

**ARTICLE NINE**

**NON-CONFORMING USES AND NON-COMPLYING STRUCTURES**

**9.00.00**      **INTENT**: This article provides certain limitations which restrict non-conforming uses and/or non-complying buildings and structures in order to realize the legislative intent and purpose of this ordinance and the adopted Comprehensive Plan of Santa Rosa County. This article is intended to assist in preserving the character of established districts in light of their suitability for particular uses, and thus to promote and protect public health, safety and general welfare.

**9.00.01**      **Non-Conforming Uses**: The provisions governing non-conforming uses set forth in this article are established to provide a gradual remedy for existing undesirable conditions resulting from such non-conforming uses. While non-conforming uses lawfully existing at the time of enactment of this ordinance are generally permitted to continue, this article is designed to restrict action regarding such uses which would make them more permanent establishments.

**9.00.02**      **Non-Complying Buildings and Structures**: The provisions governing non-complying buildings and structures are established to prevent the creation of additional non-complying buildings and structures lawfully existing at the time of enactment of this ordinance, it also provides, wherever reasonable and practical, for a gradual remedy from non-compliance.

**9.01.00**      **CONTINUANCE OF A NON-CONFORMING USE OR NON-COMPLYING BUILDING OR STRUCTURE**

A.      A non-conforming use lawfully existing at the time of the enactment of this ordinance may be continued subject to the provisions of this ordinance and any other applicable County land development regulations.

B.      The lawful use of a non-complying building or structure may be continued subject to provisions of this ordinance and any other County land development regulations.

C.      Nothing in this ordinance shall be interpreted as authorization for, or approval of, continuation of any illegal use of a building, structure, premises or land, in violation of any ordinance in effect at the time of the passage of this ordinance.

The casual, intermittent, temporary, or illegal use of land, building or structure for any length of time shall not be sufficient to establish the existence of a non-conforming use.

D.      Any planned building or structure for which a lawful building permit was issued prior to the enactment of this ordinance, and construction of which is or will be in conformity with approved site plans, if applicable, said building plans shall not be affected by this ordinance if the planned building or structure is built in full compliance with County land development regulations as they existed at the time of the issuance of the building permit. However, if such building or structure does not conform to the provisions of this Ordinance which cause such

planned building, structure or use to be non-conforming or non-complying, then it shall be non-conforming or non-complying, or both, as the case may be, by applying this ordinance to the building, structure or use.

E. Except within the Bagdad Village Historic zoning districts, any non-conforming mobile home in a residential zoning district may be replaced with an upgraded mobile home, notwithstanding the permitted use restrictions of the zoning district, provided that the exterior condition of the replacement mobile home is discernibly superior to the existing structure, so as to result in an aesthetic improvement to the neighborhood. (*This provision sunsets July 1, 2005.*)

*Modified: Ord. No. 2003-21, 8-8-03; Ord. 04-35, 11-29-04*

**9.02.00 INCREASE OF NON-CONFORMING USE PROHIBITED:** A non-conforming use shall not be extended, expanded, enlarged, or increased in intensity. Such prohibited activities apply to both complying and non-complying buildings or structures and shall include without being limited to:

A. Extension of non-conforming use to any other building or other structure. Extension of a non-conforming use to any land area other than the specific land area that was actually and directly occupied by such use on the effective date of this ordinance (or on the effective date of subsequent amendment thereto that causes such use to become non-conforming).

B. Extension of non-conforming use within a building or other structure to any portion of floor area on the same or another floor that was not actually and directly occupied by such use on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that causes such use to become non-conforming); provided, however, that a non-conforming use may be extended throughout any part of such building or other structure if same is extended without structural alteration to the building or structure, such extension does not require additional parking spaces, such extension does not add any additional dwelling units, and the existing non-conforming use and the proposed extension complies with bulk regulations, landscape requirements and other provisions of this ordinance.

C. Operation of a non-conforming use in such manner as to conflict with or to further conflict (if already conflicting on the effective date of this ordinance or, on the effective date of a subsequent amendment thereto that results in such use becoming non-conforming), with any performance standards established for the district in which the use is located.

D. Nothing contained in this Section shall in any way prohibit a non-conforming use from acquiring additional off-street parking area, subject to applicable landscape requirements.

E. No additions which increase the area of non-conforming use or a conforming use shall be made to any building or structure occupied, in whole or in part, by a non-conforming use.

F. No alterations shall be made to any building or structure occupied by a non-conforming use except as permitted by this Ordinance.

G. Nothing in this section shall prohibit the replacement of an existing nonconforming mobile home with an upgraded mobile home as provided in Section 9.01.00 (E), subject to applicable setback requirements.

