



CITY OF
TALLAHASSEE



Zoning Spotlight

Nonconformities

Growth Management Department
October 2024

Introduction

There's a very practical reason why zoning codes across the country have provisions related to nonconformities. The reason is that zoning codes are living documents which are designed to change over time to reflect evolving conditions, goals, and aspirations of our city and the world around us. Fine tunings to the zoning code occur in an ongoing effort to make it better and more responsive to the needs of the community.

Florida's first general zoning enabling act was approved in 1939. Obviously, much has changed since then. New land uses have emerged, such as data warehousing and distribution centers. Likewise, land uses have fallen out of favor, like video rental stores and newspaper stands. Moreover, the desired patterns of development continue to shift. In the post-World War II era, the ideal became the house in the suburbs in a sea of low density residential, with the car becoming the dominant means of transportation. Today, more and more people are again valuing the diversity of a walkable mix of land uses that was more prevalent prior to World War II. As our society and our economy change, it can often require our zoning code to change with it.

A practical by product of these changes is that sometimes a lot, a land use, or a building that met the standards of an existing zoning code might not meet the requirements of a future updated zoning code. Such a lot, land use, or building is known as a legally existing nonconformity. It met the zoning code that was in place when the lot was subdivided, the land use was allowed, or the building was built, but it doesn't meet the standards of the new code today.

Examples

The next page shows examples of nonconforming lots, uses, and buildings. In each case, the lot, use, or building was legally created

or built because it met the zoning code that existed at that time. However, a subsequent change in the zoning code created a new standard, which then led to the nonconformity.

Definitions

The City's nonconformity standards are provided at [Sec. 10-71 through Sec. 10-109](#), TLDC. [Sec. 10-71](#), TLDC provides 20 defined terms that specifically relate to nonconformities, and 7 of those definitions are paraphrased below as an introduction to the topic. The complete definition of each term can be found at [Sec. 10-71](#), TLDC.



“Nonconformity” means a situation that occurs when an existing lot, structure or improvement, or the use of an existing lot, structure or improvement no longer meets one or more of the regulations applicable to the zoning district in which the lot, structure or improvement is located due to an adopted change in the Zoning Code. For example, as shown by the photo at the left, a car dealership in a downtown zoning district that only allows offices, restaurants, and other pedestrian oriented uses would be a nonconformity.

“Nonconforming lot” means a nonconformity that occurs when a lot (existing before the adoption of the Zoning Code) does not meet the minimum area requirement of the zoning district in which the lot is now located.

“Nonconforming use” means a nonconformity that occurs when property is used for a purpose made unlawful by subsequent changes to the Zoning Code related to permitted uses, development standards, or dimensional requirements.

“Nonconformity relief” means permission from the Board of Adjustment and Appeals to deviate from the limitations on permissible activities in connection with a nonconformity.

Examples of Nonconforming Lots, Uses, and Buildings



The RP-1 zoning district requires a 20-foot side yard setback from adjacent high schools. This house provides a 10-foot side yard and would therefore be a nonconforming building next to a high school.



The CU-45 zoning district allows a maximum of 80% of the lot to be impervious. However, 95% of this commercial lot is impervious. The retail building would therefore be a nonconforming structure in the CU-45 district.



The R-1 zoning district allows a maximum height of 3 stories. However, this single family residence totals 4 stories. It would therefore be a nonconforming structure in the R-1 district.



The OR-2 zoning district requires a minimum lot size of 5,000 square feet. This lot has 4,950 square feet and would therefore be a nonconforming lot in the OR-2 district.



The CP zoning district doesn't allow single family homes. The residence at the left would therefore be a nonconforming use. A house might be built when the land had residential zoning. However, the zoning is subsequently changed, and the neighborhood then evolves towards office and commercial uses.



Accessory dwelling units must meet the side and rear yard setbacks that apply in their zoning district. In the RP-2 district (outside of the Multi-Modal Transportation District), the side and rear yard setback is 7.5 feet and 25 feet, respectively. This ADU is built on the property lines and would therefore be a nonconforming building.

