

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 eighteen (18) months. Failure to re-establish the structure within eighteen (18) months nullifies the nonconforming rights. A one-time extension, no longer than 6 months, may be granted by Planning Commission staff if it can be proven that extenuating circumstances have occurred, preventing reestablishment of nonconforming rights within the standard eighteen (18) month time period. 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.

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, and cemeteries, 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. No structure, or structure and premises in combination, devoted to a nonconforming use shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- D. 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;
- E. Sale of a property containing a nonconforming use shall have no effect on the nonconforming status;
- F. 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.
- G. No nonconforming use shall be changed from one use to another, unless the newly proposed use is determined by the Executive Director (or his/her designee) to be the same or less intense than the existing nonconforming use.

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 of the same zoning classification 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 for only one single family detached structure and associated accessory structures. Such building permits may be

Article 6

Nonconformities

approved if the proposed structure(s) can comply with all district development standards except minimum lot area, frontage, or width. A Variance or Waiver of any other development standard must be obtained only through action of the Board of Adjustments or Planning Commission as allowed in this ordinance.

- D. Agricultural exception lots, as defined in Section 4.3.4.C of this ordinance, are not considered non-conforming, and are a legal conforming lots of record.

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.

SEC. 6.7 NONCONFORMING SIGNS

- A. Destroyed, Damaged, Removed, or Abandoned Signs.** Whenever a non-conforming sign collapses, burns, or is removed from its location, it shall not be replaced or reconstructed, except in full compliance with the provisions of this Section.

- B.** Freestanding signs which are not prohibited on-premise signs and in legal existence on the effective date of this Section and not in conformity with the provisions may remain in place and shall be referred to as nonconforming signs. Only routine maintenance may be performed on the sign and its structure until such time as the sign is brought into conformance with these regulations. Routine maintenance includes the following:

1. Replacement of nuts and bolts, cleaning and painting, or manipulating to level or plumb the device, but not to the extent of adding struts or guys for the stabilization of the sign or structure or substantially changing the sign.
2. Routine changing of messages (i.e. readerboard messages)
3. Replacement of facing where the existing casing/framing will still be utilized
4. Replacement of casing/framing where the existing sign face(s) will still be utilized

Article 6

Nonconformities

Routine maintenance does not include installation of additional panels that will result in a greater nonconformity. In the event that the entire sign face and casing/framing are both removed in their entirety, the nonconforming rights shall be nullified. Any new signage shall conform to all requirements of this Ordinance for the zone in which it is located (size, height, location, etc.).

- C. When a nonconforming sign 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).

- D. If a nonconforming sign is voluntarily destroyed or removed, such sign can only be replaced or reconstructed in accordance with the requirements of this Ordinance and the Subdivision Regulations, as well as any recorded subdivision plat or development plan. Any sign which cannot be replaced or reconstructed in compliance with this Section shall be removed by the property owner at owner's sole cost and expense.