

ARTICLE V.**VESTED RIGHTS AND NON-CONFORMITIES****Division 1. Vested Rights and Non-conformities****Section V-101. General Purposes**

One purpose of this Article is to vest certain existing uses and structures that otherwise would not conform to these regulations. The intent of the vested rights provisions are to protect private property rights and recognize certain pre-existing or historic uses, structures, or developments which, in part, help define Sarasota's character.

A second purpose of this Article is to provide regulations governing nonconforming uses, structures, and other situations. Nonconformities are created when the application of a specific zone district to a zoning lot changes, or a zoning regulation changes. As part of the change, existing uses, characteristics of uses, or structures may no longer be allowed or may not conform to all applicable zoning provisions. Generally, the intent of new zone districts or new zoning regulations is to guide future uses and development, consistent with the *Sarasota City Plan*.

Section V-102. Vested Rights For Lawful Existing Uses and Structures

- A. Purpose, Applicability. The purpose of this Section is to regulate certain uses and structures established prior to the effective date of these regulations that do not conform to these regulations. The provisions of this Section are designed to allow certain uses and structures to continue. Uses or structures that were not lawful when established have no vested right to continue and must cease or be removed.
- B. The following uses and structures shall not be deemed nonconforming but shall be deemed to be lawfully existing in conformity with these regulations and shall be allowed to continue as a lawfully existing use or structure. A structure regulated herein that is involuntarily destroyed by any means may be reconstructed to their former footprint and the scale that existed immediately prior to the involuntary destruction. Any expansion of a use or structure regulated herein shall conform to the development requirements of the zone district in which the structure is located, unless other wise noted below. Should a use regulated herein be voluntarily terminated for a period of time exceeding six (6) consecutive months, then such use shall not be reestablished or resumed and any subsequent use of the land shall conform to the requirements of the zone district in which the use is located.
1. Botanical Gardens in RSF-1 and RMF-1 districts;
 2. Tourist Attractions in RSF-E districts;
 3. Cemeteries in RSF, RMF, and OPB districts;
 4. Railroad ROW, not including switching, freight or storage yards, building or maintenance structures in RSF, RMF, and OPB districts;

5. Single family dwellings in CBN, CG, CI, C-CBD, CP and NT districts;
6. Two family dwellings in CG, CI, C-CBD and NT districts;
7. Religious institutions or schools on the same zoning lot existing on effective date of Ordinance No. 02-4357 (June 28, 2002) if the zoning lot is less than 2 acres in size;
8. Structures located on properties formerly zoned C-CBD, CG or CN which are presently zoned TAD if:
 - a. The structures conform to the applicable maximum lot coverage limitations in their former districts, but do not conform to the maximum lot coverage limitation in the Theater and Arts district as provided in Section VI-2703.
 - b. The structures provide the applicable minimum yards required in their former districts, but do not provide the applicable minimum yards required in the Theater and Arts district.
 - c. The structures conform to the applicable maximum height limitations in their former districts, but do not conform to the maximum height limitation in the Theater and Arts district.
 - d. A structure described in 10 (a)-(c) above may be enlarged or altered in accordance with the formerly applicable maximum lot coverage limitations and minimum yard requirements of the C-CBD, CG or CN districts. Structures described in subsection (a) above may be enlarged or altered to increase height by the addition of one (1) story or up to forty-five (45) feet, whichever is less. Assemblage of lots or parcels in order to further enlarge a structure pursuant to the terms of this subsection shall not be permitted. The exemptions provided under this subsection shall no longer apply after July 1, 2006.
 - e. A structure described in 10 (a)-(c) above which is involuntarily destroyed by any means to an extent of more than seventy five (75) percent of its market value as determined by a state certified property appraiser at the time of destruction may be reconstructed to the scale at which it existed immediately prior to its involuntary destruction.
 - f. Signs provided to identify or to advertise services or products available in existing structures described in 10 (a)-(c) above which conform to the applicable sign limitations in their former districts, but which do not conform to the applicable sign limitations in the Theater and Arts district shall not be treated as a nonconforming characteristic.
 - g. Off-street parking and off-street loading provided for existing structures described in 10 (a)-(c) above which meet the applicable off-street parking and loading requirements in their former districts, but which does not meet the applicable parking or loading requirements in the Theater and Arts district, shall not be treated as a nonconforming characteristic.
 - h. Changes may be made in the characteristics of use described in (f) and (g) above, provided such changes are permissible under the formerly applicable C-CBD, CG or CN district regulations. Notwithstanding the above, all signs which do not conform to

