

**ARTICLE 12**  
**NON-CONFORMING SITUATIONS**

**SECTION 12.1 APPLICABILITY**

1. The provisions of this Article shall apply to all non-conforming situations as defined herein. Establishment of any use or development of land after the effective date of this ordinance or amendment thereto, which does not comply with the regulations contained in this ordinance or amendment thereto, shall be considered a violation of this ordinance and not a non-conforming situation.
2. A non-conforming situation shall not be deemed to have existed on the effective date of this ordinance or amendment thereto, unless:
  - a. At the time of its creation it was valid;
  - b. It was in existence on a continuous basis and to its fullest extent on such date; and
  - c. If such non-conforming situation is a use, such use had not been discontinued, as herein defined, on such date.

**SECTION 12.2 DEFINITIONS**

***Discontinuance:*** The non-use of the non-conforming use for twelve (12) consecutive months.

***Non-conforming situation:*** A non-conforming situation is one which lawfully existed prior to the effective date of this ordinance or any amendment thereto, and which fails to conform to one or more of the applicable regulations of this ordinance or such amendment thereto. For purposes of this Article, non-conforming situations are divided into the following categories:

1. ***Non-conforming use:*** A non-conforming situation that occurs when property is used for a purpose made unlawful by the regulations of this ordinance which govern the use of property, including uses that do not comply with the performance standards established in **Article 5, Section 5.13**.
2. ***Dimensional non-conformity:*** A non-conforming situation that involves any of the following:
  - a. The height of a structure, or the relationship between an existing building or buildings and other buildings or lot lines, which does not conform to the applicable dimensional regulations (e.g., setbacks) contained in this ordinance;
  - b. A lot of record that does not meet the minimum area or dimensional requirements of the district in which the lot is located;
  - c. Development of property, including buildings and other improvements thereon, which do not comply with regulations governing intensity of use, such as density (e.g., dwelling units per acre), and maximum building or site coverage;
  - d. Provision of off-street parking or loading spaces which does not meet the minimum requirements, or exceptions thereto, as specified in **Article 6** of this ordinance; or

- e. Any other situation where improvements to land do not comply with any quantitative or dimensional standard applicable such improvement.

Where such a dimensional non-conformity relates to a building or structure, the term "non-conforming structure" shall be considered synonymous with the term dimensional non-conformity.

**SECTION 12.3 NON-CONFORMING USES**

**12.3-1 Authority to Continue Use**

Any non-conforming use of part or all of a structure or any non-conforming use of land, not involving a structure or only involving a structure which is accessory to such use of land, may be continued, so long as otherwise lawful, subject to the following provisions:

1. Ordinary Repair and Maintenance:

- a. Normal maintenance and incidental repair or replacement, installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure; provided, however, that this subsection shall not be deemed to authorize any violation of paragraphs 2 through 5 below, and **Sections 12.3-2, 12.3-3, and 12.3-4**, of this Article.
- b. Nothing in this Article shall be deemed to prevent the strengthening or restoring of a structure to a safe condition in accordance with an order of the Enforcement Officer, and where such restoration will not be in compliance with **Section 12.5** of this Article.

2. Remodeling:

Except as provided for in **Section 12.3-6**, no structure shall be remodeled unless the use thereof shall thereafter conform to all provisions of this ordinance. For purposes of this section, the term "remodel" shall mean to reconstruct or relocate exterior walls, bearing walls or bearing partitions; or to substantially alter the exterior appearance of a building by adding or removing architectural elements.

3. Expansion of Use:

Except as provided for in **Section 12.3-6**, no non-conforming use of a lot or building shall be enlarged, expanded or extended to occupy a greater area of lot or building than was occupied on the effective date of this ordinance, or amendment thereto, and no additional accessory use, building or structure shall be established thereon.

4. Enlargement of Building or Structure:

Except as provided for in **Section 12.3-6**, no building or structure that is devoted in whole or in part to a non-conforming use shall be enlarged or added to in any manner, unless such building or structure addition and the entire use thereof (both existing space and the addition) shall thereafter conform to all of the provisions of this ordinance.

