

**CITY OF APALACHICOLA
ORDINANCE 2017-05**

AN ORDINANCE AMENDING ORDINANCE 91-7 WHICH ADOPTS THE CITY OF APALACHICOLA LAND DEVELOPMENT CODE REVISING SECTION II (DEFINITIONS) RELATING TO HISTORIC STRUCTURES, LOTS OF RECORD, NONCONFORMING BUILDINGS, NONCONFORMING LOTS AND VARIANCES; PROVIDING FOR REVISIONS IN SECTION VI (HISTORIC AND CULTURAL PRESERVATION REGULATIONS) RELATING TO HISTORIC AND ALTERED HISTORIC STRUCTURES; PROVIDING FOR REVISIONS IN SECTION III (ENFORCEMENT AND ADMINISTRATION) RELATING TO ADMINISTRATION OF FLOODPLAIN MANAGEMENT ORDINANCE 2013-02 AS IT RELATES TO NONCONFORMING STRUCTURES; PROVIDING FOR REVISIONS IN SECTION IV (ZONING DISTRICTS AND REGULATIONS) RELATING TO DEVELOPMENT STANDARDS FOR NONCONFORMING USE, STRUCTURE AND LOTS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Commission deems it necessary and important to preserve and encourage the preservation of the historic structures that make Apalachicola the beautiful and unique place it is; and

WHEREAS, under the current rules and regulations of the Land Development Code, the City Commission understands the hardship this places on individuals pursuing the preservation of historic structures; and

WHERE, after public workshops and obtaining citizen input, the Apalachicola Planning and Zoning Board and Apalachicola City Commission deems it necessary to revise the above referenced sections of the Land Development Code to relieve some of the hardship in regards to the preservation of historic structures.

NOW THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF APALACHICOLA, FLORIDA THE FOLLOWING ORDINANCE REVISIONS RELATING TO THE ABOVE REFERENCED SECTIONS OF THE LAND DEVELOPMENT CODE:

SECTION 1: LDC SECTION II – LANGUAGE AND DEFINITIONS REVISIONS

SECTION II – LANGUAGE AND DEFINITIONS

Remove the definitions of “Grandfather Clause” and “Nonconforming Use of Land”.

Revise the definitions of “Historic Structure”, “Lot of Record”, “Nonconforming Building”, “Nonconforming Lot”, and “Variance” to read as follows:

Historic Structure – Any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the U. S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Listed individually on a State of Florida inventory of historic places (Florida Master Site File); or

D. Listed individually on a City of Apalachicola inventory of historic places that the Florida Division of Historical Resources has certified (i.e., Apalachicola – identified historic places in the Florida Master Site File).

Lot of Record – A lot which is part of a subdivision, the map of which has been recorded in the office of the Clerk of the Circuit Court, or a parcel of land the deed of which was recorded in the office of the Clerk of Circuit Court. A deeded lot that was recorded prior to December 3, 1991, the date of enactment of this Code, shall be recognized by the City as a lawfully-created lot of record.

Nonconforming Building – Any building or structure which existed lawfully at the time it was permitted, but that does not comply with the current regulations of the zoning district or the adopted comprehensive plan land use designation in which it is located.

Nonconforming Lot – Any lot of record which does not meet the minimum dimensions, area, building units density, or intensity requirements of the zoning district or the adopted comprehensive plan land use designation in which the lot is located.

Variance – A granting of relief by the Board of Adjustment from the requirements of this Code, or by the Floodplain Administrator or the City Commission from the requirements of the Floodplain Management Ordinance.

Change the term “Nonconforming Use or Building” to “Nonconforming Use of Building or Land” and revise the definition of the term to read as follows:

Nonconforming Use of Building or Land – The use of a building or portion thereof, or land or portion thereof, which does not conform with the use regulations of the district in which the building or land is located, the use of which was legally established and existed prior to the effective date of such use regulations.

Add a definition of “Historic District” to read as follows:

Historic District – The area delineated on Map A of the Historic Preservation section the City’s Comprehensive Plan.

SECTION 2: LDC SECTION VI – HISTORIC AND CULTURAL PRESERVATION REGULATIONS

Historic Apalachicola Design Guidelines, Chapter XI, Definitions

Remove the definition of “Historic Structures” in Land Development Code section VI.B.4 and the Historic Apalachicola Design Guidelines section for Definitions.