ARTICLE V: Vested Rights and Non-conformities

the regulations of the Theater and Arts district shall either be removed by July 1, 2006, or shall be made to conform to the regulations of the TAD zone. For purposes of this Section, "existing structure" means a structure which was completed or for which a building permit was issued prior to the date the property on which the structure is located was rezoned from C-CBD, CG or CN to TAD.

9. Hotels and Motels and their accessory uses and structures, existing or approved by January 22, 1999, on the zoning lots on which they are located in RMF-4, RMF-5 and RMF-6 zone districts. The Multiple Family development standards found in these zone districts except for the maximum number of guest rooms, which shall equal twice the number of dwelling units permitted in the particular zone district shall govern any expansion of these uses or structures.

(Ord. No. 03-4471; Sec. 5, 6-16-03)

Section V-103. Regulations That Apply to All Nonconforming Uses or Structures

- A. Uses or structures that were not lawful when established have no legal right to continue and must cease or be removed.
- B. Ownership. The status of a nonconforming use or structure is not affected by changes in ownership.
- C. Change to a Conforming Use or Structure. A nonconforming use or structure may be changed to a conforming use or structure at any time in accordance with the appropriate approval processes in Article IV. Once a conforming use or structure occupies the zoning lot, the nonconforming rights are lost and a nonconforming use or structure may not be re-established.

Section V-104. Nonconforming Uses

- A. Purpose, Applicability. The purpose of this Section is to regulate and limit the continued existence of certain uses established prior to the effective date of these regulations that do not conform to these regulations. Any nonconformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this Article. Many nonconformities may continue, but the provisions of this Section are designed to curtail substantial investment in nonconforming uses and to bring about their eventual elimination in order to preserve the integrity and intent of these regulations.
 1. Nonconforming uses of land, nonconforming structures that contain nonconforming uses, and conforming structures that contain nonconforming uses may continue only in accordance with the provisions of this Section.
 2. Normal repair and maintenance may be performed to allow the continuation of a nonconforming use. However, the continuation, maintenance, or normal repair shall not extend or expand the nonconforming use and may only include:

ARTICLE V: Vested Rights and Non-conformities

- a. Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure;
 - b. Maintenance of land areas to protect against health hazards and to promote the safety of surrounding land uses;
 - c. Repairs which are required to remedy unsafe conditions which cause a threat to public safety; and
 - d. Maintenance or repair of a sign in a way that does not change the exterior message.
3. A nonconforming use shall not be expanded nor shall a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located or the occupation of additional lands, unless it complies with the terms of Sec. V-105(B)(2) (pertaining to the expansion of nonconforming structures), below.
 4. A structure in which a nonconforming use is located shall not be moved unless the use thereafter conforms to the standards of the zoning district or districts to which it is moved.
 5. Where a nonconforming use ceases for any reason except where a governmental action impedes access to the premises for more than nine (9) consecutive months, for a minimum of six (6) consecutive months, or is displaced for any period of time due to structural damage, then the nonconforming use rights are lost and the use shall not be reestablished or resumed, and any subsequent use of the land shall conform to the requirements of these regulations.
 6. Where a structure in which a nonconforming use is located is destroyed or damaged (either gradually or suddenly) by fire or other causes beyond control of the owner to seventy five percent (75%) or more of its market value as determined by a state certified property appraiser, the re-establishment of the non-conforming use is prohibited and the structure may be repaired or restored only for uses which conform to the standards of these regulations for the zoning district in which it is located. A state certified property appraiser shall determine market value for the year the structure is destroyed or damaged. The Director of Building, Zoning and Code Enforcement shall determine the extent of damage or destruction by comparing the estimated cost of repairs or restoration with the market value as determined above. In the event that such damage or destruction occurs suddenly and is less than seventy five percent (75%) of the market value of the entire building or structure as determined by a state certified property appraiser, no repairs or restoration shall be made unless such restoration is started within one (1) year from the date of the partial destruction and is diligently pursued to completion. In the case of gradual destruction where the damage to the structure does not total more than seventy five percent (75%) of its market value as determined by a state certified property appraiser, the repair or restoration must commence within six (6) months after discovery of gradual destruction and must be diligently pursued to completion. The Director of Building Zoning and Code Enforcement, may calculate the 75% threshold described in this section based upon assessed value instead of market value in the event the Applicant does not submit an appraisal performed by a state certified property appraiser. In such

