

**City of Cape Coral, Florida
Land Development Code
Article 8 – Nonconformities and Lawfully Existing Uses**

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Chapter 1. GENERAL APPLICABILITY

Section 8.1.1. Purpose.

The purpose of this Article is to provide for the continuation, modification, or elimination of nonconforming uses, structures, and signs in accordance with the standards and conditions in this Article. While nonconformities may continue, the provisions of this Article are designed to encourage the improvement or elimination of nonconformities in order to better achieve the purposes of these regulations.

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47 **Section 8.1.2. Definitions.**

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49 The terms “Nonconforming,” “Nonconforming, Legally,” “Nonconforming Lots of Record,”
50 “Nonconforming Sign,” “Nonconforming Structure,” and “Nonconforming Use” are defined in Article 11
51 of this Code and are incorporated by reference for purposes of applying the standards and requirements
52 of this Article.

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54 **Chapter 2. NONCONFORMING LOTS OF RECORD**

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56 **Section 8.2.1. General.**

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58 The majority of the City was platted in the Cape Coral Subdivision (Units 1 – 98) with 5,000 square foot
59 lots, with two adjoining lots combined as a 10,000-square foot “Parcel” to construct a single-family
60 residence. A 10,000-square foot parcel is the minimum lot size required for subdivision or development
61 of a single-family residence or a two-family dwelling (LDC Article 4. Section 4.3 Zoning District
62 Development Standards). Platted lots with less than 5,000 square feet and parcels less than 10,000 square
63 feet are defined as nonconforming lots of record or parcels, respectively.

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65 **Section 8.2.2 Residential development on nonconforming lots of record.**

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67 Residential development on nonconforming lots of record may be permitted subject to the following
68 requirements:

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70 A. Development of single-family residences under this provision is limited to the R-1 and RML zoning
71 districts.

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73 B. Development of single-family residences defined as “Micro cottages” may be permitted on lots of
74 record in the RML zoning district provided such lots are 5,000 square feet or more in area.

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76 C. Development of two-family residences under this provision is limited to the RML zoning district.

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78 D. Development of single-family or two-family residences is permitted on nonconforming lots of record
79 and parcels less than 10,000 square feet in area, without a variance, provided that:

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81 1. Such lots or parcels are larger than 7,500 square feet in area; and

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83 2. The proposed development meets all requirements of this Code for setbacks, maximum building
84 height, and off street parking.

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86 E. The nonconforming lots of record or parcels less than 10,000 square feet in area have not been
87 subdivided or their boundaries altered through the “lot split and combine” process.

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89 **Chapter 3. NONCONFORMING STRUCTURES**

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91 **Section 8.3.1. Continuation of nonconforming structures.**

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93 Except as may be provided for elsewhere in these regulations, a non-conforming structure may be
94 continued subject to the standards and conditions of this Chapter.

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96 **Section 8.3.2. Destruction of nonconforming structures.**

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98 A. Except for residential structures as identified in subsection B, below, a nonconforming structure that
99 is damaged or destroyed to an extent exceeding 50 percent of the fair market value of the structure
100 and improvements at the time of its destruction, shall not be reconstructed except in conformity with
101 these regulations.

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103 B. Nonconforming residential structures (including accessory structures) in residential zoning districts
104 may be reconstructed if damaged or destroyed to any extent, (less than 50%) if such reconstruction
105 does not increase the extent of the nonconformity(ies) existing prior to destruction and the footprint
106 of the structure is not enlarged or changed.

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108 **Section 8.3.3. Alterations to nonconforming structures.**

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110 A structure that is nonconforming in any way, shall not be altered or enlarged in a way that increases the
111 extent of any nonconformity. Normal maintenance and repair is permitted. Alterations and additions
112 which do not increase the nonconformity may be permitted.

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114 **Chapter 4. NONCONFORMING SIGNS**

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116 **Section 8.4.1. Requirements for nonconforming signs.**

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118 All signs with approved sign permits but which are not in conformance with the sign requirements of
119 Article 7, may continue as nonconforming signs, subject to the standards and conditions of Article 7.

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121 **Chapter 5. NONCONFORMING USES**

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123 **Section 8.5.1. Continuation of nonconforming uses.**

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125 Except as may be provided for elsewhere in these regulations, a non-conforming use may be continued
126 subject to the standards and conditions of this Chapter.

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128 **Section 8.5.2. Extension or expansion of nonconforming use.**

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130 A nonconforming use shall not be enlarged or expanded, except for nonconformities created by
131 amendments to the comprehensive plan, as described in Chapter 6 of this Article.

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133 **Section 8.5.3. - Discontinuance of nonconforming use.**

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135 Whenever a nonconforming use of property has been discontinued for a period of one year or more, such
136 non-conforming use shall not thereafter be re-established, and the future use of the property shall be in
137 conformity with the provisions of these regulations.

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Section 8.5.4. Permitted improvements of nonconforming uses.

Renovations, repairs, or changes to nonconforming uses may be permitted, subject to the following requirements:

- A. The nonconforming use is in a nonresidential zoning district;
- B. The total cost of the improvements is less than 50 percent of the fair market value of the structure and improvements; and
- C. The nonconforming use and associated site shall be brought into compliance with the following provisions of Article 5, Development Standards, to the maximum extent practicable, as determined by the Community Development Director:
 - 1. Landscaping;
 - 2. Sanitation;
 - 3. Signs;
 - 4. Lighting;
 - 5. Stormwater;
 - 6. Screening;
 - 7. Noise Attenuation; and
 - 8. Parking.

Chapter 6. NONCONFORMITIES RESULTING FROM COMPREHENSIVE PLAN CHANGES.

Section 8.6.1. Nonconformities created by comprehensive plan amendments.

- A. When an existing single-family or duplex dwelling becomes non-conforming as the result of an amendment to the Comprehensive Plan, including future land use map amendments, which amendment was not the result of an application or other action by the property owner, the principal single-family or duplex dwelling, as well as accessory structures, such as detached garages, sheds, and gazebos may be repaired, altered, enlarged, or replaced to the same extent as if the amendment to the Comprehensive Plan had not occurred for as long as the property owner who owned the property at the time the amendment was adopted continues to own the property on which the dwelling is located.
- B. For the purposes of this exception, a single-family or duplex dwelling shall be deemed to be "existing" if, prior to the effective date of the amendment referred to above, the dwelling was either constructed

