

*City of Dade City, Florida*  
*Land Development Regulations*

**ARTICLE 8:  
NONCONFORMITIES**

ADOPTED AUGUST 12, 20114

## ARTICLE 8: NONCONFORMITIES

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## ARTICLE 8: NONCONFORMITIES

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### SECTION 8.1 GENERAL

#### 8.1.1 Purpose and Intent

##### (A) General

Within the provisions established by these LDRs, there exist uses of land, structures, lots of record, towers, and signs that were lawfully established before these LDRs were adopted or amended, that now do not conform to its terms and requirements. The purpose and intent of this article is to regulate and limit the continued existence of those uses, structures, lots of record, signs, and towers that do not conform to the provisions of these LDRs, or any amendments thereto.

##### (B) Permit Nonconformities to Continue Until Removed, But Not Encourage Survival

It is the intent of these LDRs to permit these nonconformities to continue until they are removed, but not to encourage their survival except under the limited circumstances established in this Article. The provisions of this Article are designed to curtail substantial investment in nonconformities to preserve the integrity of these LDRs.

#### 8.1.2 Authority to Continue

Existing nonconformities and nonconformities under actual construction as of \_\_\_\_\_, are allowed to continue in accordance with the standards of this article.

#### 8.1.3 Determination of Nonconformity Status

##### (A) General

In all cases, the burden of establishing that nonconformity lawfully exists shall be on the owner of the land on which the purported nonconformity is located.

##### (B) Casual, Temporary, or Illegal Use Does Not Establish Nonconformity

The casual, temporary, or illegal use of land or structures shall not be sufficient to establish the existence of a nonconformity, nor does it create rights to continue the nonconformity.

#### 8.1.4 Minor Repairs and Maintenance

Minor repairs and normal maintenance that are required to keep nonconforming uses, structures, lots of record, signs, and towers in a safe condition are permitted, provided the minor repair or maintenance does not extend, expand, or enlarge the nonconforming use, structure, lot of record, sign, or tower. For the purposes of this section, "minor repair or normal maintenance" shall mean:

##### (A) Maintenance of Safe Condition

Repairs necessary to maintain a nonconforming use, structure, or tower in a safe condition;

##### (B) Correction of Damage or Deterioration

Repairs necessary to correct any damage or deterioration to the structural soundness or appearance of a structure without altering the structure;

##### (C) Maintenance of Land for Safety

Maintenance of land areas to protect against health hazards and promote the safety of surrounding uses; and

##### (D) Limited Sign Repairs and Maintenance

Repairs and maintenance of nonconforming signs, such as repainting and electrical repairs, whose costs do not exceed 50 percent of the replacement cost of the sign.

#### 8.1.5 Change of Tenancy or Ownership

The status of nonconformity is not affected by changes of tenancy, ownership, or management.

#### 8.1.6 Change in Characteristics of Use

If the characteristics of a use (i.e. signage, off-street parking and loading, landscaping, density, intensity, or other characteristic pertaining to the use), structure, or premises are

rendered nonconforming by the Comprehensive Plan, these LDRs, or an amendment thereto, no change shall be made that increases the nonconformity with the standards of these LDRs. However, changes that do not increase or that decrease the amount of nonconformity are allowed under these LDRs.

**8.1.7 Structural Additions**

No structures or additions to structures shall be added to nonconforming uses, structures, or lots containing nonconformity except in a manner that is consistent with the goals, objectives, and policies of the Comprehensive Plan and the standards of these LDRs.

**8.1.8 Discontinuance or Abandonment**

**(A) General**

If a nonconforming use or structure is discontinued or abandoned for a continuous period of 6 months or more, or is changed to or replaced by a conforming use or structure, it shall lose its nonconformity status, except as provided in Section 8.2.5 *Reconstruction After Casualty Damage*, or Section 8.3.5 *Restoration After Casualty Damage*.

**(B) Development After Discontinuance or Abandonment**

Any subsequent development shall be consistent with the goals, objectives, and policies of the Comprehensive Plan and shall comply with the standards in these LDRs.

**(C) Impeded Access**

If an act of government prevents access to the nonconformity, the calculation of an abandonment or discontinuation period shall not include the amount of time when access was impeded.

