

ARTICLE 24
NONCONFORMING STRUCTURES AND USES

Sec. 24.01 STATEMENT OF PURPOSE

It is the purpose of this Article to provide regulations governing lots, buildings, structures and the uses thereof, which were lawful prior to the enactment of this Ordinance, or amendment thereto, but which are prohibited, regulated or restricted under the provisions of this Ordinance. It is the intent of this Article to permit these buildings, structures and uses to continue, but not to encourage their prolonged existence. Because such nonconforming lots, structures and uses prevent the full realization of the goals and objectives of this Ordinance, the spirit of this Ordinance is to reduce such nonconformance. The standards of this Article are intended to accomplish the following:

- 24.01.01 Terminate and remove any use, building, accessory structure or any combination thereof established after the effective date and in violation of this Zoning Ordinance. Such uses, buildings or accessory structures are classified as a nuisance and shall not receive any of the rights, privileges or protection granted by this Article for legal nonconformities.
- 24.01.02 Eliminate nonconforming uses which are considered to be incompatible with permitted uses, or encourage redevelopment into a more conforming use.
- 24.01.03 Permit legal nonconforming buildings, structures or uses to remain until they are discontinued or removed.
- 24.01.04 Encourage the upgrade of residential neighborhoods through bringing non-conforming residential structures more into compliance with the Zoning Ordinance.
- 24.01.05 Encourage a gradual upgrading to a more conforming status of site landscaping, parking, paving, signage, access, pedestrian circulation or other features of a site which were developed in compliance with the standards at the time of their construction, but which do not meet the site standards of this Zoning Ordinance and its amendments.
- 24.01.06 Encourage the combination of contiguous nonconforming lots of record to create lots which conform to current standards, are compatible with other lots in the zoning districts, to promote the public health, safety and welfare and to eliminate problems associated with the over-crowding of land.

Sec. 24.02 NONCONFORMING BUILDINGS, STRUCTURES, LOTS, USES AND SITES

Buildings, structures, lots and uses of land which were lawfully in existence at the time or enactment of amendment of this ordinance and which have been prohibited, regulated or restricted under the terms of this Ordinance are hereby recognized as nonconforming buildings, structures, lots, uses and sites.

Sec. 24.03 USE OF NONCONFORMING LOTS

In any zoning district notwithstanding limitations imposed by other provisions of this Ordinance, where an existing lot of record fails to meet the requirements of this Ordinance for minimum lot area, minimum lot width or both, of the zoning district in which it is located, such lot may be used for the permitted uses of the zoning district including permitted accessory uses, provided other requirements of the zoning district in which such lot is located

are met. Said lot shall be described in a deed or land contract executed and delivered prior to the effective date of this Zoning Ordinance or the amendment that created the nonconforming lot and shall be continued subject to the following provisions:

- 24.03.01 **Use of Nonconforming Lots:** A principal building and customary accessory buildings for a permitted use may be erected on any single lot of record at the effective date of this Zoning Ordinance, provided all other standards of the Zoning Ordinance are met. 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 conformance with all other applicable yard setback, minimum floor area, maximum height and access requirements for the district in which it is located.
- 24.03.02 **Variance to Area and Dimensional Requirements:** If the use of a non-conforming lot requires a variation in minimum floor area and dimensional (minimum setback and maximum height) standards, then such use shall be permitted only if a variance is granted by the Zoning Board of Appeals.

Sec. 24.04 **NONCONFORMING BUILDINGS AND STRUCTURES**

Structures and buildings which are existing and lawful on the effective date of this Ordinance or amendments thereto, may be continued even though such structure does not conform with the provisions of this Ordinance or amendments thereto, subject to the following provisions of this section.

