

# City of Valdosta Land Development Regulations

## Chapter 234 Non-conforming Situations

### Section 234-1 Statement of Intent and Purpose

Within the districts established by Title 2, or in other LDR provisions or amendments, there exist uses, lots, buildings and structures that were lawful before the LDR was adopted or amended, but that would be prohibited under the terms of the LDR or future amendment. Such non-conforming situations are hereby declared to be incompatible with authorized and permitted uses and regulations within the district(s) involved. It is the intent of the City to allow these non-conformities to continue, on a limited basis, until they are otherwise removed or cease. It is further the City's intent that non-conformities not be used as grounds for adding other buildings, structures, or uses of land prohibited by the LDR, and that no such building, structure, or use of land shall be enlarged, expanded, moved, or otherwise altered in any manner that increases the degree of non-conformity.

### Section 234-2 Non-conforming Lot of Record

A legal non-conforming lot of record in a residential district may be used for one single-family residence provided all required setbacks can be met.

### Section 234-3 Non-conforming Use of Land, Buildings and Structures

The following regulations apply to the non-conforming uses of land, buildings and structures.

- (A) Such uses of land, buildings, and structures may be continued, but no such use which has been discontinued for a continuous period of 6 months shall be reestablished unless such cessation is a direct result of governmental action impeding access to the property.
- (B) Such uses of land, buildings and structures, or any such building or structure, shall not be enlarged, expanded, moved, or otherwise altered either on the same lot or adjoining property in any manner except in conformance with this LDR.
- (C) A non-conforming use of a building may be extended into those interior parts of an existing building that were designed for such use prior to the enactment of the LDR.

### Section 234-4 Non-conforming Characteristics of Buildings and Structures

No building or structure with non-conforming characteristics which is occupied by a conforming use shall be enlarged, expanded, moved, or otherwise altered in any manner except in conformance with this LDR. .

### Section 234-5 Non-conforming Uses Requiring Conditional Use Permit

No non-conforming use, building or structure requiring a Conditional Use Permit under the terms of Title 2, including any use, building or structure that was authorized as of right prior to the adoption of the LDR but would require a Conditional Use Permit upon the adoption of the LDR, shall be enlarged, expanded, moved, or otherwise altered in any manner except after application for and approval of the now- required Conditional Use Permit. Normal repair and maintenance of buildings and structures is authorized without the need for a Conditional Use Permit. No such use, building, or structure that has been discontinued for a continuous period of 6 six months shall be reestablished unless such cessation is a direct result of governmental action impeding access to the property.

### Section 234-6 Reconstruction

Any non-conforming building or non-conforming structure , or building or structure with non-conforming characteristics that has been damaged by fire or other cause , may be reconstructed to its previous non-conforming characteristics and used as it was prior to damage if said reconstruction is completed within 1 year of the date of the damage, except that if said building or structure has been declared by the Director to have been damaged to an extent exceeding 60% of its fair market value at the time immediately prior

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to its damage, then any repair, reconstruction or new construction shall conform to all of the requirements of the district in which said building or structure is located.

### **Section 234-7 Buildings and Structures**

Nothing in this Chapter shall prevent the strengthening or restoration to a safe condition of any part of any building or structure declared unsafe by the Director.

### **Section 234-8 Buildings and Structures Where Construction Has Begun**

To avoid undue hardship, nothing in this Title shall be deemed to require a change in the plans, construction, or designated use of any building or structure for which a development or building permit was lawfully applied for or issued, or a preliminary or final subdivision plat was lawfully approved, prior to the effective date of the LDR or amendment thereto, provided:

- (A) Such permit or approval has not by its own terms expired prior to such effective date.
- (B) Actual building construction is commenced prior to the expiration of such permit or approval.
- (C) Actual building construction is carried on pursuant to said permit or approval and limited to and in strict accordance with said permit or approval.
- (D) No renewals or extensions of said permit or approval shall be authorized.

### **Section 234-9 Prior Authorization**

Variances, rezoning, and conditional use permits lawfully authorized and granted prior to the effective date of this Title 2 shall continue to be utilized provided the terms and conditions of said authorization are followed.

### **Section 234-10 Reversions and Changes**

- (A) Any non-conforming use, non-conforming structure, non-conforming building, non-conforming lot of record, or non-conforming characteristic ("Non-conforming Situation") that is changed to a conforming state shall not be permitted to revert to a non-conforming situation.
- (B) No non-conforming situation shall be changed to another non-conforming situation.

### **Section 234-11 Area Extensions Prohibited**

A non-conforming use, non-conforming building, non-conforming structure, or building or structure with non-conforming characteristics, shall not be extended or enlarged beyond the area of use either on the same lot or adjoining property or beyond the conforming size, height, or other dimensions or characteristics of the building or structure as it existed on the date of adoption of the LDR or amendments applicable thereto.

### **Section 234-12 Sign Provisions**

Non-conforming situations relating to signs shall be governed by Section 230-10.

### **Section 234-13 Non-conforming Land Use Waivers**

- (A) Intent. It is the intent of this section to provide procedures and criteria for the review of the status of non-conforming land uses.
- (B) Eligibility for Waiver. The non-conforming use shall be consistent with all of the following criteria as set forth by this section, in order to be eligible for application for a certification of previously

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established land use conformity (PELUC certificate). Any nonconformity that is expressly prohibited by the following criteria shall not be eligible to apply for waiver of non-conforming use status.