**SECTION 8.2 NONCONFORMING USES**

**8.2.1 General**

Nonconforming uses are declared generally incompatible with the permitted uses in the zone district in which they are located and with the provisions of these LDRs. Nonconforming uses shall be subject to the following standards.

**8.2.2 Change of Use**

**(A) General**

A nonconforming use shall not be changed to another nonconforming use, except in accordance with Section 2.4.12, *Certificate of LDR Compliance*, and this section, and only when the Community Development Director determines the new nonconforming use is more similar to or comparable with the permitted uses in the district than the existing nonconforming use. In determining whether a proposed use is more similar to or comparable with the permitted uses in the zone district, the following factors shall be considered:

**(1) More Comparable in Size, Type, and Scope**

Whether the proposed nonconforming use is more comparable in size, type, and scope to permitted uses in the zone district;

**(2) More Comparable in Density and Intensity of Use**

Whether the proposed nonconforming use is more comparable in density or intensity, including hours of operation, traffic, noise, and similar visual impacts, to permitted uses in the zone district; and

**(3) Less Detrimental Effect**

Whether the proposed nonconforming use will have a less detrimental effect on conforming uses in the surrounding area than the existing nonconforming use.

**(B) Off-street Parking**

Any new nonconforming use approved in accordance with this subsection and Section 2.4.12, *Certificate of LDR Compliance*, shall comply with the standards for off-street parking in Section 6.1, *Off-Street Parking and Loading Standards*, for the marginal increase of off-street parking required for the new conforming use versus the off-street

parking required for the existing nonconforming use. Computation of parking required for the existing nonconforming use and the new nonconforming use shall be based on the land or building space subject to change.

**(C) Conditions of Approval**

In permitting the change in nonconforming use, the Community Development Director may require appropriate conditions and safeguards to ensure consistency with the purposes of this subsection that the new nonconforming use is more compatible and comparable with permitted uses in the zone district than the existing nonconforming use.

**8.2.3 Expansion and Enlargement**

**(A) Area Occupied by Nonconforming Use**

A nonconforming use shall not be expanded in the structure's area occupied, except that it may be enlarged into any area of the same structure in which it is located that was manifestly arranged or designed for such use prior to the date it became a nonconformity.

**(B) Moved to Another Location**

A nonconforming use shall not be moved to any other location or within the lot on which it is located unless the use conforms to the standards and requirements of these LDRs.

**(C) Structure Devoted to Nonconforming Use**

A structure devoted to a nonconforming use shall not be expanded, moved, or structurally altered except to change the structure to a use permitted in the district in which the structure is located.

**8.2.4 Accessory Uses**

No use accessory to a principal nonconforming use shall continue after the principal use terminates, except in accordance with Section 8.2.2, *Change of Use*.

**8.2.5 Reconstruction After Casualty Damage**

**(A) Damage up to 50 Percent of Value**

When a structure or portion of a structure housing a nonconforming use is damaged up to 50 percent of its replacement value at the time of the casualty, it may be restored if:

(1) Restoration is begun within 12 months and completed within 24 months of the date of the casualty; and

(2) Any expansion complies with Section 8.2.3, *Expansion and Enlargement*.

In restoring the structure housing the nonconforming use, changes are permitted that reduce the degree or extent of the nonconforming use.

**(B) Damage Greater than 50 Percent of Value**

When a structure housing a nonconforming use is damaged to an extent of more than 50 percent of its replacement value at the time of the casualty, its status as a nonconformity terminates, and it shall not be restored except as a conforming use.

**8.2.6 Uses Subject to Conditional Use Permit**

In cases where there are lawfully existing (developed) permitted uses in a zone district that are changed to Conditional uses by amendment to these LDRs, any lawfully existing permitted uses (developed) at the time of amendment shall be considered conforming, and are not required to obtain approval of a Conditional Use Permit (Section 2.4.4). However, any expansion, enlargement, or intensification of the use shall require approval of a Conditional Use Permit in accordance with Section 2.4.4, *Conditional Use Permit*. (Failure to obtain conditional use approval prior to expansion, enlargement, or intensification shall constitute a violation of these LDRs, and shall render the use nonconforming.)

