
Sec. 94-514. - Nonconforming uses.

A legal nonconforming use may be continued if it lawfully existed prior to the time when the regulations prohibited the use or required a special use permit, subject to the following limitations and restrictions:

1. *Expansion or extension.* The area occupied by a nonconforming use shall not be enlarged or expanded beyond the area that was lawful at the time the use became nonconforming. However, any legal nonconforming use may be extended within the building in which it is located with the approval of a Level I site plan, but the building shall not be expanded to allow an expansion of the use. No additional site features shall be allowed unless such features reduce the non-conformity.
2. *Repairs and maintenance of structures occupied by nonconforming uses.* Replacement of roofs and load bearing walls, and routine repairs and maintenance of fixtures, wiring or plumbing shall be permitted, regardless of cost, unless the use has been interrupted for a sufficient period of time as to be considered an abandonment as provided in this article.
3. *Change of ownership or tenancy.* All rights and obligations associated with a nonconforming use shall run with the use and the land, and are not personal to the present owner or tenant and are not affected by a change in ownership or tenancy, except if abandoned. Change in ownership or tenancy shall not affect continuation of a nonconforming use unless interrupted for a sufficient period of time as to be an abandonment, as provided in this article.
4. *Change in use.* No nonconforming use shall be moved in whole, or in part, to a location where it would remain a nonconforming use. A parcel with an existing non-conforming use shall not change its use to another use not permissible within the applicable zoning district.
5. *Abandonment of use.* The interruption or abandonment of a nonconforming use for a period of 90 consecutive days shall terminate the status as a legal non-conforming uses and any use that comes into effect after the 90th day shall comply with current zoning regulations. A nonconforming use may be temporarily suspended due to damage by windstorm, flood, or natural disaster, provided application for a building permit to make repairs is made within six months of the date of the windstorm, flood, or natural disaster. The development services director may consider any information that indicates the use has been abandoned, however, the burden of proof is on the owner/operator to provide such evidence that the use has not been abandoned. Evidence that the use has been abandoned may include, but is not limited to:
 - a. The removal of goods, services or stock in trade and/or the removal of operating equipment; or
 - b. The cessation of water or electricity service provided to the site, not due to natural causes; or
 - c. The cessation of paying retail sales taxes; or
 - d. Some overt act or failure to act that carries with it a sufficient implication that the owner/operator neither claims nor retains any interest in the abandoned use operated under a business tax receipt/certificate of use. The maintenance of a business tax receipt/certificate of use shall not, by itself, constitute sufficient evidence that the nonconforming use has not been abandoned.
6. *Commercial buildings in residential areas.* Commercial or retail uses permitted as of right in neighborhood commercial (NC) in Table IX-1 of [ARTICLE IX](#) of this chapter, pertaining to permitted uses, may be allowed in existing structures originally designed and intended for commercial use and located either (i) with property frontage along Spruce Avenue, between 15th Street and 21st Street, or (ii) located north of Palm Beach Lakes Boulevard, south of 15th Street, east of Tamarind Avenue and west of Henrietta Avenue, provided a Class B special use permit is obtained. To qualify, these existing structures must contain original, distinguishing nonresidential characteristics, such as, but not limited to, storefront windows, placement and orientation to the street, and floor to ceiling height. The special use permit shall be limited to the existing building(s) and such structures shall not expand in net interior area. Buildings originally constructed for residential use, including those with previous commercial or retail uses, shall not qualify for such special use permit.
7. *Community Residence or Recovery Community.* A community residence or recovery community located in West Palm Beach that is not licensed or certified by the State of Florida or appropriate national accrediting agency as of the date of the first reading of Ordinance No. 4957-21 and that does not receive licensure, certification, or recertification from the designated state entity or appropriate national accrediting agency on or before the 270th day

following of the effective date of Ordinance No. 4957-21 shall no longer constitute a legal nonconforming use and must cease operation on or before the 270th day following the effective date of Ordinance No. 4957-21 or within 60 days of the date on which certification, recertification, or the required license is denied, whichever date comes first. Such a community residence or recovery community must either return residents to their families or relocate them to safe, secure housing within 60 days of the date on which certification, recertification, or the required license is denied or on or before the 270th day following the effective date of Ordinance No. 4957-21, whichever date comes first.

Except state licensed community residences for seven to 14 individuals established under Chapter 419 of the state statutes, a family or transitional community residence having received a reasonable accommodation to operate at a particular located in West Palm Beach as of the date of the first reading of these amendments that is occupied by more than ten unrelated individuals may continue to operate with the same number of persons authorized under the reasonable accommodation issued and be conforming use subject to the provisions of Section 94-514 and provided the number of occupants of a community residence may not exceed the maximum number allowed under the city's Housing Code or the number authorized under the community residence's state certification or license, whichever is less.

The number of occupants of a recovery community that is a legal nonconforming use may not exceed the maximum number allowed under the city's Housing Code or the number authorized under the recovery community's state certification or license, whichever is less.

(Ord. No. 4714-17, § 3, 9-14-2017; Ord. No. [4957-21](#), § 12, 11-15-2021)