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ARTICLE III - NONCONFORMITIES

SECTION 3.01 INTENT AND APPLICABILITY

SECTION 3.01.01 INTENT

- A. Within the districts established by the City of Destin, legal nonconformities exist which were lawful by way of being permitted or approved before the adoption of the Land Development Code (LDC or this "Code") and are now prohibited, regulated, or restricted under this Code. This includes but is not limited to:
 1. Lot(s)
 2. Land use(s)
 3. Structure(s)
 4. Site Elements
 5. Signs
- B. This Article intends to implement policies 1-3.6.2 and 1-3.6.3 of the Comprehensive Plan, prohibiting
 1. The expansion of nonconforming land uses
 2. Development that intensifies a nonconforming use
 3. Increases or exacerbates the intensities of a nonconforming feature of a building or structure.
- C. The following standards shall require that plans for alterations to nonconforming structures incorporate improvements to bring the subject structure into compliance to the greatest reasonable and practical extent.

SECTION 3.02 NONCONFORMING LOTS

SECTION 3.02.01 LOTS OF RECORD

- A. If a nonconforming lot of record existed by way of plat, subdivision or contract of purchase prior to March 11, 1974, and a single-family dwelling is a permitted use of the applicable zoning district, then;
 1. The owner shall be allowed to construct a single-family dwelling, and
 2. Customary accessory structures if the primary dwelling is established on the property.
- B. Any variance of setback requirements shall be obtained only through action of the Board of Adjustment.
- C. No such nonconforming lot shall be altered in a way which increases its nonconformity, but any lot or portion thereof may be altered to decrease its nonconformity.

SECTION 3.03 NONCONFORMING USES

SECTION 3.03.01 LEGAL NONCONFORMING USES

- A. Uses of land, including uses of land with minor structures, made nonconforming by the adoption of this code, may be continued so long as it remains otherwise lawful, provided:
 1. No such nonconforming use shall be enlarged, increased, or expanded to occupy a greater area of land than occupied at the effective date of adoption or amendment of this provision.
 2. The nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than the area occupied by such use at the effective date of adoption or amendment of this provision.

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3. If any nonconforming use of land ceases for any reason for a period of more than six months, any subsequent use of land, lot or parcel shall conform to this Code specified by the district in which the land, lot, or parcel is located.
4. No additional structure not conforming to the requirements of this section shall be erected in connection with such nonconforming use of land.

SECTION 3.03.02 NONCONFORMING USES UNDER SPECIAL EXCEPTION PROVISIONS

- A. A nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use only if the proposed use is in the public's interest, such as;
 1. Law enforcement,
 2. Fire and rescue,
 3. Utilities,
 4. Public services.
- B. The Board of Adjustment by making findings in the specific case, shall find that the proposed use is necessary in this specific location based on the interest of the public. The Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of the LDC.
- C. Any use which is permitted as a special exception in a district under the terms of this section shall be considered a legally nonconforming use.

SECTION 3.04 NONCONFORMING STRUCTURES

SECTION 3.04.01 LEGAL NONCONFORMING STRUCTURES

- A. Structures made nonconforming by the adoption of this code, may be continued so long as it remains otherwise lawful, provided:
 1. Any structure or portion thereof may be altered to decrease its nonconformity.
 2. No nonconforming structure or portion thereof shall be enlarged or altered in a way that increases its nonconformity.
 3. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, may be reconstructed in its nonconforming location, size, or height, provided that;
 - a. It shall not be reconstructed except in the exact dimensions as it existed on the date of its destruction with due diligence.
 - b. Complete building permit applications, conforming to current Florida Building Code requirements, must be submitted to the Community Development Department no more than;
 1. Six (6) months from the date of destruction for nonresidential structures
 2. One (1) year from the date of destruction for residential structures
 4. Should any structure be moved for any reason to any district whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

SECTION 3.04.02 MOBILE OR MANUFACTURED HOMES

- A. Where, at the time of passage of this provision, lawful use of land involving mobile or manufactured homes which would not be permitted by the regulations imposed by this Code, the structure and use may be continued so long as it remains otherwise lawful, provided:
 1. No additional mobile or manufactured homes shall be located on any parcel in excess of the number of mobile or manufactured home sites, consisting of the appropriate slabs or

other identifiable location and utility connections which were in existence at the effective date of adoption or amendment of this Code.

2. If any individual mobile or manufactured homes located on any individually owned parcel or lot of record shall be moved for more than a period of six months, any subsequent use of such land shall conform to the regulations specified by this Code for the district in which such land is located.
 3. These regulations are not intended to prohibit the continued operation of existing mobile or manufactured home parks as of the effective date of adoption or amendment of this Code and such mobile or manufactured home parks are expressly permitted to continue operation in the manner conducted prior to the effective date of adoption or amendment of this chapter.
- B. If any individual mobile/manufactured home located on any parcel of property on the effective date of adoption of this section shall be bounded by a fence or other boundary mutually agreed to by the adjoining land owners or occupants, and provided said lots abut a city street or public right-of-way, said lots may be sold or otherwise conveyed by metes and bounds description and such use continued so long as not abandoned pursuant to **Section XX.XX.XX** of this Code.