*Modified: Ord. No. 2003-21, 8-8-03*

**9.03.00 CHANGE OF NON-CONFORMING USE:** If no structural alterations are made, a non-conforming use of a building or structure may be changed to another non-conforming use of similar classification under the following conditions:

A. The uses to which the building is to be put is at the time of the proposed change, classified as a similar use in the zoning district where the existing non-conforming use is permitted. If the existing non-conforming use is an unconditionally permitted use (not a conditional use) in more than one zoning district, the most restrictive zoning district where the use is unconditionally permitted shall be the zoning district referenced to determine whether the proposed new non-conforming use is classified as a use similar to the existing non-conforming use.

B. The change in use shall not intensify or enlarge the basic use of the building or premises by increasing the need for more parking facilities; by increasing vehicular or pedestrian traffic; by creating more noise, vibration, fire hazard, smoke, dust or fume, by increasing ground coverage or adversely impacting drainage; or otherwise result in a more intensive use of the building or premises unless the change is to make the building and premises more nearly conform to the requirements of the zoning of the district in which the building or structure is located.

C. When a non-conforming use of all or any part of a building, structure or premises is changed to another non-conforming use of a more restricted character, the new use may not thereafter be changed to any less restricted use.

D. When a non-conforming use of all or any building, structure or premises has been changed to a conforming use, the conforming use shall not thereafter be changed to any non-conforming use.

E. No alterations shall be made to any building or structure occupied by a non-conforming use except as permitted in this ordinance.

F. A change from one non-conforming use to another non-conforming use shall not be permitted if the change results in an extension of a non-conforming use, except as would be permitted pursuant to Section 9.02.00 (B) above.

**9.04.00 ALTERATIONS TO NON-CONFORMING USES OR NON-COMPLYING BUILDINGS OR STRUCTURES**

**9.04.01 Incidental Alterations to Non-Conforming or Non-Complying Buildings or Structures:** Repairs and alterations shall be limited to incidental alterations as defined below:

- A. Minor interior structural improvements which do not extend the non-conforming use or increase the non-compliance and which are consistent with all applicable provisions of this article.
- B. Replacement of, or minor changes in capacity of utility pipes, ducts, conduits, or other utility system components.
- C. Improvements to exterior facade, including windows or doors.
- D. No incidental alteration shall include an extension or addition which permits the non-conforming use to occupy any additional land or which increases any non-compliance.
- E. Any single family residential structure, including mobile homes, used for residential occupancy only, located in any district may make unwallled additions limited to the following: porches, patios, decks, and carports provided the more restrictive setbacks, open space, and other bulk regulations governing single family dwelling units are applied to the entire parcel. Accessory buildings are permitted in accordance with Section 2.10.06.

9.04.02 Non-Incidental Change of or Increase in Conforming Use in Non-Complying Building or Structure:

A. Change of Use or Increase in Floor Area With No Exterior Addition - Provided non-compliance is not intensified, extended or increased, a change from one conforming use to another conforming use, or an increase in the area of a conforming use, within a non-complying building or structure, with or without structural alterations, is permitted only under the following conditions:

1. All uses to which said building or structure is put conform to the applicable use provisions of the zoning district in which the building or structure is located.
2. If only parking is deficient at the time of the proposed change under the provisions of this ordinance and the change does not require any additional parking space which would increase the existing parking deficiency and its attendant landscaping are corrected to the extent sufficient land is available on the site to accommodate some or all of the deficient parking spaces. Increases in floor area which result in additional required parking may be permitted up to the square footage that would still allow for the accommodation of the additional required parking.
3. If only landscaping is deficient at the time of the proposed change under the provisions of this ordinance, and the change does not require additional parking spaces, the change is permitted providing the existing landscaping deficiency is corrected to the extent sufficient land is available on the site to accommodate some or all of the deficient landscaping.
4. If the parking area is deficient at the time of the proposed change under the provisions of this ordinance and the proposed change requires additional parking spaces over the existing parking deficiency, the change is prohibited unless the net additional parking

area and its attendant landscaping are provided and any deficiencies are corrected under the same criteria in this article.

5. If both existing parking and landscaping are deficient at the time of the proposed change under the provisions of this ordinance and the change does not require any additional parking, or any additional landscaping or which would increase the requirement for parking or landscaping over the existing deficiencies, the change is permitted provided the deficiencies are corrected to accommodate some or all of the deficient parking or landscaping. If sufficient land is not available on the site to allow correction of all of the parking and landscaping deficiencies (at the time of the proposed change), priority of correction to the landscaping and parking deficiencies shall be determined on a case-by-case basis by the Planning Director and, the Building Director. The Planning Director shall determine if the proposed change is a minor change in site plan pursuant to Section 2.10.00 et. seq., or if the change requires full site plan review.
6. If parking and landscaping are in compliance at the time of the proposed change under the provisions of this code and the proposed changes do not render either the parking or landscaping deficient, the change is permitted. If the proposed change would render either the parking or landscaping, or both, to become deficient, and therefore non-complying, the change is prohibited unless the required additional parking and landscaping are provided.

