

## **CHAPTER 1200. NONCONFORMITIES**

### **SECTION 1201. GENERALLY**

#### **1201.1. Intent and Purpose**

The intent and purpose of this section is to protect the property rights of owners or operators of nonconforming uses, structures, or lots while encouraging the reduction of nonconforming uses within the County as provided in Chapter 2, Policy FLU 1.5.1, of the Pasco County Comprehensive Plan.

#### **1201.2. Construction and Uses Approved Prior to December 1, 1975**

Nothing herein contained shall require any change in plans or construction of a structure for which a Building Permit was issued prior to December 1, 1975, provided such construction was completed by December 1, 1976. Nothing herein shall require any change in a use of land or a structure provided such use lawfully existed before December 1, 1975, and has not since been abandoned as defined in this Code, Section 1202.4.

#### **1201.3. Unlawful Use Not Authorized**

Nothing in this section shall be interpreted as authorization for, or approval of, the continuance of any use of a structure or premises in a manner that violated State law and/or County ordinances in effect on December 1, 1975.

#### **1201.4. Applicability**

This section applies to all nonconformities. There are three (3) categories of nonconformities as described in Table 1201-1.

**TABLE 1201-1**

**Nonconformities**

<b>Situation</b>	<b>Definition</b>
Nonconforming Use	<p>A nonconforming use is a use which legally existed prior to the initial adoption of the Comprehensive Plan or subsequent amendment thereto or the County's first land development regulations, or any subsequent amendment thereto, and which does not comply with the current Code. The casual, temporary, or illegal use of land or structures does not establish the existence of a nonconforming use.</p> <p>A nonconforming use may consist of a nonconforming use of land, a nonconforming use of structures, or a nonconforming use of land and structures.</p>
Nonconforming Structure	<p>A nonconforming structure is a structure lawfully existing prior to the initial adoption of the County's first land development regulations or any subsequent amendment or government action which could not be built under the terms of the current Code by reason of restrictions governing area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot.</p> <p>A nonconforming sign is a sign lawfully erected within the County on December 10, 2002, which does not conform to the requirements of this Code.</p>
Nonconforming Lot	<p>A nonconforming lot is a lot which lawfully existed prior to the December 1, 1975, adoption of the County's first land development regulations Code, or any subsequent amendment or government action that could not be created under the terms of this Code by reason of lot size, dimension, characteristic, or other provision of this Code.</p>

1201.5. **Review of Nonconformities**

Any person may request a review of a nonconformity for the purposes of determination that the use, structure or lot is legally nonconforming, or determination of whether a nonconforming use has been abandoned pursuant to the provisions of this Code. The request shall be submitted to the County Administrator or designee, along with supporting documentation, such as affidavits, dated photographs, utility receipts, statements from utility companies, occupational licenses, or professional licenses

showing locations, and a review fee. The County Administrator or designee shall have forty-five (45) days from the date that the application is found to be sufficient to issue a final determination. The final determination may be appealed to the BCC as provided in this Code, Chapter 400, Section 407.1.

1201.6. **Registration**

The County Administrator or designee shall maintain, for public use and information, a list of uses, lots, and structures determined to be legally nonconforming. The list shall include a general description of the nature and extent of the nonconformities and may include photographs as documentation.

SECTION 1202. NONCONFORMING USES

1202.1. **Nonconforming Use Enlargement Prohibited**

A legal nonconforming use shall not be changed, intensified, expanded, or enlarged in any manner beyond the floor area or lot area that it occupied on December 1, 1975, or the effective date of any amendment to this Code rendering such use nonconforming.

1202.2. **Nonconforming Use Allowed Continuation**

A nonconforming use may continue and may be bought or sold in conjunction with the land upon which the use is operated , subject to the provisions of this Code, even though such use does not conform to the current regulations established for that zoning district in which it is located.

