

ARTICLE XXI. - NONCONFORMITY

Sec. 53-241. - Relationship to Comprehensive Plan.

The Zoning Regulations in this section implement Objective 1 of the Future Land Use Element of the Comprehensive Plan, which state: "Future development activities shall continue to be directed in appropriate areas as depicted on the Future Land Use Map, and shall encourage the use of innovative land development regulations, consistent with sound planning principles, minimal natural limitations, the goals, objectives and policies contained within this plan, and the community character," as well as the following policy:

"Policy 1.2: Expansion, reclassification or replacement of land uses shall be compatible and consistent with the Future Land Use Map. Each land use type will be reviewed individually and for their impact on the remainder of the Plan. Land use types cumulatively will be evaluated based on:

1. Extent and provision of infrastructure systems;
2. Location and gateways;
3. Distribution;
4. Density;
5. Intensity;
6. Compatibility with existing and future neighborhoods or Activity Centers;
7. Suitability;
8. Functional relationship;
9. Land use combinations;
10. Demonstrated need over the planning period;
11. Financial impact.

Sec. 53-242. - Intent.

- A. Within the districts established by these zoning regulations or amendments that may later be adopted, there may exist lots, structures, uses of land or water and structures and characteristics of use which were lawful before these zoning regulations were adopted or amended, but which would be prohibited, regulated or restricted under the terms of these zoning regulations or future amendments. It is the intent of these zoning regulations to permit these nonconformities to continue until they are voluntarily moved or removed as required by these zoning regulations, ~~but not to encourage their survival.~~ It is further the intent of these zoning regulations that nonconformities, **except as provided herein**, shall not be enlarged upon, expanded, intensified or extended, significantly changed as defined in Chapter 61 of

this Unified Land Development Code, nor be used as grounds for adding other structures, additions or uses unless the nonconformity is brought into conformance.

- B. Nonconforming uses are declared by these regulations to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land or water or a nonconforming use of structure and land or water in combination shall not be extended or enlarged after the effective date of these zoning regulations or amendments thereto by attachment on a structure or premises of additional signs intended to be seen from off the premises or by the addition of other uses of a nature which would be prohibited generally in the district involved.
- C. Any nonconforming use of land, structure, or water or any combination thereof, shall be brought into compliance with these regulations upon substantial improvement to the land, structure, or water, or any combination thereof unless otherwise permitted by this Unified Land Development Code.

Sec. 53-243. - Nonconforming lots of record.

In any district, any permitted or permissible structure may be erected, expanded or altered on any lot of record at the effective date of adoption or amendment of these zoning regulations, notwithstanding limitations imposed by other provisions of these zoning regulations. The maximum residential density, maximum lot coverage, minimum width and minimum yard requirements shall be as for the most similar district to which such lot of record most closely conforms in dimension or area.

Sec. 53-244. - Nonconforming uses of lands or waters or land with minor structures only.

Where, at the effective date of adoption or amendment of these zoning regulations, lawful use of lands or waters exists which would not be permitted under these zoning regulations, and where such use involves no individual permanently fixed structure with a replacement cost exceeding one thousand dollars (\$1,000.00) and no combination of permanently fixed structures with a combined replacement cost exceeding four thousand dollars (\$4,000.00), the use may be continued, so long as it remains otherwise lawful, provided that:

- A. Movement, alteration, intensification. No nonconforming use of land not involving structures shall be moved in whole or in part to adjacent property not containing such use, nor shall such use be altered or intensified by adding additional nonconforming uses within the confines of the property containing such nonconforming use on the adoption date or amendment date of these zoning regulations.
- B. Discontinuance. If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of

more than two hundred seventy (270) consecutive days, any subsequent use of such land shall conform to the regulations specified by these zoning regulations for the district in which such land is located.

- C. Division of structural additions. No land in nonconforming use shall be divided, ~~nor shall any structures be added on such land which can be used for the nonconforming use.~~

Sec. 53-245. - Nonconforming structures.

Where a structure exists lawfully under these zoning regulations at the effective date of its adoption or amendment that could not be built under these zoning regulations by reason of restrictions on lot area, lot coverage, height, yards, location of the lot or requirements other than use concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming attribute of a structure may be enlarged or altered in a way which increases the **structure's** nonconforming attribute, but any structure or portion thereof may be altered to decrease its nonconforming attribute.
- B. Reconstruction.
 - (1) Should such nonconforming structures or nonconforming portion of structure be destroyed by any means other than as a result of governmental action to an extent of more than fifty percent (50%) of its actual replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of these zoning regulations.
 - (2) Notwithstanding the foregoing restrictions as to reconstruction, any residential structure or structures in any residential zone district may be rebuilt after destruction, except when destruction has occurred by the voluntary act of the owner, to the prior extent, height and density of units per acre regardless of the percentage of destruction.
 - (a) In the event of such rebuilding, all setbacks and other applicable district requirements shall be met unless a variance therefore is obtained from the Zoning Board of Appeals.
 - (b) For the purpose of this section, a hotel or motel structure shall be considered to be a residential structure.
 - (3) If a structure or portion thereof is destroyed by governmental action, that structure shall not be rebuilt until all land uses and construction is in compliance with these zoning regulation.
- C. Should such structure be moved for any reason for any distance whatever, other than as a result of governmental action, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Sec. 53-246. - Nonconforming use of major structures or of major structures and premises in combination.

