

## ARTICLE II. NONCONFORMITIES

### Sec. 122-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Acquiring authority* means the governmental entity proposing to acquire private property for a public transportation or other public purpose, pursuant to eminent domain action or by voluntary conveyance. Acquiring authorities include, but are not limited to, Monroe County, the City of Key West, and the Florida Department of Transportation ("FDOT").

*Cure plan* means a site plan submitted by an acquiring authority or a private property owner for a site subject to an eminent domain action or a voluntary conveyance for public transportation or other public purpose. The cure plan shall show proposed changes to structures or other features of the remainder parcel necessary to make the remainder parcel comply with the applicable land development regulations or, comply to the degree feasible.

*Dwelling unit.* See section 86-9.

*Eminent domain action* means one or a series of actions taken by an acquiring authority to obtain fee simple title to all or some part of privately held real property for a public use.

*Eminent domain/public purpose waiver* means authorization from the City of Key West for the continued use and enjoyment of a remainder parcel subsequent to an eminent domain action or a voluntary conveyance for public transportation or other public purpose. An eminent domain/public purpose waiver shall not be issued where the remainder parcel and the existing structures located thereon conform with the applicable zoning district land development regulations as of the date that title transferred to an acquiring authority under an eminent domain action or through a voluntary conveyance.

*Legal Nonconforming building or structure* means any building or structure, which does not, on the effective date of the ordinance from which this section derives or amendment thereto, conform to the dimensional requirements of the Land Development Regulations in which it is located, but which was legally established in accordance with the zoning in effect at the time of its inception or which predates all zoning codes and which use has not changed or been abandoned. This definition shall not operate to make legal an unlicensed transient rental accommodation located in a residential structure.

~~*Noncomplying building or structure* means any building or other structure, for which the use is lawful (permitted or nonconforming), but the building or other structure does not comply with all applicable sections of the land development regulations, including, but not limited to, size and dimension regulations, off-street parking requirements, landscape requirements, nuisance abatement standards, or height requirements, either on the effective date of the ordinance from which this section derives or as a result of any subsequent amendment.~~

*Legal Nonconforming density* means the number of dwelling or living units per acre greater than the number allowed by the land development regulations, which were legally established or licensed prior to the effective date of the ordinance from which this section derives.

Legal Nonconforming use means a use of a building or structure or a tract of land which does not, on the effective date of the ordinance from which this section derives or amendment thereto, conform to any one of the current permitted uses of the zoning district in which it is located, but which was legally established in accordance with the zoning in effect at the time of its inception or which use predates all zoning codes and which use has not changed or been abandoned. This definition shall not operate to make legal an unlicensed transient rental accommodation located in a residential structure.

Ordinary repairs and maintenance means work done to repair ordinary damage or to prevent ordinary deterioration or decay of a building or structure or any part thereof as nearly as possible to its condition prior to such damage, deterioration, or decay, and which does not involve or cause a change in the design, the material, or the exterior appearance of the building.

Owner of a remainder parcel means the owner in fee simple title of a remainder parcel who is a successor in interest to a private property owner's interest in the remainder parcel; or, the owner in fee simple title of a remainder parcel whose title to the remainder parcel is derived from the private property owner or the private property owner's successors in title.

Parent tract means the parcel of land that existed prior to an acquiring authority's acquisition of some portion of the parcel through eminent domain action or voluntary conveyance for public transportation or other public purpose.

Private property owner means the owner in fee simple title of a parent tract.

Reconstruction means the act or process of erecting by means of new construction the form of a vanished or non-surviving legal nonconforming building or structure as it appeared at the time of demolition or destruction.

Remainder parcel means that portion of the parent tract remaining in private ownership following an eminent domain action or a voluntary conveyance for public transportation or other public purpose.

Substantial Improvement means any combination of repair, reconstruction, rehabilitation, alteration, addition or improvement of a building or structure taking place during a one-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. For each building or structure, the one-year period begins on the date when a permit is closed. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.

2. Any alteration of a historic structure, including buildings and structures listed individually in the National Register of Historic Places, Contributing, or Altered Contributing buildings listed under the Historic Architectural Survey, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Chapter 34, unless the building has been moved or the foundation replaced.

*Voluntary conveyance* means the transfer of title to any portion of a parent tract by the private property owner to an acquiring authority for public transportation or other public purpose in lieu of an eminent domain action.

(Ord. No. 00-10, § 3, 6-6-2000; Ord. No. 12-18, § 1, 7-17-2012)

Cross reference(s)—Definitions generally, § 1-2.

**Sec. 122-27. Intent.**

The purpose of this article is to regulate and limit the continued existence of land uses and structures established prior to the date of the enactment of the original ordinance from which these Land Development Regulations are derived and/or prior to the date of the enactment of a subsequent ordinance amending these Regulations that do not or no longer conform to the provisions of the Land Development Regulations. Legal Nonconformities may continue, but the provisions of this article are designed to curtail substantial investment in nonconformities and to bring about their eventual elimination in order to preserve the integrity of the Land Development Regulations and Comprehensive Plan.

~~The intent of this article is to permit a nonconforming use and a noncomplying structure or building to be continued, to be reconstructed or replaced, or to be repaired or maintained under certain conditions, but not to encourage their expansion. Nonconforming densities may also be continued, reconstructed, replaced, repaired or maintained, although a distinction is made for reconstruction or replacement purposes between transient and permanent residential densities.~~

A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a legal nonconforming use, legal nonconforming density or legal nonconforming building or structure.

(Ord. No. 00-10, § 4, 6-6-2000)

**Sec. 122-28. Registration.**

(a) All known, lawful nonconforming land uses and structures may be registered with the Planning Department. In the course of its duties related to development review, staff of the department shall identify and recognize legal nonconforming land uses and structures. Property owners may also independently apply to the department for such determinations.