- (1) The non-conforming use shall have been originally established as a legal use and have been in existence on the date of adoption of this LDR.
- (2) The waiver provisions by this section shall be applicable only to existing non-conforming uses of land and cannot be applied to waive any other development criteria in the LDR, such as but not limited to, environmental requirements, buffering, open space, building codes, lot area, impervious surface, parking, or setbacks.
- (3) In all future land use and zoning categories, the following, uses shall not be eligible to apply for a PELUC certificate:
  - (a) Industrial uses, such as those permitted in the M-2 District, adjoining residential areas.
  - (b) Any industrial use for which sole access is to a local or collector street.
- (4) In order to protect existing residential areas from encroachment of incompatible uses that are destructive to the character and integrity of the residential environment, the following uses that are located within areas zoned for residential use shall not be eligible to apply for a PELUC certificate:
  - (a) Commercial uses and development in excess of 20,000 square feet of building floor area, other than office uses.
  - (b) All industrial uses.
- (5) No request for waiver can be submitted which exceeds 75% impervious surface per lot with the exception of single-family residential uses. A request for waiver can be submitted for single-family residential land uses regardless of the impervious surface percentage.

(C) Criteria for Granting Waiver of Non-conforming Use Status. The establishment of eligibility of the non-conforming use for purposes of application submittal shall in no way be construed to form the basis for granting the waiver, or waiver with mitigation, of non-conforming use status. The applicant shall bear the burden of demonstrating that the impacts of the non-conforming use are either minimal upon the surrounding land uses and are not detrimental to the public health, safety, and welfare, or that the impacts of the non-conforming use may be substantially mitigated. Economic hardship may be considered as a factor supporting granting a non-conforming use waiver.

- (1) The zoning board of appeals may grant a PELUC certificate upon application of the property owner and after public review and hearing in accordance with the standards of Chapter 242 of this LDR. Notice of public hearing on any proposed application for a PELUC certificate shall be provided as is required in Section 242-4(E). A principal place of residence shall be exempt from the requirements as set forth below. A PELUC certificate for any other eligible use may only be granted upon the zoning board of appeals' findings of fact and conclusions of law that the non-conforming use is consistent with the following criteria:
  - (a) A determination that the impact of the nonconformity is minimal upon surrounding land uses and is not detrimental to the public health, safety, and welfare and, as a result, the non-conforming status may be waived.
  - (b) A determination that the impact of the nonconformity may be substantially mitigated such that the development may attain conforming status by implementing the outlined mitigation steps.
  - (c) Site plan or plan of development may be required to demonstrate mitigative measures that will maintain compatibility through specified design measures. Inter-site compatibility criteria shall be determined by the zoning board of appeals based on the following:
    - i. Aesthetically and functionally compatible land uses.

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- ii. Adequate buffering, screening, landscaping, and architectural treatment if located in a residential area.
  - iii. Sufficient parking, designed to provide safe internal traffic circulation, and off-site access.
- (d) The objectionable impacts of service and delivery areas, refuse and recycling collection areas, as well as the outdoor storage and work areas generally associated with commercial or residential buildings shall be designed to minimize off-site impacts.
- (2) If the Zoning Board of Appeals determines that the non-conforming use meets the required criteria as specified by this section, the Zoning Board of Appeals may issue a PELUC certificate, which shall be valid only for the specific use and area of the site for which the waiver was granted. The certificate may contain conditions under which the waiver has been granted and may contain an expiration date for the waiver. The certificate shall provide that any expansion proposed on the property covered by the certificate must comply with the development standards for the primary use in the district in which the property is located. If an expiration date is provided, the use shall revert to non-conforming status on the expiration date. Upon application to the Zoning Board of Appeals prior to the expiration date, the expiration date may be extended after review by the zoning board of appeals. The granting of a PELUC certificate for a particular use on a single parcel of property shall in no way be construed to waive any other development requirements or to establish vesting or precedence for other non-conforming uses on that parcel or on any other parcel.

### (D) Final Order of the Zoning Board of Appeals.

- (1) The PELUC certificate may require the applicant to meet certain specific mitigative conditions such as, but not limited to, a site plan or plan of development, buffering, architectural treatment in residential areas, additional setbacks, access limitations, and limitations on use, or an expiration date of the use. Such order cannot allow a waiver that exceeds an impervious surface of 75% per lot.
- (2) The written certificate of the zoning board of appeals shall be permanently on file in the office of the community development department and a copy thereof promptly transmitted to the applicant. Within 30 calendar days following action by the Zoning Board of Appeals, written notification shall be mailed to the applicant and property owner, if different. The applicant shall provide proof to the Director that the certificate has been recorded in the office of the Clerk of the Superior Court within 30 days of the date of the certificate. Failure to record shall render the certificate null and void as though it had never been issued.

### (E) Change of Use/Violations of Conditions of Certificate.

- (1) Any use for which the PELUC certificate has been granted that ceases for a period in excess of 12 months shall be deemed a voluntary abandonment of such certificate.
- (2) Any change of use shall be deemed a voluntary abandonment of such certificate unless, upon notice of violation of the certificate conditions from the city, the violation ceases within 30 days.
- (3) A finding of a violation by the code enforcement board of the terms or conditions of the certificate shall be an abandonment of the certificate, and the use shall return to its previous non-conforming status.

- (F) Criteria for Denial of Waiver of Non-conforming Status. Any application for a PELUC certificate shall be denied based upon the zoning board of appeals' findings of fact and conclusions of law in accordance with the provisions of this section that the nonconformity violates the intent of this section or that it has substantial impacts which may not be overcome by any mitigation procedures and as such, the development shall remain in a non-conforming status and such use shall terminate according to law.

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- (G) Appeals. Every determination of the zoning board of appeals regarding a PELUC certificate shall be final, subject to such remedies as any aggrieved party might have at law or in equity.