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Chapter 1. GENERAL APPLICABILITY

Section 8.1.1. Purpose.

The purpose of this Article is to provide for the continuation, modification, or elimination of nonconforming uses, structures, and signs in accordance with the standards and conditions in this Article. While nonconformities may continue, the provisions of this Article are designed to encourage the improvement or elimination of nonconformities in order to better achieve the purposes of these regulations.
Section 8.1.2. Definitions.

The terms “Nonconforming,” “Nonconforming, Legally,” “Nonconforming Lots of Record,” “Nonconforming Sign,” “Nonconforming Structure,” and “Nonconforming Use” are defined in Article 11 of this Code and are incorporated by reference for purposes of applying the standards and requirements of this Article.

Chapter 2. NONCONFORMING LOTS OF RECORD

Section 8.2.1. General.

The majority of the City was platted in the Cape Coral Subdivision (Units 1 – 98) with 5,000 square foot lots, with two adjoining lots combined as a 10,000-square foot “Parcel” to construct a single-family residence. A 10,000-square foot parcel is the minimum lot size required for subdivision or development of a single-family residence or a two-family dwelling (LDC Article 4. Section 4.3 Zoning District Development Standards). Platted lots with less than 5,000 square feet and parcels less than 10,000 square feet are defined as nonconforming lots of record or parcels, respectively.

Section 8.2.2 Residential development on nonconforming lots of record.

Residential development on nonconforming lots of record may be permitted subject to the following requirements:

A. Development of single-family residences under this provision is limited to the R-1 and RML zoning districts.

B. Development of single-family residences defined as “Micro cottages” may be permitted on lots of record in the RML zoning district provided such lots are 5,000 square feet or more in area.

C. Development of two-family residences under this provision is limited to the RML zoning district.

D. Development of single-family or two-family residences is permitted on nonconforming lots of record and parcels less than 10,000 square feet in area, without a variance, provided that:

1. Such lots or parcels are larger than 7,500 square feet in area; and

2. The proposed development meets all requirements of this Code for setbacks, maximum building height, and off street parking.

E. The nonconforming lots of record or parcels less than 10,000 square feet in area have not been subdivided or their boundaries altered through the “lot split and combine” process.

Chapter 3. NONCONFORMING STRUCTURES

Section 8.3.1. Continuation of nonconforming structures.
Except as may be provided for elsewhere in these regulations, a non-conforming structure may be continued subject to the standards and conditions of this Chapter.

Section 8.3.2. Destruction of nonconforming structures.

A. Except for residential structures as identified in subsection B, below, a nonconforming structure that is damaged or destroyed to an extent exceeding 50 percent of the fair market value of the structure and improvements at the time of its destruction, shall not be reconstructed except in conformity with these regulations.

B. Nonconforming residential structures (including accessory structures) in residential zoning districts may be reconstructed if damaged or destroyed to any extent, (less than 50%) if such reconstruction does not increase the extent of the nonconformity(ies) existing prior to destruction and the footprint of the structure is not enlarged or changed.

Section 8.3.3. Alterations to nonconforming structures.

A structure that is nonconforming in any way, shall not be altered or enlarged in a way that increases the extent of any nonconformity. Normal maintenance and repair is permitted. Alterations and additions which do not increase the nonconformity may be permitted.

Chapter 4. NONCONFORMING SIGNS

Section 8.4.1. Requirements for nonconforming signs.

All signs with approved sign permits but which are not in conformance with the sign requirements of Article 7, may continue as nonconforming signs, subject to the standards and conditions of Article 7.

Chapter 5. NONCONFORMING USES

Section 8.5.1. Continuation of nonconforming uses.

Except as may be provided for elsewhere in these regulations, a non-conforming use may be continued subject to the standards and conditions of this Chapter.

Section 8.5.2. Extension or expansion of nonconforming use.

A nonconforming use shall not be enlarged or expanded, except for nonconformities created by amendments to the comprehensive plan, as described in Chapter 6 of this Article.

Section 8.5.3. - Discontinuance of nonconforming use.

Whenever a nonconforming use of property has been discontinued for a period of one year or more, such non-conforming use shall not thereafter be re-established, and the future use of the property shall be in conformity with the provisions of these regulations.
**Section 8.5.4. Permitted improvements of nonconforming uses.**

Renovations, repairs, or changes to nonconforming uses may be permitted, subject to the following requirements:

A. The nonconforming use is in a nonresidential zoning district;

B. The total cost of the improvements is less than 50 percent of the fair market value of the structure and improvements; and

C. The nonconforming use and associated site shall be brought into compliance with the following provisions of Article 5, Development Standards, to the maximum extent practicable, as determined by the Community Development Director:

1. Landscaping;

2. Sanitation;

3. Signs;

4. Lighting;

5. Stormwater;

6. Screening;

7. Noise Attenuation; and


**Chapter 6. NONCONFORMITIES RESULTING FROM COMPREHENSIVE PLAN CHANGES.**

**Section 8.6.1. Nonconformities created by comprehensive plan amendments.**

A. When an existing single-family or duplex dwelling becomes non-conforming as the result of an amendment to the Comprehensive Plan, including future land use map amendments, which amendment was not the result of an application or other action by the property owner, the principal single-family or duplex dwelling, as well as accessory structures, such as detached garages, sheds, and gazebos may be repaired, altered, enlarged, or replaced to the same extent as if the amendment to the Comprehensive Plan had not occurred for as long as the property owner who owned the property at the time the amendment was adopted continues to own the property on which the dwelling is located.

B. For the purposes of this exception, a single-family or duplex dwelling shall be deemed to be "existing" if, prior to the effective date of the amendment referred to above, the dwelling was either constructed
or an active application for a building permit to construct the dwelling was pending with or issued by
the city. This exception applies only when the effect of a Comprehensive Plan amendment would
render the principal single-family or duplex dwelling structure becoming non-conforming as the result
of an amendment, and does not apply when the effect of an amendment would render accessory
structures including sheds and gazebos, non-conforming while the principal dwelling remains
conforming. This exception does not apply either to conjoined residential dwellings or to multi-family
residential dwellings, regardless of number.

C. In the event the property owner who owned the real property containing the single- family or duplex
dwelling use at the time the Comprehensive Plan amendment was adopted conveys or otherwise
transfers ownership of the real property, subsequent to the adoption of the amendment, to another
person or entity, then this exception shall terminate and the dwelling shall be subject to the
limitations identified by Chapters 4 and 5 of this Article, that apply to non-conforming structures
generally and, prior to the conveyance or other transfer of property ownership, the property owner
shall notify in writing the person or entity to whom ownership is being transferred of the change in
the status of the property. The failure of a property owner to provide notice as required herein of the
change in the status of the property shall not affect the change in the status of the property.

Chapter 7. EMINENT DOMAIN.

Section 8.7.1. Nonconformities created by eminent domain.

Any structure, use, or lot made nonconforming as a direct result of eminent domain proceedings instituted
by the City of Cape Coral or other condemning authority, or through a voluntary conveyance by such lot
owner in lieu of formal eminent domain proceedings, which lot or parcel, except for such eminent domain
or voluntary conveyance, would be an otherwise conforming lot or parcel, shall be deemed to be a
conforming lot or parcel for all purposes under the City of Cape Coral Land Development Code, without
the necessity for a variance from any land development ordinance. This subsection shall not apply to any
lot or parcel which is reduced in size by more than 25 percent by such action.