(b) The Planning Director, or their designee, shall review available documents to determine if a body of evidence exists supporting the lawful establishment of a land use or structure prior to the change in regulation that deemed the land use or structure nonconforming. Any issued City of Key West building permit(s), Certificate of Occupancy or Certificate of Compliance for the original lawful establishment or lawful construction of the land use or structure, confirming its approval and existence prior to the change in regulation that deemed the land use or structure nonconforming, can stand as the only piece of evidence. If there are no such building permit(s), Certificates of Occupancy, or Certificates of Compliance available, additional evidence shall be documented and submitted to the Planning Director on a form provided by the Planning Department and shall include, at a minimum, at least two of the following documents:

- (1) Any other issued City of Key West building permit(s) approving or supporting the legal existence of the structure(s) and/or use;
- (2) Documentation from the Monroe County Property Appraiser's Office supporting the legal existence of the structure(s) and/or use;
- (3) Aerial photographs and original dated photographs showing the structure or land use existed on site;

- (4) State and/or county licenses, supporting the legal existence of the structure(s) and/or land use;
- (5) Documentation from the utility providers indicating the type of service (residential or commercial) provided; and
- (6) Similar supporting documentation not listed above as determined suitable by the Planning Director.

(c) Once discovered and determined to be lawful, the Planning Director, or their designee, shall add recognized lawful nonconforming land uses and structures to an official registry.

#### **Sec. 122-29. Legal Nonconforming Uses.**

(a) Authority to continue. Legal Nonconforming land uses may continue in accordance with the provisions of this section.

(b) Ordinary repair and maintenance. Normal maintenance and repair to permit continuation of legal nonconforming land uses registered in accordance with Section 122-28 may be performed.

(c) Expansions. Legal Nonconforming land uses shall not be expanded. This prohibition shall be construed so as to prevent:

(1) Enlargement of legal nonconforming land uses by additions to the structure in which such nonconforming land uses are located; or

(2) Occupancy of additional lands. However, accessory uses associated with a lawful nonconforming principal use may be permitted if in compliance with all other provisions of the Land Development Regulations.

(d) Relocation. A structure in which a legal nonconforming land use is located shall not be moved unless the land use thereafter conforms to the provisions of the future land use category and the land use (zoning) district into which it is relocated.

(e) Change in use. A legal nonconforming land use shall not be changed to any other land use unless:

(1) The new land use conforms to the provisions of the future land use category and the land use (zoning) district in which it is located or;

(2) The nonconforming use is changed to a use more consistent with the existing zoning category and more compatible with surrounding land uses as determined by the Planning Board after due public hearing. The Planning Board shall consider the intensity of the proposed nonconforming use including parking, trip generation, hours of operation, outside activity, consistency with the Comprehensive Plan, compliance with development standards contained within these Land Development Regulations, and any other criteria needed to properly evaluate the potential impact to adjoining properties.

(f) Termination.

(1) Abandonment of nonconforming use. If a nonconforming use ceases, except when government action impedes access to the premises, any and every future use of the building or structure and/or premises shall be in conformity with the use section of the applicable zoning district stated within the land development regulations. No new structure or addition that does not conform to the requirements of this article shall be erected in connection with such nonconforming use. A nonconforming use shall be

considered abandoned given expiration of the local, state, or federal licenses relevant to the alleged abandoned use, and/or business operations having ceased as evidenced by one of the following: removal of utility meters; negligence to maintain the premises in a habitable condition as evidenced by a finding by a court, official, or magistrate of competent jurisdiction; failure to operate pursuant to the terms of an active building permit and in violation of the FL Building Code; or removal of equipment or inventory related to the nonconforming use for a period of 24 continuous months. If a dispute occurs with the city about whether a use has been abandoned, the owner shall be entitled to a hearing before the Planning Board.

(2) Damage or destruction. If a structure in which a legal nonconforming land use is located is damaged or destroyed so as to require substantial improvement, then the structure may be repaired or restored only for land uses that conform to the provisions of the land use (zoning) district in which it is located. Fair market value shall be determined by reference to the official tax assessment rolls for that year or by an appraisal by a qualified independent appraiser. The extent of damage or destruction shall be determined by the building official, in consultation with the Planning Director, by comparing the estimated cost of repairs or restoration with the fair market value of the structure.

(3) Amortization. Any legal nonconforming land use may be subject to compulsory termination when it is found detrimental to the conservation of the value of surrounding land and improvements, and therefore is tending to deteriorate or blight the neighborhood. In ordering the compulsory termination of a legal nonconforming land use, the City Commission will establish a definite and reasonable amortization period during which the nonconforming land use may continue while the investment value decrement resulting from termination is amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the nonconforming land use less their value and condition for a conforming land use, and such other reasonable costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

### **Sec. 122-30. Legal Nonconforming Structures.**

(a) Authority to continue. A legal nonconforming structure devoted to a use permitted in the land use (zoning) district in which it is located or devoted to a nonconforming use with authority to continue pursuant to Section 122-29, may be continued in accordance with the provisions of this section.

(b) Ordinary repair and maintenance. Ordinary repairs and maintenance, as defined in Section 122-26, of legal nonconforming structures registered in accordance with Section 122-28 may be performed.

(c) Enlargements, expansions, extensions, and renovations. Lawful nonconforming structures that are used in a manner conforming to the provisions of the Land Development Regulations and the Comprehensive Plan may be enlarged, expanded, ~~or~~ extended, or renovated, provided that:

(1) The improvement does not constitute a substantial improvement;

(2) A legal nonconforming use is not located in the legal nonconforming structure; and

(3) The legal nonconformity is not further violated, increased, or intensified.

