

**ARTICLE VII**

**NON-CONFORMING USES**

**SECTION 21-70 - PURPOSE ..... VII-1**

**SECTION 21-71 - NON-CONFORMING USES ..... VII-1**

    21-71.01 - Intent..... VII-1

    21-71.02 - Non-Conforming Structures..... VII-2

    21-71.03 - Non-Conforming Lots of Record ..... VII-2

    21-71.04 - Non-Conforming Lots ..... VII-2

    21-71.05 - Non-Conforming Mobile Home Parks..... VII-4

    21-71.06 - Non-Conforming Parking Areas.....VII-4

**Sections 21-72 through 21-79 reserved for future use.**

**ARTICLE VII  
NON-CONFORMING USES**

**SECTION 21-70 - PURPOSE**

The purpose of this Article is to regulate and limit the continued existence of lots, signs and structures that were lawfully established prior to the effective date of this Code but do not conform to the provisions of this Code. Nonconformities may continue, but the provisions of this Article are intended to curtail substantial investment in nonconformities and to bring about their eventual elimination.

**SECTION 21-71 - NON-CONFORMING USES**

**21-71.01 - Intent**

- a. **Authority to Continue.** Nonconforming uses of land or structures may continue in accordance with the provisions of this Section.
- b. **Ordinary Repair and Maintenance.** Normal maintenance and repair of structures containing nonconforming uses may be performed.
- c. **Expansions.** Unless otherwise noted in this Article, nonconforming uses shall not be expanded. This prohibition shall be construed so as to prevent the enlargement of nonconforming uses by an addition to the structure housing the nonconforming use or by the occupation of additional land.
- d. **Relocation.** The structure housing a nonconforming use may not be moved unless the entire structure and use shall thereafter conform to the requirements of this Code.
- e. **Change in Use.** A nonconforming use shall not be changed to any other use unless such use conforms to the provisions of this Code. A change in use shall mean a substantial change in character involving activities that result in different external impacts. A change only in the items offered for sale or manufactured or a change in the business name shall not constitute a change in use.
- f. **Termination.**
  1. Abandonment or Discontinuance - when a nonconforming use is discontinued or abandoned for six (6) months, then the nonconforming use may not be restored.
  2. Damage or Destruction - if a structure housing a nonconforming use is damaged or destroyed to the extent of fifty percent (50%) or more of the assessed value of the structure, then the nonconforming use of the structure may not be restored, with the following exception:
    - a. Any existing single-family residential use considered non-conforming and permitted prior to the adoption of this Code may be permitted to restore

damaged or destroyed buildings, not to exceed the existing footprint (prior to the damage or destruction), unless approval of a variance is granted by City Council to expand the footprint of the structure. City Council may also consider requests to waive the application fee.

### **21-71.02 - Non-Conforming Structures**

- a. **Authority to Continue.** Nonconforming structures may continue in accordance with the provision of this Section.
- b. **Ordinary Repair and Maintenance.** Normal maintenance and repair of nonconforming structures may be performed.
- c. **Expansions.** Any expansion of a nonconforming structure shall be in conformance with the provisions of this Article. This shall not prevent expansion as long as the nonconformity is not increased. A nonconforming structure may be altered or enlarged into a required setback which already contains an encroachment as long as the existing setback is not reduced further.
- d. **Relocation.** A nonconforming structure that is moved shall thereafter conform to the requirements of this Code.
- e. **Termination Upon Damage or Destruction.** Any part of a nonconforming structure that is damaged or destroyed to the extent of fifty percent (50%) or more of the assessed value of said structure shall not be restored unless that part conforms to the provisions of this Code, with the following exception:
  1. Any existing single-family residential structure considered non-conforming and permitted prior to the adoption of this Code may be permitted to restore damaged or destroyed buildings, not to exceed the existing footprint (prior to the damage or destruction), unless approval of a variance is granted by City Council to expand the footprint of the structure. City Council may also consider requests to waive the application fee.

