



TREATMENT OF NONCONFORMITIES Frequently Asked Questions

BACKGROUND

The city's zoning codes have *always* regulated the basic framework for a building on a lot (height, lot coverage, setbacks, etc.) and the allowable uses on a lot (residential, commercial, industrial, etc.). Since the City's incorporation in 1898 and the first zoning code in 1934, there have been revisions, overlays, and special districts created to address special situations which have resulted in an overly complicated and occasionally inconsistent treatment of land use.

Zoning codes must address existing conditions that may be inconsistent with the new regulations and set criteria for remodeling, expanding, replacing, redeveloping or otherwise altering the existing conditions. Nonconformities and regulations to govern these situations currently exist in Zoning Ordinance 11000 and will be modified in Miami 21 Zoning Code.

The Miami 21 zoning code proposes to make regulations governing nonconformities simpler and more flexible for residents; particularly in the case of a hurricane which is a major concern to homeowners in South Florida. These proposed regulations offer protection to homeowners that do not exist today under the current Zoning Ordinance 11000.

PART 1- GENERAL

(This section provides general information)

WHAT DOES NONCONFORMING MEAN?

An irregularity or deviation from established standards, rules, regulations, laws.

IS A NONCONFORMING STRUCTURE AND/OR USE ILLEGAL?

Non conforming structures and/or uses may be legal or illegal.

- **Legal nonconformities** are structures or uses that have received building and zoning permits previously under the regulations in place at the time of construction.
- **Illegal nonconformities** are structures or uses built without a permit and violates a portion of the legislated regulations.

ARE THERE OTHER TYPES OF NONCONFORMITIES?

Yes, any changes to legislated codes or regulations can create a nonconformity. Examples of nonconformities can be from changes in the Florida Building Code (Ex: hurricane shutters, electric fuses), Fire Code (Ex: number of window openings, fire separation), Zoning Code (Ex: setbacks or uses), etc.



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Below are some of the major differences between the current zoning code 11000 and Miami 21 for single-family and duplexes.

Occurrence	Current Zoning Code (11000)	Miami 21 Zoning Code
Destruction in the event of a natural disaster, explosion, fire, act of God.	If more than 50% of the assessed value is destroyed, <u>the home may not be rebuilt as it was, except by public hearing and special exception.</u> If less than 50% of the assessed value is destroyed, home may be restored <u>if begun</u> within six (6) months. This part of the code is unclear since it addresses the use of a structure and not the structure itself.	Allows reconstruction of the house and <u>does not stipulate a percentage requirement regardless of the amount of damage.</u> Application for reconstruction must be <u>filed</u> within twelve (12) months from date of destruction. This time period may be further extended by the City Commission.
Repairs and Maintenance of property	Only 20% of the gross square footage of the nonconforming home can be repaired within a twelve (12) month period.	Allows nonconforming home to be maintained and repaired. Does not stipulate a percentage or time frame.

PART 2- NONCONFORMING STRUCTURES

(This section focuses on nonconforming structures only)

WHAT IS A NONCONFORMING STRUCTURE?

A structure that has one or more feature(s) that does not meet the current zoning code.

WHAT IS A LEGAL, NONCONFORMING STRUCTURE IN THE MIAMI 21 CODE?

A legal nonconforming structure is one built legally (with permits) prior to the Miami 21 Zoning Code approval, where certain conditions of the structure will become inconsistent with the new zoning code.

Example:

A building was built at a five story height under the existing zoning code 11000. The Miami 21 Zoning Code has recommended that the height on the same lot be limited to a total of three stories. After



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Miami 21 zoning code is adopted, in this example, only the additional height (i.e. top two-stories), would become “nonconforming” or deviates from the new regulation.

- That additional 2-stories of height built legally with permits under a prior zoning code are considered “grandfathered” indefinitely and may remain.
- The property owner can renovate interior space on all 5 floors.
- The property owner can add a swimming pool or other accessory features to the property in conformance with the new zoning code.
- The property owner will be able to insure the entire structure and/or sell the entire structure.

ARE INTERIOR RENOVATIONS FOR NONCONFORMING STRUCTURES ALLOWED UNDER THE MIAMI 21 CODE?

Yes.

WILL MOST SINGLE-FAMILY HOMES CONFORM TO MIAMI 21?

Yes. There will be a fair number of instances when some parts of homes will become nonconforming. Conversely, there are existing single family homes that are legally nonconforming under Ordinance 11000 that will become conforming as a result of the adoption of Miami 21.

Example:

A homeowner has an existing two-car garage attached to the front of the house that occupies almost two-thirds of the frontage or front wall of the house. After Miami 21 zoning code is adopted, in this example, only the garage portion that is extending beyond the front of the house would become nonconforming.

- The nonconforming garage portion built legally with permits under a prior zoning code is considered “grandfathered” indefinitely and may remain.
- The property owner can renovate interior space on the house and nonconforming garage.
- The property owner can add a porch or other addition onto the home in conformance with the new zoning code. (All other areas of the house or property can be renovated, replaced, expanded, etc.)

WILL A BUILDING WITH AN ADDITION THAT IS LEGALLY NONCONFORMING BE ABLE TO MAKE IMPROVEMENTS?

Yes, only a portion of the building that is inconsistent with the current regulations is nonconforming. The owner has a right to build additions elsewhere on the property, or make renovations, as long as, a permit is acquired and the addition does not *increase* the nonconforming portion.

Example:

The owner of a building (house or business) with a legally built (with permits) rear addition is located one foot into the required setback. The owner proposes to build a second story addition to the building. The building may be expanded on the second story anywhere except over the nonconformity.