SECTION 3.05 NONCONFORMING SITE ELEMENTS

SECTION 3.05.01 LEGAL NONCONFORMING SITE ELEMENTS

- A. Legal nonconforming site elements listed in Paragraph C. below may be continued on-site so long as it remains otherwise lawful, unless the existing on-site uses, structures, or other elements do not require site modifications to meet this Code requirements.
- B. Legal nonconforming site elements shall be brought into compliance with this Code if;
1. The use of the site changes, expands, or increases that the Change of Use process per **Article 2** applies.
 2. The existing structure is modified, expanded, and increased to affect the existing condition of the legal nonconforming element.
- C. Legal nonconforming elements may include, but are not limited to;
1. Off-street parking
 2. Landscaping
 3. Lighting
 4. Stormwater
 5. Access (ingress or egress)
 6. Utilities
 7. Open space

SECTION 3.06 NONCONFORMING SIGNS

SECTION 3.06.01 LEGAL NONCONFORMING SIGNS

- A. All legal nonconforming signs shall be subject to the following restrictions:
1. No nonconforming sign may be enlarged or altered in a way which increases its nonconformity,
 2. A sign, or portion thereof, may be altered to decrease its nonconformity or for ordinary repair and maintenance as provided for herein.
 3. Ordinary repair and maintenance of nonconforming signs is permitted, up to 50% of the cost of replacement, as follows:

- a. Ordinary repair and maintenance shall mean the work necessary to keep the sign in good state of repair provided, however, ordinary repair and maintenance shall not include replacement of structural materials.
 - b. Structural materials, as used in this section shall mean those materials comprising the load-bearing components of the sign including, but not limited to;
 1. Vertical supports
 2. Horizontal stringers
 3. Braces, bracing wires, or brackets
 4. Catwalks
 - c. Structural materials do not include the;
 1. Sign face
 2. Skirt
 3. Electrical service or electric lighting, except in cases where such items have been incorporated into the load-bearing parts of the sign.
 - d. Examples of changes, modifications, or work which do not constitute ordinary repair and maintenance and are prohibited include, but are not limited to:
 1. Modification that changes the structure, or type of structure, of the sign, such as conversion of back-to-back sign to a V-type, or conversion of a wooden sign structure to a metal structure.
 2. Modification that changes the sign face area or the height of the sign.
 3. Modification that enhances the visibility of the sign's message or the period of time the sign's message is visible.
 4. Modification that adds automatic or electronic changeable faces, or copy.
 5. Modification that adds artificial lighting, or changes the existing lighting, such that elimination of the sign face is substantially increased.
 - e. Should a nonconforming sign be destroyed and must be structurally repaired by any means it shall be reconstructed in compliance with this Code.
 - f. A nonconforming sign may not be disassembled and re-erected at the same location.
 - g. A nonconforming sign may not be relocated.
 - h. A nonconforming sign which has become structurally unstable or constitutes an imminent threat to public safety shall be removed. Any replacement sign must conform to the provisions of **Section XX.XX.XX** Permitted signs.
 1. The Building Official has the authority to enforce this section.
 - i. Nothing in this section shall be construed so as to constitute a violation of § 70.20, Florida Statutes.
- B. Off-site signs: If an existing nonconforming off-site sign, billboard, or permanent outdoor advertising sign is destroyed by any cause, it may not be rebuilt for any reason.

SECTION 3.07 NONCONFORMITIES DUE TO PUBLIC AGENCY ACTION

- A. In the event that an action by a public agency (City of Destin, Florida Department of Transportation, etc.) creates a nonconforming structure and/or site, such structure or site may remain as legally nonconforming and no further action on the part of the owner is required.
- B. No legal nonconformity created due to public agency action may be increased or intensified and shall be governed by the appropriate sections of this article.
- C. In the event that a nonconformity is created by public agency action that results in a risk to public health, safety or welfare, the City Manager or designee may require certain LDC provisions to be

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met to the maximum degree physically and financially feasible, at the cost of the public agency that created the nonconformity.

- a. The public agency shall rectify or mitigate the created risk at the time the risk is identified.
- b. If the risk cannot be reasonably mitigated then the public agency shall be responsible for acquiring the entire property where the risk is created.

SECTION 3.08 REPAIRS AND MAINTENANCE

- A. Nonconforming Multifamily or non-residential structures, including townhouse structures or portion of a structure containing a nonconforming use, work may be done not to exceed 25% of the current replacements cost of the structure, in any period of 12 consecutive months on the items listed below, provided that the cubic content existing when it became nonconforming shall not be increased;
 - a. Ordinary repairs
 - b. Repair or replacement of nonbearing walls
 - c. Fixtures
 - d. Wiring
 - e. plumbing,
- B. Paragraph A above does not apply to Single-Family or Duplex dwellings.
 - a. The intent of Paragraph A is not to supersede or nullify any Federal or State improvement requirements for Flood Plain improvements.
- C. For any nonconforming structure, declared to be unsafe or unlawful to use by any duly authorized official, no permits shall be issued to restore, repair, rebuild, modify, remodel, or for similar improvements.
 - a. Any permit for a structure declared unsafe, shall be in full compliance with the currently adopted Land Development Code.
- D. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any conforming building or part of a nonconforming structure thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.