

**ARTICLE 9**  
**HARDSHIP RELIEF**

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**ARTICLE 9**  
**HARDSHIP RELIEF**

**SECTION 9.01. EXISTING NONCONFORMING DEVELOPMENT**

**9.01.01. Defined**

Nonconforming development is development that does not conform to the use regulations in Article II and/or the development design and improvement standards in Article VI.

**9.01.02. Continuation of Nonconforming Development**

- A. Subject to the provisions below for terminating nonconforming development, such development may, if otherwise lawful and in existence on the date of enactment of this Code, remain in use in its nonconforming state.
- B. Mobile homes are specially allowed to be replaced in all areas should they be destroyed by fire or any other natural or man made disaster.

**9.01.03. Termination of Nonconforming Development**

- A. *Generally.* Nonconforming development must be brought into full compliance with the use regulations in Article II of this Code, and the development design and improvement, standards in Article VI of this Code, in conjunction with the following activities:
  - 1. Expansion of the gross floor area of the development by more than 50%. Repeated expansions of a development, constructed over any period of time commencing with the effective date of this Code, shall be combined in determining whether this threshold has been reached.
  - 2. Reconstruction of the principal structure after the structure has been substantially destroyed by fire or other calamity. A structure is "substantially destroyed" if the cost of reconstruction is 50% or more of the fair market value of the structure before the calamity. If there are multiple principal structures on a site, the cost of reconstruction shall be compared to the combined fair market value of all the structures.
  - 3. Reoccupation after twelve months of continuous non-occupation. Occupation shall be defined by currency of an occupational licence for non-residential uses and by payment of water bills for residential uses.

B. *Special Provisions for Specific Nonconformities.*

1. Nonconformity with the Stormwater Management Requirements of this Code. In addition to the activities listed in Section 9.01.03 A, existing development that does not comply with the stormwater management requirements of this Code must be brought into full compliance when the use of the development is intensified, resulting in an increase in stormwater runoff or added concentration of pollution in the runoff.
2. Nonconformity with the Parking and Loading Requirements of this Code. In addition to the activities listed in Section 9.01.03 A, full compliance with the requirements of this Code shall be required where the seating capacity or other factor controlling the number of parking or loading spaces required by this Code is increased by 50% or more.
3. Nonconforming Signs. In addition to the activities listed in Section 9.01.03 A, full compliance with the requirements of Article VIII of this Code shall be required when a nonconforming sign is substantially replaced or reconstructed at a cost equal to or greater than 50% of total replacement cost.

## **SECTION 9.02 VESTING**

### **9.02.01 Generally**

The City hereby establishes the following administrative procedures and standards by which a property owner may demonstrate that private property rights have been vested against the provisions of this Code prior to adoption of the Code. These administrative procedures shall provide determination for the consistency of development with the densities and intensities set forth in this Code.

### **9.02.02 Administration**

Applications for vesting determinations shall be filed with the Development Review Coordinator. The application shall include all pertinent evidence and/or shall include a request for a hearing. The City Council shall, within 30 days, schedule a hearing, if necessary, and make a determination to grant or deny exemption from specific provisions of this Code and the Comprehensive Plan based on evidence presented and on the standards set forth below. An application for vesting determination may be filed as part of development review or may be filed independently.

### **9.02.03 Standards**

- A. *Generally.* Applications for vesting determinations shall be evaluated pursuant to the following standards for each type of vesting.

- B. *Common Law Vesting.* A right to develop or to continue the development of property notwithstanding this Code may be found to exist whenever the applicant proves by a preponderance of evidence that the owner or developer, acting in good faith and reasonable reliance upon some act or omission of the City, has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the property.
- C. *Statutory Vesting.* The right to develop or to continue the development of property shall be found to exist if a valid and unexpired final development order was issued by the City prior to adoption of this Code, substantial development has occurred on a significant portion of the development authorized in the development order and is completed, or development is continuing in good faith as of the adoption of this Code. A "final development order" shall be any development order which approved the development of land for a particular use or uses at a specified density of use and which allowed development activity to commence on the land for which the development order was issued. "Substantial development" shall mean that all required permits necessary to commence and continue the development have been obtained, permitted clearing and grading has commenced on a significant portion of the development, and the actual construction of roads and the stormwater management system on that portion of the development is complete or is progressing in a manner that significantly moves the entire development toward completion.
- D. *Presumptive Vesting for Consistency or Concurrency.* Any structure on which construction has been completed pursuant to a valid building permit shall be presumptively vested for the purposes of consistency and concurrency and shall not be required to file an application to preserve their vested rights status.
- E. *Presumptive Vesting for Density Only.* All lots of record as of the adoption of this Code, whether located within a subdivision or without, but only to the extent of one single family residence per lot, shall be presumptively vested for the purpose of density and shall not be required to file an application to preserve their vested rights in this regard, provided such lots abut a public street and provided such lots are not contiguous, as of the adoption of this Code, to any other lot(s) owned by, or under contract for deed to, the person(s) applying for the single family residence building permit.

## **SECTION 9.03 VARIANCES**

### **9.03.01 Generally**

- A. *Granted by the Plan Board.* The Plan Board may grant a variance from the strict application of any provision of this Code, except provisions in Articles II (Land Use) and IV (Concurrency), if the following procedures are followed and findings are made.

- B. *Variances to Be Considered as Part of Development Review.* Any person desiring to undertake a development activity not in conformance with this Code may apply for a variance in conjunction with the application for development review. A development activity that might otherwise be approved by the Building Official or Development Review Coordinator must be approved by the Plan Board if a variance is sought. The variance shall be granted or denied in conjunction with the application for development review.
  
- C. *Mobile Homes.* Variances may be used for allowing mobile homes in all residential districts. Variances shall be forwarded to the Plan Board for determinations. Determination shall be made by examining the mobile home impact on the character of the neighborhood. If the location for the proposed placement of the mobile home would significantly reduce the value of surrounding property, conflict with the character of the neighboring structures or otherwise be incompatible with existing neighborhood development, then such variance shall not be allowed.

### **9.03.02. Limitations on Granting Variances**

- A. *Initial Determination.* The Plan Board shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographical condition, or other physical or environmental conditions that are unique to the specific property involved. If so, the Plan Board shall make the following required findings based on the granting of the variance for that site alone. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the Plan Board shall make the required findings based on the cumulative effect of granting the variance to all who may apply.
  
- B. *Required Findings.* The Plan Board shall not vary the requirements of any provision of this Code unless it makes a positive finding, based on substantial competent evidence, on each of the following:
  - 1. There are practical or economic difficulties in carrying out the strict letter of the regulation.
  - 2. The variance request is not based exclusively upon a desire to reduce the cost of developing the site.
  - 3. The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire, or other hazards to the public.
  - 4. The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.

5. The effect of the proposed variance is in harmony with the general intent of this Code and the specific intent of the relevant subject area(s) of the Code.
- C. *Imposition of Conditions.* In granting a development approval involving a variance, the Plan Board may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance.
- D. *Variations to Flood Damage Regulations.* For special limitations on granting variances to the Flood Damage regulations in Section 5.05 of this Code, see subsection 5.05.06 of this Code.