

## **Article XII Non-Conforming Uses**

### **Sec. 27-251 - Intent.**

- (a) Within the districts established by this chapter, there exist structures and uses of land and structures which were lawful at the time this chapter or subsequent amendment becomes effective, but which would have been prohibited under the terms of this chapter or future amendment, such structures or uses of land and structures shall be designated as nonconforming. Such uses and structures are declared by this chapter to be incompatible with permitted uses in the districts involved, and it is the intent of this ordinance to permit these nonconformities to continue subject to the terms of this article, but not to encourage their survival. It is further the intent of this chapter that nonconformities shall not be enlarged, expanded nor extended, nor be grounds for adding other structures or uses prohibited elsewhere in the same district. (b) A nonconforming structure, a nonconforming use of land, or a nonconforming use of a structure shall not be extended or enlarged by attachment of additional signs to a building, or the placement of additional signs or display devices on the land, or by the addition of other uses, if such additions are of a nature which would be prohibited generally in the district involved.

### **Sec. 27-251 – Non-Conforming use of land.**

- (a) The nonconforming use of land shall be discontinued and cease within three (3) years from the date such use becomes nonconforming, in each of the following cases:
- (1) Where no buildings are employed on the premises in connection with such use.
  - (2) Where the only buildings employed are accessory to such use and have a replacement value of two thousand dollars (\$2,000.00) or less.
  - (3) Where such use is accessory to and maintained in connection with a building conforming as to use, provided that this requirement shall not apply to off-street parking accessory to a building conforming as to use.
- (b) The nonconforming use of land which is accessory or incidental to the nonconforming use of a building shall be discontinued on the same date that the nonconforming use of the building is discontinued.
- (c) A nonconforming use of land which has in connection therewith incidental or accessory buildings have a value in excess of two thousand dollars (\$2,000.00) shall be deemed to be a nonconforming structure and shall be subject to the appropriate provisions of this article.

**Sec. 27-251 – Non-Conforming use of land as a pet cemetery.**

- (a) The pet cemetery and animal carcass crematorium now existing within the Plantation Acres area of Plantation as a nonconforming use by virtue of the annexation of the Plantation Acres into the city, shall continue as a nonconforming use but shall be henceforth operated and controlled in accordance with the provisions of this chapter.
- (b) All existing records of animal interment and the location of said animal remains shall be delivered to the office of the city clerk of Plantation upon application for renewal of existing local business tax receipt for said pet cemetery and crematorium, and on each successive application for local business tax receipt the licensee shall submit additional records of additional interment of animal remains within the said pet cemetery, being specific as to the name and address of the owner of said deceased animal, the location of the burial site of the deceased animal and such other particulars, including the monies paid licensee for burial and perpetual care of such burial sites by such deceased animals' owners.
- (c) The local business tax receipt for the conducting of this nonconforming use of land shall neither be assignable or transferable without the prior consent of the city council which shall in part be dependent upon submission of sufficient financial reports and information as needed to satisfy the city council that such applicant for transfer or assignment of the local business tax receipt has the ability to properly maintain said nonconforming use of land as a pet cemetery and pet crematorium.
- (d) Upon the sale and disposition or abandonment of this property with the cessation of its continuing use as a pet cemetery and a pet crematorium, the then owner shall be required prior to the approval of such sale and any license or permit for the use of the land or the erection of any structure or renovation permit thereon which would bring the use of the land into conformity with the then permitted uses under the zoning use district then in effect for the land, such owner shall have all animal remains which have been previously interred within the pet cemetery, removed and reburied in a location as close as possible to the present nonconforming use location within South Florida where pet cemeteries are permitted at the expense of the owner who shall otherwise assign such perpetual care payments or other financial arrangements which he or his predecessors had made with the owners of the animal remains to the operator of the substitute pet cemetery. It being understood that the owner shall first attempt to contact the owners of the animal remains and offer to reassign any such perpetual care financial arrangements or consideration to the pet cemetery of the owner's choice within South Florida and remove the remains from where now buried and cause same to be reinterred at such pet cemetery of the owner's choice within South Florida at no additional cost or expense to the owner. As used in this portion of this article, the term "South Florida" applies to a land south of an imaginary line running from east to west across the State of Florida, parallel to the nearest latitude which would intersect the northernmost edge of Lake Okeechobee.

