

SECTION 4.

NONCONFORMING LOTS, NONCONFORMING USES OF LAND, NONCONFORMING STRUCTURES, NONCONFORMING USES OF STRUCTURES AND PREMISES, AND NONCONFORMING CHARACTERISTICS OF USE

Sec. 4.1. Intent

Within the districts established by this ordinance or amendments that may later be adopted there exist:

- (a) Lots,
- (b) Structures,
- (c) Uses of land and structures, and
- (d) Characteristics of use

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, expanded or extended; nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. This provision shall not apply to the expansion, extension or enlargement of residential structures located in residential districts which expansion, extension or enlargement may be granted by way of special-use permit.

Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structures and land in combination 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 generally in the 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 carried on. Actual building construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual building construction. All work shall be completed within two (2) years after the passage of this ordinance.

Sec. 4.2. Nonconforming lots of record.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings (as determined by the Inspector) may be erected on any single-family lot of record, which at the time of its creation was in conformance with the Zoning Ordinance then in effect, notwithstanding limitations imposed by other provisions of this ordinance. 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 district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board.

4.2.1. Merger of multiple nonconforming lots of record.

For lawfully established lots with continuous frontage in single ownership which are located in the REA-120, RA-65, RS-40, and RU-20 zones, if all or part of the lots do not meet the requirements established for lot width, frontage or area, the lots shall be deemed to be merged and shall be considered under this ordinance, as an individual lot and no portion of said lot shall be used or sold in a manner which diminishes compliance with lot width, frontage and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with frontage or area below requirements stated in this ordinance.

Sec. 4.3. Nonconforming uses of land.

Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, the use may be continued so long as it remains otherwise lawful, provided:

- (a) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
- (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 adoption or amendment of this ordinance;
- (c) Abandonment of a nonconforming use shall consist of some overt act, or failure to act, which would lead one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use unless said owner can demonstrate an intent not to abandon the use. An involuntary interruption of nonconforming use, such as by fire and natural catastrophe does not establish the intent to abandon the nonconforming use. However, if any nonconforming use is halted for a period of one (1) year, the owner of such nonconforming use will be presumed to have abandoned such nonconforming use, unless such presumption is rebutted by presentation of sufficient evidence of intent not to abandon the use.

- (d) No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

Sec. 4.4. 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 areas, lot coverage, height, yards, its location on the lot, or other dimensional requirements concerning the structure, such structure may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity but any structure or portion thereof may be altered to decrease its nonconformity.
- (b) An involuntary interruption of a nonconforming structure, such as by fire and natural catastrophe does not establish the intent to abandon the nonconforming structure. However, if any nonconforming structure is vacant for a period of one (1) year, the owner of such nonconforming structure will be presumed to have abandoned such nonconforming structure, unless such presumption is rebutted by presentation of sufficient evidence of intent not to abandon the structure.
- (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.

Sec. 4.5. Nonconforming uses of structures or of structures and premises in combination.

If lawful use involving individual structures 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 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 existing structure devoted to a use not permitted by this ordinance in the district in which it is located 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. Alterations to remove code violations shall be permitted.
- (b) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such 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;
- (c) If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special-use permit be changed to another nonconforming use provided that the Board, or by making findings of fact in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the

existing nonconforming use. In permitting such change, the Board may require appropriate conditions and safeguards in accord with the provisions of this ordinance.

- (d) 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 district, and the nonconforming use may not thereafter be resumed;
- (e) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned as in section 4.3(c), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located;
- (f) Where nonconforming use status applies to a structure and premises in combination, voluntary removal or destruction of the 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 ninety (90) percent of the replacement cost at time of destruction.

Sec. 4.6. Repairs and maintenance of nonconforming structures.

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

Nothing in this ordinance shall be deemed to prevent the performance of normal repair or maintenance work or work necessary to comply with safety codes on a legal nonconforming use or structure.

Sec. 4.7. Uses under special-use permit and variance provisions not nonconforming uses.

Any use which has been or is permitted by special-use permit or variance in a district under the terms of this ordinance (other than a change through Board action from a nonconforming use to another use not generally permitted in the district) shall not be deemed a nonconforming use in such district, but shall without further action be considered a use by special-use permit or a use by variance and shall require further action of the Board for any changes in uses.