B. Addition to a Non-Complying Building or Structure or Addition to Another Building or Structure - Provided non-compliance is not intensified, extended or increased, an increase in the area of a conforming use by the addition to a non-complying building or structure, or by the addition of another building or structure on the site, is permitted only under the following conditions:

1. All uses to which all buildings or structures are put conform to the applicable use provisions of the zoning district in which the building or structure is located.
2. In every case the additional parking required by the addition shall be provided.
3. In every case the additional landscaping required by the addition shall be provided.

In addition to the requirements of paragraphs (1), (2) and (3) above:

4. If only parking space is deficient at the time of the proposed addition under the provisions of this code, the deficiency shall be corrected by applying the following formula: Divide the gross floor area of the existing building(s) or structure(s) into the gross floor area of the proposed addition to establish a percentage; then multiply the percentage times the existing building prior to the proposed addition. The result rounded at the next highest whole number shall be the minimum number of parking spaces required (with attendant landscaping) to correct the deficiency.

If insufficient land remains to fully accommodate both the remaining parking deficiency and the landscaping required by the parking spaces to accommodate the remaining

parking deficiency, the priority of parking spaces vis-a-vis landscaping shall be determined on a case-by-case basis as provided in this Section above.

5. If only landscaping is deficient under the provisions of this code at the time of the proposed addition, and the addition does not require additional parking, the landscaping deficiency shall be corrected to the extent sufficient land was available on the effective date of this ordinance on the site to accommodate the landscaping.
6. If both parking and landscaping are deficient at the time of the proposed addition, and the minimum requirements of paragraphs (1), (2), (3), and (4) above are complied with and additional land area was available on the site on the effective date of this ordinance or at the time of the proposed addition, whichever land area is greater, to accommodate both the parking and landscaping deficiencies shall be complied with.

If, under the above situation sufficient land was not available on the effective date of this ordinance on the site to accommodate full correction of both deficiencies, and sufficient land is not available on the site at the time of the proposed change, whichever land area is greater, the priority of corrections shall be determined as provided in Section 9.04.02 (5) above.

#### 9.04.03 Provisions for Determining the Required Corrections to Deficiencies

A. It is the intent of this ordinance to require the corrections of deficiencies to the extent sufficient land was available on site to accommodate maximum corrections to deficiencies to the effective date of this ordinance.

B. If any land area was available on the site on the effective date of the deficiencies by applying this ordinance, but the land area has been voluntarily changed on the effective date of this ordinance or thereafter, whereby the net land area available (at the time of the proposed change) to accommodate the corrections that could have been accommodated on the effective date of this ordinance, has been reduced, the proposed change or addition or both shall be prohibited. This condition is intended to prohibit voluntary sales, leases, and other changes to the land area that should cause a situation whereby all of the possible maximum corrections (to deficiencies) as they existed on the effective date of this ordinance would need not be complied with because the landowner(s) or their successors in interest, at any time after the effective date of this ordinance, made changes to the land which resulted in a reduction to the number of possible corrections of deficiencies.

C. Involuntary transfers of, or restrictions on, the land which occurred after the effective date of this ordinance, shall not be held against the proposed addition as to the existing deficiencies only and, in such event, the provisions relating to existing deficiency shall be complied with to the extent possible at the time, subject to full compliance with the provisions of this Section relating to changes of additions which require additional parking or landscaping, or both over and above any existing deficiency.

D. The landowner or his representative shall be required to prove the size and shape of the site on the effective date of this ordinance, plus the size and location of all buildings and structures, including parking lots, on the effective date of this ordinance, plus the net addition to

or subtraction from the land area or buildings or structures, or both, at the time of the proposed addition, to enable the County to properly determine the legality and propriety of the proposed change or addition; and the corresponding required corrections of the existing deficiencies, if any, in parking and landscaping.

E. Repairs or resurfacing of existing parking lots without landscaping is prohibited unless the landscaping deficiency is corrected to the extent land is available on the site to accommodate the landscaping without reducing the existing parking area to less than the applicable parking requirements.

**9.05.00 ABANDONMENT OR DISCONTINUANCE OR A NON-CONFORMING USE**

A. If a non-conforming use is removed or abandoned for a continuous period of not less than ninety (90) days, every future use of the premises shall be in conformity with the use provisions of this ordinance. All material and equipment associated with the abandoned non-conforming use shall be completely removed from the premises by its owner within one (1) year after the expiration of the ninety (90) day period.