- 24.04.01 **Restrictions on Creating Nonconformities:** Nonconforming structures devoted to a conforming use shall not be enlarged nor altered in a way which increases its nonconformity within the provisions of this Ordinance, unless approved by the ZBA under Article 23.
- 24.04.02 **Restrictions on Alteration or Modification:** If a nonconforming structure is altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later re-established or increased.
- 24.04.03 **Restrictions on Damage Replacements Exceeding One-Half of Value:** In the event that any nonconforming structure shall be damaged by any means or in any manner to the extent the cost of reconstruction or restoration exceeds one-half (1/2) the value of such structure prior to the damaging occurrence as determined by the most recent assessment of the market value of the structure, exclusive of the market value of land, such reconstruction or restoration shall only be permitted in conformity with the provisions of this Ordinance, except as otherwise provided herein.
- 24.04.04 **Restrictions on Damage Replacements Less Than or Equal to One-Half of Value:** In the event that any nonconforming structure shall be damaged by any means or in any manner to the extent the cost of reconstruction or restoration is equal to or less than one-half (2) the value of such structure prior to the damaging occurrence, as determined by the most recent assessment of the market value of the structure, exclusive of the market value of land, such reconstruction or restoration shall be permitted provided a building permit for such reconstruction or restoration is issued within one (1) year of the occurrence of such damage.
- 24.04.05 **Reconstruction of a Fire Damaged Residential Structure:** In the event a nonconforming residential structure is damaged by fire or other natural cause, a residential structure may be reconstructed on the same foundation provided the first floor footprint and the total floor area does not exceed the size of the previous residence.

- 24.04.06 **Repairs, Improvements and Modernization:** Repairs, improvements, or modernization of non-conforming buildings or structures shall be permitted provided such repairs or improvements do not exceed one-half (1/2) of the value of the building or structure during any period of twelve (12) consecutive months. This cost/value calculation shall not include any costs associated with modernization of electrical, plumbing, heating or cooling systems to meet Building Code requirements. However, if a non-conforming structure or a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of maintenance and repairs and is declared as such by the Building and Fire Departments, it shall not thereafter be restored, repaired, or rebuilt except in full conformity with the regulations in the district in which it is located.
- 24.04.07 **Permitted Building Improvements:** A residential building, which is nonconforming, may be altered or rehabilitated if such activity will make it more conforming to the regulations of this Zoning Ordinance and meets building codes.
- 24.04.08 **Expansion of a Nonconforming Residential Building:** A residential nonconforming building may be expanded provided the expansion will be within required setbacks and other dimensional and building code requirements are met (spacing between structures, height, maximum lot coverage, etc.). (Example: a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming and maximum lot coverage is not exceeded).
- 24.04.09 **Permitted Expansion of Nonresidential Nonconforming Buildings:** Nonresidential nonconforming buildings shall not be expanded, unless a variance is obtained from the Zoning Board of Appeals.

Sec. 24.05 **NONCONFORMING USES OF BUILDINGS AND STRUCTURES**

The lawful use of any structure existing and lawful on the effective date of this Ordinance or amendment thereto, may be continued, even though such use does not conform with the provisions of this Ordinance or amendment thereto, subject to the provisions of this section:

- 24.05.01 **Expansions:** Any nonconforming use may be expanded throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of this Ordinance or amendment thereto, but no such use shall be expanded to occupy any land outside such building.
- 24.05.02 **Structural Expansion:** No existing structure devoted to a nonconforming use 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, unless approved by the ZBA under Article 23.
- 24.05.03 **Restoration of Damage:** If a structure which conforms with the provisions of this Ordinance, but which is occupied by a nonconforming use, is damaged by any means or in any manner to the extent that the cost of reconstruction or restoration exceeds one half (2) the value of such structure prior to the damaging occurrence, as determined by the most recent assessment of the market value of the structure, excluding the value of land, for purposes of taxation, such structure may be reconstructed or restored only if its use conforms with the provisions of this Ordinance.

- 24.05.04 **Repairs to Nonconforming Use:** On 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 nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent (10%) of the current replacement value of the structure, provided that the structure is not enlarged, extended, moved or structurally altered.
- 24.05.05 **Safety Repairs:** Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- 24.05.06 **Prohibition on Reestablishment if Replaced by Conforming Use:** If a nonconforming use of any structure is terminated and replaced by a permitted use, such nonconforming use shall not be later re-established.
- 24.05.07 **Discontinuance or Termination of Nonconforming Use of Structure:** When a nonconforming use of a structure or structure and land in combination, is discontinued or abandoned for twelve (12) consecutive months, the structure or structure and land in combination, shall not thereafter be used except in conformance with the regulations of the zoning district in which it is located. Structures occupied by seasonal uses shall be excepted from this provision.
- 24.05.08 **Mobile Home:** Where nonconforming use status applies to a mobile home, trailer coach or manufactured housing unit presently located outside a licensed mobile home park, nonconforming use status shall be lost if the mobile home, trailer coach or manufactured housing unit is moved to a different lot outside a licensed mobile home park.