5. Moving:

No structure that is devoted in whole or in part to a non-conforming use shall be moved, in whole or in part, to any other location on the same or any other lot, unless the entire structure and use thereof shall thereafter conform to all of the provisions of this ordinance after being so moved. No non-conforming use of land shall be moved, in whole or in part, to any other location on the same or any other lot, unless such use shall thereafter conform to all of the provisions this ordinance after being so moved.

#### 6. Compliance with Performance Standards:

Any non-conforming use shall be brought into conformance with the performance standards established in **Article 5, Section 5.13**, of this ordinance upon the effective date of this ordinance, or any applicable amendment thereto.

#### 12.3-2 Change of Use

A non-conforming use shall not be changed to any use other than a permitted use in the zoning district in which the property is located. When a non-conforming use has been changed to any permitted use, it shall not thereafter be changed back to a non-conforming use.

#### 12.3-3 Discontinuance of Use

When a non-conforming use is discontinued, as defined herein, such use shall not thereafter be re-established or resumed, and any subsequent use or occupancy of such land or building shall comply with the provisions of this ordinance.

#### 12.3-4 Non-conforming Accessory Uses

No use which is accessory to a principal non-conforming use shall continue after such principal use has been discontinued, as defined herein.

#### 12.3-5 Status of Special Uses or Uses Approved Under Site Plan Review

1. Existing uses which were issued a special use permit and continue to be classified as special uses under the applicable district regulations of this ordinance, or amendment thereto, shall not be considered a non-conforming use. Such a use may continue, subject to compliance with the conditions set forth in the special use permit. The same applies to uses approved with conditions of use attached under the site plan review procedure, which under this ordinance are classified as a special use.
2. Existing uses which were issued a special use permit or site plan review approval prior to effective date of this ordinance or amendment thereto, but are no longer permitted as a special use or as a permitted use upon such effective date, shall be considered a non-conforming use, subject to the provisions of this Article.
3. Uses existing prior to the effective date of this ordinance, or amendment thereto, which were not classified as a special use, but are so classified upon such effective date, shall be deemed a lawful conforming use. In the event that such existing use is to be altered (other than maintenance and remodeling), expanded, intensified, or otherwise changed, then such use shall be required to obtain a special use permit, pursuant to the procedures set forth in **Article 9** of this ordinance.

#### 12.3-6 Exceptions

Any structure devoted to a non-conforming dwelling use (e.g., a dwelling located in a non-dwelling district where such uses are not permitted), may be remodeled, extended, expanded and enlarged; provided that after any such remodeling, extension, expansion, or enlargement, such structure shall not be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work, and provided that such work does not create any dimensional non-conformities, except as may be authorized under **Section 12.4-3**. This paragraph shall not be deemed to authorize any violation of **Sections 12.3-1** (paragraphs 5 and 6), **12.3-2**, **12.3-3**, **12.3-4** or **12.5**.

**SECTION 12.4 DIMENSIONAL NON-CONFORMITIES**

Any existing dimensional non-conformity may be continued, so long as otherwise lawful, subject to the following provisions:

**12.4-1 Non-conforming Lots of Record**

Lots of record, established prior to the effective date of this ordinance, or amendments thereto, that have any dimensional non-conformities, may be used for purposes allowable by this ordinance, subject to the following limitations:

