

ARTICLE VIII NONCONFORMITIES

Section 8.0 Purpose

A. The purpose of this Section is to regulate and limit the continued existence of uses, lots, signs, and structures established prior to the effective date of this Code that do not conform to the provisions of this Code. Nonconformities may continue, but the provisions of this Section are intended to curtail substantial investment in nonconformities and to bring about their eventual elimination, when appropriate, in order to preserve the integrity of the zoning district.

1. Nonconforming Uses:

The Provisions governing non-conforming uses set forth in this section are established to provide a gradual remedy for existing non-conforming uses. While nonconforming uses lawfully existing at the time of enactment of this Code are generally permitted to continue, this section is designed to restrict action regarding such uses which would make them more permanent establishments.

2. Nonconforming Buildings And Structures:

The provisions governing Nonconforming buildings and structures are established to prevent the creation of additional non-compliance or increase in the degree of noncompliance. While this section permits continuance of Nonconforming buildings and structures lawfully existing at the time of enactment of this Article, it also provides, wherever reasonable and practical, for a gradual remedy from non-compliance.

Section 8.1 Continuation of Nonconformities.

A. Nonconformities may be continued so long as they remain otherwise lawful, subject to the remaining provisions of this Article.

B. Existing nonconforming structures shall be deemed to be legal nonconformities if said structure(s):

1. Was properly permitted for construction or was constructed prior to permitting requirements; and
2. Was issued a certificate of occupancy, or passed a final (last) inspection if a certificate of occupancy was not required or was constructed prior to any applicable final (last) inspection or certificate of occupancy requirement.

Nothing in this section shall be interpreted as authorization for, or approval of, continuation of any illegal use of a building, structure, premises or land, in violation of this Code or any ordinance in effect at the time of the adoption of this Code. The casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a non-conforming use.

Section 8.2 Expansion, Increase, or Change of Nonconformities.

A. Generally.

No nonconformity shall be enlarged, increased, or changed to a different nonconformity, except upon a determination by the City Council that the change results in lessening of the degree of the nonconformity.

B. Additions to nonconforming structures.

Additions to nonconforming structures containing conforming uses shall be permitted, if the additions to the structure(s) comply fully with setback and other applicable site-related regulations.

C. Additions to, and development or re-development of, establishments with site-related nonconformities.

Additions to, and development or re-development of, structures on property with site-related nonconformities, whereby the structural additions do not warrant the submittal of a site plan, may be permitted provided that such additions are in conformance with all applicable laws and ordinances of the City of Fellsmere and do not create nonconforming uses or structures, and do not increase the existing site-related nonconformity. Any addition which warrants the submittal of a site plan shall require all site-related nonconformities to be terminated and brought in compliance with all applicable regulations of the City of Fellsmere, with the following exceptions:

- 1) Site-related nonconformities pertaining to encroachments into required yard setback areas, and
- 2) Site-related nonconformities created by public right-of-way acquisition.

Section 8.3 Repair or Alteration of Nonconformities.

Repairs, maintenance and improvements of nonconformities may be carried out, provided that such work does not increase the nonconforming building or the floor or ground area devoted to the nonconforming use and does not in any way increase or create a site-related nonconformity. The requirements of this section shall not be construed to prevent compliance with applicable laws or requirements relative to the safety and sanitation of a building occupied by a nonconforming use.

Section 8.4 Reconstruction of Nonconformities.

- A. If any nonconforming structure or use or an establishment containing a site-related nonconformity is damaged by causes including but not limited to fire, flood, explosion, collapse, wind, neglect, age, or is voluntarily razed or disassembled to such an extent that the cost of repair or reconstruction will exceed fifty (50) percent of the building's value as shown on the tax assessment roll at the time of damage or proposed reconstruction, the nonconformity shall be deemed terminated, and shall not thereafter be reestablished. In the event that a nonconformity may be repaired by an investment of less than fifty (50) percent of the value of the nonconformity as shown on the tax assessment roll at the time of the damage or proposed reconstruction, such repair shall be permitted, and the nonconformity may continue.

- B. If Indian River County or a portion thereof is declared a disaster area by the Governor of the State of Florida or the President of the United States, as a result of a hurricane, tornado, flood, or other similar act of God, then the provisions of section 8.4 A. shall be hereby modified to allow within the declared disaster area the replacement or reconstruction of structures on or in the location of the original foundation, except that the any replacement construction must comply with the applicable provisions of Chapter 38 Article II Flood Damage Prevention of the City Code and all Florida Building Codes as adopted by the City. However, this modification to the regulations of the City of Fellsmere to allow the replacement or reconstruction of nonconforming structures has no effect upon the application and enforcement of state or federal laws and agency regulations regarding replacement or reconstruction of nonconforming structures.

Section 8.5 Abandonment or Discontinuance of a Non-conforming Use or Structure:

- A. If a non-conforming use is removed or abandoned for a continuous period of not less than ninety (90) days, every future use of the premises shall be in conformity with the use provisions of this Code. All material and equipment associated with the abandoned non-conforming use shall be completely removed from the premises by its owner within six (6) months after the expiration of the ninety-day period.
- B. Where the cessation of the use is involuntary, the non-conforming use shall not be declared abandoned after the ninety-day period. However, if the use is discontinued for a period of six (6) months or more, every future use of the premises shall be in conformity with the use provisions of this chapter; and all material and equipment associated with the discontinued non-conforming use shall be completely removed from the premises by the owner. Extensions to the six (6) month time period may be granted by the City Council upon application by the land-owner. The land-owner shall prove that a cessation of use for a period of more than six (6) months was due to circumstances beyond his control and that he exerted a continuing good faith effort to put the building or structure to use during the six (6) month period.

Section 8.6 Nonconforming Lots Of Record

- A. Lots of Record Created Prior to December 17, 1956.
1. In any district, principal permitted structures and customary accessory buildings may be erected on any single lot of record existing before December 17, 1956, notwithstanding limitations imposed by other provisions of this Code. Such lot must be in separate ownership and not contiguous to other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area, or width, or frontage or any combination of the three that are generally applicable in the district, provided that yard dimensional standards, other than those applying to area, or width, or frontage of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard dimensional standards other than those applying to area, width, and frontage shall be obtained only through action of the Board of Adjustment. If however, the lot has no frontage as defined in Article II, then proof of recorded legal ingress and egress acceptable to the City Attorney must be furnished before a building permit will be issued.

2. Where two (2) or more lots, combinations of lots or portions of lots are contiguous and are under one ownership or were under one ownership as of the effective date of this Code, they shall be combined to create the legal minimum lot size for the district in which they are located, or as close thereto as possible, depending on the number of contiguous lots or portions thereof available to be combined into one lot. A Unity of Title from the City shall be used to combine the lots.