

CHAPTER IX
HARDSHIP RELIEF

- 9.00.00 PURPOSE
- 9.01.00 EXISTING NONCONFORMING DEVELOPMENT
 - 9.01.01 DEFINED
 - 9.01.02 CONTINUATION OF
 - 9.01.03 TERMINATION OF
- 9.02.00 VARIANCES
 - 9.02.01 GENERALLY
 - 9.02.02 LIMITATIONS ON GRANTING VARIANCES
 - 9.02.03 SPECIAL PROVISIONS WHERE VARIANCE IS SOUGHT TO REQUIREMENTS TO FLOOD DAMAGE PREVENTION REGULATIONS

CHAPTER IX
HARDSHIP RELIEF

9.00.00 PURPOSE

The purpose of this Chapter is to provide mechanisms for obtaining relief from the provisions of this Code where hardship would otherwise occur. Two forms of hardship are addressed: (1) Part 9.01.00 addressed hardship that would be caused if nonconforming development were required to immediately come into compliance with this Code; and (2) Part 9.02.00 addresses the hardship that may be caused in particular cases by the imposition of the Code's development design standards.

9.01.00 EXISTING NONCONFORMING DEVELOPMENT

9.01.01 Defined

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

9.01.02 Continuation Of

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.

9.01.03 Termination of Nonconforming Development

A. *Generally*

Nonconforming development must be brought into full compliance with the use regulations in Chapter II of this Code, and the development design and improvement standards in Chapters V and VI of this Code, in conjunction with the following activities:

1. The gross floor area of the development is expanded by more than ten (10) percent or more than four thousand (4000) square feet, whichever is less. 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. If such nonconforming building use is removed or discontinued for a continuous period of one year, any future use of the building shall be in conformity with the provisions of this Code.

3. Any building which is rebuilt or structurally altered, except as provided under A.1. above, shall conform to all applicable provisions of this Code unless such rebuilding or alteration is required as the result of a disaster (fire, flood, wind damage, etc.).
- B. 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 for parking and loading spaces (Sections 5.04.02 and 5.04.06) shall be required where a City development permit for the expansion or modification of a structure is issued.

C. Nonconforming Signs

1. Defined

Any sign within the City on the effective date of this Code which is prohibited by, or does not conform to the requirements of, this Code; except that signs that are within ten (10) percent of the height and size limitations of this Code, and that in all other respects conform to the requirements of this Code, shall be deemed to be in conformity with this Code.

2. Amortization of Nonconforming Signs

- a. All nonconforming signs with a replacement cost of less than \$100.00, and all signs prohibited by Section 9.02.00 (Prohibited Signs) of this Code, shall be removed or made to conform within one (1) year of the enactment of this Code.
- b. All other nonconforming signs shall be removed or altered to be conforming within five (5) years of the effective date of this Code, unless the sign is removed or an earlier removal is required because the sign is destroyed or damaged and requires substantial repair (greater than 50% of the value of the sign).

D. Nonconforming Vehicle Use Areas

1. A vehicle use area is any portion of a development site used for circulation, parking and/or display of motorized vehicles, except junk or automobile salvage yards.
2. When the square footage of a vehicle use area is increased, compliance with this Code is required as follows:

- a. Expansion by Ten (10) Percent or Less

When a vehicle use area is expanded by ten (10) percent or less, only the expansion area must be brought into compliance with this Code.

- b. Expansion by more than Ten (10) Percent

When a vehicle use area is expanded by more than ten (10) percent, the entire vehicle use area shall be brought into compliance with this Code.

- c. Repeated Expansions

Repeated expansions of a vehicle use area over a period of time commencing with the effective date of this Code shall be combined in determining whether the above threshold has been reached.

9.02.00 VARIANCES

9.02.01 Generally

A. Granted by the City of Bonifay

The City of Bonifay may grant a variance from the strict application of any provision of this Code, except provisions in Chapters II (Land Use) and IV (Concurrency), if the following procedures are followed and findings 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 City must be approved by the City of Bonifay if a variance is sought. The variance shall be granted or denied in conjunction with, but prior to, any action to be taken on the application for development review.

9.02.02 Limitations on Granting Variances

A. Initial Determination

The City of Bonifay 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 Council 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 Council shall make the required findings based on the cumulative effect of granting the variance to all who may apply.

B. Required Findings

The City of Bonifay 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 a site.
3. The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire, or other hazard 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 City of Bonifay 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.

9.02.03 Special Provisions Where Variance is Sought to Requirements to Flood Damage Prevention Regulations

A. Additional Finding

In addition to the findings required above, the City of Bonifay shall find that the requested variance will not result in an increase in the base flood elevation, additional threats to public safety, additional public expense, the creation of nuisances, fraud or victimization of the public, or conflicts with other local ordinances.

B. Considerations

Before granting a variance, the City of Bonifay shall consider:

1. The danger that materials may be swept from the site onto other lands.
2. The danger to life and property from flooding or erosion.
3. The potential of the proposed facility and its contents to cause flood damage and the effect of that damage on the owner and public.
4. The importance of the services provided by the proposed facility to the community, and whether it is a functionally dependent facility.
5. The availability of alternative locations, not subject to flooding or erosion, for the proposed use.
6. The compatibility of the proposed use with existing and anticipated neighboring development.
7. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
8. Safe vehicular access to the property in times of flood.
9. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, at the site.
10. The costs of providing governmental services during and after floods including maintenance and repair of public utilities and facilities.

C. *Special Restriction for Regulatory Floodways*

Variances that would increase flood levels during the base flood shall not be issued within any regulatory floodway.

D. *Flowage Easements*

No variance that would increase flood damage on other property shall be granted unless flowage easements have been obtained from the owners of all affected properties. In no event shall a variance be granted that would increase the elevation of the Base Flood more than one foot.

E. *Notification*

All variances to the flood damage prevention regulations shall:

1. Specify the difference between the flood protection elevation and the elevation to which the structure is to be built.

2. State that the variance will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage.
 3. State that construction below the Flood Protection Level increases risk to life and property.
- F. Record of Variances to be Maintained

The City shall maintain a record of all variances including the justification for their issuance and a copy of the notice of the variance. The City shall report all variances to the Federal Emergency Management Agency upon request.

G. Historic Properties

Notwithstanding the foregoing requirements, special variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on, or classified as contributing to a district or site listed on, the National Register of Historic Places or the Florida Master Site File. The special variance shall be the minimum necessary to protect the historic character and design of the structure. No special variance shall be granted if the proposed construction, rehabilitation or restoration will cause the structure to lose its historical integrity as determined by conformance with the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.