1. Such lot, when located in a dwelling district, shall comply with the prevailing patterns requirement specified under **Article 5, Section 5.4** of this ordinance; shall only be used for open space or a detached one-family dwelling and associated accessory uses or structures; and any buildings placed thereon shall meet the required setbacks of the applicable district regulations, subject to setback exceptions established under **Article 5, Sections 5.6** of this ordinance.
2. Such lot, when located in any non-dwelling district, shall not be less than five thousand (5,000) square feet nor less than forty (40) feet in width; shall only be used for open space or an office building; and any buildings placed thereon shall meet the required setbacks of the applicable district regulations, subject to setback exceptions established under **Article 5, Sections 5.6** of this ordinance.
3. In any event, a non-conforming lot of record shall not be used for the development of a freestanding principal structure, unless;
  - a. Such lot was owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by the zoning ordinance adopted by the City; and
  - b. Has remained in separate and individual ownership from adjoining tracts of land continually during the entire time that creation of such lot has been prohibited by the applicable zoning ordinance.
4. Nothing in this section shall prohibit the combination of a non-conforming lot of record, or portions thereof with another adjoining lot, or lots, so as to create zoning lots, which comply with the requirements of this ordinance. Such consolidations may be accomplished under the subdivision procedures specified in Appendix C, ASubdivision≡ of the Jacksonville Municipal Code or treated as a Azoning lot≡ as defined in Article 2 of this ordinance.

**12.4-2 Non-conforming Structures**

1. Non-conforming Structures Associated with Conforming Uses:

Any non-conforming structure, which is associated with a conforming use, may remain as a non-conforming structure, subject to the following provisions:

- a. *Enlargement, Repair, Alterations:* Any such structure may be enlarged, maintained, repaired or remodeled; provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except as may be permitted under **Section 12.4-3** of this Article.

- b. *Damage or Substandard Conditions:* Any such structure shall be subject to the provisions of **Section 12.5** of this Article.
- c. *Moving:* No such structure shall be moved, in whole or in part, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the provisions of this ordinance after being moved.

2. Dimensional Non-Conformity Associated with Non-conforming Uses:

Any dimensional non-conformity associated with a non-conforming use, may remain non-conforming, subject to the regulations contained in **Sections 12.3 and 12.5** of this Article.

#### 12.4-3 Exceptions to Non-Conforming Dwellings

A one-family or two-family dwelling, which lawfully existed prior to the effective date of this ordinance, or amendment thereto, and which fails to comply with the dimensional requirements of this ordinance, may be expanded and such expansion may encroach upon required building setbacks; provided, however, that such addition shall only be permitted to extend to the horizontal or vertical plane of the building's exterior wall or the building's height which is in non-conformance with a required setback or building height limitation. In other words, the addition shall not create a dimensional non-conformity that is greater than the existing dimensional non-conformity.

#### 12.4-4 Other Dimensional Non-conformities

Any other dimensional non-conformities may remain non-conforming, so long as any modification to a building site or the structures thereon, as may be permitted by this Article, does not create any increase in the degree of such other dimensional non-conformity and no reduction in required off-street parking shall be permitted, except as may be provided for under **Article 6, Section 6.5-1** of this ordinance.

### SECTION 12.5 DAMAGE OR SUBSTANDARD CONDITIONS

1. Except as otherwise provided in **Article 7, Section 7.5-1 and Section 7.9-3**, nothing in this Article shall be deemed to prohibit the restoration of any structure and its use where such structure has been damaged, by any means, to an extent less than fifty (50) percent of its replacement value (excluding the value of the land, the cost of preparation of land, and the value of any foundation associated with such structure) at the time of damage, as determined by the Enforcement Officer; provided, however, that the restoration of such structure and its use in no way increases any former non-conformity, and provided that restoration of such structure is begun within six (6) months of such damage and diligently prosecuted to completion within one (1) year following such damage.
2. Whenever such structure has been damaged, by any means, to an extent of more than fifty (50) percent of its replacement value (excluding the value of the land, the cost of preparation of land and the value of any foundation associated with such structure) at the time of damage, as determined by the Enforcement Officer, the structure and use thereof shall not be restored except in full conformity with the regulations of this ordinance.
3. When a structure is determined by the Enforcement Officer, to be in violation of the Building Code or any applicable health or safety code, and the cost of placing the structure in condition to satisfy the standards under such codes exceeds fifty (50) percent of the reconstruction cost of the entire structure, as determined by the Enforcement Officer, such non-conforming structure shall not be restored for the purpose of continuing a non-conforming use.

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