Where, at the effective date of adoption or amendment of these zoning regulations, lawful use of structures and premises exist, such use may be continued so long as it remains otherwise lawful, provided that:

- A. Enlargement, extension or alteration. **Except as provided in (i)**, no existing structure devoted to a use not permitted by these zoning regulations in the district in which such use is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
 - (i) Enlargement, extension or alteration in Commercial Districts including within Activity Centers. A nonconforming use which existed on a property at the date of adoption or amendment of these zoning regulations, may be increased in extent by natural expansion and growth of the business. An existing structure devoted to a use not permitted by these zoning regulations may be enlarged, extended, constructed, reconstructed, moved or structurally altered. However, any expansion enlargement, extension or alteration must be in compliance with the current zoning ordinance's dimensional regulations applicable to the property (i.e., setbacks, building coverage, parking, signage) and there is no right to expand a nonconforming structure that would exacerbate the structure's dimensional nonconformity.**
- B. Extension of use in building manifestly designed for such use. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of adoption or amendment of these zoning regulations.
 - (1) Any nonconforming use which occupied a portion of a building not originally designed or intended for such use shall not be extended to any other part of the building, **except as provided in A (i)**,
 - (2) No nonconforming use shall be extended to occupy any additional building on the same lot or parcel not used for such nonconforming use at the effective date of adoption or amendment of these zoning regulations, **except as provided in A (i)**,
- C. Change in tenancy or ownership. There may be a change in tenancy, ownership or management of a nonconforming use, provided that there is no change in the nature or character of such nonconforming use.
- D. Change in use. If no structural alterations are made, any nonconforming use of a structure, or of a structure and premises in combination, may not be changed

to another nonconforming use of the same character, or to a more restricted but nonconforming use.

- E. Change to conforming use requires future conformity with district regulations. Any structure, or structure and premises in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use shall not thereafter be resumed nor shall any other nonconforming use be permitted.
- F. Discontinuance. If any nonconforming use of a structure, or structure and premises in combination, ceases for any reason (except where governmental action impedes access to the premises) for a period of more than three hundred sixty-five (365) consecutive days, any subsequent use shall conform to the regulations for the district in which the use is located.
- G. Division of structural additions. Premises which contain structures devoted to a nonconforming use as of the effective date of adoption or amendment of these zoning regulations shall not be divided, nor shall any additions be added to the premises, unless the nonconforming use is discontinued.
- H. Destruction of major structures. Where nonconforming use status applies to a major structure or structures and premises in combination, removal or destruction of the structure or structures shall eliminate the nonconforming status of the land. "Destruction" of the structure for purposes of this subsection is hereby defined as damage to an extent of more than fifty percent (50%) of the replacement cost at the time of destruction.
 - (1) Upon removal or destruction as set out in this subsection, the use of land and structures shall thereafter conform to the regulations for the district in which such land is located.

Sec. 53-247. - Nonconforming characteristics of use.

If characteristics of use, such as signs, off-street parking or off-street loading or other matters pertaining to the use of land, structures and premises are made nonconforming by these zoning regulations as adopted or amended, no change shall thereafter be made in such characteristics of use which increases nonconformity with the regulations herein set out; provided, however, that changes may be made which do not increase or which decrease such nonconformity **and as provided in A (1)**

Sec. 53-248. - Repairs and maintenance.

On any nonconforming structure or portion of a structure and on any structure containing a nonconforming use, repairs and maintenance to the structure may be made, provided that the structure is not enlarged to increase the nonconformity., **except as provided in A (1)**

Sec. 53-249. - Unsafe structures due to lack of maintenance.

If a nonconforming structure or portion of a structure or any structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance, and is declared by the duly authorized official of the City of North Port to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

Sec. 53-250. - Restoration of unsafe structures.

If a nonconforming structure or portion of a structure or any structure containing a nonconforming use becomes physically unsafe or unlawful for reasons other than lack of repairs or maintenance, nothing contained herein shall be deemed to prevent the strengthening or restoring to a safe condition of such building or part thereof declared to be unsafe by the authorized official of the City of North Port charged with protecting the public safety; provided, however, that where such unsafeness or unlawfulness is the result of damage from destruction, the percentage of damage limitations set out in Sec. 53-245(B) or Sec. 53-246(H), as the case may be, shall apply.

Sec. 53-251. - Nonconforming residential density.

Where properties containing dwelling units that exceed the density allowed by these zoning regulations exist on the date of adoption or amendment of these zoning regulations, no structural additions or additional structures are permitted unless the density of units is reduced to the maximum allowed in the district under these zoning regulations.

Sec. 53-252. - Casual, temporary or illegal use.

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

Sec. 53-253. - Special exceptions deemed conforming uses.

Any use which was permitted as a special exception in a district under the terms of these zoning regulations shall not be deemed a nonconforming use in such district but shall without further action be deemed a conforming use in such district, and shall be regulated by Article XXII. The special exception/conditional use shall adhere to all

conditions that are listed on the special exception/conditional use permit. If the special exception/conditional use is required to be reviewed, pursuant to a pre-determined time period or by reason of the regulations listed in this Unified Land Development Code, the special exception/conditional use shall come into compliance with the regulations that are in affect at the time of the pre-determined review.

Example