ARTICLE V: Vested Rights and Non-conformities

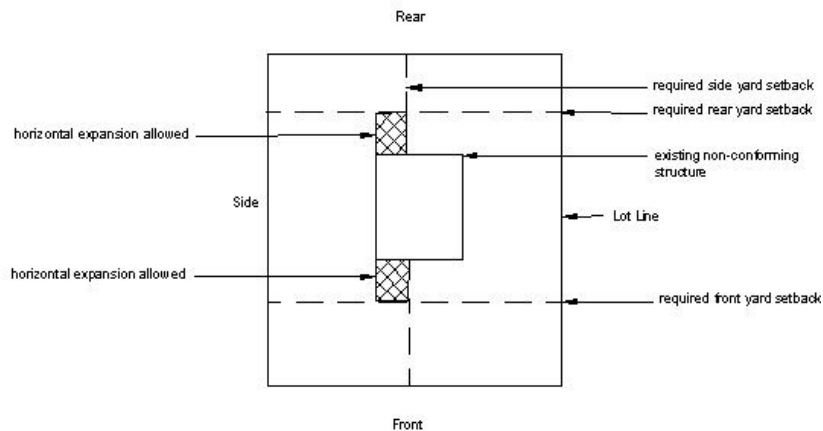
event, assessed value shall be determined by reference to the official property tax assessment rolls for the year the structure, accessory use or accessory structure is destroyed or damaged.

(Ord. No. 00-4193, Sec. 10, 2-22-00)

Section V-105. Nonconforming Structures

- A. A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this Section.
- B. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- C. Structures with a nonconforming setback may be expanded along a line parallel to the existing nonconformity, provided all of the other zoning code requirements are met. This type of expansion is allowed in front, rear and side yards, however, this type of expansion is not allowed in waterfront yards. In residential zone districts, this type of expansion is not allowed where the existing setback is less than three (3) feet. This Subparagraph shall apply to one (1) story structures which have a finished floor elevation which is no more than 24 inches above the average elevation of the crown of a dedicated public street abutting a front yard.

The following example illustrates an expansion that is allowed in a side yard.



(Ord. No. 03-4471; Sec. 6, 6-16-03)

- D. A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning district in which it is located and other pertinent regulations.
- E. Any nonconforming structure which is destroyed or damaged (either gradually or suddenly) by fire or other causes beyond control of the owner to seventy five percent (75%) or more of its market value as determined by a state certified property appraiser may be repaired or restored only if the structure conforms to the standards of these regulations for the zoning

ARTICLE V: Vested Rights and Non-conformities

district in which it is located. A state certified property appraiser shall determine market value for the year the structure is destroyed or damaged. The Director of Building, Zoning and Code Enforcement shall determine the extent of damage or destruction by comparing the estimated cost of repairs or restoration with the market value as determined above. In the event that such damage or destruction occurs suddenly and is less than seventy-five percent (75%) of the market value of the entire building or structure as determined by a state certified property appraiser, no repairs or restoration shall be made unless such restoration is started within one (1) year from the date of the partial destruction and is diligently pursued to completion. In the case of gradual destruction where the damage to the structure does not total more than seventy-five percent (75%) of its market value as determined by a state certified property appraiser, the repair or restoration must commence within six (6) months after discovery of gradual destruction and must be diligently pursued to completion. The Director of Building Zoning and Code Enforcement, may calculate the 75% threshold described in this section based upon assessed value instead of market value in the event the Applicant does not submit an appraisal performed by a state certified property appraiser. In such event, assessed value shall be determined by reference to the official property tax assessment rolls for the year the structure, accessory use or accessory structure is destroyed or damaged.

