation in the city. At the hearing any party may appear in person or be represented by agent or attorney.
- (d) *Notice.* The planning board shall not hold any hearing or grant any variance without having first notified, by certificate of mail, within at least seven days prior to the date of the hearing, all parties to the hearing, all property owners within 300 feet on all sides of the subject property. Except, however, when a hearing under this section concerns a single-story single-family dwelling or duplex, notification by certificate of mail need only be given to property owners within 100 feet on all sides of the subject property.
- (e) *Contents of notice.* The notice shall contain the time and date of the hearing before the planning board, and the proposed variance to be considered. Service of the notice to said property owners shall be deemed complete upon the date of mailing.
- (f) *Approval.*

1. In granting any variance, appropriate conditions and safeguards may be prescribed to ensure compliance with the requirements of this chapter and the Code in general. Such conditions may include time limits for the initiation of the variance, specific minimum or maximum limits to regular code requirements, or any other conditions reasonably related to the requirements and criteria of this chapter.
  2. Variances run with the property and the use of a variance shall not be restricted to the applicant but also to subsequent parties for use on the same property.
- (g) *Appeal from board of adjustment.* Any person or persons jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department or the city commission may present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision to the office of the board, otherwise the decision of the board will be final.
- (h) *Administrative variance.*
1. The planning department may grant administrative variances from the height and setback requirements of this chapter when deemed appropriate by the planning director.
  2. The review criteria for the variance request shall be the same as described in Section 103.03, but in no case shall an administrative variance be granted when such request exceeds one foot of the required dimension. In such case, the applicant shall be required to make an application in accordance with the variance procedure established in this chapter.
  3. If a structure was built prior to 1960, rear or side building setback requirements may be reduced by 30 percent, if deemed appropriate by the planning director.

(Ord. No. 2008-39, § 23, 9-3-08)

33-103.05. *Special provisions where variance is sought from requirements of flood damage prevention regulations.*

- (a) *Additional finding.* In addition to the findings required above, the planning board shall find that the requested variance will not result in an increase in the elevation of the base flood, additional threats to public safety, additional public expense, the creation of nuisances, fraud or victimization of the public, or conflicts with other local ordinances.

(b) *Considerations.* Before granting a variance, the planning board shall consider:

1. The danger that materials may be swept from the site onto other lands.
2. The danger to life and property from flooding erosion.
3. The potential of the proposed facility and its contents to cause flood damage and the effect of that damage on the owner and the public.
4. The importance of the services provided by the proposed facility to the community, and whether it is a functionally dependent facility.
5. The availability of alternative locations, not subject to flooding or erosion, for the proposed use.
6. The compatibility of the proposed use with existing and anticipated neighboring development.
7. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
8. Safe vehicular accesses to the property in times of flood.
9. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and effects of wave action, if applicable, at the site.
10. The costs of providing governmental services during and after floods including maintenance and repair of public utilities and facilities.

(c) *Special restriction for regulatory floodways.* Variances that would increase flood levels during the base flood shall not be issued within any regulatory floodway.

(d) *Flowage easements.* No variance that would increase flood damage on other property shall be granted unless flowage easements have been obtained from the owners of all affected properties. In no event shall a variance be granted that would increase the elevation of the base flood more than one foot.

(e) *Notification.* All variances to the flood damage prevention regulations shall:

1. Specify the difference between the flood protection elevation and the elevation to which the structure is to be built.

2. State that the variance will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage.
  3. State that construction below the flood protection elevation increases risks to life and property.
- (f) *Record of variances to be maintained.* The director shall maintain a record of all variances including the justification for their issuance and a copy of the notice of the variance. The director shall report all variances in the annual or biennial report to the administrator.
- (g) *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 Local Register 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.

(Ord. No. 2002-09, §§ 1, 2, 2-18-02; Ord. No. 2008-39, § 23, 9-3-08)

**Editor's note**— Ord. No. 2011-04, § 4, adopted July 18, 2011, repealed § 33-104, which pertained to clustering. See the extended editor's note at the beginning and end of this chapter and the Code Comparative Table for complete derivation of this section.

**Secs. 33-104—33-110. - Reserved for future use.**