

ARTICLE 10.

NONCONFORMITIES.

10.1 INTENT.

A. Within the districts established on the zoning map or amendments that may hereafter be adopted, there exists: lots; structures; uses of land or water and structures; and characteristics of use which were lawful prior to the adoption or amendment of these regulations, but which would be prohibited, regulated or restricted under the terms of these regulations or future amendments. It is the intent of this Article to permit existing nonconformities to continue until they are removed, but not to encourage their continuance.

B. It is further the intent of this section to ensure that nonconformities are not enlarged upon, expanded, intensified or extended, and are not used as grounds for adding other prohibited structures or uses elsewhere in the same district after the effective date of the ordinance from which these regulations are derived. Additionally, it is the intent of these regulations to ensure that changes in a nonconforming use shall be strictly controlled as specified herein.

10.2 NONCONFORMITIES

A. Nonconforming Lots of Record.

(1) In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of the ordinance from which these regulations are derived. This provision shall apply even though such lot failed to meet the requirements for area and width that are generally applicable in the district.

(2) Yard dimensions and requirements other than those applying to the area and width of the lot shall conform to the requirements of the district in which such lot is located. In the event that setbacks or other site and building requirements cannot be met, the owner may apply for a variance.

(3) In any district, a conforming structure on a nonconforming lot of record at the effective date of the ordinance from which these regulations are derived may be expanded or altered; provided other requirements of these regulations are met. After the effective date of the ordinance from which these regulations are derived:

a. No lot or parcel may be so divided as to create a lot with width or area below the requirements stated in these regulations; and

b. No lot or parcel or portion of a lot or parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by these regulations.

B. Nonconforming Uses of Land; Land with Minor Structures Only.

(1) Where, at the effective date of the ordinance from which these regulations are derived, the unlawful use of land exists which would not be permitted by the regulations imposed by these regulations, and where such use involves no individual, permanently-fixed structure, and no combination of permanently-fixed structures, the use may be continued as long as it remains otherwise lawful; provided:

- a. No such nonconforming use shall be enlarged, increased, intensified or extended to occupy a greater area of land than was occupied at the effective date of the adoption or amendment of these regulations;
- b. No such 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 the adoption or amendment of the ordinance from which these regulations are derived;
- c. If any such nonconforming use ceases for any reason, except when governmental action impedes or denies access to the premises, for a period of more than six consecutive months, any subsequent use of such land shall conform to the requirements specified by these regulations for the district in which such land is located; and
- d. No land with nonconforming uses shall be divided, nor shall any structure be added on such land, except for the purpose and in a manner conforming to the regulations for the district in which such land is located; provided, however, the division may be made which does not increase the degree of nonconformity of the use.

C. Nonconforming Structure Requirements.

(1) Where a structure exists lawfully in a district at the effective date of the adoption or amendment of the ordinance from which these regulations are derived, but that could not be constructed in compliance with the terms of these Land Development Regulations by reason of restrictions on area, lot coverage, height, yards, location on the lot or other requirements concerning the structure (not including the use), such structure may continue to exist so long as it remains otherwise lawful, subject to the following provisions:

- a. No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any nonconforming portion thereof may be altered to decrease its nonconformity. Any conforming portion of such structure may be enlarged or altered in such a manner that is in conformance with the requirements of the revised Land Development Regulations;
- b. Should such nonconforming structures or nonconforming portion of a structure be destroyed by any means to an extent of more than 50 percent of its just value at the time of destruction, it shall not be reconstructed, except in conformity with the provisions of these regulations;
- c. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved; and
- d. Special exceptions to the provisions of this section may be granted by the board of adjustments to permit the enlargement, repair, expansion, replacement or intensification of existing nonconforming structures that exist in an area that is zoned for a lower class of use. Any enlargement, expansion or intensification of such structures shall meet the lot coverage, height and setback requirements of the district in which such particular use is permitted.