- (e) During the continued operation of the pet cemetery and pet crematorium as a nonconforming use of land, the licensee shall maintain same in a neat, attractive appearance, so as to minimize any emotional stress on the owners of the animal remains which have given financial consideration for the perpetual care of their deceased pets in the cemetery as well as to avoid said cemetery lapsing into such disrepair as to create a vexatious nuisance or threat to the health, safety and welfare of the adjacent homes within Plantation Acres and further the pet crematorium shall be operated as a continuing nonconforming use of land in such a manner as to not create any undue noxious odors, smoke emissions or air pollution of adjacent residences with the pet crematorium to be used only and exclusively for the cremation of animal carcass remains. Failing to so maintain the premises, the city shall have the same privilege of enforcing these restrictions or undertaking such maintenance of said premises with attendance lien rights for the costs therein incurred as now exist generally for the clearance and assessment by the city for the removal of weeds and brushes and garbage and trash in codified form in chapter 10, which section, as to the assessment and maintenance procedures and standards followed by the city, is fully incorporated herein by reference as if set forth verbatim deleting only therefrom the requirements that such land be located within five hundred (500) feet of a dwelling house, commercial or public structure.

### **Sec. 27-251 – Nonconforming structures**

Structures that are nonconforming under the terms of this article by reason of restrictions on area, lot coverage, height, yards, design or other characteristics or the structure or its location on the lot may be continued except as provided in section 27-785, so long as they remain otherwise lawful, subject to the following provisions:

- (1) No nonconforming structure shall be enlarged or structurally altered unless such structure shall, after enlargement or alteration, conform to the provision of the ordinance. A single family dwelling which is nonconforming only as to setbacks may be enlarged provided such addition conforms to the setback requirement established by this chapter and provided the total ground area covered does not exceed the maximum lot coverage established by this chapter.
- (2) Should such structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
- (3) Should such structure be moved for any reason, for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

**Sec. 27-251 – Nonconforming uses in nonconforming structures in residential districts**

In all residential districts ("R" districts), any nonconforming building or structure, all, or substantially all of which is designed, arranged or intended for a use permitted only in a nonresidential zoning district (i.e., business, commercial, industrial, office park, institutional educational, community facility, golf course, etc.) or for a use permitted in a residential district different than that assigned to the land on which the nonconforming building or structure is located, shall be removed or it shall be altered and converted to a conforming building or structure designed for a use permitted in the district in which it is located within six (6) months after the expiration of the respective periods of time set out hereinafter, which periods are hereby established as the reasonable amortization of the normal useful life of each class of building and type of construction being as defined and specified in the South Florida Building Code:

- (1) Type I. Fire-resistive construction ..... 30 years
- (2) Type II. Heavy timber construction ..... 25 years
- (3) Type III. Ordinary masonry construction ..... 20 years
- (4) Type IV. Metal frame construction ..... 12 years
- (5) Type V. Wood frame construction ..... 7 years

**Sec. 27-251 – Reserved.**

**Sec. 27-251 – Extending a nonconforming use to other parts of a building or land.**

- (a) The nonconforming use of a building may be extended throughout any part of a building manifestly arranged or designed for such use.
- (b) Any conforming use which occupies a portion of a building not originally designed or intended for such use shall not be extended to any other part of the building, nor may it be extended to occupy any land outside the building, nor any additional building on the same plot.
- (c) The nonconforming use of land shall not be extended to any additional land.
- (d) No conforming structure used for a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless the use is changed to one which complies with the provisions of this chapter.

**Sec. 27-252. - Nonconforming use in residential districts.**

In any residential district ("R" districts), any nonconforming use of a conforming building, which use is permissible only in a nonresidential zoning district (i.e., business, commercial, industrial, office park, institutional educational, community facility, golf course, etc.) or for a use permissible in a residential district different than that assigned to the land on which the building or structure is located, shall be discontinued within five (5) years of February 10, 1966, or within five (5) years of the date the use became nonconforming by reason of amendment to the chapter. This five-year time limitation shall be extended for fifteen (15) years (for a total of twenty (20) years) for the following types of nonconforming uses of conforming buildings: daycare centers, day nurseries, private elementary schools, after school care for children up to twelve (12) years of age, and summer camps.

**Sec. 27-253. - Change of nonconforming use.**

- (a) In any district any change in a nonconforming use shall be to a conforming use.
- (b) There may be a change of tenancy, ownership or management of a nonconforming use provided there is no change in the nature of character of such use except as may be permitted by this chapter.
- (c) Any change of a nonconforming use of land shall be to a conforming use.

