

ARTICLE 8. NONCONFORMING USES

Section 8-1. Nonconforming Use of Land and Buildings

Within the zoning 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 amendments.

It is the intent of this Ordinance to permit these nonconformities to continue until they are removed or destroyed, but not to encourage their survival. Such uses are declared by the Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.

A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited in the zoning district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

Additional Provisions regulating nonconforming use of land and buildings in the Critical Area are set forth in Article 5.

Section 8-2. Nonconforming Lots of Record (PORTIONS OF SECTION 8-2 REPEALED BY ORDINANCE 2008-03-01)

Notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, except in industrial districts. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the zoning district.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold which does not meet lot width and area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Ordinance.

Section 8-3. Nonconforming Uses of Land

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of and than was occupied at the effective date of adoption or amendment of this Ordinance;
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance;
3. If any such nonconforming use of land ceases for any reason for a period of more than 90 days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zoning district classification in which such land is located.

Section 8-4. 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, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such structure may be enlarged or altered in a way which increases its nonconformity;
2. Should such structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction as determined by the Building Inspector, it shall not be reconstructed except in conformity with the provisions of this Ordinance;
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.

Section 8-5. Nonconforming Uses of Structures

If a lawful use of a structure or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the zoning 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:

1. No existing structure devoted to a use not permitted by this Ordinance in the zoning district in which it is located, except dwellings, shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located;
2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the zoning district than the existing nonconforming use. In permitting such change, the Board of Appeals may require appropriate conditions and safeguards in accord with the provisions of this Ordinance;
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zoning district in which such structure is located, and the nonconforming use may not thereafter be resumed;
5. Except in accordance with Section 8-8 in any residential district when a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the zoning district in which it is located;
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 8-6. Repairs and Maintenance

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months or ordinary repairs, or repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an

extent not exceeding 10 percent of the current replacement value of the building, provided that the cubic content of the building, as it existed at the time of passage or amendment of this Ordinance shall not be increased.

Section 8-7. Nonconforming Lots of Record with Conforming Single Family Dwellings (ADDED PER ORDINANCE 2010-09-03)

Notwithstanding limitations imposed by other provisions of this Ordinance, a conforming single-family dwelling that existed at the effective date of adoption or amendment of this Ordinance on a nonconforming lot of record may be enlarged or expanded subject to the following provisions:

1. The enlargement or expansion shall meet all requirements for height, area and bulk regulations in effect at the time of construction.
2. The enlargement or expansion may not create a nonconforming structure.
3. The enlargement or expansion may not occupy area required to meet any off-street parking requirements of this Ordinance.

Section 8-8. Uses Under Exception Provisions Not Nonconforming Uses

Any use for which a special exception is permitted as provided in this Ordinance shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such zoning district.

Section 8-9. Restoration After Damage Or Reconstruction

Nothing in these regulations shall prevent the continuance of a use or the reconstruction of a structure occupied by a lawful nonconforming use destroyed by fire, explosion, or act of God as it existed at the time of such destruction provided that reconstruction is begun within two (2) years after the occurrence.

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