D. Nonconforming Use Requirements for Structures or Structures and Premises in Combination.

(1) Where, at the effective date of adoption or amendment of the ordinance from which these regulations are derived, the lawful use of structures or of structures and premises in combination exist, which would not be permitted by the requirements imposed by these regulations, these structures may be continued so long as the use of the structure or the structure and premises remain otherwise lawful; provided the following shall apply:

- a. An existing structure devoted to a use not permitted by these regulations in the district in which such use is located shall not be enlarged, extended, constructed, re-constructed, moved or structurally altered, except in changing the use of the structure to a use permitted in the district in which it is located. Nonconforming single-family residential uses which are owner-occupied may be reconstructed as a nonconforming use, but must be otherwise in accordance with the provisions of these regulations;
- b. The premises of a structure, where such structure is used for a nonconforming purpose, shall not be divided nor shall any structure be added on such premises, except for the purpose and in a manner conforming to the regulations for the district in which such premises is located;
- c. Any nonconforming use may be extended throughout any part of a building which was arranged or designed for such use at the time of the adoption or amendment of the ordinance from which these regulations are derived. Any nonconforming use which occupied a portion of a building not originally designed or intended for such use shall not be extended to any other part of the building. A nonconforming use shall not be extended to occupy any land outside the building, nor any additional building on the same lot or parcel, not used for any such nonconforming use at the time of the adoption or amendment of the ordinance from which these regulations are derived;
- d. If any nonconforming use of a structure, or structure and premises in combination, ceases for any reason, except where governmental action impedes or denies access to the premises, for a period of more than six consecutive months any subsequent use shall conform to the regulations for the district in which the use is located;
- e. Any structure or structure and premise in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use shall not thereafter be resumed, nor shall any other nonconforming use be permitted; and
- f. Where nonconforming use status applies to a structure or structure and premise in combination, removal or destruction, as defined in this section, of a structure or structures shall not eliminate the nonconforming uses status of the land. Upon removal or destruction of the nonconforming structure, the use shall thereafter conform to the regulations for the district in which this land is located.

E. Conforming Uses Not Altered by Change of Use or Development Activity.

An existing use or structure that is conforming to the requirements of these regulations and future amendments thereto, shall not be made to be nonconforming by the change of use or development activity occurring on abutting properties or those in proximity.

F. Nonconforming Status Not Altered by Change in Characteristics of Use.

If characteristics of use, such as off-street parking, off-street loading, or other matters pertaining to the use of land, structures, or premises, are made nonconforming by these regulations as adopted or amended, no change shall thereafter be made to such characteristics of a use which increases nonconformity with these regulations. Changes may be made which do not increase, or which decrease, such nonconformities.

G. Nonconforming Construction to Continue with Valid Building Permit.

To avoid undue hardship, nothing in these regulations shall be deemed to require a change in the plans, construction or designated use of any building for which a building permit has been issued prior to the effective date of adoption or amendment to the ordinance from which these regulations are derived. If actual construction has not begun under a permit issued prior to the effective date of the ordinance from which these regulations are derived within six months of the date of issuance of the permit, such permit shall become invalid and shall not be renewed, except in conformity with the requirements of these regulations.

H. Repairs and Maintenance.

Work may be done on any nonconforming structure or portion of a structure, or on any structure containing a nonconforming use, for a period of 12 consecutive months for ordinary repairs, or for the repair or replacement of 30 percent of the current just value of the structure; provided that the cubic area of the structure existing at the time the structure became nonconforming is not increased.

I. Nonconforming Structures Unsafe Due to Lack of Maintenance; Repairs Permitted to Make Structure Conforming.

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

J. Nonconforming Structures Unsafe for Other than Maintenance; Permitted to Repair without Making Structure Conforming.

If a nonconforming structure or portion of a structure, or any structure containing a nonconforming use is declared by any duly authorized city official to be an unsafe building or unlawful for reasons other than the lack of repair or maintenance, nothing in these regulations shall be construed to prevent the strengthening or restoring of such building or part thereof to a safe condition. Where such un-safeness or unlawfulness of the structure is the result of damage from destruction, the percentage of damage limitations set out in these regulations shall apply.

K. Removal and replacement of mobile homes in nonconforming zones.

Mobile homes not conforming to the requirements contained in these regulations, may be removed and replaced with a new or improved unit for the owner's occupancy upon submittal of an application to the planning and development department for approval contingent upon compliance with the following requirements:

- (1) The applicant must comply with the requirements of these regulations contained in this Article, specifically subsection 10.2(C), regarding replacement;
- (2) The replacement unit must comply with all current local, state, and federal requirements; and
- (3) The size and amount of utilities to residents and mobile homes in a nonconforming area may not be increased without the approval of the city manager or his designee.