**Sec. 27-254. - Discontinuance or abandonment of nonconforming use.**

- (a) If for any reason a nonconforming use of land ceases or is discontinued for a period of thirty (30) days or more, the land shall thereafter be used only for a conforming use.
- (b) If, for any reason, a nonconforming use of a conforming or nonconforming building ceases or is discontinued for a period of six (6) months or more, it shall be considered abandoned, and such building shall not again be occupied by a nonconforming use.
- (c) Any part of a building or land occupied by a nonconforming use which is changed to or occupied by a conforming use shall not thereafter be used or occupied by a nonconforming use.

**Sec. 27-255. - District or regulation change.**

- (a) The provisions of this article shall also apply to buildings, structures, land, premises or uses which hereafter become nonconforming due to a change or reclassifications of a district, or

due to a change in district regulations. Where a period of time is specified in this article, such period shall be computed from February 10, 1966, for those building structures and uses made nonconforming by the provisions of this chapter, and from the effective date of the amendment for those buildings, structures or uses made nonconforming by any subsequent change in these regulations.

- (b) Any change to the off-street parking requirements of this chapter may cause uses to become nonconforming. Notwithstanding anything to the contrary in this chapter, uses made nonconforming as a result of a change to the off-street parking requirement may continue (but may not expand or enlarge) so long as the use is not abandoned or is not discontinued for a period of six (6) months or more, and so long as there is no damage to or destruction of the structure where the use is located to an extent of more than fifty (50) percent of the structure's replacement costs at the time of its damage or destruction, except for a voluntary demolition. In the event of a voluntary demolition and reconstruction of a structure where a use is nonconforming only as to the off-street parking requirement, such nonconforming use may re-locate in the reconstructed structure (only to the extent it was previously established) with the same amount of nonconforming off-street parking spaces being supplied for the use, provided:
- (1) the reconstructed structure does not exceed the gross floor area of the demolished structure, and
  - (2) the off-street parking requirement for all proposed uses in the reconstructed structure (including the nonconforming count required for the nonconforming use) does not exceed the off-street parking requirement for all previously existing uses of the demolished structure, and
  - (3) the amount of off-street parking spaces supplied for all proposed uses in the reconstructed structure (including the nonconforming count required for the nonconforming use) is the same or greater as the off-street parking requirement for all previously existing uses of the demolished structure (provided however, that in the event the amount of off-street parking spaces supplied for the reconstructed structure exceeds that previously supplied on the site, the excess shall be allocated to the nonconforming use to decrease the extent of nonconformity).

**Sec. 27-256. - Illegal use.**

The casual, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use or to create any rights in the continuance of such use.

**Sec. 27-257. - Reserved.**

**Sec. 27-258. - Normal maintenance.**

- (a) On any building devoted in whole or in part to any nonconforming use, work may be done in ordinary repairs or maintenance, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, provided that no structural repairs shall be made that would extend the life of the building and provided that the cubical content or area of the building shall not be increased.
- (b) Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition any building or part thereof declared to be unsafe by any city official charged with protecting the public safety, upon order of such official.



### **27-251 Purpose and Scope**

The purpose of this chapter is to regulate and limit the development and continued existence of uses, structures, and lawful lots established prior to the effective date of this Code which do not conform to the requirements of this Code. Many non-conformities may continue, but the provisions of this chapter are designed to curtail substantial investment in nonconformities and to bring about their eventual improvement or elimination in order to preserve the integrity of this Code and the character of the city. Any nonconforming use, structure, or lot which lawfully existed as of the effective date of this Code and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of this Code or any subsequent amendment to this Code may be continued or maintained only in accordance with the terms of this chapter.

### **27-252 Expansion of Non-Conforming Use**

A nonconforming use shall not be expanded or extended beyond the floor area or lot area that it occupied on the effective date of this Code or the effective date of any amendment to this Code rendering such use nonconforming.

### **27-253 Discontinuation or abandonment of a nonconforming use**

If a nonconforming use is discontinued for a period of 90 consecutive days, including any period of discontinuation before the effective date of this Code, then that use shall not be renewed or re-established and any subsequent use of the lot or structure shall conform to the use regulations of the land use district in which it is located.

### **27-254 Change of use**

A nonconforming use may be changed to a permitted use or conditional use for the zoning district in which the property is located subject to the review and approval requirements of the appropriate zoning district and conditional uses regulations contained in this Code.

