

ARTICLE II. - NONCONFORMITIES

Sec. 90-31. - Applicability of article provisions.

The regulations of this article shall apply to nonconforming lots, uses, structures and signs.

(LDR 1998, § 750)

Sec. 90-32. - Development of nonconforming lot.

- (a) *Residential lot in separate ownership.* A lot in a residential zoning district which is nonconforming because of insufficient area, which has at least 4,000 square feet and 40 feet frontage, and was in separate ownership on the date of enactment of these regulations, may be used to build a single-family dwelling.
- (b) *Nonresidential lot in separate ownership.* A lot nonconforming because of insufficient area, which was in separate ownership on the date of enactment of these regulations, may be used, provided that all other zoning district regulations are complied with. No use that requires a lot area greater than the district minimum lot area is permissible on a nonconforming lot.
- (c) *Contiguous lots.* When three or more vacant nonconforming lots with continuous frontage are in single ownership, they shall be resubdivided in such a manner as will make them conforming lots. If resubdivision to eliminate nonconforming lots is impossible, application shall be made for a variance prior to development of the lots. This subsection shall not apply to contiguous nonconforming lots in single ownership if a majority of the lots on the street or within 500 feet of such lot in the same zoning district are also nonconforming.
- (d) *Creation of nonconforming lot.* No division of land shall be made which creates a lot or parcel which does not meet the minimum lot requirements for the zoning district in which such lot or parcel is located.

(LDR 1998, § 751)

Sec. 90-33. - Completion of nonconforming project.

- (a) *Completion of approved project.* Nonconforming projects that were approved prior to enactment of these regulations may be completed in accordance with terms of their permits, provided that the permits remain valid.
- (b) *Completion of phased projects.* Projects which are approved and developed in phases shall be completed in accordance with conditions of approval. Phases which have not received final approval shall conform to the requirements of these regulations.

(LDR 1998, § 752)

Sec. 90-34. - Continuation of nonconforming use and structure.

- (a) A lawful nonconforming use or structure, existing on the enactment date of the regulations from which this article is derived, may be continued subject to restrictions and qualifications set forth in this article.
- (b) Special regulations for adult entertainment are as follows:
 - (1) An adult entertainment establishment in existence at the time this chapter became effective and is located in violation of this chapter, may continue to operate for a period of one year from the date this chapter became effective, and shall cease operation immediately upon the expiration of such period.
 - (2) An adult entertainment establishment becoming operational after the effective date of this chapter which had legal rights vesting with respect to such establishments location arising from a judicial declaration construing any ordinance in effect prior to the adoption of this chapter, may operate for a period of one year, notwithstanding that it may be located in an area otherwise prohibited by section 90-343(10). The adult entertainment establishment shall cease operation immediately upon the expiration of such period.
 - (3) When a nonconforming use of an adult entertainment establishment has been discontinued for 90 consecutive days or more for any reason, the nonconforming use shall be deemed abandoned, and the future use of the premises or site shall revert only to those uses permitted on the site on which the establishment is located.

(LDR 1998, § 753)

Sec. 90-35. - Change or transfer of nonconforming use or structure.

- (a) *Change.* A nonconforming use or structure may be changed to a conforming use or structure for the district in which it is located. Once changed to a conforming use or structure, no building, structure or land use shall be permitted to revert to a nonconforming use.
- (b) *Transfer of nonconforming commercial use.* In the event the underlying lands on which exists a nonconforming use in a commercial, commercial business district, commercial professional office, or industrial zoning category within the city is sold, assigned, or in any manner transferred from the record title holder of said lands, as such ownership is reflected in the records of the Clerk of Court or Property Appraiser for Okeechobee County, such nonconforming use shall cease, and not be permitted to likewise be transferred, and the nonconforming use shall extinguish. Any such future use of said lands subsequent to transfer shall be in compliance with all current City Codes, and land use regulations applicable to such zoning or land use designation.

Excluded from this prohibition is the transfer of ownership of said lands to a corporation, professional association or limited liability company recognized under Florida law whose majority stockholder is the same person as the previous record owner.