### **21-71.03 - Non-Conforming Lots of Record**

- a. **Legally Nonconforming Lots of Record.** Any lot created prior to June 17, 1974, shall be considered legally nonconforming if the lot has a width of at least forty (40) feet and an area of at least three thousand six hundred (3,600) square feet. Any lot created between June 17, 1974 and the effective date of this Code shall be considered legally conforming only if the lot met the requirements in effect as of the date the lot was created.

### **21-71.04 - Non-Conforming Lots**

- a. In any district, principal permitted structures and customary accessory buildings may be erected on any legally nonconforming lot of record or lot rendered nonconforming through the exercise of eminent domain.
- b. Such lot shall be in separate ownership and not be contiguous to other lots in the same or substantially the same ownership. This provision shall apply even though such lot fails to meet the requirements of this Article for area, width, depth and frontage or any combination thereof, provided that yard dimensions and requirements other than those applying to area, width, depth or frontage shall conform to the requirements of this Article.
- c. Variance of yard dimensions and requirements shall be obtained only through action of the Planning and Zoning Board.
- d. If however, the lot has no frontage, then proof of recorded legal ingress and egress acceptable to the City Attorney must be furnished before a Development Order will be issued.
- e. If a nonconforming lot is contiguous to another lot in the same or substantially the same ownership, such lots shall be considered to be an undivided parcel for the purpose of this Article.
- f. The existence of a roadway dividing a parcel of land shall not determine whether the parcel is considered to be two separate lots. Each portion of the parcel must have a separate legal identity in order for the parcel to be considered two separate lots.
- g. All new dwellings built upon nonconforming lots of record shall be placed upon such lots in accordance with the following requirements when adjacent dwellings have existed and have been listed on the tax rolls before July 17, 1974:
  1. In subdivisions where dwellings have been placed on two (2) lots, the new dwellings can be built on the two (2) or more lots. Similarly, where dwellings have been placed on single lots, the new dwellings can be placed on single lots.
  2. New dwellings shall be placed so as to conform to the front setbacks of existing dwellings on the same street.
  3. The side setbacks for new dwellings shall be ten percent (10%) of the width of the lot, except that no such side setbacks shall be less than five feet (5').
  4. For pie-shaped lots, the side setbacks shall be ten percent (10%) of the figure reached by adding the width of the front and back of lot together and dividing by two (2), except that no such side setback shall be less than five feet (5').

### **21-71.05 - Non-Conforming Mobile Home Parks**

There exists within the City of Edgewater, Florida, non-conforming mobile home parks, formerly zoned MH-S.

The non-conforming mobile home parks now existing within the City of Edgewater, Florida, to wit: Anchor Garage Trailers, Blue Gables Trailer Park, Carter's Trailer Park, Edgewater Mobile Home Park, Friendly Shores, Pyramid Mobile Park, Riverview Pines and Wolfe's Driftwood Village, shall be hereafter classified as being with the MH-1 zoning classification and shall comply with the following provisions:

- a. The mobile home parks as set forth above shall hereafter be allowed to operate in their present number of mobile home spaces and all permanent structures now located in the respective mobile home parks.
- b. In the event that any of the mobile home parks as set forth above shall desire to expand the use of said parks, the owners of said parks shall be required to conform to all of the requirements regulating mobile home parks within the City of Edgewater, Florida, at the time of the proposed expansion for the use.
- c. Minimum setbacks for nonconforming mobile home parks shall be consistent with the requirements of the State Fire Code.

### **21-71.06 - Non-Conforming Parking Areas**

- a. To encourage redevelopment and to avoid requiring an excessive amount of parking spaces to serve a non-residential redevelopment project, the Technical Review Committee (based on reasonable evidence) may defer the provision of some portion of the off-street parking standards required by this Code if previous experience within the City for such a use or information supplied by the developer suggests that the required number of parking spaces and/or other parking standards may not be necessary.

**Sections 21-72 through 21-79 reserved for future use.**