### **27-255 Repair or reconstruction of nonconforming structure**

- (a) Ordinary repairs and maintenance may be made to a nonconforming structure. The community development department shall determine what constitutes "ordinary repairs and maintenance".
- (b) If a nonconforming structure is destroyed or damaged by a fire, flood, windstorm, or similar abnormal and identifiable event, and the cost of restoring the structure to its condition immediately prior to the event does not exceed 50 percent of the cost of replacing the entire structure, then the structure may be restored to its original nonconforming condition, provided that a building permit is secured and reconstruction is started within 180 days from the date of the damage, and such reconstruction is diligently prosecuted to completion without the expiration of building permits.
- (c) If a nonconforming structure is destroyed or damaged by a fire, flood, windstorm, or similar abnormal and identifiable event, and the cost of restoring the structure to its condition immediately prior to the event exceeds 50 percent of the cost of replacing the entire structure, then the structure shall not be restored unless the structure as restored, and the use thereof, will thereafter conform to all requirements of the zoning district in which it is located

### **27-256 Alteration or enlargement of nonconforming structure**

Except as provided in this section, a nonconforming structure shall not be enlarged in any manner or undergo any structural alteration unless to make it a conforming structure. Such alteration or enlargement may be permitted provided that:

- (1) The property owner or developer secures conditional use approval for the enlargement or addition in accordance with the procedures in section 27-45; or the structure is an existing legal nonconforming detached single-family or duplex home and the alteration or enlargement will meet the requirements of paragraphs (2) through (4) below; and
- (2) In the case of a nonconforming setback, the enlargement or alteration follows the established line of the home and does not increase the extent of the existing non-conformity; no new non-conforming condition is created; or the enlargement or alteration itself conforms to the requirements of this Code;

- (3) The total structure as enlarged or altered does not exceed the maximum density or intensity limit for the applicable district; and
- (4) The use of the structure is conforming.

### **27-257 Moving of nonconforming structure**

A nonconforming structure shall not be moved in whole or in part to any other location unless every portion of such structure and the use thereof is made to conform with all requirements for the district to which such structure is moved. The moving of the structure also shall comply with the requirements of applicable city regulations.

### **27-258 Nonconforming lots of record**

- (a) *Use as permitted.* Notwithstanding limitations imposed by other sections of this Code, any nonconforming lot of record which was in single and separate ownership on the date of adoption of this Code may be used as permitted by the district regulations for the district in which the lot is located. This section shall apply even though such lot of record fails to meet the requirements for width or area or both that are generally applicable to it, provided that all yards and other requirements not involving lot width or area shall conform to the regulations for the district in which the lot is located.
- (b) *Subdivision of nonconforming lots.* When two or more contiguous, vacant, nonconforming lots of record are in a single ownership, such lots shall be subdivided in such manner as will make them conforming. If this is impossible or impractical the city council may grant such variance from this requirement in conformance with the requirements of this Code.

### **27-259 Reserved.**

### **27-260 Community enhancement**

- (a) *Community enhancement.* The owner of an existing structure located along the State Road 7 corridor, south of Sunrise Boulevard and North of Peters Road (Gateway Overlay District) who is contemplating site improvements may request community enhancement approval in cases where it is impossible to meet current code requirements. Conditions may arise when

normal compliance is impractical or impossible, or where maximum achievement of the city's objectives can only be obtained through the standards detailed in the community enhancement guidelines. These standards may be utilized by owners of nonconforming sites to bring said sites as close as possible to meeting current zoning requirements. The standards are intended to foster site improvements that are economically viable and aesthetic in nature, while encouraging creative solutions to existing site development problems. A written request with a proposed site plan must be filed with the planning, zoning and economic development department.

The city council may grant approval of community enhancement requests only after the applicant shows that:

- (1) The strict application of this chapter would prohibit site improvements to bring nonconforming sites as close as possible to meeting current zoning requirements;
- (2) The need for the proposed enhancement arises from some condition peculiar to the specific property involved;
- (3) The proposed enhancement would improve the quality and/or safety of the property and not diminish the use nor value of the neighborhood;
- (4) The proposed enhancement meets the requirements of the Land Development Regulation.

The city council may condition the approval of community enhancement improvements upon any contingencies or commitments by the applicant which furthers the goals, objectives and policies of the comprehensive plan and land development regulations. The granting of this relief will not necessarily nor automatically mean that a requirement is reduced without mitigation. For example, granting a reduced setback may be mitigated for by planting additional landscape material.

The use of community enhancement provisions shall be limited to the specific project or request under consideration and shall not establish precedents for acceptance in other cases.