- (c) *Transfer of a nonconforming residential use.* In the event the underlying lands on which exists a nonconforming use in a residentially zoned category within the city is sold, assigned, or in any manner transferred from the record title holder of said lands, as such ownership is reflected in the records of the Clerk of Court or Property Appraiser for Okeechobee County, such nonconforming use may continue thereafter in such use, so long as such use is residential in nature. However, such nonconforming residential use shall not thereafter be expanded, enlarged or increase in intensity of use, so long as the use remains nonconforming under City Codes. Additionally, such nonconforming residential use shall not be permitted to continue if the structure does not conform to fire safety code; health codes; Florida Building Codes; or fails to comply with F.S. ch. 381 regarding migrant housing.
- (d) *Transfer of a nonconforming structure.* In the event of the underlying land on which exists a nonconforming structure is sold, assigned or in any manner transferred from the record title holder of said lands, as such ownership is reflected in the records of the Clerk of Court, and Property Appraiser for Okeechobee County, such nonconforming structure may continue in the new owner, so long as the land is not a nonconforming use, and the nonconforming structure is not expanded or repaired except as authorized in these regulations. The transfer of such nonconforming structure is further subject to the requirement that the new owner must comply, to the extent reasonably possible, considering the nature and configuration of the structure, with all current codes, land use and zoning requirements, except off-street parking requirements, of the district regulations applicable to the structure. Provided however:
 - (1) That, if by physical evidence such as photographs or aerial photography, it becomes evident to the city that portions of the property have been used for off-street parking but are unpaved or unimproved, unmarked or otherwise do not meet the city's design requirements for such parking, the owner shall improve the quality of such area (or its dimensional equivalent) with "pavers" or other form of dustless surface acceptable to the city for the purposes of vehicular parking. The number of spaces to be provided shall be equal to that which can be accommodated within the geographic area previously used for parking with said spaces and interior circulation components meeting the city's minimum design requirements for off-street parking and vehicular use areas.
 - (2) That, as a result of the operation of the business on the site, the city determines that parking has been or is occurring off-site in a manner that is detrimental to the health, safety and welfare of its residents or has detrimental effects upon the economic well-being of the surrounding nonresidential area, and that there is adequate vacant land on the site to

accommodate some or all of the required off-street parking for the business, the owner of the property shall provide, to the extent reasonably possible, the number and type of off-street parking required in the land development regulations.

- (3) That, if the use of the property or structure under the new owner is different from the prior use such that application of section 90-512, space regulations, results in a greater number of off-street parking spaces being required than the number of off-street parking spaces required of the prior owner and use, the new owner shall provide parking facilities in complete conformance with the land development regulations as if the use were entirely new.

(LDR 1998, § 754; Ord. No. 788, § 1, 6-4-2002; Ord. No. 816, § 1, 2-4-2003; Ord. No. 885, § 1, 3-15-2005; Ord. No. 1036, § 1, 1-20-2009; Ord. No. 1087, § 1, 7-17-2012)

Sec. 90-36. - Discontinuance of nonconforming use.

When a nonconforming use has been discontinued or abandoned for a period of a year, any future use of the property shall be either, a permitted use within the district regulations, or after approval a special exception use permitted in the district.

(LDR 1998, § 755)

Sec. 90-37. - Discontinued use of nonconforming structure.

When a nonconforming structure is discontinued or abandoned for a period for a year, any future use of the property shall comply with the following:

- (1) *Use.* Future use shall be either a permitted use within the district or, after approval, a special exception use permitted in the district.
- (2) *Nonconformity.* Future use shall not increase the extent of nonconformity by reason of insufficient yards, setbacks, landscaping or parking, or excessive floor area, coverage or height.

(LDR 1998, § 756)

Sec. 90-38. - Expansion of nonconforming use.

- (a) *Expansion of nonconforming use.* A nonconforming use shall not be expanded. Expansion of a conforming use to any part of a nonconforming use shall not be deemed an expansion of such nonconforming use.
- (b) *Increase in intensity of nonconforming use.* Increase in the volume of business, intensity or frequency of property use at a nonconforming use is permitted. Change in the equipment or processes used in a nonconforming use is permitted, provided that it amounts only to changes in

the degree of activity rather than changes in kind.

- (c) *Nonconforming use of open land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except for a quarry use.
- (d) *Moving a nonconforming use.* A nonconforming use shall not be moved to another part of the property.

(LDR 1998, § 757)

Sec. 90-39. - Extension or moving of nonconforming structure.