(d) Relocation. A legal nonconforming structure, other than a historic structure listed on the National Register of Historic Places, the Florida Inventory of Historic Places, and/or designated as historic by the City Commission, shall not be moved unless it thereafter shall conform to the regulations of the land use (zoning) district in which it is relocated.

(e) Termination, damage or destruction and retrofits.

(1) Abandonment. Where a legal nonconforming structure is voluntarily abandoned for 24 48 consecutive months, then the City Commission reserves the right to require that such structure shall be demolished, removed or converted to a conforming structure after due public hearing.

(2) Damage or destruction.

a. A legal nonconforming structure in which the repair, maintenance, or reconstruction is determined not to constitute a substantial improvement, as defined herein, is permitted by right in the existing location, footprint, and three-dimensional building envelope at the time of damage or destruction so long as a building permit application to repair, restore, or reconstruct the legal nonconforming structure is submitted to the Building Department within twenty-four (24) months of damage or destruction. This provision shall not supersede floodplain construction requirements as provided in Chapter 34.

b. A legal nonconforming structure in which the repair, maintenance, or reconstruction is determined to constitute a substantial improvement, as defined herein, is permitted by right in the existing location, footprint, and three-dimensional building envelope at the time of damage or destruction so long as a building permit application to repair, restore, or reconstruct the legal nonconforming structure is submitted to the Building Department within five (5) years of damage or destruction. This provision shall not supersede floodplain construction requirements as provided in Chapter 34.

(3) Flood Mitigation. To further recovery, post disaster and resiliency, as provided in the Comprehensive Plan, a legal nonconforming dwelling unit or other insurable building or structure through the National Flood Insurance Program (NFIP), not including mobile homes, may be retrofitted to elevate the structure to or above the base flood elevation requirement to achieve compliance with State and local floodplain regulations. This provision shall be pursuant to:

a. The lawfully existing dwelling unit or insurable structure may maintain its existing setbacks, building coverage, and land use open space requirement, even if nonconforming, so long as the legal nonconforming building or insurable structure is elevated within the original (existing) footprint of the structure.

b. Front, side, and rear setback, building coverage, and land use open space requirements are waived to allow necessary improvements to a dwelling unit being retrofitted by elevating the unit to meet or exceed flood levels. The necessary improvements are limited to ingress/egress structures (stairs, ramps, landings, elevators, etc.). The waiver provided shall be the minimum necessary to provide access to the structure that is in compliance with fire code requirements.

c. Side and rear setback requirements are waived to allow elevated platforms above the base flood elevation for building utility equipment (mechanical, plumbing and electrical systems, appliances and components) situated at least five (5) feet from the side or rear yard property line.

d. Maximum possible shoreline setbacks and open space are to be maintained, and in no event shall a required shoreline setback be reduced to less than ten (10) feet from mean high water except to accommodate the lawfully existing footprint of the structure to be elevated.

e. The improvements shall be constructed to avoid off-site discharge of stormwater from the subject parcel, in accordance with all applicable Federal, State, County and City rules and regulations.

f. Development of the site shall maintain compliance with the Comprehensive Plan and Land Development Regulations to the maximum extent practicable, as determined by the Planning Director.

g. This policy does not waive any required setbacks or buffers adjacent to wetlands and does not authorize any encroachments to a conservation easement.

h. This policy does not restrict a property owner from proposing other additions or improvements to the elevated dwelling unit, as long as the additions, enlargements, expansions, and extensions do not create a nonconformity or cause a further violation to an existing nonconformity.

(4) Amortization. Any legal nonconforming structure may be subject to compulsory termination when it is found detrimental to the conservation of the value of surrounding land and improvements, and therefore is tending to deteriorate or blight the neighborhood. In ordering the compulsory termination of a legal nonconforming structure, the City Commission will establish a definite and reasonable amortization period during which the legal nonconforming structure may continue while the investment value decrement resulting from termination is amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the legal nonconforming structure less their value and condition for a conforming structure, and such other reasonable costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

(f) Water-dependent and water-related commercial nonconforming structures. Lawfully established water-dependent and water-related nonresidential structures which are identified as a source of economic sustainability may be permitted to be rebuilt even if 100 percent destroyed provided that they are rebuilt to preexisting use and registered in accordance with Section 122-28. Development shall be brought into compliance with applicable land development standards to the maximum extent practicable, as determined by the Planning Director.

#### **Sec. 122-31. Nonconforming Accessory Uses and Accessory Structures.**

(a) A legal nonconforming accessory use shall not continue after the principal use has terminated.

(b) A legal nonconforming accessory structure shall not continue after the principal use or structure is demolished or otherwise eliminated unless the structure is modified to conform to the provisions of the land use (zoning) district in which it is located and is associated with a new principal use.

(c) Notwithstanding subsections (a) and (b), when a principal structure and/or use is discontinued or removed as a result of damage from a manmade or natural disaster, lawfully established accessory structures associated with the discontinued use may remain with approval from the Planning Director for a maximum of five (5) years or until a conforming principal structure has been reconstructed, whichever is less.

Legal Nonconforming Accessory Uses and Accessory Structures, when a principal structure and/or use is discontinued or removed as a result of damage from a manmade or natural disaster, lawfully established accessory structures associated with the discontinued use may remain with approval from the Planning Director if all of the following criteria are met:

- (1) The principal structure is determined to be a lawfully established dwelling unit;
- (2) The lawfully established accessory structure is conforming to all other provisions of the Land Development Regulations, and
- (3) In the absence of an active concurrent permit for redevelopment of a principal use or structure on the site, the accessory structure may remain for up to five years from the date of the disaster event.

