

CHAPTER V: NON-CONFORMING SITUATIONS

5.1 PURPOSE. This chapter provides for the continued use or discontinuance of legally established developments or uses that do not comply with the standards of this ordinance.

5.2 CONTINUATION OF NON-CONFORMITIES AND COMPLETION OF NON-CONFORMING PROJECTS. It is the intent of this ordinance to permit legally established non-conformities to continue until they are removed, but not to encourage their continuation. Such uses are declared by this ordinance to be incompatible with permitted uses in the district involved. It is further the intent of this ordinance that non-conformities shall only be enlarged upon, expanded or extended under limited conditions.

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, 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.

5.3 NONCONFORMING LOTS OF RECORD. 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 adoption or amendment of this ordinance; provided, however, that the sewage disposal system and water supply shall first be approved by the County Health Department. 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 setback dimensions and other requirements, not involving area or width or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of area, width and setback requirements shall be obtained only through action of the Board of Adjustment.

5.4 EXTENSION OR ENLARGEMENT OF NON-CONFORMITIES.

A. Non-Conforming Residence. A non-conforming residential use or structure shall not be expanded in scope or area by greater than 20% of its area or value.



- B. Non-Conforming Businesses.** A non-conforming business, commercial or industrial use may be expanded when:
1. **Structural Expansion.** Structural expansion shall not exceed 20% of existing gross floor area or value of the structure, provided that the business must provide adequate parking for the existing and expanded business area.
 2. **Expansion of Non-Conforming Use in Structure.** Where a non-conforming use occupies a portion of an existing structure, expansion shall be limited to 20% of the square footage occupied by the use, provided that the business must provide adequate parking for the existing and expanded business area.
- C. Application for Expansion Required.** Application for expansion shall be submitted to the Administrator, in writing, together with a site plan showing the existing uses, detailing the type and amount of the proposed expansion and the names and addresses of all adjacent property owners (see Definitions) within 500 feet of the property.
- D. Notification of Expansion and Protest.** Upon receipt of the application, mailed notification of the proposed expansion shall be provided to all owners of property within 500 feet of the non-conformity. If protests are received from 35% or more of the property owners within the 500-foot limit within twenty days of the mailing, the requested expansion shall require processing in accordance with special exception use procedures.

5.5 NONCONFORMING STRUCTURES AND USES OF OPEN LAND OR PREMISES. If a lawful use of a structure, premises, 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: (Amended 11/22/2000-Ord 2000-05)

- A. No Increases in Non-Conformity.** No such structure, use of premises, or of a structure and premises, may be enlarged or altered in a way which increases its non-conformity nor moved in whole or in part to any other portion of the lot or parcel occupied by such a use on the effective date of adoption or amendment of this ordinance. (Amended 11/22/2000-Ord 2000-05)
- B. Extension of Non-Conforming Use Within a Building.** 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. **Destruction of Non-Conformity.** Should such structure or use of premises be destroyed by any means to an extent of more than 40 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance. A non-conforming residence located in a commercial district may be reconstructed, provided the new structure does not expand the non-conformity.(Amended 11/22/2000-Ord 2000-05)
- D. **Replacement by Conforming Use.** Any structure, or structure and land in combination, or use of premises, in or upon which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure or use is located and the nonconforming use may not thereafter be resumed.(Amended 11/22/2000-Ord 2000-05)
- E. **Change in Use Where Non-conformity Exists.** Any nonconforming use of land or structure may be changed to another nonconforming use of the same nature or less intensive nature if no structural alterations are involved and if the Administrator finds that the relation of the structure and proposed use to surrounding property is such that adverse effects on occupants and neighboring property will not be greater than if the original nonconforming use continued.
- F. **Non-Conforming Parking.** The maintenance, repair and alterations of a use with nonconforming parking in such a manner so as not to increase the need for off-street parking is permitted without limitation subject only to the other applicable requirements of this ordinance. Alteration, addition or expansion which results in an increased need for off-street parking shall provide additional parking according to the following guidelines:
 - 1. Where the modifications result in an increase in the applicable unit of measurement (dwelling unit, floor area, capacity number of seats, etc.) which is 50 percent or less of the original total, additional parking shall be required only for this new or modified part of the development.
 - 2. Where the modifications result in an increase in the applicable unit of measurement which is over 50 percent of the original total, sufficient off-street parking shall be provided to bring the entire development into conformance with the requirements of this ordinance.
- G. **Abandonment and Discontinuance.**
 - 1. **General.** Whenever a non-conforming use has been discontinued for a period of six months or longer, such use or any other non-conforming use shall not be re-established but shall be deemed abandoned. Evidence of intent to abandon the



non-conforming use is not required. A non-conforming residential use which has been unoccupied for a period of one year or more shall not be considered discontinued unless the structure has been lawfully changed to a non-residential use.

2. **Removal of a Non-Conforming Mobile Home.** A non-conforming mobile home having been removed from its foundation or pad shall constitute abandonment of the use and must comply with the provisions of this Code. Evidence of intent to abandon the non-conforming mobile home or manufactured home use is not required.

H. **Exception for Residences.** Non-conforming residences shall be allowed to provide private garages or sanitary facilities without complying with this Section as long as the garage or sanitary facility is in conformance with all other adopted codes. Such additions shall comply with all Bulk Requirements of the zoning district in which they are located.

I. **Evidence of Status.** Evidence of the status of a non-conforming use or site shall be supplied by the owner of the property upon request of the Administrator.

5.6 REPAIRS, MAINTENANCE AND RESTORATION. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent (10%) of the current replacement cost of the building provided that the area of the building as it existed at the time of passage or amendment of this ordinance shall not be increased.

Nothing in this ordinance shall be deemed to prevent the strengthening of 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 EXCEPTION AND PROVISIONS NOT NONCONFORMING USES. Any use permitted as a special exception in this ordinance shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use in such district.