“Discontinue” means to cease a use or activity or the use of a building or structure with the intent to resume the same or another use or activity within 6 months. Discontinuation includes temporary or short term interruptions in a use, during periods of remodeling, maintaining or rearranging a facility, or during normal periods of vacation or seasonal closure, and changes of use or tenancy, or periods during which the property is being held for sale or lease.

“Abandonment” means to cease a use or activity without intent to resume for more than 6 months, unless the owner meets any one of the following criteria: 1.) Has a valid, unexpired occupational license for the premises; or 2.) Continues utility connections; or 3.) Actively markets the property; or 4.) Is engaged in legal proceedings related to change of ownership. Alternately, the owner may also seek a variance from the Board of Adjustment and Appeals to extend the time. The gas station shown below is abandoned because it hasn't been operational for over 6 months and doesn't meet any of the stated exceptions.

“Amortization” is a process that allows the City to establish a timetable by which certain types of nonconformities must be eliminated or made

conforming. It has not been used by the City in recent memory. Local governments typically use amortization when it serves a compelling public purpose. It is not a tool that is used frequently.

Purpose of Nonconformities

The nonconformity standards serve four purposes. First, they create a legal framework for nonconforming uses to continue in their current state. Second, they provide guidance concerning the allowable scope of their ongoing repair and maintenance. Third, they limit the ability of a nonconformity to expand or relocate, or change the land use. Fourth, they explain how a city can require the eventual removal of a nonconformity through a process called amortization. As noted above, amortization is rarely if ever used and is reserved for circumstances that involve a significant public purpose.

There are four broad categories of nonconformities, including nonconforming lots (see [Sec. 10-76](#), TLDC), nonconforming uses of land (see [Sec. 10-77](#), TLDC), nonconforming buildings (see [Sec. 10-78](#), TLDC), and nonconforming uses of a conforming building (see [Sec. 10-79](#), TLDC). The Code explains nonconformities in great detail



at the noted citations. The nonconformity standards are summarized at Table 1 on the last page of this issue of Zoning Spotlight.

Nonconformity Relief

If a project is proposed at a site with a nonconformity, [Sec. 10-80](#), TLDC allows the potential for nonconformity relief. The Code notes that the application for relief must be submitted to “the administrative body initially responsible for review of the subject project”. For example, if the underlying project is a subdivision, then the application would go to the Development Review Committee. Nonconformity relief may only be approved if the following criteria are met:

1. Development isn’t reasonably possible without relief;
2. Relief can’t increase or create a nonconformity;
3. Relief won’t cause significant adverse impact on surrounding land and isn’t detrimental to public health, safety, and welfare;
4. Relief is the minimum necessary to accommodate the use; and
5. The impact may be mitigated and approval is made conditional.

Amortization

Amortization hasn’t been used by the City in recent memory but is a tool that’s available in the Code. The City Commission may adopt an amortization schedule under which nonconformities may be gradually eliminated. The schedule establishes a timetable by which nonconformities must be either eliminated or made conforming. Rooming houses are the only use in recent memory that have been

addressed through amortization. A rooming house is a single-family dwelling or duplex rented by four or more persons unrelated by blood, marriage or legal adoption to both the owner of the house and to each other. They are prohibited in the RP-1, RP-2, R-1, and R-2 districts, were common nonconformities, and often housed large numbers of college students.

The City recognized the impact of rooming houses on neighborhoods and used a form of amortization to address the issue in 2000. Rooming houses existing between June 14, 1998 and June 14, 2000 in the RP-1, RP-2, R-1, and R-2 districts were required to do the following: a.) Register as a nonconforming use; b.) Appoint an agent for the purpose of receiving notices from the City; and c.) Renew their registration annually. Nonconforming rooming houses may lose their non-conforming status per specified criteria.

Conclusion

We hope this issue of Zoning Spotlight has been helpful. If you would like to discuss nonconformities further, please contact us at either (850) 891-7001, option 4, or at zoning@talgov.com. We look forward to hearing from you.

Please keep in mind that if a conflict is ever identified between the City Code and an issue of Zoning Spotlight, the City Code will control. Also, all photographs in this issue of Zoning Spotlight (prior to this page) were taken outside of Tallahassee but were used to illustrate examples of how development would be viewed in the City’s Code.



