

CHAPTER 87 LAND DEVELOPMENT CODE

SECTION 8. NONCONFORMITIES: USES, STRUCTURES, AND EXISTING DEVELOPMENT

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8.1. Purpose and Intent

A. Purpose and Intent. The purpose and intent of this section is:

1. To establish the criteria for defining nonconforming uses and structures, the standards that apply, and to what extent changes to the nonconforming use or structure may be subject to the regulations within this [LDC Code](#).
2. To establish the criteria for defining when the standards of this [LDC Code](#) apply to modifications, alterations, or changes to existing developed properties (not specific to the use or structure as identified above).

8.2. Applicability

A. Applicability. ~~This section applies to uses, structures, lots or other nonconformities which that were lawful prior to the adoption of this LDR, but do not conform to the terms of this LDR or amendments hereto. Nonconformities are defined as any use, structure, or nonconformity related to any other standards of this LDC that can be verified to have lawfully existed prior to the adoption date of this LDC.~~ Any existing lawful nonconforming use, [nonconforming structure](#), [nonconforming lots](#) or other nonconformity ~~in accordance with other standards of this LDC~~ may continue to exist provided ~~it is they are~~ not altered or changed except as otherwise permitted in this section.

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8.3. General Standards

- A.** Casual, temporary, or illegal uses, development, structures or other nonconformance of standards shall not be sufficient to establish the existence of a [lawful](#) nonconforming use, [nonconforming structure](#), [nonconforming lot](#) or ~~other nonconformity~~ [other standard](#) or to create rights to allow the continuance of such use, structure, [lot](#) or ~~other other standard~~ [nonconformity](#).
- B.** ~~There may be a~~ change in tenancy, ownership or management of a nonconforming use, [nonconforming structure](#), or other nonconformity. ~~Such change in tenancy, ownership or management~~ shall have no impact on the nonconforming status unless there is a discontinuation of the [nonconforming use, nonconforming structure or other](#) nonconformity.

8.4. Nonconforming Uses

- A.** Nonconforming uses may be altered provided such alteration is restricted to the same lot where the nonconforming use was created, and such alteration does not create a new nonconforming use or increase the density or intensity of the nonconforming use.

B. If any nonconforming use of land ceases for a period of more than 12 consecutive months, for any reason, except where eminent domain proceedings have caused the ~~nonconformity~~ cessation of the use, any subsequent use shall conform to the regulations for the zoning district in which the use is located. However, at the written request of the property owner prior to the expiration of the 12-month period, the City Council may extend the 12-month period for an additional 12 months; provided that the property owner can demonstrate by competent and substantial evidence that financial or legal constraints prevented the continuation of the nonconforming use.

Commented [KF1]: Should this refer to the ceasing of the use instead?

~~C. Where an extension of a use is to be made in a building occupied by a nonconforming use, no such extension shall be permitted unless and until the off-street parking requirements for a new use of the type involved are applied to the existing use and full provision for off-street parking facilities for the entire use is made.~~

Commented [KF2]: I don't understand that this is trying to accomplish. Is it applying to expansions of the use?

8.5 Nonconforming Structures

A. **Maintenance and Repair of Nonconforming Structures.** Nonconforming structures may be maintained or repaired so long as there is no increase in floor area. All maintenance and repair related to life-safety issues or changes to the Florida Building Code, as confirmed by the building official, are not subject to the limitation on additional square footage.

B. **Replacement and Restoration of Nonconforming Structures.**

1. Nonconforming structures destroyed or rendered unusable by an act of government, fire, natural disaster or other such loss that is not a direct result of the action or intent of the owner, lessee, tenant, or other interest in the property, may be replaced or restored to a safe pre-disaster condition, including but not limited to the same density, intensity, square footage per unit for residential properties, building setbacks, building height, and architectural design and uses. ~~Modifications required to, provided there is compliance~~ with current FEMA National Flood Insurance Program and Florida Building Code regulations shall be allowed. ~~Residential property may be replaced or restored with the same number of units at the same square footage per unit.~~ Otherwise, nonconforming structures may only be replaced or restored in compliance with the provisions of this LD Code.

2. If replacement, restoration or alteration of a nonconforming structure beyond its original configuration requires a modification of Code standards, then the appropriate height exception, design alternative, or variance must be sought.

~~3. Reconstruction or improvements to nonconforming structures within the special flood hazard area shall be performed in accordance with the regulations of the National Flood Insurance Program.~~

- C. Alteration of Nonconforming Structures.** A nonconforming structure may be altered provided:
1. Such alteration is restricted to the same lot on which the structure existed when the nonconforming situation was created.
 2. Such alteration does not result in increased or new nonconformities.
 3. When structures are nonconforming in setbacks due to the provisions of this ~~LDC~~Code, alterations may be made to such structures provided there is no increase in the setback(s) encroachment to the structure resulting in additional linear feet of the building that is nonconforming, and all other setbacks meet the requirements of this ~~section~~Code. However, this does not preclude the ability to obtain a variance, through the appropriate procedure provided for in this ~~LDC~~Code, to address the nonconforming setbacks or generally allow reduced setbacks.

8.6. Other Nonconformities

- A. Generally.** For the purpose of this section, other nonconformities shall be defined as any nonconforming development, improvement or other nonconforming standard of this ~~LDR~~LDC that is not identified in Section 8.4: Nonconforming Uses and 8.5: Nonconforming Structures.
- B. Continuance of Other Valid Nonconformities.** Existing ~~lawful~~valid nonconforming development may continue to completion in accordance with prior City approvals for such development without further compliance with this ~~LDR~~LDC.
- C. Permitted Changes to Valid Nonconformities.** Any alteration or modification to ~~lawful~~valid nonconformities shall require such alteration or modification to be in compliance with the requirements of this ~~LDR~~Chapter. ~~The Director may determine that alterations or modifications that have a significant impact to the site shall require a design alternative.~~

Commented [KF3]: Why state this? If the alteration or modification couldn't meet the LDR requirement, wouldn't the default be they could request a design alternative if one was available?

8.7. Nonconforming Lots

- A.** In any district, any permitted or permissible structure may be erected or altered on any lot of record legally established prior to the effective date of this ~~LDC~~Code, notwithstanding limitations imposed by other provisions of this ~~Code~~chapter.

8.8. City Approvals ~~Allowing Not Constituting a Nonconformities~~

- A.** City approval ~~shall be through a~~ design alternatives, height exceptions, ~~and/or~~ variances ~~under the terms of the LDC~~, shall not be deemed to create a nonconforming use, or nonconforming structure or other nonconformity.