1. Notwithstanding the foregoing restrictions as to reconstruction, any structure or structures on a single zoning lot under condominium ownership or cooperative long term leases may be rebuilt after destruction to the prior extent of nonconformity as to height and density of units per acre regardless of the percentage of destruction. In the event of such rebuilding, all setbacks and other applicable district requirements shall be met unless a variance therefor is obtained from the Board of Adjustment.
 2. Notwithstanding the foregoing restrictions as to reconstruction, any single family structure or accessory structure thereto which exists on a single zoning lot within a zone district which permits single family residences, may be rebuilt, after destruction in whole or in part, as a single family structure or accessory structure, so long as all setbacks and other applicable district requirements are met except minimum requirements as to zoning lot width or area. A variance as to setbacks and other applicable district requirements may be sought from the Board of Adjustment.
 3. Notwithstanding the foregoing restrictions as to reconstruction, for any project which was granted a special exception for height in a zone district pursuant to a prior zone code which previously provided for a special exception for height and if such special exception was granted prior to the effective date of these regulations, then such project may be rebuilt after destruction to the prior extent of nonconformity as to height and density of units per acre regardless of the percentage of destruction. In the event of such rebuilding, all setbacks and other applicable district requirements shall be met unless a variance therefor is obtained from the Board of Adjustment.
- F. No conforming ground sign shall be erected on the same premises as an existing nonconforming ground sign until the nonconforming sign has been removed or changed to a conforming sign. However, in commercial retail establishments, the fact that one particular

ARTICLE V: Vested Rights and Non-conformities

establishment therein has a nonconforming sign shall not prohibit a different establishment therein from erecting a conforming sign on the same premises.

- G. Structures which have been designated as historically significant pursuant to Article IV, Division 8 of this Code, shall be exempt from the provisions of Section V-105(D) concerning limitations upon the repair of nonconforming structures. Structures located in a district which have been designated as an historic district pursuant to Article IV, Division 8 of this Code shall be exempt from the provisions of Section V-105(D) concerning limitations upon the repair of nonconforming structures, provided that such structures have been classified as contributing or contributing with alterations.

(Ord. No. 99-4128, Sec. 4, 5-03-99)

Section V-106. Nonconforming Characteristics of Uses and Structures [Sec. 9-6]

If characteristics of a use or structure, such as densities, off-street parking or off-street loading, or other matters pertaining to the use of land and structures, are made nonconforming by these regulations as adopted or amended, no change shall thereafter be made in such characteristics of use which increase or extends the nonconformity; provided that changes may be made which do not increase, extend, or which decrease such nonconformity.

Section V-107. Nonconforming Accessory Uses and Accessory Structures

- A. No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction, unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located.
- B. A nonconforming accessory use or accessory structure may be expanded only if the nonconforming features are not expanded so as to increase the nonconforming element of that accessory use or accessory structure and the expansion is otherwise in conformance with these regulations.
- C. Any nonconforming accessory use or accessory structure shall be brought into conformity with these regulations whenever a substantial improvement to, addition to, or change in the principal use or structure on the property is proposed and approved.
- D. Any part of a nonconforming accessory use or accessory structure which is destroyed or damaged (either gradually or suddenly) by fire or other causes beyond control of the owner to seventy five percent (75%) or more of its market value as determined by a state certified property appraiser may be repaired or restored only if the accessory use or accessory structure conforms to the standards of these regulations for the zoning district in which it is located. A state certified property appraiser shall determine market value for the year the accessory use or accessory structure is destroyed or damaged. The Director of Building, Zoning and Code Enforcement shall determine the extent of damage or destruction by comparing the estimated cost of repairs or restoration with the market value as determined