Type of Nonconformity	Land Use	May Be Continued Indefinitely	Repaired, Maintained, Remodeled, or Reconstructed	Extended or Enlarged	Move to New Location on Parcel	Changed to Another Use	Discontinued	Abandoned	Made Nonconforming as to Parking Space Requirements	Amortized	Nonconformity Relief
Nonconforming Lots	Manufactured homes, 1-family, and 2-family	Yes, if lot can be used in conformity with all other regulations.	NA	NA	NA	NA	NA	NA	NA	No	Yes, if setbacks are only standard not met, if proposed use is allowed by zoning, and if construction can't reasonably occur in conformity with setback or area requirements.
	Multi-family residential or non-residential	Yes. If possible, make conforming by re-subdivision, buying adjacent land, or other.	NA	NA	NA	NA	NA	NA	NA	No	
Nonconforming Uses of Land	NA	NA	NA	Not allowed. An unlawful extension or expansion of the use results in the loss of the legal nonconformity status.	No.	May change to less intense nonconforming use per nonconformity relief. May never change to more intense nonconforming use. Change to more intense use results in loss of legal nonconformity. Nonconforming use may change to a conforming use regardless of whether new use meets development standards.	May be resumed without further review by the City.	If abandoned, any subsequent use of the land must meet the use and development standards or other dimensional requirements. An abandonment results in the loss of the legal nonconformity status.	NA	Yes	Yes
Nonconforming Buildings and Structures	Manufactured homes, 1-family, and 2-family	Yes, unless City Commission approves an amortization schedule.	Yes, without limit as to cost of work in relation to value of building, except that manufactured homes must show that work complies with applicable standards.	Yes, if it doesn't increase nonconformity. Extensions or enlargements to manufactured homes must meet standards.	NA	May not be changed to another more intensive use unless such use is permitted and complies with all applicable requirements.	May be resumed without further review by the City.	Any subsequent use involving the expenditure of 50% or more of the value of the building is not permitted. An expenditure of less than 50% of the value of the building is permitted.	May be continued indefinitely, provided that upon an enlargement of the use, parking space requirement must be met.	Yes	Yes
	Multi-family residential or non-residential	Yes, unless City Commission approves an amortization schedule.	Yes, as long as the cost of the work is less than 50% of the structural value of the building. If work exceeds 50%, then legal nonconformity status is lost.	Yes, by up to 10% if it doesn't contribute to or increase a nonconformity. An unlawful extension or expansion results in loss of legal nonconformity status.	NA	A change to a more intensive use is not allowed and would result in a loss of nonconformity status. A change to a less intensive use is permitted if such use is permitted, the nonconformity is decreased, and the use complies with all other applicable requirements.	May be resumed without further review by the City.	Any subsequent use involving the expenditure of 50% or more of the value of the building is not permitted. An expenditure of less than 50% of the value of the building is permitted only by nonconformity relief. Abandonment results in loss of legal nonconformity status.	May continue indefinitely, provided parking space requirements met if use is extended, enlarged, repaired, maintained, remodeled, or reconstructed with a value of \geq 50% of building.	Yes	Yes
Nonconforming Use of a Conforming Building or Structure	NA	NA	NA	No. However, a nonconforming use may be extended to other parts of a building which were "manifestly arranged or designed" for such use. An unlawful extension or expansion of the use results in the loss of the legal nonconformity status.	NA	<ul style="list-style-type: none"> If no alterations are made, may change to another nonconforming use if Board of Adjustment and Appeals finds that proposed use is more appropriate to zone than existing nonconformity. Nonconforming use may be changed to a conforming use regardless of whether new use meets development standards. May not change to less intense nonconforming use unless all development standards are met, but parking relief may be allowed. Change to more intense use results in loss of legal nonconformity. 	May be resumed without further review by the City.	<ul style="list-style-type: none"> Any subsequent use must meet applicable standards. If nonconformity is for both land and structure, destruction of structure eliminates nonconforming status of land. Destruction means damage to > 50% of structural value of building. An abandonment results in the loss of the legal nonconformity status. 	NA	Yes	Yes