In Land Development Code section VI.B.4 and Historic Apalachicola Design Guidelines section for Definitions, change the term “Altered Structures” to “Altered Historic Structures” and revise the definition of the term to read as follows:

Altered Historic Structures – Historic buildings whose basic character has been changed (e.g., inappropriate new siding, replaced window sashes, enclosed porches, and major additions).

SECTION 3: LDC SECTION III – ENFORCEMENT AND ADMINISTRATION

A. ADMINISTRATION: POWERS AND DUTIES

Add Section III.A.1.h. to read as follows:

h. City Commission decisions on Flood Management Ordinance appeals – Under section 107 of the Floodplain Management Ordinance (Ordinance 2013-02), the City Commission is responsible for hearing and making decisions on an appeal of any alleged error in any requirement, decision, or determination made by the Floodplain Administrator and of a requested variance from the strict application of the Ordinance’s requirements. In the interest of reducing the regulatory burden and thereby facilitating the maintenance and preservation of historic structures that would upon repair not conform to the floodplain elevation requirements, the City Commission authorizes an administrative process for these structures in areas of special flood hazard (rated A and V zones) that is implemented by the Floodplain Administrator (code section III.A.5.). The City Commission still makes decision on all appeals of Floodplain Administrator decisions for nonhistoric structures and all requested variances for nonhistoric structures. The filing fee for an appeal to the City Commission and the newspaper notice requirements are the same as those in paragraph d of this section. As set forth in Floodplain Management Ordinance section 107.2, any person aggrieved by the decision of the Commission may appeal such decision to the Circuit Court, as provided by Florida Statutes.

Revise Section III.A.3.b. to read as follows:

b. Variances: Variance from the terms of this code shall be granted only if the variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship. However, a variance may be authorized only for height, area, setback, size of structure, or size of yards and open space requirements. The Board shall not issue a variance from the terms of this Code unless and until:

Revise Section III.A.3.b.9. to read as follows:

9. Under no circumstances shall the Board issue a variance to permit a use or expand a use not generally or provisionally permitted in the district involved in the request, or any use expressly or by implication prohibited by the terms of this Code in the referenced district. The Board shall not issue a variance because of the presence of nonconformities in the zoning district or an adjoining district. The Board shall not issue a variance that would in any way increase the density upon a parcel of land if not generally or provisionally permitted in the district in which the parcel is located. The Board shall not issue a variance which would permit the reduction of the required setback requirements along arterial and collector roads as defined in the Traffic Circulation Element of the City of Apalachicola Comprehensive Plan.

Add Section III.A.5. to read as follows:

5. Floodplain Administrator – Section 103 of the Floodplain Management Ordinance (Ordinance 2013-02) specifies the duties and powers of the Floodplain Administrator. As set forth in code section III.A.1.h., the City Commission additionally authorizes the Floodplain Administrator to implement the following administrative process for historic structures in special flood hazard areas (rated A and V zones) that would not conform to the base flood elevation requirements for these areas.

a. Overview – The Floodplain Administrator implements an administrative process to make decisions on requests for variances from the requirements of the Floodplain Management Ordinance (Ordinance 2013-02) in special flood hazard areas (rated A and V zones). This administrative variance process only applies to historic structures that would upon repair not conform to the Ordinance elevation requirements. The City Commission makes decisions on all Ordinance variance requests for nonhistoric structures.

b. Variance request: A person who wants to repair a historic structure that has sustained substantial damage or wants to make a substantial improvement to the historic structure may submit a variance request that the structure not be required to be elevated to the base flood elevation required for the flood zone where the structure is located.

c. Application: The Floodplain Administrator shall prepare an application form for administrative variance requests. In addition to the information required by Section 104.3 of the Floodplain Management Ordinance, the application shall require proof of the structure's eligibility as a historic structure (the list of historic structures is on (A, B, C, or D in the code definition of "Historic Structure" (usually C, the historic State Historic Preservation Officer's Florida Master Site File)) deeds or other proof of ownership for the property.

d. Administrative variance decision: In rendering a decision, the Floodplain Administrator shall consider all pertinent requirements of the Floodplain Management Ordinance, including section 107.4, which concerns historic buildings.

e. City Commission confirmation of Floodplain Administrator's decision: At regularly scheduled monthly meetings, the City Commission will confirm the administrative decisions made by the Floodplain Administrator on variance requests.