ARTICLE V: Vested Rights and Non-conformities

above. In the event that such damage or destruction occurs suddenly and is less than seventy five percent (75%) of the market value of the entire building or structure as determined by a state certified property appraiser, no repairs or restoration shall be made unless such restoration is started within one (1) year from the date of the partial destruction and is diligently pursued to completion. In the case of gradual destruction where the damage to the structure does not total more than seventy five percent (75%) of its market value as determined by a state certified property appraiser, the repair or restoration must commence within six (6) months after discovery of gradual destruction and must be diligently pursued to completion. The Director of Building Zoning and Code Enforcement, may calculate the 75% threshold described in this section based upon assessed value instead of market value in the event the Applicant does not submit an appraisal performed by a state certified property appraiser. In such event, assessed value shall be determined by reference to the official property tax assessment rolls for the year the structure, accessory use or accessory structure is destroyed or damaged.

Section V-108. Nonconforming Zoning Lots [Sec. 9-2]

- A. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected, expanded, or altered on any single zoning lot in separate ownership from abutting zoning lots existing on January 10, 1974, provided that the district regulations other than minimum zoning lot area and zoning lot width are met.
- B. Such nonconforming zoning lots for one and two-family dwellings must be in separate ownership and not of continuous frontage with other zoning lots in the same ownership.
- C. If two (2) or more lots of record or combinations of lots of record and portions of lots of record with continuous frontage in single ownership are of record of January 10, 1974, or the effective date of any future amendment of this Zoning Code and if all or part of the lots of record do not meet the requirements established for zoning lot width and for area, the lands involved shall be considered to be an undivided parcel for the purposes of this Zoning Code; and no portion of such parcel shall be used so as to diminish compliance with zoning lot width and area requirements established by this Zoning Code, nor shall any division of any parcel or lot of record be made which creates a zoning lot with a width or area less than the requirements stated in this Zoning Code.
- D. If two (2) or more adjacent and vacant nonconforming zoning lots are in single ownership at any time, and such zoning lots individually have less frontage or area than the minimum requirements of the district in which such zoning lots are located, then such zoning lots shall, following their consolidation (see Section VI-104), be considered and treated as a single zoning lot or several zoning lots which meet the minimum requirements of these regulations for the district in which such zoning lots are located. Such consolidated zoning lots may be developed without need of variances for lot width and area; however, all other development standards of the zone district in which it is located shall be met, unless variances thereto have been approved.

Section V-109. Non-conforming Non-residential Uses Located in Residential Zone Districts

ARTICLE V: Vested Rights and Non-conformities

- A. The Zoning Code (1974 ed.), as amended, which predated the effective date of these regulations, provided an amortization period of 25 years for the termination of commercial or industrial uses in residential zone districts contained in structures classified as Type V, Ordinary Construction and Type VI, Wood Frame Construction. The City Commission on July 7, 1997 adopted Ordinance No. 96-3928 providing a limited exemption from the termination provisions of the Zoning Code (1974 ed.), as amended, for specified nonconforming uses. This section sets forth the requirements for obtaining and maintaining this limited exemption and is applicable solely to those properties identified by site number and legal description in Ordinance No. 96-3928, copies of which are on file in the office of the City Auditor and Clerk. Those requirements are as follows:
1. No later October 5, 1997 the owners of the structures at the locations referenced above shall submit to the Director of Building, Zoning and Code Enforcement the following:
 - a. A current signed and sealed survey depicting all structures and parking.
 - b. A diagram of the premises containing the nonconforming use showing a plan thereof specifying the interior floor area devoted to the nonconforming use. A professionally prepared diagram in the nature of an engineer's or architect's blueprint is not required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas "of the interior of the premises to an accuracy of plus or minus six (6) inches.
 - c. A sworn notarized statement describing the following characteristics of the nonconforming use: the type of use, the number of employees, hours of operation, the number of units for hotel use, and the gross floor area for a commercial use. By filing a notarized statement under this section, the property owner shall be deemed to have consented to the inspection of the nonconforming use by the Department of Building, Zoning and Code Enforcement for the purpose of verification of the facts contained in the notarized statement and for ensuring compliance with this section, at any time the nonconforming use is occupied or open for business.
 2. The Director of Building, Zoning and Code Enforcement shall determine whether the property owner has submitted all of the information required by Subsection (1) within 30 working days from the date of filing. In the event the information submitted is deemed complete, the Director of Building, Zoning and Code Enforcement shall have one hundred and twenty (120) days from the date of the completeness determination to verify the accuracy of the information submitted. Alternatively, if the information is determined by the Director of Building, Zoning and Code Enforcement to be incomplete, then the Manager shall notify the property owner in writing of the additional information which is required,, and the property owner shall have thirty (30) days to submit the required information. If the information required by subsection (2) hereof has not been submitted and deemed complete by the Director of Building, Zoning and Code Enforcement by March 14, 1998, then the Director shall notify the City Auditor and Clerk and the procedures set forth in subsection (5) shall apply.