- The nonconformity, in this case, the one foot in the rear of the building may not be expanded vertically or horizontally encroaching further onto the rear setback.



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IF A LEGAL NONCONFORMING PRIVATE HOME OR DUPLEX IS DESTROYED BY A HURRICANE, WILL THE NONCONFORMING HOME OR DUPLEX BE ALLOWED TO BE REBUILT EXACTLY AS IT WAS?

Yes, if the owner applies for a building permit within one year of the event of the destruction. Additionally, the City Commission may authorize the zoning administrator to administratively grant an extension for large scale disasters.

MIAMI 21 WILL ELIMINATE THE REQUIREMENT FOR A PUBLIC HEARING IN ORDER FOR AN OWNER TO REBUILD AFTER A NATURAL DISASTER.

ALL OTHER LEGAL NONCONFORMING STRUCTURES WHICH ARE DESTROYED BY A NATURAL DISASTER MUST FILE AN APPLICATION FOR ITS REPLACEMENT WITH THE PLANNING AND ZONING ADVISORY BOARD (PZAB) at a public hearing. PZAB may grant the replacement or reconstruction of the nonconforming structure.

A HOMEOWNER IN A SINGLE-FAMILY NEIGHBORHOOD HAS CONSTRUCTED (WITHOUT PERMITS) ADDITIONS TO HIS HOME WHERE TENANTS ARE HOUSED. WILL THE OWNER BE ALLOWED TO RETAIN THESE UNITS?

Illegal construction and uses are not permitted and will continue to be illegal under the provisions of Miami 21 Zoning Code. (there is no change from Ordinance 11000.)

PART 3- NONCONFORMING USES

(This section focuses on nonconforming uses only)

WHAT IS A NONCONFORMING USE?

A nonconformity is an existing Use, Structure, Lot, or site improvement that is in compliance with the zoning regulations that were applicable when it was established, and for which all required permits were issued, but does not conform in whole or in part to the regulations proposed.

Example:

A daycare is operating within a single family neighborhood. Under Miami 21, daycare businesses are no longer allowed. The existing daycare business is considered a legal nonconforming use, and will continue to be allowed to operate. No new daycare businesses will be allowed in the single family neighborhood after Miami 21 is enacted.

WILL MIAMI 21 INCREASE THE NUMBERS OF NONCONFORMING USES?

No, nonconforming uses will be created in residential neighborhoods after the adoption of Miami 21. In some commercial areas, Miami 21 will actually *increase* the number of permitted uses. As a result, some previously nonconforming uses will become entirely legal. MIAMI 21 ADDS USES, AND WILL ACTUALLY LEGALIZE FORMERLY NONCONFORMING USES IN MOST OF THE PROPOSED TRANSECTS.



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Example:

There is a significant concentration of hotels/motels along the Biscayne Boulevard corridor. When “SD-9” zoning was previously enacted, it banned any additional hotel rooms. Miami 21 encourages the revitalization of the Boulevard by allowing even more uses in this area, and includes hotels as a vital component towards the revitalization effort.

HOW LONG WILL A NONCONFORMING USE BE ALLOWED TO CONTINUE?

Miami 21 proposes no changes. The same duration as within the existing zoning code allow nonconforming uses to remain for twenty (20) years and an applicant may submit to the Planning, Zoning and Appeals Board (PZAB) for an additional twenty (20) year extension.

ARE MOST OF THE USES PERMITTED IN THE INDUSTRIAL ZONES (NOW CLASSIFIED AS D1 AND D2), ALLOWED?

Yes. The number of uses permitted in D Zones (Industrial districts) has actually increased. Miami 21 would allow in the D-1 and D-2 use classifications all existing allowed uses in the existing General Commercial (C-2) and Industrial (I) categories.

Example:

An artist who owns a warehouse in an existing industrial area and is proposed in Miami 21 to be zoned D1 may build a living quarters creating a live/work studio.

PART 4- OTHER QUESTIONS REGARDING NONCONFORMITIES

WILL AN OWNER OF A LEGALLY PLATED SUBSTANDARD LOT BE ABLE TO BUILD A STRUCTURE?

Yes. Any lot that was legally platted prior to the enactment of Miami 21 Zoning Code will continue to be a buildable lot. New plats will be required to comply with the Miami 21 standards.

MIAMI 21 IS NOT CHANGING THE MINIMUM LOT SIZE REQUIRED AND LEGALLY PLATTED LOTS MAY CONTINUE TO BE BUILT UPON.

DOES THE NONCONFORMITY SECTION AFFECT HISTORIC HOMES?

Non-conformities routinely exist in many historic buildings since the buildings were built long before current zoning, fire, and building code provisions were enacted. As a result, a significant number of historic properties are currently nonconforming, but are grandfathered and further protected and regulated by historic preservation regulations. Miami 21 Zoning Code will allow single family neighborhoods an option known as T3-L allowing granny flats or accessory units to become legally conforming.



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DOES THE NONCONFORMITY SECTION AFFECT HISTORIC NEIGHBORHOODS?

The current nonconformity rules that apply to historic neighborhoods will still apply under Miami 21 Zoning Code. These nonconformity rules give distinct advantages to owners that preserve designated historic properties.

Chapter 23 of the Miami City Code contains the city's historic preservation code. Chapter 23 has undergone an extensive rewrite, and is accompanying the Miami 21 Code through the legislative process. Chapter 23 includes provisions for waivers from certain zoning regulations when a property owner makes an addition, or changes the home in a historically-appropriate manner. (See FAQ- Historic Resources for additional information.)