

ARTICLE 6 NONCONFORMITIES

SEC. 6.1 INTENT

If, within the districts established by this Ordinance or amendments that may later be adopted, there exist lots, structures and uses of land and structures which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. ***It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival.*** It is further the intent of this Ordinance that nonconformities shall not be enlarged upon or expanded, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

SEC. 6.2 NONCONFORMING STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No nonconforming structure may be enlarged, moved, or structurally altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Voluntary demolition of a nonconforming structure nullifies its nonconforming rights. Should a nonconforming structure or nonconforming portion of structure be voluntarily destroyed, moved or removed to an extent of 55 percent or more of its replacement cost at time of destruction (exclusive of foundations), it shall not be repaired or reconstructed except in conformity with the provisions of this Ordinance.
- B. When a nonconforming structure is involuntarily destroyed or removed, it shall retain its nonconforming rights for a period of six (6) months. Failure to re-establish the structure within six (6) months nullifies the nonconforming rights. Re-establish, for the purposes of this section, shall mean that necessary permits and approvals have been obtained or have been applied for and that binding contracts for the construction of the principal structure have been let; in the absence of contracts, the principal structure must be under construction to a substantial degree (at least 55 percent of the construction completed).
- C. A nonconforming structure may be altered to the extent necessary to comply with a lawful order of government officials.
- D. Existing nonconforming structures located in the special flood hazard area shall not be expanded but may be otherwise modified, altered, or repaired provided such measures incorporate flood-proofing of the structure in accordance with FEMA standards.

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SEC. 6.3 NONCONFORMING USES OF LAND

Where at the time of passage of this Ordinance or amendments, lawful use of land exists which would not be permitted in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful subject to the following provisions:

- A. No nonconforming use, except single family residential uses, shall be enlarged, increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- B. No nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
- C. A nonconforming use may continue indefinitely; however if any nonconforming use of land ceases for any reason for eighteen (18) consecutive months or more, except where government action impedes access to the premises, the nonconforming status shall be nullified. Any subsequent use of land shall be in conformity with the regulations of the district in which it is located;
- D. Sale of a property containing a nonconforming use shall have no effect on the nonconforming status;
- E. Where nonconforming use status applies, the removal or destruction of the occupied principal structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 55 percent or more of its replacement cost, exclusive of foundation, at time of destruction.

SEC. 6.4 NONCONFORMING LOTS OF RECORD

- A. A nonconforming lot of record is any lot which was lawfully created prior to the adoption of the Zoning Ordinance (see Sec. 1.3 and 6.1) but which has a smaller minimum lot area, frontage, or width than now required for that zoning district.
- B. A nonconforming lot of record may be used in accordance with the other applicable regulations for that zoning district. The subdivision of a nonconforming lot that creates a greater nonconformity is prohibited. The minor adjustment of lot lines between nonconforming lots may be allowed as long as an additional lot is not created.
- C. The Executive Director may approve building permits for a lot of record if the proposed structure can comply with all district development standards except minimum lot area, frontage, or width. Variance of any other development standard must be obtained only through action of the Board of Adjustments.

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SEC. 6.5 REPAIRS AND MAINTENANCE

A. Routine Maintenance

On any nonconforming structure or portion of a structure containing a nonconforming use, any change that does not require a building permit is considered routine maintenance and shall not affect the nonconforming status.

B. Unsafe Buildings

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any building official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

SEC. 6.6 CONDITIONAL USES NOT NONCONFORMING USES

Any use which is permitted as a conditional use in a district under the terms of this Ordinance shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.

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