ARTICLE V: Vested Rights and Non-conformities

3. Upon verification of the information submitted by the property owner, the Director of Building, Zoning and Code Enforcement shall prepare a verification form. In the event of a conflict between the facts set forth in the notarized statement submitted by the property owner and the verification form, the facts in the verification form shall prevail. The verification form shall be recorded in the Public Records of Sarasota County to document the type and intensity of the nonconforming use which is exempted from the termination provisions of the Zoning Code (1974 ed.), as amended,
4. The existing nonconforming uses shall be limited to the structures and parking depicted in the survey, and the type of use, number of employees, hours of operation, number of units for hotel use and gross floor area for commercial use as stated in the verification form. The nonconforming uses shall cease to be exempt from the termination provisions of the Zoning Code (1974 ed.), as amended in the event the use is enlarged beyond the square footage shown on the diagram or is converted to another use. In such event, the Director of Building, Zoning and Code Enforcement shall notify the City Auditor and Clerk of the change in the nonconforming use and the procedures set forth in subsection (5) hereof shall apply.
5. Upon receipt of the notification of noncompliance, change in nonconforming use or failure to buffer from the Director of Building, Zoning and Code Enforcement pursuant to subsections (2), (4) (6) or (7) hereof, the City Auditor and Clerk shall schedule an ordinance for public hearing before the City Commission, to revoke the exemption from the termination provisions of the Zoning Code (1974 ed.), as amended. Notice of the time and place of the public hearing by the City Commission shall be sent at least ten (10) days in advance of the hearing by certified mail to the owner of the subject property upon which the nonconforming use is located as well as to all owners of property within five hundred (500) feet of the property lines of the land upon which the nonconforming use is located.
6. Notwithstanding the foregoing, the existing nonconforming use located at 1740 South East Avenue shall not be subject to the termination provisions of the Zoning Code (1974 ed.), as amended for a limited period of five (5) years after the expiration of the amortization period, such that the nonconforming use would terminate by July 10, 2004. It is the intent of the City Commission to provide only a limited exemption from the termination provisions as to this existing nonconforming use due to the minimal impact of such use upon the residentially zoned district within which it is located.
7. The existing nonconforming use located at 528 South Polk Drive is further subject to the following conditions in order to provide adequate buffering of the existing motel from the adjacent single-family homes:
 - a. The property owner shall provide a six-foot high masonry wall, fence or landscaped hedge along both the sides and rear of the property.
 - b. In the event a hedge is used for such buffering requirement, it shall be' at least 80 percent opaque and between two and six feet above the average ground level when viewed horizontally.

ARTICLE V: Vested Rights and Non-conformities

c. The wall, fence or hedge may be reduced to four feet in height within 20 feet of the front lot line.

In the event the above buffering requirement has not been installed by the property owner January 7, 1998, then the Director of Building, Zoning & Code Enforcement shall notify the City Auditor & Clerk and the procedures set forth in subsection (5) hereof shall apply.

B. The medical office uses located at 1428 South Osprey Avenue, 2003 South Osprey Avenue, and 3313 South Osprey Avenue may continue; provided however, that the use is limited to those structures and parking depicted on the survey sketch that was submitted pursuant to this Article. The submittal included a written statement from each owner of the structures reflecting the square footage within the building devoted to medical office use and the square footage devoted to residential use. The square footage devoted to medical office use and the square footage devoted to residential use as described in the written statement shall remain unchanged. The existing medical office uses described herein may not be converted to another professional office use nor may an existing medical office use be intensified.