**SECTION 8.3 NONCONFORMING STRUCTURES**

**8.3.1 Relationship with Nonconforming Uses**

Where a nonconforming structure houses a nonconforming use, the regulations for nonconforming structures and nonconforming uses shall both apply. In case of conflict, the rules for nonconforming uses shall prevail.

**8.3.2 Continuation**

A nonconforming structure may continue as it existed when it became nonconforming, as long as it is maintained in its then structural condition.

**8.3.3 Enlargement**

Any enlargement, alteration, or expansion of a nonconforming structure that increases the degree of nonconformity is prohibited. (For example, a structure that has a 5-foot side setback where these LDRs require a 10-foot side setback cannot be enlarged to further encroach into the side setback.)

**8.3.4 Relocation**

A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless it conforms to the standards of these LDRs.

**8.3.5 Restoration After Casualty Damage**

**(A) Damage up to 50 Percent of Value**

When a nonconforming structure is damaged up to 50 percent of its replacement value at the time of the casualty, it may be restored if:

- (1) Restoration is begun within 12 months and completed within 24 months of the date of the casualty; and
- (2) Any expansion complies with Section 8.3.3, *Enlargement*.  
In restoring the structure, changes are permitted that reduce the degree or extent of nonconformity.

**(B) Damage Greater Than 50 Percent of Value**

When a nonconforming structure is damaged to an extent of more than 50 percent of its replacement value at the time of the casualty, its status as nonconformity terminates, and it shall not be restored except as a conforming use.

**SECTION 8.4 NONCONFORMING LOTS OF RECORD**

**8.4.1 Status of Structures on Nonconforming Lots**

Conforming structures on a nonconforming lot may be continued, enlarged, extended, reconstructed, or structurally altered in any way that is in conformance with the standards of these LDRs.

**8.4.2 Development of Unimproved Lots in Residential Districts**

**(A) General**

If an unimproved lot in a residential district was part of a subdivision or division of land evidenced by plat or deed, or both, recorded prior to [REDACTED], one (1) single family detached dwelling and any customary accessory structures may be developed on the lot, even though the lot does not comply with the minimum lot area or width standards established in Table 5.1-2, *Table of Dimensional Standards in the Residential Zoning Districts*, provided such use is an allowable use in the zone district where the lot is located. The following standards shall also apply:

- (1) The lot shall be in separate ownership;
- (2) The lot shall not be of continuous frontage with other lots under the same ownership;
- (3) The development shall conform to all other standards of these LDRs, including setback standards, or shall have obtained a Variance Permit in accordance with Section 2.4.5; *Variance Permit*

**(B) Consolidation**

If two or more adjacent unimproved lots of record are in a Residential district and under single ownership, and do not individually meet the minimum lot width or area standards for the district where they are located (see Table 5.1-2, *Table of Dimensional Standards in the Residential Zoning Districts*), such lots shall be treated as a single lot for the

purposes of development, and shall be subject to the standards of these LDRs. Unity of Title shall be recorded to join the two unimproved lots of record.

**8.4.3 Development of Improved Lots in Residential Districts After Casualty**

If an improvement is destroyed by casualty, or is demolished for the purposes of reconstruction as a part of a local, state or federal housing rehabilitation program, on a lot of record in a Residential district, one (1) single family detached dwelling and any customary accessory structures may be re-established on the lot within six (6) months of the casualty. This development after casualty may take place even though the lot does not comply with the minimum area, setbacks, or, width standards in Table 5.1-2, *Table of Dimensional Standards in the Residential Zoning Districts*.

**8.4.4 Governmental Acquisition of Lot in Residential Zone District**

Governmental acquisition of a portion of a lot for a public purpose in a Residential district that results in reduction in lot width and area below that required by Table 5.1-2, *Table of Dimensional Standards in the Residential Zoning Districts*, shall not make the lot nonconforming.