**Sec. 122-32. – Historic District.**

**(A) Purpose.**

The general purpose of these regulations is to protect and encourage the restoration, rehabilitation and preservation of sites and districts within the city having special historic, architectural, or archeological value to the public. This general purpose is reflected in the following specific goals:

- (1) The identification of historic sites and districts;
- (2) The protection of such historic sites and districts to combat urban blight, promote tourism, foster civic pride, and maintain physical evidence of the city's heritage;
- (3) The encouragement and promotion of restoration, preservation, rehabilitation and reuse of historic sites and districts by providing technical assistance, investment incentives, and facilitating the development review process;
- (4) The promotion of excellence in urban design by assuring the compatibility of restored, rehabilitated, or reused buildings or structures within designated historic districts; and
- (5) The protection of all contributing, contributing altered buildings and structures in the city's designated historic zoning districts or on designated historic sites from unlawful demolition, demolition by neglect and the failure of property owners to maintain and preserve the structures.

(B) Reconstruction. Reconstruction is a treatment that is contrary to historic preservation, and it is discouraged for replacing historic buildings that can be restored, repaired, or retrofitted. Voluntary demolition or partial demolition of a non-conforming contributing, alter contributing or a historic building or structure declared by the city commission shall be approved by the historic architectural review commission, prior to the issuance of a building permit, as stipulated under Chapter 102, unless deemed unsafe by the chief building officer, as per Chapters 14 and 102.

**(C) Demolition Policies.**

The loss of contributing, contributing altered or any building or structure declared historic by the city commission shall be prevented. It is hereby declared by the city commission that the preservation and



conservation of properties of historical, architectural, and archeological merit in the city is a public policy of the city and is in the interest of the city's future prosperity.

(CD) General. Alterations to structures located within the Historic District shall be governed by Chapter 102 (Historic Preservation). This shall include, but not be limited to:

- (1) Ordinary repairs and maintenance.
- (2) Expansions, alterations, and Additions.
- (3) Relocation.
- (4) Termination – Abandonment or Discontinuance.
- (5) Damage, ~~or~~ Destruction, or Demolition.
- (6) Amortization.

**Sec. ~~122-33~~ 122-31. - Noncomplying lots or building sites of record.**

(a) In any district in which single-family dwellings are allowed, a single-family dwelling and customary accessory buildings may be erected on any legal nonconforming single lot that is in existence on January 1, 1994, and that is in different ownership from the adjoining property. This subsection shall apply even though such lot fails to meet the requirements for area, depth or width, provided that all other zoning requirements shall apply.

(b) If two or more adjoining lots or portions of lots in single ownership on January 1, 1994, do not meet the requirements for building site width, depth and area as established by this article, the land involved shall be considered to be an undivided parcel, and no portion of the parcel shall be used or sold that does not meet building site width, depth and area requirements, nor shall any division of the parcel be made that leaves remaining any lot with substandard width, depth, area, parking, open space or stormwater retention. Notwithstanding anything to the contrary in this subsection, two or more adjoining lots or building sites shall not be considered to be an undivided parcel, and may be sold or used for single-family dwellings, if allowed by applicable district regulations, so long as each lot or building site is at least 75 percent of the minimum lot size of the applicable district regulations and is not otherwise required to provide required parking for the adjacent parcel.

(Ord. No. 00-10, § 8, 6-6-2000)

**~~Sec. 122-32. - Additional regulations. —~~**

~~(a) A nonconforming use, nonconforming density or a noncomplying building or structure may be continued, subject to this article. Notwithstanding anything in the Code to the contrary, a structure or site improvement may be altered without the need for a variance if the alteration decreases respective noncompliance. This provision shall not function to permit the construction, reconstruction, or alteration of any structure that obstructs clear and free passage of emergency responders or that otherwise conflicts with fire safety Code.~~

~~(b) A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconforming use, nonconforming density or noncomplying building or structure.~~

~~(c) Should any noncomplying building or structure be moved for any reason from its location, it shall thereafter conform to the regulations or the zoning district of its new location.~~

~~(d) A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. This prohibition shall include but not be limited to the extension of a nonconforming use within a building or structure or to any other building or structure.~~

~~(e) A nonconforming use of a building or structure may be changed to another nonconforming use if the planning board finds that:~~

~~(1) The new use is equally or more appropriate to the zoning district; and~~

~~(2) The change of use would not intensify the use of the premises by increasing the need for parking facilities; increasing vehicular traffic to the neighborhood; increasing noise, dust, fumes or other environmental hazards; or by having an adverse impact on drainage.~~

~~(f) This article shall apply to signs, consistent with chapter 114.~~

~~(g) Enlargement and extensions: Nonconforming structures which are used in a manner conforming to the provisions of this chapter may be enlarged or expanded provided that the existing nonconformity is not further increased, nor any new nonconformity created.~~

~~(Ord. No. 00-10, § 9, 6-6-2000; Ord. No. 08-04, § 26, 5-20-2008; Ord. No. 13-18, § 4, 10-16-2013; Ord. No. 22-25, § 2, 8-16-2022)~~

### **Sec. 122-34 122-33. - Eminent domain/public purpose waiver.**

An eminent domain/public purpose waiver is intended to provide private property owners and owners of remainder parcels a viable and fair alternative to the adverse impact on their real property, as a result of an eminent domain action or voluntary conveyance to an acquiring authority. It allows the continued use of the remainder parcel in a manner similar to its pre-acquisition, pre-taking, or pre-conveyance condition. Waivers provided pursuant to this section 122-33 can be obtained for nonconforming lots and structures. Waivers cannot be granted for nonconforming uses.