- (a) *Extension of nonconforming structure.* A nonconforming structure may be enlarged, improved, or be brought up to current codes without concern as to whether the existing nonconformity deals with lack of off-street parking, or on-site water retention, excessive floor area, height or landscaping, as may be otherwise required of a new structure in these regulations, so long as such development does not create a nonconforming use in that district; does not create a new nonconformity as to property line setbacks; and would not cause or create a significant impact as to drainage and off-street loading requirements. Provided, however, that if the enlargement or improvement, because of application of the provisions of section 90-512, space regulations, results in a greater number of off-street parking spaces being required than the number of off-street parking spaces required before the improvement, the owner shall provide parking facilities in complete conformance with the land development regulations as if the use were entirely new.
- (b) *Extension of nonconforming dwelling.* Notwithstanding subsection (a) of this section, a single-family or two-family nonconforming dwelling may be enlarged, so long as the enlargement does not create new nonconformities or increase the extent of existing nonconformities with respect to yards, floor area, coverage, height parking or landscaping requirements.
- (c) *Moving a nonconforming structure.* A nonconforming structure shall not be moved, unless by moving, the structure is made to conform to district regulations or reduce the extent to nonconformity.

(LDR 1998, § 758; Ord. No. 816, § 1, 2-4-2003; Ord. No. 1036, § 1, 1-20-2009)

Sec. 90-40. - Repair or reconstruction of nonconforming structure or use.

- (a) *Repair or reconstruction of nonconforming structure or use.* A nonconforming structure may be maintained, repaired or altered, without concern as to whether the existing nonconformity deals with lack of off-street parking, or on site water retention, excessive floor area, height or landscaping, so long as such repair does not create a new nonconforming use in that district; does not create new or additional nonconformity as to property line setbacks; height, or floor area, and would not create a significant impact as to drainage and off-street loading

requirements. Provided, however, that if the repair or alteration, because of application of the provisions of section 90-512, space regulations, results in a greater number of off-street parking spaces being required than the number of off-street parking spaces required before the improvement, the owner shall provide parking facilities in complete conformance with the land development regulations as if the use were entirely new.

- (b) *Reconstruction after catastrophe.* A nonconforming structure but not nonconforming use, that is damaged or by any catastrophic means, may be repaired and restored to a safe, sanitary and usable condition, so long as the structure was not totally destroyed, and a development permit authorizing such repair and replacement is issued and construction commences within twelve months of such catastrophe.
- (c) *Reconstruction of nonconforming dwelling.* Notwithstanding the foregoing, a single-family or two-family nonconforming dwelling may be reconstructed or replaced within two years, so long as the reconstruction does not create new nonconformities, nor increase the extent of the existing nonconformities with respect to yards, floor area, coverage, height, parking or landscaping requirements. Except that in the case of a nonconforming mobile home, the replacement option is permitted only one time on each lot. In the case of a nonconforming mobile home, no replacement option shall be permitted, unless such replacement meets all current codes, land use zoning and district regulations.
- (d) *Compliance required where possible.* In reconstructing a nonconforming structure or use, the owner shall comply to the extent reasonably possible with all provisions of the district regulations applicable to the use.

(LDR 1998, § 759; Ord. No. 1036, § 1, 1-20-2009)

Sec. 90-41. - Reserved.

Editor's note— Ord. No. 994, adopted Apr. 21, 2009, repealed § 90-41, which pertained to nonconforming signs. See the Code Comparative Table for complete derivation.

Sec. 90-42. - Cluster development.

- (a) Density of a use that would have been allowed in the absence of federal or state agency environmental restrictions to land development may be used on site by clustering the development onto unrestricted land.
- (b) Development may be clustered on a site in accord with the following:
 - (1) Development may be clustered on part of a site by concentrating the number of dwelling units or the amount of building floor area allowed for the entire site under the zoning district regulations onto the nonenvironmentally restricted area.

- (2) The entire site, including the clustered development and the remaining environmentally restricted area, shall be platted and meet all applicable provisions of the regulations of this chapter.
- (3) Environmentally restricted areas of the site shall be precluded from future development by reservation on the subdivision plat in a form acceptable to the city.

(LDR 1998, §§ 790, 791)

Secs. 90-43—90-70. - Reserved.