SECTION 4: LDC SECTION IV: ZONING DISTRICTS AND REGULATIONS

Revise Section IV.C. to read as follows:

C. Nonconforming Structures, Uses, and Lots

At the time of passage of this code and subsequent amendments, there existed structures, uses of structures and land, and lots that would be prohibited under the terms of this code or amendments. These are nonconforming structures, uses, and lots. The overall intent of this code is to preserve historic, nonconforming structures and to provide for the limited protection of nonhistoric nonconforming structures, uses, and lots.

1. Continuation of Historic and Nonhistoric, Nonconforming Structures

a. Historic, Nonconforming Structures

The intent of this section is to preserve all historic structures, including those that are nonconforming as to size, setback, elevation, and/or height.

i. Nothing in this section shall be construed to prevent the ordinary and routine maintenance and repair of historic, nonconforming structures.

ii. Repairs, alterations, and additions necessary for the preservation, restoration, and rehabilitation of a nonconforming structure may be permissible when authorized by the Architectural Review Board in the form of a Certificate of Appropriateness, provided the structure is a documented historic structure.

iii. If a historic, nonconforming structure receives substantial damage in excess of fifty (50) percent of the appraised value of the structure, such historic structure shall be reconstructed in accordance with the Florida Building Code. If the damaged or destroyed historic structure was nonconforming based on size, setback, elevation, or height, it may be reconstructed at no greater nonconformity than prior to when it was damaged or destroyed. A damaged or destroyed historic, nonconforming building that exceeded current height restrictions may be rebuilt to original height provided it is a replica of the original historic building. In the case of transient lodging facilities, the number of units in the reconstructed structure may not exceed the number of units in existence at the time of damage or destruction.

iv. If a historic, nonconforming structure or portion of any such structure is declared by any duly authorized official of the City to be physically unsafe or unlawful due to lack of repairs

or maintenance, the unsafe or unlawful portion shall be repaired and rebuilt in conformity with the historic preservation provisions of Chapter VI.

b. Nonhistoric, Nonconforming Structures

The intent of this section is to provide for the limited protection of nonhistoric, nonconforming structures.

- i. Nothing in this section shall be construed to prevent the ordinary and routine maintenance and repair of nonhistoric, nonconforming structures.
- ii. Ordinary repairs and maintenance on any nonhistoric, nonconforming structure may be done in any period of twelve (12) consecutive months, but repair or replacement of nonbearing walls, fixtures, wiring, or plumbing may not exceed ten (10) percent of the latest assessed valuation of the building.
- iii. If a nonhistoric, nonconforming structure receives substantial damage in excess of fifty (50) percent of the appraised value of the structure, reconstruction of the structure must comply with the Florida Building Code, the City's Floodplain Management Ordinance, and this code. If the damaged or destroyed structure was nonconforming based on size, setback, elevation, or height, the damaged portion of the structure may be reconstructed only if it is in accordance with the code requirements for size, setback, elevation, and height. In the case of transient lodging facilities, the number of units in the reconstructed structure may not exceed the number of units in existence at the time of damage or destruction.
- iv. If a nonhistoric, nonconforming structure or portion of any such structure is declared by any duly authorized official of the City to be physically unsafe or unlawful due to lack of repairs or maintenance, the unsafe or unlawful portion of the structure shall be removed or repaired and rebuilt in conformity with this code.

2. Expansion of Historic and Nonhistoric, Nonconforming Structures

The intent of this section is not to permit either historic or nonhistoric, nonconforming structures to be enlarged upon, expanded, or extended, except as allowed through the variance process at section III.A.3.b. Existing nonconformities of a structure shall not be used as grounds for adding other structures prohibited elsewhere in the same district.

- a. An expansion in square footage for either historic or nonhistoric structures shall be permitted where such expansion meets all requirements of this code, including those of section III.A.3.b. when a variance is needed.
- b. An expansion of either a historic or nonhistoric, nonconforming structure is permissible when it is required by law or ordered by the Building Inspector to secure the safety of the building.