(a) Applicability.

(1) Vacant parcels, whether conforming or nonconforming lots, shall be eligible for an eminent domain/public purpose waiver from land development regulations including, but not limited to, minimum lot size, setbacks, parking, open space, pervious versus impervious area, density, floor area ratios, landscaping and landscape buffers, and signage setbacks, pursuant to sections 122-33(c), (d), and (e).

(2) Developed parcels. Where an eminent domain action or voluntary conveyance for public transportation or other public purpose reduces the lot size and creates a nonconforming remainder parcel but does not require the relocation of site features, said parcel shall be eligible for an eminent domain/public purpose waiver from land development regulations including, but not limited to, minimum

lot size, setbacks, parking, open space, pervious versus impervious area, floor area ratios, density, landscaping and landscape buffers, and signage setbacks, pursuant to sections 122-33(c), (d) and (e).

(3) Developed parcels. Where an eminent domain action or voluntary conveyance for public transportation or other public purpose requires the relocation of site features including, but not limited to, buildings, parking spaces, landscaping, stormwater facilities, dumpsters, light poles and signs, such a parcel shall be eligible for an eminent domain/public purpose waiver, pursuant to sections 122-33(c) and (e).

(b) An acquiring authority, a private property owner, and an owner of a remainder parcel are each hereby granted the authority to apply for a waiver from the land development regulations on a remainder parcel that has resulted or will result from an eminent domain action or voluntary conveyance for public transportation or other public purpose. The application may be made prior to or after the acquiring authority has obtained title to some part of the parent tract. The city planner shall have authority to grant eminent domain/public purpose waivers pursuant to sections 122-33(c), (d) and (e).

(c) Procedure for an acquiring authority or private property owner to apply for an eminent domain/public purpose waiver.

(1) An acquiring authority or a private property owner may apply in writing to the city planner for a waiver pursuant to sections 122-33(c) and (e). The applicable fee, established by resolution, shall be submitted with the following documents:

a. An as-built drawing of the parent tract and a legal description of the portion to be acquired by or transferred to the acquiring authority and the remainder parcel shall be submitted for those circumstances described in sections 122-33(a)(1), (2) and (3) above. The as-built drawing must show the parent tract and the remainder parcel with the proposed changes to the site including, but not limited to, buildings, parking, landscaping, stormwater facilities, topographic data and adjacent right-of-way; and

b. A site plan (a cure plan as defined herein) showing the parent tract and the remainder parcel with the proposed changes to the site including, but not limited to, buildings, parking, landscaping, stormwater facilities, topographic data and adjacent right-of-way. Submittal of a cure plan shall not be necessary on a vacant parcel but shall be required for those parcels described in section 122-33(a)(3) above.

(2) If an application for a waiver is submitted by an acquiring authority, the private property owner shall be notified via certified mail (return receipt requested) by the city planner within ten days of the application submittal date. Likewise if the private property owner applies for a waiver, the acquiring authority shall be notified via certified mail (return receipt requested) by the city planner within ten days of the application submittal date.

(3) The city planner shall grant or deny a waiver pursuant to section 122-33(c) in accordance with the standards set forth in section 122-33(e) below. A certified letter (return receipt requested) shall be issued within 30 days to the acquiring authority and the private property owner following the decision. The private property owner shall not be required to accept the waiver or implement a cure plan, as approved by the city planner.

(d) Procedure for an owner of a remainder parcel to apply for an eminent domain/public purpose waiver.

(1) An owner of a remainder parcel may apply in writing to the city planner for a waiver pursuant to sections 122-33(d) and (e). The applicable fee, established by resolution, shall be submitted with the following documents:

a. An as-built drawing depicting the remainder parcel and that portion of the parent tract previously acquired by or transferred to the acquiring authority following an eminent domain action or as a result of a voluntary conveyance shall be submitted for those circumstances described in section 122-33(a)(1) and (2) above; and

b. A certified copy of the recorded document evidencing the acquiring authority's acquisition of a portion of the parent tract following an eminent domain action or a certified copy of the deed of conveyance wherein the private property owner conveyed a portion of the parent tract to the acquiring authority as a result of a voluntary conveyance for public transportation or other public purpose.

(2) The city planner shall grant or deny a waiver pursuant to section 122-33(d) in accordance with the standards set forth in section 122-22(e) below. A certified letter (return receipt requested) shall be issued within 30 days to the owner of a remainder parcel following the decision.

(e) Standards for issuance of eminent domain/public purpose waivers.

(1) If an existing lot, parcel or structure becomes nonconforming (or an existing nonconformity becomes less conforming) as a result of a voluntary conveyance to an acquiring authority or an eminent domain action, a waiver may be granted by the city planner, provided a determination is made by the city planner that:

a. The requested waiver will not adversely affect safety, aesthetic or environmental conditions of neighboring properties; and

b. The requested waiver shall not adversely affect the safety of pedestrians or operations of motor vehicles; and

c. The requested waiver will not encourage or promote the continuation of existing uses of the property which have been or will be rendered unfeasible or impractical due to the impacts of the taking, conveyance, and/or construction of the roadway or other facility including, but not limited to, aesthetic, visual noise, dust, vibration safety, land use compatibility, environmental or other impacts.

(Ord. No. 12-18, § 2, 7-17-2012)

**Sec. 122-35 122-34. - Status of parcels during or after acquisition by eminent domain action or voluntary conveyance for public transportation or other public purpose.**

(a) Where a waiver is issued pursuant to section 122-33(c) and (d), the waiver shall become effective and the remainder parcel shall be considered compliant to the degree feasible after an acquiring authority takes title to any portion of real property subject to an eminent domain action or voluntary conveyance for public transportation or other public purpose.

