

CHAPTER VIII. HARDSHIP RELIEF

8.00.00. PURPOSE

A. ~~The purpose of this Chapter is to provide for the regulation of legally nonconforming structures, lots of record, uses and signs and to specify those circumstances and conditions under which such nonconformities shall be permitted to continue. It is necessary and consistent with the regulations prescribed by this chapter that those nonconformities which adversely affect orderly development and the value of nearby property not be permitted to continue without restriction.~~

B. ~~The regulations established by this Code are designed to guide the future use of Walton County land by encouraging appropriate groupings of compatible and related uses and thus to promote and protect the public health, safety and general welfare. The continued existence of nonconformities is frequently inconsistent with the purposes for which such regulations are established, and thus the gradual elimination of such nonconformities is generally desirable. With limited exceptions, the regulations of this chapter permit such nonconformities to continue without specific limitations of time but are intended to restrict further investments which would make them more permanent.~~

C. ~~This Chapter distinguishes between nonconforming uses, nonconforming structures, nonconforming lots of record, and nonconforming signs. Different regulations are made applicable to each of these categories. The degree of restriction made applicable to each separate category is a function of the degree to which that category of nonconformity is a nuisance or incompatible with the purposes and regulations of this Code.~~

8.01.00. EXISTING NONCONFORMING DEVELOPMENT

8.01.01. Defined.

A. *Legal Nonconformity.* A legal nonconformity is any land use, structure, lot of record, or sign legally established prior to the effective date of this Code which would not be permitted by or is not in full compliance with the regulations of this Code.

B. *Nonconforming Use.* A nonconforming use is an activity using land, buildings, signs, and/or structures for purposes which were legally established prior to the effective date of this Code and which would not be permitted to be established as a new use in a district in which it is located by the regulations of Section 2.01.03 of this Code.

C. *Nonconforming Structure.* A nonconforming structure is any nonresidential building or structure, other than a sign, legally established prior to the effective date of this Code which does not fully comply with the table of development standards (Section 2.03.06) or the development design and improvement standards of Chapter V.

~~D. Nonconforming Lot of Record. A nonconforming lot of record is any validly recorded lot which at the time it was recorded fully complied with all applicable laws and ordinances but which does not fully comply with the lot requirements of Sections 2.03.02 and 2.03.03.~~

~~E. Nonconforming Sign. A nonconforming sign is any sign legally established prior to the effective date of this Code which is not in full compliance with the regulations of this Code.~~

~~8.01.02. Continuation of nonconformity.~~

~~A. Continuation. Except as otherwise provided in this Chapter, any nonconforming lot, structure, use, or sign lawfully existing on the effective date of this Code may be continued so long as it remains otherwise lawful.~~

~~A nonconforming use which is discontinued for more than six months may not be re-established unless in conformance with this Code and the comprehensive plan.~~

~~Single family residential lots of record that are nonconforming and cannot meet the minimum site design requirements of Chapter V of this Code without so diminishing the building area so as to render its use for a single family residence unfeasible, may be considered as conforming lots for purposes of construction of a single family home and the setback requirements may be reduced by the minimum extent necessary to accommodate the structure. However, in no case shall the minimum side yard be less than five feet, the minimum rear yard less than ten feet and the minimum front yard be less than 15 feet.~~

~~B. Expansion of Nonconformity. No nonconformity shall be enlarged upon, expanded, or extended unless such alteration is in full compliance with all requirements of this code. Normal maintenance and incidental repair of a legal nonconformity shall be permitted, provided that this does not violate any other section of this Code.~~

~~1. Nothing in this section shall be deemed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition, provided that such restoration is not otherwise in violation of this section prohibiting the repair or restoration of partially damaged or destroyed structures or signs.~~

~~2. Nothing in this section shall be deemed to prevent an extension for the exclusive purpose of providing required offstreet parking or loading spaces, provided that the offstreet parking or loading is brought into compliance with the standards of Section 5.03.02.~~

~~C. Relocation of Nonconformity. No nonconformity shall be moved, in whole or in part, for any distance whatsoever, to any location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the land use district in which it is located after being moved.~~

D. Accessories to Nonconformities. Any other provision of this Chapter to the contrary notwithstanding, no use, structure, or sign which is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it shall thereafter conform to all regulations of this ordinance.

E. Burden of Proof. The burden of establishing that any nonconformity is a legal nonconformity as established by this Chapter shall, in all cases, be upon the owner of such nonconformity and not upon Walton County.

8.01.03. Termination of nonconforming development.

A. Nonconforming Structures and Uses. In the event that any nonconforming structure or use is destroyed by any means to the extent of more than 50 percent of the fair market value of the structure before the calamity, such structure or use shall not be restored, rebuilt, or reoccupied for any purpose unless it shall thereafter conform to all regulations of this Code. When such a structure or use is damaged or destroyed to the extent of 50 percent or less of the fair market value, no repairs or rebuilding shall be permitted except in conformity with Section 8.01.02 and other applicable regulations of this Code.

