

ARTICLE 3

NON-CONFORMITIES

SECTION 3.1 -- GENERAL PROVISIONS

Where within the districts established by this Ordinance, or by amendments, there exist lots, structures, and uses of land and structures which were lawful before this Ordinance was adopted or amended and 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 non-conformities to continue until they are discontinued, damaged, or removed but not to encourage their survival. These non-conformities are declared by this Ordinance to be incompatible with the lots, structures, and uses permitted by this Ordinance in certain districts. It is further the intent of this Ordinance that such non-conformities shall not be enlarged, expanded, or extended except as provided herein; nor to be used as grounds for adding other lots, structures, or uses prohibited elsewhere in the same district.

SECTION 3.2 -- NONCONFORMING USES OF LAND

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

1. No such nonconforming use of land shall be enlarged, expanded, or extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this Ordinance; and no accessory use or structure shall be established therewith.
2. No such nonconforming use of land shall be moved in whole or in part to any other portion of such land not occupied on the effective date of adoption or amendment of this Ordinance.
3. If such nonconforming use of land ceases for any reason for a period of more than one hundred and eighty (180) consecutive days, the subsequent use of such land shall conform to the regulations and provisions set by this Ordinance for the district in which such land is located.

SECTION 3.3 -- NONCONFORMING STRUCTURES:

Where, on the effective date of adoption or amendment of this Ordinance, a lawful structure exists that could not be built under the regulations of this Ordinance by reason of restrictions upon lot area, lot width, lot coverage, height, setback, open spaces or other characteristics of such structure or its location upon a lot, such structure may be continued so long as it remains otherwise lawful subject to the following provisions:

1. No such structure shall be enlarged, expanded, extended, or altered in any way which increases its nonconformance. Expansions and improvements shall be allowed where there will not be an increase in nonconformity - for example, a building with a nonconforming front yard setback may be expanded to the rear, provided the setbacks for the rear portion of the building comply.
2. Should any such structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in

conformity with the provisions of this Ordinance. Any reconstruction of a building damaged less than fifty (50) percent of its replacement cost may be reconstructed within the existing building footprint; provided reasonable upgrades to the building and site may be required to bring the building and site closer to compliance with the ordinance.

3. Should any such structure be moved for any reason of any distance, it shall thereafter conform to the regulations of the district in which it is located after it is moved.
4. Repairs and modernization to nonconforming structures containing a use allowed in the district shall be permitted, provided the total cost of construction does not exceed fifty (50) percent of the structure's replacement cost. Reasonable upgrades to the building and site may be required to bring the building and site closer to compliance with the ordinance. (Amended, effective May 20, 2009.)

SECTION 3.4 -- NONCONFORMING USES OF STRUCTURES

Where, on the date of adoption or amendment of this Ordinance, a lawful use of a structure exists that is no longer permissible under the regulations of this Ordinance, such use may be continued so long as it remains otherwise lawful subject to the following provisions:

1. No nonconforming use of a structure shall be enlarged, expanded, extended, or altered except in changing the use of such structure to a use permitted in the district in which such structure is located.
2. When a nonconforming use of a structure is discontinued or abandoned for more than one hundred eighty (180) consecutive days, the structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.
3. Any structure devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing to an extent not to exceed ten (10) per cent of the then current replacement value of the structure, provided that the volume of such structure or the number of families housed therein as it existed on the date of adoption or amendment of this Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or part thereof declared to be unsafe by any official charged with protecting the public safety upon order of such official.
4. Should any structure containing a nonconforming use be moved, for any reason of any distance, it shall thereafter conform to the regulations of the district in which it is located after it is moved.
5. Should any structure devoted in whole or in part to any nonconforming use be destroyed by any means to an extent of more than fifty (50) per cent of its replacement cost at the time of destruction, it shall not be reconstructed and again devoted to any use except in conformity with the regulations of the district in which it is located.

SECTION 3.5 -- CHANGE OF TENANCY OR OWNERSHIP

There may be a change of tenancy, ownership, or management of an existing nonconforming use, building, or structure, provided there is no change in the nature or character of such nonconforming use, building or structure.

SECTION 3.6 -- NONCONFORMING LOTS

The following regulations shall apply to any non-conforming lot of record or non-conforming lot described in a deed or land contract executed and delivered prior to the effective date of this Article or Amendment thereto:

1. **USE OF NON-CONFORMING LOTS.** Any non-conforming lot shall be used only for a use permitted in the district in which it is located. In any district in which single-family dwellings are permitted, 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 this article. 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 the lot is in conformity with all other applicable yard setback, minimum area, and any other dimensional requirements which apply to the district in which the lot is located (see Subsection 3 below).
2. **VARIANCE REQUIREMENTS.** If the proposed use of non-conforming lot would not be in conformity with the minimum set back and other applicable dimensional requirements set forth in this ordinance, then such proposed use shall be permitted only if a variance is granted by the Zoning Board of Appeals (see Subsection 3 below).
3. To develop a non-conforming lot(s) under the provisions of Subsections 1 and/or 2 of this section, the applicant is required to submit evidence that ownership of the lot was not, at the time of adoption or amendment of this Article, under contiguous single ownership with other lots which could have been combined into a conforming or more conforming lot. For purposes of this Article, the term “develop” shall be defined to mean a change in use of, or location, modification, or construction of any structure on such lot.”
4. **NON-CONFORMING CONTIGUOUS LOTS UNDER THE SAME OWNERSHIP.** The following regulations shall apply to non-conforming contiguous lots under the same ownership:
 - A. If two or more lots, or combinations of lots with contiguous frontage are under single ownership, and are of record at the time of adoption or amendment of this article, and if all or part of the individual lots do not meet the requirements established for lot width or area, the parcels involved shall be considered to be an individual parcel for purposes of this article. Any alteration of lot lines, or combinations of lots, shall result in lots which more closely conform to the requirements of this article.
 - B. No portion of any such parcel shall be used, occupied, or sold such that the same would diminish compliance with the minimum lot width and area requirements set forth in this ordinance, nor shall any division of a parcel be made which creates a lot with width or area less than the minimum requirements set forth in this ordinance.
 - C. Once any combination which creates a conforming lot occurs, the resulting lot shall not retain non-conforming lot of record status, may not be re-divided, and will thereafter be required to comply with the lot requirements of this ordinance. (Amended, effective March 1, 2004)

SECTION 3.7 -- DISTRICT BOUNDARY CHANGES

When district boundaries shall hereafter be changed, any nonconforming use may still be continued but subject to all other provisions of this ordinance.