(b) Where a private property owner accepts a waiver on a remainder parcel that was also a vacant parcel or where no cure plan was necessary, the waiver shall remain valid and applicable to the remainder parcel indefinitely. However, future site plan and building permit approvals shall comply with all provisions in the land development regulations except those listed in the waiver.

(c) Where a private property owner accepts a waiver based upon a cure plan, the physical changes to the remainder parcel, specified in the cure plan, shall occur within two years of the waiver and cure plan being approved. Future site plan and building permit approvals shall comply with all provisions in the land development regulations except those listed in the waiver.

(d) Waivers issued pursuant to this section may be appealed in the manner provided for appeals of administrative interpretations of the city planner pursuant to section 90-430.

(e) The city planner shall cause waivers issued pursuant to this section to be filed with the city clerk and recorded in the public records of Monroe County no later than 30 days from the effective date of the waiver.

(f) The provisions of sections 122-33(c), (d), and (e) shall not be interpreted to allow for the continued existence of building or safety code violations that are determined to be an immediate threat to the public health, safety or welfare.

(g) The appropriate city staff are hereby authorized to take any necessary steps to enforce all applicable building and safety codes though the subject property is part of a pending governmental acquisition.

(Ord. No. 12-18, § 3, 7-17-2012)

**Sec. 122-28. Replacement or reconstruction.**

~~(a) Applicability. This section applies both to voluntary reconstruction or replacement of dwelling units and involuntary reconstruction or replacement of dwelling units. Nothing in this section is intended to supersede applicable Federal Emergency Management Agency requirements for elevation in flood zones.~~

~~(b) Dwelling units (residential). Residential dwelling units may be replaced at their existing nonconforming density, location and three dimensional building envelope. Dwelling units involuntarily destroyed do not require variances to be reconstructed or replaced. If a voluntary reconstruction or replacement occurs and if the dwelling units exist or existed in a noncomplying building or structure, the reconstruction or replacement that increases the nonconformity of the building or structure shall require a variance granted by the planning board. In a voluntary reconstruction of a structure on a corner lot, the property owner must apply to the planning board for all necessary setback variances. All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be enlarged, reconstructed or replaced, either voluntarily or involuntarily. If a proposed reconstruction or replacement would not otherwise require a variance but would add a new building or structure to the site to accommodate allowed density, a variance shall be required for the additional building or structure. A residential building in which one or more units hold a residential transient use business tax receipt shall be deemed residential for the purposes of this section. Variances which would increase density or intensity beyond that maximum allowed on the particular property or lot by the land development regulations shall be prohibited.~~

~~(c) Dwelling units (transient). Transient dwelling units may be replaced at their existing nonconforming density so long as the reconstruction or replacement complies with all zoning district regulations, review procedures and performance criteria contained in the land development regulations. No variances shall be granted to accommodate such reconstruction or replacement; provided, however, that a variance may be granted to setbacks only if existing setback regulations would create undue hardship.~~

~~(d) Properties without dwelling units. For a proposed reconstruction or replacement of a property without dwelling units, where that property is either a nonconforming use or a noncomplying building or structure, (i) if the property is involuntarily destroyed, reconstruction or replacement does not require a variance; and (ii) if voluntarily destroyed to the extent that reconstruction or replacement would exceed 50 percent of the property's appraised or assessed value, the applicant must apply to the planning board for a variance.~~

~~(e) Mixed use properties. If a property contains both a dwelling unit and a commercial use, its reconstruction or replacement shall be governed, separately, under each applicable subsection set forth in this section.~~

~~(f) Historic district. Notwithstanding any other subsection contained in this section, if a noncomplying building or structure is a contributing building or structure according to the historic architectural review commission (HARC) and it is involuntarily destroyed, such building or structure may be reconstructed or replaced without a variance so long as it is to be rebuilt in the three-dimensional footprint of the original building and built in the historic vernacular as approved by the historic architectural review commission.~~

~~(g) Miscellaneous. With respect to subsections (a) through (f) of this section, the development review committee and the planning board, in evaluating petitions for variance, shall balance the need to protect life and property with the need to preserve the economic base of the community. Under no circumstances shall a voluntarily or involuntarily destroyed nonconforming use or noncomplying building or structure be replaced to a degree or level that increases or expands the prior existing nonconforming use or noncomplying building or structure.~~

~~(Ord. No. 00-10, § 5, 6-6-2000; Res. No. 06-292, § 1, 9-6-2006; Ord. No. 08-04, § 24, 5-20-2008; Ord. No. 13-18, § 3, 10-16-2013)~~

#### **~~Sec. 122-29. Repairs and maintenance.~~**

~~(a) Generally. Any building or structure devoted in whole or in part to a nonconforming density or nonconforming use may be repaired and maintained as provided in this section. If repair or maintenance shall exceed the criteria set forth in this section, renovation of the building or structure shall be governed by section 122-28.~~

~~(b) Residential or transient dwelling units. For residential or transient dwelling units, work may be done in any period of 12 consecutive months for repairs and maintenance to an extent not exceeding 66 percent of the current assessed or appraised value.~~

~~(c) Property without dwelling units or mixed use (commercial). For property without dwelling units or mixed use (commercial), work may be done in any period for 12 consecutive months on ordinary repairs and maintenance to an extent not exceeding 50 percent of the current assessed or appraised value.~~