B. Nonconforming Lots of Record. A nonconforming lot of record may be used for any principal use permitted in the district in which the lot is located provided that for any use which is to be served by an individual well and/or septic system, the nonconforming lot shall be of a size and design to meet the minimum requirements of the Department of Health and Rehabilitative Services for such wells and septic systems.

C. Nonconforming Sign.

1. No nonconforming sign shall be changed, expanded, or altered in any manner which would increase the degree of its nonconformity, or be structurally altered to prolong its useful life, or be moved in whole or in part to any other location where it would remain nonconforming.

2. Prohibited signs or sign features as set forth in Section 7.02.00 shall be terminated within six months after the effective date of this Code, except as otherwise expressly permitted by this Code. Termination of the sign shall consist of removal of the sign or its alteration to eliminate all prohibited features.

3. Permanent outdoor advertising signs which are non-conforming as a result of the prohibitions contained in Section 13.03.00(F)(2) of this Code must all be removed no later than _____ if they are required to be removed sooner by any other provision of this Code.

4. A nonconforming sign structure the use of which has been discontinued for a period of 90 days, regardless of any intent to resume or not to abandon such use, shall be presumed to be abandoned and shall not thereafter be reestablished except in full compliance with this Code. Any period of

discontinuance caused by government actions, strikes, materials shortages, or acts of God, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of the discontinuance for purposes of this subsection.

5. Any nonconforming sign damaged or destroyed, by any means, to the extent of 75 percent of its replacement cost shall be terminated and shall not be restored.

8.02.00. VARIANCES

A. Purpose. The purpose of this Section is to empower the Zoning Board of Adjustment to vary or adapt the strict application of any of the requirements of this Code in any district. A variance may be appropriate where, by reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions or other extraordinary and exceptional situations or conditions on a piece of property, the strict application of any regulation enacted under this Code would result in peculiar, exceptional, and undue hardship on the owner of such property. Where the requested deviation is from a provision of the scenic corridor guidelines set forth in Chapter 13, the Design Review Board shall make the initial determination whether a deviation should or should not be granted, based on the findings required in §13.02.01(G). If the Design Review Board determines that the deviation should not be granted, the applicant may appeal that determination to the Board of Adjustments. The Board of Adjustments shall make a determination, based on the evidence presented to the Design Review Board, whether the applicant provided competent, substantial evidence that they met the criteria for a deviation from the scenic corridor provisions.

B. Variances to be Considered as Part of Development Review. Any person desiring to undertake a development activity not in conformance with this code may apply for a variance in accordance with the Section 8.02.02. A development activity that might otherwise be approved by the Director must be approved by the Board of Adjustment if a variance is sought. The variance shall be granted or denied in conjunction with, but prior to, any action to be taken on the application for development review.

8.02.02. Standards and Procedures.

A. Petition. The applicant for a variance must submit a written petition to the Board of Adjustment demonstrating that the application conforms to the required findings in Sections (C) and (D) below.

B. Public Hearing. The Board of Adjustment shall hold a public hearing on the application for the variance. Notice of the public hearing shall be given in accordance with Section 10.03.02.

C. Initial Determination. The Board of Adjustment shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographical condition, or other physical or environmental conditions that are unique to the specific property involved. If so, the Board shall make the following required findings based on the granting of the variance for that site alone. If, however, the condition is common to numerous sites so that requests for similar variances

are likely to be received, the Board shall make the required findings based on the cumulative effect of granting the variance to all who may apply.

D. Required Findings. The Board of Adjustment shall not vary the requirements of any provision of this Code unless it makes a positive finding, based on substantial competent evidence, on each of the following:

1. The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by this Code or the land use district in which it is located and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.
2. The granting of the variance will not permit the establishment of any use that is not permitted in the land use district.
3. There must be proof of unique circumstances: there must exist special circumstances or conditions, fully described in the findings, applicable to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the district, and which circumstances or conditions are such that the strict application of the provisions of this Code would deprive the applicant of the reasonable use of such land or building.
4. There must be proof of unnecessary hardship. It is not sufficient proof of unnecessary hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this code; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.
5. That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the board is the minimum variance that will accomplish that purpose.
6. That the proposed variation will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger public safety, or substantially diminish or impair property values within the adjacent neighborhood.
7. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Code to other lands, structures, or buildings in the same district.

E. Imposition of Conditions. In granting a development approval involving a variance, the Board of Adjustment may impose such conditions and restrictions upon the premises benefitted by a

variance as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance.

F. Documentation by Resolution. Action taken by the Board of Adjustment to grant a variance or to grant a variance with conditions or safeguards shall be documented in the form of a resolution containing a legal description of the real property to which the variance applies, together with the terms of the variance and any additional conditions or safeguards to be imposed.

G. Historic Properties. Notwithstanding the foregoing requirements, special variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on, or classified as contributing to a district or site listed on, the National Register of Historic Places or the Florida Master Site File. The special variance shall be the minimum necessary to protect the historic character and design of the structure. No special variance shall be granted if the proposed construction, rehabilitation, or restoration will cause the structure to lose its historical integrity as determined by conformance with the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

(Ord. No. 2003-12, § 3, 8-5-03; Ord. No. 2008-01, § 1, 1-8-08)

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