1202.3. **Where Structure is Damaged**

In circumstances where less than fifty (50) percent of the value of the structure (as determined by fair market value of the structure) in which a nonconforming use is located is damaged or destroyed by fire, explosion, flood, or other casualty, or legally condemned, the structure may be reconstructed and the nonconforming use continue provided that (a) the reconstructed structure shall not exceed the height, area, or volume of the structure destroyed or condemned; and (b) reconstruction shall be commenced within six (6) months from the date the structure was destroyed or condemned and shall be carried on without interruption. The act of receiving a Building Permit does not constitute commencement of construction.

1202.4. **Abandonment**

The nonconforming use of a structure or land, except a residential structure being used as a residence, which has been abandoned, shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered abandoned when one or more of the following conditions exists:

- A. When a nonconforming use has been discontinued for a period of 180 days. For the purposes of this section, the intent of the owner of the nonconforming

use shall not be controlling in determining whether the nonconforming use has been abandoned. Discontinuance of the nonconforming use for a period of 180 days, regardless of the intent of the owner, shall constitute abandonment.

- B. When it has been replaced by a conforming use.

1202.5. **District Changes**

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any nonconforming uses existing therein.

1202.6. **Grandfather of Special Exception Uses**

Any use which is currently permissible as a special exception in a district under the terms of this Code and was in existence at the time the property was initially zoned (December 1, 1975) or rezoned shall not be deemed a nonconforming use in such district, but shall without further action be considered a permitted use.

SECTION 1203. NONCONFORMING STRUCTURES

1203.1. **Repair, Maintenance, and Alterations**

Except as below, only ordinary repairs and maintenance may be made to a nonconforming structure:

- A. A nonconforming structure may be altered or improved provided that any structural change shall not increase the degree of nonconformity. Structural changes which decrease or do not affect the degree of nonconformity shall be allowed.
- B. A nonconforming structure may be altered to the extent necessary, if such alteration is intended, and will result in the structure's conversion to a conforming structure.
- C. Nothing in this section shall prevent the strengthening or restoring to a safe condition of any portion of a nonconforming structure declared unsafe by the Building Official.

1203.2. **Restorations**

- A. In circumstances where less than fifty (50) percent of the value of the structure (as determined by fair market value of the structure) in which a lawful nonconforming structure is damaged or destroyed by fire, explosion, flood, or other casualty, or legally condemned, the structure may be reconstructed provided that (a) the reconstructed structure shall not exceed the height, area, or volume of the structure destroyed or condemned; and (b) reconstruction shall be commenced within six (6) months from the date the structure was destroyed or condemned and shall be carried on without interruption.

- B. In circumstances where fifty (50) percent or more of the value of the structure (exclusive of walls below grade) as of the date of the damage (as determined by fair-market value of the structure) in which a lawful nonconforming structure is damaged or destroyed by fire, explosion, flood, or other casualty, or legally condemned, and which does not comply with the use, area, setback or height regulations of Chapter 500, the structure shall not be restored except in conformity with the regulations for the zoning district in which such structure is located.
- C. A nonconforming sign shall not be replaced with another nonconforming sign.

1203.3. **Replacement of Nonconforming Mobile Homes**

Nonconforming mobile homes may be replaced with a larger or same size mobile home provided that the replacement is accomplished within six months from the removal.

SECTION 1204. NONCONFORMING LOTS

1204.1. Notwithstanding the limitations imposed by any other provisions of this section, any lot or parcel, which existed prior to December 1, 1975, and, located within an original zoning district as established at the time of the adoption of zoning, but that did not meet the minimum requirements for that district, shall be considered a small lot of record. A small lot of record may also be created as a result of governmental action including, but not limited to, right-of-way dedication or reservation.