Sec. 24.06 **NONCONFORMING USES OF LAND**

The lawful use of any land not involving a building or structure, existing and lawful on the effective date of this Ordinance or amendment thereto, may be continued even though such use does not conform with the provisions of this Ordinance or amendments, subject to the following provisions:

- 24.06.01 **Expansions:** No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on the effective date of this Ordinance, or amendment thereto;
- 24.06.02 **Relocations:** No such nonconforming use shall be moved in whole or in part to any other portion of the lot occupied by such use on the effective date of this Ordinance, or amendment thereto;
- 24.06.03 **Discontinuance or Abandonment:** If any such nonconforming use of land, not involving a building or structure, ceases for any reason for a period of more than twelve (12) consecutive months, any subsequent use of such land shall conform to the requirements of this Ordinance. Seasonal uses of land, such as boat storage, shall be excepted from this provision.

Sec. 24.07 **GENERAL REQUIREMENTS**

- 24.07.01 **Structure and Land in Combination:** Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

- 24.07.02 **Change of Nonconforming Use to Another Nonconforming Use:** A nonconforming use of a structure may be changed to another nonconforming use, subject to the prior approval of the Zoning Board of Appeals. The ZBA may approve such change only if it complies with all of the following standards:
- (a) the proposed use does not substantially differ from the existing use in terms of compatibility with the character of the area in which it is located;
 - (b) the proposed use does not increase the degree of nonconformity existing prior to such change of use;
 - (c) No structural alteration of the existing structure will be required to accommodate the new use.
- 24.07.03 **Change of Tenancy or Ownership:** There may be a change of tenancy, ownership or management of a nonconforming use, provided there is no change in character to the nonconformity and that all building and fire codes are met.
- 24.07.04 **Change in Use, Residential District:** In any residential district, a nonconforming use of a structure, or structure and land, may only be changed to a permitted use.
- 24.07.05 **Illegal Nonconforming Uses:** Those alleged nonconforming uses which can not be proved conclusively to have been in existence prior to the date of the enactment or amendment of this Ordinance shall be declared illegal uses and shall be discontinued following the enactment of this subsection.

Sec. 24.08 **STRUCTURES UNDER CONSTRUCTION AT ORDINANCE ADOPTION**

Any structure on which actual construction was lawfully begun prior to the effective date of this Ordinance or amendment thereto, shall be considered existing and lawful. Nothing in this Ordinance shall be deemed to require any change in the plans, construction or use of such structure. Actual construction is hereby defined to include the placing of construction materials in a permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to reconstruction, such demolition or removal shall be deemed actual construction.

Sec. 24.09 **NONCONFORMING SITES**

- 24.09.01 **Intent:** The intent of this Section is to permit improvements and minor modifications to a conforming use and building which does not meet all of the various site improvement related regulations of this Zoning Ordinance. The purpose is to allow gradual compliance with the site related requirements, for the entire site, for sites which predate the various Zoning Ordinance standards for landscaping, paving and other non safety site related items.
- 24.09.02 **Permitted:** Such improvements or expansions may be permitted by the Planning Commission during site plan review without a complete upgrade of all site elements under the following conditions:
- (a) The applicant is proposing reasonable site improvements on the overall site in relation to the scale and construction cost of the building improvements or expansion.

- (b) The applicant has addressed safety related site issues on the overall site.
- (c) For landscaping, the applicant shall bring the site toward conformity at twice the rate of building or parking lot expansions (for example, a 5% building expansion will provide at least 10% of the required landscaping).
- (d) The improvements or minor expansion will not increase noncompliance with site requirements.
- (e) All driveways that do not conform with the access standards of this Zoning Ordinance shall be eliminated, provided that the minimum reasonable access shall be maintained, as determined by the standards of Article 15.

Sec. 24.10 **RIGHT-OF-WAY CHANGES**

Where a nonconforming front yard setback, parking lot setback or greenbelt is created as a result of additional road right-of-way width being acquired by a road agency, the building or parking lot may be improved or expanded without the need to obtain a variance from the Zoning Board of Appeals, provided the following conditions are met:

- 24.10.01 **Conformed Prior to Right-of-way Widening:** The building or parking lot complied with the front yard setback prior to the acquisition of the additional road right-of-way.
- 24.10.02 **Will Not Decrease Conformity:** The building or parking lot expansion will not reduce the front yard setback from its current depth.
- 24.10.03 **Other Requirements Met:** All other requirements of the ordinance are complied with and all necessary approvals required under this ordinance are obtained.