3. Nonconforming Uses

The intent of this code is to permit nonconforming uses of structures until they are removed by economic forces or otherwise, but not to encourage their survival, since it has been determined that such uses are not compatible with other uses in the districts involved. Conformity of use is determined by the zoning district in which the structure is located. A nonconforming use may apply to either a conforming or nonconforming structure. An existing nonconforming use within a district shall not be used as grounds for permitting expansion of such use or the permitting of additional nonconforming uses within said district.

- a. Subject to the provisions contained herein, the lawful use of structures or land existing on December 3, 1991, the date of enactment of this code, shall be allowed to continue. Any business use that predates this code and otherwise would be in violation of the section IV.C. requirements may continue to operate and be licensed as a legal nonconforming use; provided, however, that the business location of the use shall not be enlarged or increased in size or intentionally abandoned in use for a period of more than 180 days. In such event, the nonconforming use shall cease and the business shall conform in all respects to the provisions of this code. All material and equipment associated with the abandoned nonconforming use shall be completely removed from the premises by its owner. Abandonment shall occur when the property owner has intent to abandon the property's nonconforming use either by an act or a failure to act. These provisions apply to intentional abandonment not caused by force majeure.
- b. Nothing in this section shall require any change in plans, construction, or designated use of a building or structure for which a building permit has been issued and the construction of which shall have been commenced within twelve (12) months of the date of that permit.
- c. Uses under special exception provisions are not nonconforming uses. Any uses for which a special exception is required, or for which a special permit may be granted as provided in this code, shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.
- d. If any nonconforming use of land intentionally ceases for a period of more than one hundred eighty (180) days, any subsequent use of such land shall conform to the regulations specified by the code for the district in which such use of property is located.
- e. If a nonconforming structure or portion of any structure containing a nonconforming use is declared by any duly authorized official of the City to be physically unsafe or unlawful due to lack of repairs or maintenance, the structure shall not thereafter be repaired or rebuilt except in conformity with this code. Closure of a nonconforming use for repair shall not be subject to the 180 day abandonment clause.
- f. An expansion of a nonconforming use may be permitted where such expansion is solely to extend an existing use throughout the building in which the use occurs on the date of enactment of this

code. Such expansion shall not be extended to occupy any land outside the building, including parking and other impervious surfaces.

g. No existing structure devoted to a use not permitted by this code in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in district in which it is located.

4. Nonconforming Lots

It is not the intent of this code to permit construction on nonconforming lots that do not meet the required lot size. However, a deeded lot that was recorded prior to December 3, 1991, shall be recognized by the City as a lawfully – created lot even it is does not meet the required square footage required for development. Nonconforming lots are subject to the following additional provisions:

- i. Lots containing historic structures within the historic district that contain more than one (1) historic structure shall be considered conforming as to density. Any lot made smaller purely by an act of the City or utility company shall not be deemed nonconforming.
- ii. Notwithstanding limitations imposed by other provisions of this code in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on a single lot of record that existed at the time of passage or amendment of this code, if such lot is in separate ownership and not of continuous frontage with other lots in the same ownership, even though such lot fails to meet the requirements for area and/or width generally applicable in the district, provided that yard dimensions and other requirements not involving area and/or width of lot shall conform to the regulations for the district in which such lot is located.
- iii. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this code, and if all or part of the lots do not meet the requirements for lot width and area as established by this code, the lands involved shall be considered to be an undivided parcel for the purposes of this code, and no portion of said parcel shall be used or sold for the purpose of development which does not meet lot width and area requirements established by this code nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements herein.

SECTION 5: All ordinances or parts of ordinances in conflict herewith, to the extent of such conflict are hereby repealed.

This Ordinance was read and adopted on April 4th, 2017. Motion to adopt Ordinance made by Commissioner Elliott, second by Commissioner Cook.

Voting Aye:

Voting Nay:

**FOR THE CITY COMMISSION OF THE
CITY OF APALACHICOLA**

ATTEST:

Lee Mathes
Lee Mathes, City Administrator

Van W. Johnson, Sr.
Van W. Johnson, Sr., Mayor