~~(Ord. No. 00-10, § 6, 6-6-2000)~~

#### **~~Sec. 122-30. Abandonment of nonconforming use.~~**

~~If a nonconforming use ceases, except when government action impedes access to the premises, any and every future use of the building or structure and/or premises shall be in conformity with the use sections of the land development regulations. All material and equipment associated with the abandoned nonconforming use shall be completely removed from the premises by its owner. No new structure or addition that does not conform to the requirements of this article shall be erected in connection with such nonconforming use. A nonconforming use shall be considered abandoned when such use has ceased for a period of 24 months. If a dispute occurs with the city about whether a use has been abandoned, the owner shall be entitled to a hearing before the planning board.~~

(Ord. No. 00-10, § 7, 6-6-2000; Ord. No. 08-04, § 25, 5-20-2008)

**Sec. 122-31. Noncomplying lots or building sites of record.**

~~(a) In any district in which single-family dwellings are allowed, a single-family dwelling and customary accessory buildings may be erected on any legal nonconforming single lot that is in existence on January 1, 1994, and that is in different ownership from the adjoining property. This subsection shall apply even though such lot fails to meet the requirements for area, depth or width, provided that all other zoning requirements shall apply.~~

~~(b) If two or more adjoining lots or portions of lots in single ownership on January 1, 1994, do not meet the requirements for building site width, depth and area as established by this article, the land involved shall be considered to be an undivided parcel, and no portion of the parcel shall be used or sold that does not meet building site width, depth and area requirements, nor shall any division of the parcel be made that leaves remaining any lot with substandard width, depth, area, parking, open space or stormwater retention. Notwithstanding anything to the contrary in this subsection, two or more adjoining lots or building sites shall not be considered to be an undivided parcel, and may be sold or used for single-family dwellings, if allowed by applicable district regulations, so long as each lot or building site is at least 75 percent of the minimum lot size of the applicable district regulations and is not otherwise required to provide required parking for the adjacent parcel.~~

~~(Ord. No. 00-10, § 8, 6-6-2000)~~

**Sec. 122-32. Additional regulations.**

~~(a) A nonconforming use, nonconforming density or a noncomplying building or structure may be continued, subject to this article. Notwithstanding anything in the Code to the contrary, a structure or site improvement may be altered without the need for a variance if the alteration decreases respective noncompliance. This provision shall not function to permit the construction, reconstruction, or alteration of any structure that obstructs clear and free passage of emergency responders or that otherwise conflicts with fire safety Code.~~

~~(b) A casual, intermittent, temporary or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconforming use, nonconforming density or noncomplying building or structure.~~

~~(c) Should any noncomplying building or structure be moved for any reason from its location, it shall thereafter conform to the regulations or the zoning district of its new location.~~

~~(d) A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. This prohibition shall include but not be limited to the extension of a nonconforming use within a building or structure or to any other building or structure.~~

~~(e) A nonconforming use of a building or structure may be changed to another nonconforming use if the planning board finds that:~~

~~(1) The new use is equally or more appropriate to the zoning district; and~~

~~(2) The change of use would not intensify the use of the premises by increasing the need for parking facilities; increasing vehicular traffic to the neighborhood; increasing noise, dust, fumes or other environmental hazards; or by having an adverse impact on drainage.~~

~~(f) This article shall apply to signs, consistent with chapter 114.~~

~~(g) Enlargement and extensions: Nonconforming structures which are used in a manner conforming to the provisions of this chapter may be enlarged or expanded provided that the existing nonconformity is not further increased, nor any new nonconformity created.~~

~~(Ord. No. 00-10, § 9, 6-6-2000; Ord. No. 08-04, § 26, 5-20-2008; Ord. No. 13-18, § 4, 10-16-2013; Ord. No. 22-25, § 2, 8-16-2022)~~

**~~Sec. 122-33. Eminent domain/public purpose waiver.~~**

~~An eminent domain/public purpose waiver is intended to provide private property owners and owners of remainder parcels a viable and fair alternative to the adverse impact on their real property, as a result of an eminent domain action or voluntary conveyance to an acquiring authority. It allows the continued use of the remainder parcel in a manner similar to its pre-acquisition, pre-taking, or pre-conveyance condition. Waivers provided pursuant to this section 122-33 can be obtained for nonconforming lots and structures. Waivers cannot be granted for nonconforming uses.~~

~~(a) Applicability.~~

~~(1) Vacant parcels, whether conforming or nonconforming lots, shall be eligible for an eminent domain/public purpose waiver from land development regulations including, but not limited to, minimum lot size, setbacks, parking, open space, pervious versus impervious area, density, floor area ratios, landscaping and landscape buffers, and signage setbacks, pursuant to sections 122-33(c), (d), and (e).~~

~~(2) Developed parcels. Where an eminent domain action or voluntary conveyance for public transportation or other public purpose reduces the lot size and creates a nonconforming remainder parcel but does not require the relocation of site features, said parcel shall be eligible for an eminent domain/public purpose waiver from land development regulations including, but not limited to, minimum lot size, setbacks, parking, open space, pervious versus impervious area, floor area ratios, density, landscaping and landscape buffers, and signage setbacks, pursuant to sections 122-33(c), (d) and (e).~~

~~(3) Developed parcels. Where an eminent domain action or voluntary conveyance for public transportation or other public purpose requires the relocation of site features including, but not limited to, buildings, parking spaces, landscaping, stormwater facilities, dumpsters, light poles and signs, such a parcel shall be eligible for an eminent domain/public purpose waiver, pursuant to sections 122-33(c) and (e).~~

~~(b) An acquiring authority, a private property owner, and an owner of a remainder parcel are each hereby granted the authority to apply for a waiver from the land development regulations on a remainder parcel that has resulted or will result from an eminent domain action or voluntary conveyance for public transportation or other public purpose. The application may be made prior to or after the acquiring authority has obtained title to some part of the parent tract. The city planner shall have authority to grant eminent domain/public purpose waivers pursuant to sections 122-33(c), (d) and (e).~~