B. Where the cessation of the use is involuntary or the result of acts of God, the non-conforming use shall not be declared abandoned until after a six (6) month period. However, if the use is discontinued voluntarily or involuntarily for a period of six (6) months or more, every future use of the premises shall be in conformity with the use provisions of this Ordinance and all material and equipment associated with the discontinued non-conforming use shall be completely removed from the premises by the owner. Extensions to the six (6) month time period may be granted by the BOA (County Zoning Review and Appeals Board) if the landowner proves a cessation of use for a period of more than six (6) months was due to circumstances beyond his control and that he exerted a continuing good faith effort to put the building or structure to use during the six (6) month period.

**9.06.00 DESTRUCTION OF NON-CONFORMING USES AND NON-COMPLYING BUILDINGS AND STRUCTURES:** Nothing in this Ordinance shall prevent either:

A. The restoration of a building destroyed to the extent of not more than forty-nine percent (49%) of total replacement value by fire, explosion or other casualty, or act of God, or public enemy, or

B. The continued occupancy or use of such building or part thereof which existed at the time of such partial destruction.

If damage exceeds forty-nine percent (49%) of the replacement value, the owner may appeal to the Board of Adjustment (Zoning Review and Appeals Board) for a special exception pursuant to Article 2 of this ordinance.

Destruction or damage of non-complying residential buildings:

Notwithstanding any other provision of this ordinance, any residential building located on Navarre Beach which was damaged or destroyed by Hurricane Ivan which was non-complying only by reason of side, rear or front yard setbacks may be rebuilt in its original footprint. Additionally, said building or structure may be rebuilt in a modified footprint, so long as such modified footprint is closer to compliance with the applicable rear, front or side setback requirement than the original footprint.

All such reconstruction shall not require a variance, but must comply with all other applicable state and federal laws or regulations.

9.16.01      Rebuilding within the Historic and/or Conservation Overlay District Following a Disaster: Within the Historic and Conservation Overlay Districts, should a structure be fully or partially destroyed by a disaster such as a hurricane, flood or fire, the owner may rebuild the structure to its pre-disaster condition regardless of its consistency with the overlay design standards, provided that all other provisions of this code are met. This provision does not apply to acts purposefully caused or allowed by the owner, such as arson.

**9.07.00      NON-CONFORMING GRAVEL, DIRT, OR EARTH MATERIAL EXCAVATION OPERATIONS**

All lawfully existing nonconforming gravel, dirt, or earth material excavation, mining, borrow pits, and construction and demolition debris (C&D) and land clearing (LCD) disposal facilities shall be subject to the following:

- A. Those facilities which have an approved and unexpired site plan on file with the County may develop the approved operation(s) to the extent approved on said site plan..
- B. For legally existing nonconforming facilities or facilities that have been granted previous land use approval, site plan approval for certain development activities that are not described by a previously approved and valid site plan may be requested without a zoning change to the PIT district.

- 1. This allowance applies in either of the following situations:
  - a. Proposed development of a facility, operation or use that is consistent with a valid and unexpired conditional use approval which was granted prior to the adoption of Ordinance 2011-19 (July 28, 2011);
  - b. Proposed expansion of a legally existing use at a legally existing nonconforming or previously approved facility in operation prior to adoption of Ordinance 2011-19 (July 28, 2011).
- 2. Development activities allowed under subpart 1 above shall be subject to site plan review and the following standards;

- a. Development is allowed to the extent as specified by the conditional use or rezoning approval(s) and any conditions specified in said approval, if any;
- b. Development will be subject the standards of Section 6.05.26, parts D, E, K, L (2), M, N, O, P, Q, and R; and
- c. Facilities, operations and uses will be subject to the following property line setbacks;
  - i. Gravel, dirt, earth material excavation/mining activities: The minimum setback shall be fifty (50) feet from all property lines and public rights-of-way for excavations up to one hundred (100) feet deep. The minimum setback shall be one hundred (100) feet from all property lines and public rights-of-way for excavation deeper than one hundred (100) feet. Sloped or terraced excavation will be allowed within a horizontal distance of fifty (50) feet to provide a transition between the fifty (50) foot and one hundred (100) foot excavation depth areas. The vertical drop within the transition area cannot exceed a distance of one (1) foot vertical drop for each one (1) foot of horizontal distance. Such activities shall be located no closer than two hundred (200) feet from residentially zoned property.
  - ii. LCD disposal facilities: The minimum setback shall be one hundred (100) feet from all property lines and public rights-of-way.
  - iii. C&D disposal facilities: The minimum setback shall be one hundred (100) feet from all property lines and public rights-of-way and five hundred (500) feet from all residentially zoned properties, including residential properties across a right-of-way. For the purposes of this subsection, AG and AG-2 are not considered residential zoning districts.

C. All other development activities, expansions or pit conversions not allowed under parts A and B above are not permitted without a zoning change to the PIT district and subsequent site plan approval.

D. For the purposes of this section, excavation or borrow operations, LCD disposal operations and C&D disposal operations are considered separate and distinct uses.