

# Lee County Land Development code

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## **DIVISION 3. NONCONFORMING BUILDINGS AND USE OF BUILDINGS**

### **Sec. 34-3241. Nonconforming buildings and structures.**

(a) For purposes of this division, the term "nonconforming building or structure" means a building or structure which was lawful prior to the adoption of the ordinance from which this chapter is derived, or the adoption of a revision or amendment of this chapter, but which fails, by reason of such adoption, revision or amendment, to conform to the proper development requirements of the zoning district in which the building or structure is located due to its size, dimension or location on the lot.

(b) A nonconforming building or structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) Except as provided in section 34-3203, no such building or structure may be enlarged, altered or repaired in a way which, in the opinion of the department director or his designee, increases its nonconformity, but any structure or building or portion thereof may be altered to decrease its nonconformity. If there is more than one structure on a property with a legally nonconforming use, a limited expansion may be allowed subject to there being a determination that there will be an improvement to neighborhood compatibility. The limited expansion shall be to allow a structure or portion of a structure to be destroyed and the equivalent square footage replaced by expansion of another existing structure if the department director makes a determination that such expansion would not be detrimental to the neighborhood and such expansion is less than 50 percent of the current assessed value of the structure which will be expanded. Any expansion must also conform to setback requirements and all other requirements for the zoning district in which the property is located.

(2) Except as provided in this section:

a. Any nonconforming structure or building, or portion thereof, that is substantially improved (reconstructed, rehabilitated, altered or demolished) to the extent that the cost of such improvement equals or exceeds a cumulative total of 50 percent of the current assessed value of the structure before the start of construction of the improvement may only be reconstructed at, but not to exceed, the lawful density or intensity existing at the time of destruction; provided, however, that the reconstruction of the structure is consistent with federal, state and local regulations and all the other provisions of this chapter. Any such alteration, demolition, reconstruction or rebuilding must be recorded with the division of development services for the purpose of establishing the value upon which subsequent alterations, demolition, reconstructions or rehabilitations will be based.

b. Structures damaged by fire or other natural forces to the extent that the cost of their reconstruction or repair exceeds 50 percent of the replacement cost of the structure may be reconstructed at, but not to exceed, the legally documented actual use, density and intensity existing at the time of destruction, thereby allowing such structures to be rebuilt or replaced to the size, style and type of their original

construction, including their original square footage; provided, however, that the affected structure, as rebuilt or replaced, complies with all applicable federal and state regulations, local building and life safety regulations, and other local regulations that do not preclude reconstruction otherwise intended by the Lee Plan and Lee County Ordinance No. 95-14, as amended from time to time.

(3) A lawfully existing single-family residence or mobile home damaged by fire or other natural forces may be repaired or replaced, provided the new unit is no larger in area, width and depth than the size of unit being replaced.

(4) Repairs, reconstruction or renewal of an existing structure, building or portion thereof for the purpose of its maintenance may be permitted. However, repairs, reconstruction or renewal of structural elements will be reviewed by the director of the division of development services to determine applicability under this section, or whether such repairs will be considered under subsection (b)(2)a. of this section. For purposes of this section, a change in the roofline from a flat roof to a peaked roof constitutes an alteration as indicated in subsection (b)(2)a. of this section, provided that there is no increase in floor area.

(5) Should a nonconforming structure be moved on-site for any reason, for any distance whatever, it may not be moved unless the relocation decreases the nonconformity.

(6) Any portion of a nonconforming structure that becomes physically unsafe or unlawful due to lack of repairs and maintenance, and which is declared unsafe or unlawful by a duly authorized county official, but which the owner wishes to repair, restore or rebuild, must be repaired, restored or rebuilt in conformance with the provisions of this chapter. Excluded from this provision are buildings that have been designated as historic by chapter 22.

(7) Zoning applications that include property upon which a nonconforming structure exists at the time of the zoning application, must include a sworn statement from the property owner regarding the owner's intent with respect to bringing the nonconforming structure into compliance in the event the zoning request is granted. A finding regarding the nonconforming structure must be included in the zoning resolution or decision.

(Zoning Ord. 1993, § 603; Ord. No. 98-28, § 5, 12-8-98; Ord. No. 07-24, § 7, 8-14-07)

#### **Sec. 34-3242. Nonconforming uses of buildings.**

A nonconforming use of a building, or building and land in combination, may be continued subject to the following provisions:

(1) Enlargement or replacement. No such nonconforming use of a building, or building and land in combination, shall be extended or enlarged, or replaced by another building or use not specifically permitted in the use regulations for the zoning district in which the building is located.

(2) Discontinuance. When a nonconforming use of a building, land, or building and land in combination is discontinued or abandoned for six consecutive months (except when government action impedes access to the land), the building, or building and land in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located. This subsection shall not apply to seasonal agricultural uses.

(3) Repair and maintenance.

a. Only ordinary repairs and maintenance, including repair or replacement of roof covering, walls, fixtures, wiring or plumbing, shall be permitted on any building or structure devoted to a nonconforming use. In no case shall such repairs include structural alterations.

b. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations for the district in which located.

(Zoning Ord. 1993, § 601.02)

Secs. 34-3243--34-3270. Reserved.