~~(c) Procedure for an acquiring authority or private property owner to apply for an eminent domain/public purpose waiver.~~

~~(1) An acquiring authority or a private property owner may apply in writing to the city planner for a waiver pursuant to sections 122-33(c) and (e). The applicable fee, established by resolution, shall be submitted with the following documents:~~



~~a. An as-built drawing of the parent tract and a legal description of the portion to be acquired by or transferred to the acquiring authority and the remainder parcel shall be submitted for those circumstances described in sections 122-33(a)(1), (2) and (3) above. The as-built drawing must show the parent tract and the remainder parcel with the proposed changes to the site including, but not limited to, buildings, parking, landscaping, stormwater facilities, topographic data and adjacent right of way; and~~

~~b. A site plan (a cure plan as defined herein) showing the parent tract and the remainder parcel with the proposed changes to the site including, but not limited to, buildings, parking, landscaping, stormwater facilities, topographic data and adjacent right of way. Submittal of a cure plan shall not be necessary on a vacant parcel but shall be required for those parcels described in section 122-33(a)(3) above.~~

~~(2) If an application for a waiver is submitted by an acquiring authority, the private property owner shall be notified via certified mail (return receipt requested) by the city planner within ten days of the application submittal date. Likewise if the private property owner applies for a waiver, the acquiring authority shall be notified via certified mail (return receipt requested) by the city planner within ten days of the application submittal date.~~

~~(3) The city planner shall grant or deny a waiver pursuant to section 122-33(c) in accordance with the standards set forth in section 122-33(e) below. A certified letter (return receipt requested) shall be issued within 30 days to the acquiring authority and the private property owner following the decision. The private property owner shall not be required to accept the waiver or implement a cure plan, as approved by the city planner.~~

~~(d) Procedure for an owner of a remainder parcel to apply for an eminent domain/public purpose waiver.~~

~~(1) An owner of a remainder parcel may apply in writing to the city planner for a waiver pursuant to sections 122-33(d) and (e). The applicable fee, established by resolution, shall be submitted with the following documents:~~

~~a. An as-built drawing depicting the remainder parcel and that portion of the parent tract previously acquired by or transferred to the acquiring authority following an eminent domain action or as a result of a voluntary conveyance shall be submitted for those circumstances described in section 122-33(a)(1) and (2) above; and~~

~~b. A certified copy of the recorded document evidencing the acquiring authority's acquisition of a portion of the parent tract following an eminent domain action or a certified copy of the deed of conveyance wherein the private property owner conveyed a portion of the parent tract to the acquiring authority as a result of a voluntary conveyance for public transportation or other public purpose.~~

~~(2) The city planner shall grant or deny a waiver pursuant to section 122-33(d) in accordance with the standards set forth in section 122-22(e) below. A certified letter (return receipt requested) shall be issued within 30 days to the owner of a remainder parcel following the decision.~~

~~(e) Standards for issuance of eminent domain/public purpose waivers.~~

~~(1) If an existing lot, parcel or structure becomes nonconforming (or an existing nonconformity becomes less conforming) as a result of a voluntary conveyance to an acquiring authority or an eminent domain action, a waiver may be granted by the city planner, provided a determination is made by the city planner that:~~

~~a. The requested waiver will not adversely affect safety, aesthetic or environmental conditions of neighboring properties; and~~

~~b. The requested waiver shall not adversely affect the safety of pedestrians or operations of motor vehicles; and~~

~~c. The requested waiver will not encourage or promote the continuation of existing uses of the property which have been or will be rendered unfeasible or impractical due to the impacts of the taking, conveyance, and/or construction of the roadway or other facility including, but not limited to, aesthetic, visual noise, dust, vibration safety, land use compatibility, environmental or other impacts.~~

~~(Ord. No. 12-18, § 2, 7-17-2012)~~

**~~Sec. 122-34. Status of parcels during or after acquisition by eminent domain action or voluntary conveyance for public transportation or other public purpose.~~**

~~(a) Where a waiver is issued pursuant to section 122-33(e) and (d), the waiver shall become effective and the remainder parcel shall be considered compliant to the degree feasible after an acquiring authority takes title to any portion of real property subject to an eminent domain action or voluntary conveyance for public transportation or other public purpose.~~

~~(b) Where a private property owner accepts a waiver on a remainder parcel that was also a vacant parcel or where no cure plan was necessary, the waiver shall remain valid and applicable to the remainder parcel indefinitely. However, future site plan and building permit approvals shall comply with all provisions in the land development regulations except those listed in the waiver.~~

~~(c) Where a private property owner accepts a waiver based upon a cure plan, the physical changes to the remainder parcel, specified in the cure plan, shall occur within two years of the waiver and cure plan being approved. Future site plan and building permit approvals shall comply with all provisions in the land development regulations except those listed in the waiver.~~

~~(d) Waivers issued pursuant to this section may be appealed in the manner provided for appeals of administrative interpretations of the city planner pursuant to section 90-430.~~

~~(e) The city planner shall cause waivers issued pursuant to this section to be filed with the city clerk and recorded in the public records of Monroe County no later than 30 days from the effective date of the waiver.~~

~~(f) The provisions of sections 122-33(e), (d), and (e) shall not be interpreted to allow for the continued existence of building or safety code violations that are determined to be an immediate threat to the public health, safety or welfare.~~

~~(g) The appropriate city staff are hereby authorized to take any necessary steps to enforce all applicable building and safety codes though the subject property is part of a pending governmental acquisition.~~

~~(Ord. No. 12-18, § 3, 7-17-2012)~~

**Secs. 122-35—122-60. - Reserved.**