**SECTION 8.5 NONCONFORMING SIGNS**

**8.5.1** A sign which was lawfully erected prior to \_\_\_\_\_ but which does not conform in one or more respects with the requirements of Section 6.5.4(G), *Nonconforming Signs* may remain in use, subject to the requirements of these LDRs and other applicable requirements of City of Dade City ordinances and these LDRs. For purposes of this subsection, a sign which was erected in accordance with the terms of a variance approved by the Board of Adjustment or other approving body shall be considered to have been lawfully erected.

**8.5.2** Any of the following types of signs which do not conform to this section shall be removed on or before (insert adoption date):

- (A) Portable signs
- (B) Temporary signs
- (C) Balloons
- (D) Inflatable signs
- (E) Window signs
- (F) Any other similar sign made of flexible material (such as paper, cloth, or flexible plastic) or not permanently fastened to a foundation or to a structural wall of a building.

**8.5.3** Any lighting which does not conform to this Section 6.5, *Signage* and which is not an integral part of the sign that it lights shall be removed or made conforming on or before (insert adoption date).

**8.5.4** Any sign which does not conform to this Section 6.5, *Signage* because of a lack of required maintenance or deferred maintenance shall be removed or made conforming on or before (insert adoption date).

**8.5.5** Limitations on Other Nonconforming Signs

- (A) Except as otherwise provided in this Section 6.5, *Signage* any on-premise sign which is located on property which becomes vacant and unoccupied for a period of at least three (3) months, or any sign which pertains to a time, event, or purpose which is no longer imminent or pending shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management shall not be deemed abandoned unless the property remains vacant for a period of one (1) year. Abandoned signs are prohibited and shall be removed by the owner of the sign or the owner of the premises.
- (B) Any other nonconforming sign that shall cease being used or cease being leased for a continuous period of one (1) year shall be considered abandoned.



- (C) Any person obtaining a permit from the City for construction of a new building, for expansion of an existing building by more than 1,000 square feet or ten (10%) percent of its floor area, whichever is less, or for any improvements valued for permitting purposes at more than \$25,000 shall, as part of the work or at the same time as the work is performed, remove all nonconforming signs from the property, which nonconforming signs shall be replaced only with signs fully conforming with the requirements of Section 6.5, *Signage* and these LDRs. If the property affected is a multi-tenant property, then the person obtaining the permit shall be required only to remove the nonconforming signs directly appurtenant to the portion of the premises for which the permit is issued.
- (D) Change of copy or the substitution of panels or faces on nonconforming signs without changing size or configuration of the sign shall be permitted without affecting the legal status of the sign as a nonconforming sign (subject to requirements for building and electrical permits). Repairs and maintenance of nonconforming signs, such as repainting, electrical repairs, and neon tubing, shall be permitted.
- (E) Nonconforming flagpoles shall be removed on or before (insert adoption date).

## SECTION 8.6 NONCONFORMING TOWERS

### 8.6.1 Continuance

Nonconforming towers are allowed to continue provided that they do not pose a hazard to safety. (by city engineer/building official)??

### 8.6.2 Minor Repairs and Normal Maintenance

Minor repairs and normal maintenance that is required to keep nonconforming towers in a safe condition is permitted, provided the minor repairs and normal maintenance do not extend, or expand any nonconforming tower.

### 8.6.3 Enlargement

There shall be no expansion or enlargement of a nonconforming tower, except in compliance with the standards of these LDRs. Nothing in this sub-section shall prevent the addition of antennas or other equipment to a nonconforming tower provided they do not increase the overall height of the tower, and provided any ground-based equipment is fenced and screened in accordance with the requirements of this Ordinance.

### 8.6.4 Reconstruction After Damage or Destruction

Nonconforming towers or antennas that are damaged or destroyed may be rebuilt to their pre-existing condition and form within 180 days of the damage or destruction without having to first obtain administrative approval or a Special Use Permit. If the nonconforming tower is not rebuilt within 180 days of its damage or destruction, it shall be considered abandoned, and shall comply with the standards and requirements of these LDRs.

### 8.6.5 Abandonment

Any antenna or tower that is not operated for a continuous period of 12 months shall receive notice from the Community Development Director of the abandonment. Failure to remove the abandoned antenna or tower within 90 days of notification shall be grounds to remove the tower or antenna, at the land owner's expense.