1204.2. Building Permits may be issued upon identification of a parcel or lot as a small lot of record to allow the erection, expansion, alteration, or replacement of any structure, together with accessory buildings as permitted within that zoning classification as follows:

- A. Single-family dwellings, including mobile homes, and their accessory buildings constructed or to be constructed upon small lots of record shall not be required to comply with the minimum setback and lot-coverage requirements applicable in the district in which the parcel or lot is located, but shall conform with the required setbacks and lot coverage of the nearest zoning district where minimum lot area, width, depth, or setback regulations can be met.
  - 1. In cases where a small lot of record does not conform to any single-family district, a minimum setback of fifteen (15) feet or other setback as determined by the County Administrator or designee, to be equitable, from any front, or rear lot line, or five (5) feet from any side lot line shall apply, depending upon which dimension is substandard. In determining an equitable front or rear setback, the County Administrator or designee shall use the approximate average depth of the front or rear yards of the nearest structures on the same side of the street within 200 feet. If the lot width is sixty (60) feet or greater, then the minimum side setback shall be 7.5 feet.

2. No accessory structure in any residential district shall be permitted less than five (5) feet from a side or rear lot line and fifteen (15) feet from any front lot line unless approved by the Planning Commission.
  3. Existing single-family dwellings shall be allowed to expand, be altered, or replaced, provided that such improvements do not further encroach into the established yard areas and setbacks, if less than the minimum for the district in which they are located.
- B. Undeveloped, commercial, or industrial zoned parcels or lots shall not be required to meet minimum lot area and/or width requirements, but shall conform to all other zoning district regulations for the zoning district in which the small lot of record is located.
- C. Developed, commercial, or industrial zoned parcels or lots shall not be required to meet minimum lot area and/or width requirements and shall be allowed to expand, alter, or replace existing structures provided that such improvements do not further encroach into the established yard areas and setbacks if less than the minimum for the district in which it is located.

#### SECTION 1205. EFFECT OF CONDEMNATION ACTIONS ON EXISTING DEVELOPMENT

This section of the Code shall apply to all properties impacted by an eminent domain action to the extent that eminent domain affects the existing use of a property:

- 1205.1. A nonconformity created through the exercise of eminent domain powers shall not constitute a violation of this Code, and the owner of any property that is the subject of such nonconformity shall not be required to cure such nonconformity.
- 1205.2. Any structure or site improvement subject to this Section may be rebuilt, relocated, or reconstructed to cure the adverse impacts that result from the exercise of eminent domain powers, even if such rebuilding, relocation, or reconstruction does not conform to this Code with respect to area, width, depth, setbacks, required yards, landscape buffer, location of improvements, location of signs, or parking, so long as the following criteria are met:
- A. The proposed rebuilding, relocation, or reconstruction is necessary to allow use of the property consistent with or similar to the pre-acquisition use of the property.
  - B. The size or intensity of the nonconformity is not increased.
  - C. The rebuilding, relocation, or reconstruction will not result in a violation of the Comprehensive Plan.

- 1205.3. Existing lawful signs, lawful on-premises signs, or registered billboards shall not be required to comply with the setback or spacing requirements of this Code for signs and billboards, as amended, so long as such sign will be located a minimum of five (5) feet from the edge of the proposed right-of-way. Legally nonconforming on-site signs may be relocated or reconstructed if required as a result of the condemnation action.
- 1205.4. If the condemning authority provides for alternate retention areas or drainage facilities as part of the condemnation action, facilities in such alternate areas shall not be required to comply with stormwater management requirements, subdivisions, and development review procedures of this Code, as amended.
- 1205.5. A condemning authority exercising its power of eminent domain is authorized to apply for such permits or approvals necessary to carry out the rebuilding, relocation, or reconstruction of a structure or site improvement pursuant to this Section 1205.
- 1205.6. The provisions of this Section shall apply to real property of which a portion is acquired through the exercise or the threat of exercise of eminent domain. This Section shall apply without regard to whether the real property acquisition is pursuant to an order of a court of competent jurisdiction or is pursuant to the process of a negotiated purchase under threat of eminent domain.