

SECTION 5

NON-CONFORMING REGULATIONS

5.1 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 non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended, not be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of structure 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 diligently. Actual 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 construction, provided that work shall be carried on diligently.

5.2 Non-Conforming Lots of Record: 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 adoption or amendment of this ordinance, 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 these 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 of Adjustment.

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 established for lot width and area, 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 in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

5.3 Non-Conforming Uses of Land (or Land with Minor Structures Only):

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, and where such use involves no individual structure with a replacement cost exceeding \$1,000, the use may be continued so long as it remains otherwise lawful, provided:

- a) No such non-conforming 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 non-conforming 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) If any such non-conforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located;
- d) No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such non-conforming use of land;

5.4 Non-Conforming 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 such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.

- b) Should such non-conforming structure or non-conforming portion or structure be destroyed by any means to an extent of more than 50 per cent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance;
- 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.

5.5 Non-Conforming Uses of Structures or of Structures and Premises in Combination: If lawful use involving individual structures with a replacement cost of \$1,000 or more, 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;
- b) Any non-conforming 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 non-conforming use of a structure, or structure and premises, may as a special exception be changed to another non-conforming use provided that the Board of Adjustment, 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 district than the existing non-conforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safe guards in accord with the provisions of this ordinance;
- d) Any structure, or structure and land in combination in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed;
- e) When a non-conforming 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 (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with regulations of the district in which it is located.

- f) Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction.

- 5.6 Repairs and Maintenance: On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten percent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized officials 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.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

- 5.7 Uses Under Special Exception Provisions Not Non-Conforming Uses: Any use which is permitted as a special exception in a district under the terms of this ordinance (other than a change through Board Adjustment action from a non-conforming use to another use not generally permitted in the district) shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.