

## CHAPTER 25: NON-CONFORMING USES

---

### 25.01 Purpose

Within the districts established by this Ordinance, or by amendments thereto which may later be adopted, lots, uses of land, structures, and uses of structures and land in combination exist which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance. The legitimate interest of those who lawfully established these nonconformities are herein recognized by providing for their continuance, subject to regulations limiting their completion, restoration, reconstruction, extension, and substitution. Furthermore, nothing contained in this Ordinance shall be construed to require any change in the layout, plans, construction, size or use of any lot, structure, or structure and land in combination, for which a zoning permit became effective prior to the effective date of this Ordinance, or any amendment thereto. Nevertheless, while it is the intent of this Ordinance that such nonconformities be allowed to continue until removed, they should not be encouraged to survive. Therefore, no nonconformity may be moved, extended, altered, expanded, or used as grounds for any other use(s) or structure(s) prohibited elsewhere in the district without the approval of the Board of Zoning Appeals, except as otherwise specifically provided for in this Ordinance.

### 25.02 Uses Under Conditional Use Provisions Not Non-Conforming Uses

Any use which is permitted as a conditional use in a district under the terms of this Ordinance shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

### 25.03 Incompatibility of Nonconformities

Nonconformities are declared by this Ordinance to be incompatible with permitted uses in the districts in which such uses are located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a 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 generally prohibited in the district in which such use is located.

### 25.04 Avoidance of Undue Hardship

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 demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently.

**25.05 Certificates for Nonconforming Uses**

The Zoning Inspector may upon their own initiative, or shall upon the request of any owner, issue a certificate for any lot, structure, use of land, use of structure, or use of land and structure in combination, that certifies that the lot, structure or use is a valid nonconforming use. The certificate shall specify the reason why the use is a nonconforming use, including a description of the extent and kind of use made of the property in question, the portion of the structure or land used for the nonconforming use, and the extent that dimensional requirements are nonconforming. The purpose of this section is to protect the owners of lands or structures that are or become nonconforming. No fee shall be charged for such a certificate. One copy of the certificate shall be returned to the owner and one copy shall be retained by the Zoning Inspector, who shall maintain as a public record a file of all such certificates.

**25.06 Substitution of Nonconforming Uses**

So long as no structural alterations are made, except as required by enforcement of other codes or this Ordinance, any nonconforming use may, upon appeal to and approval by the Board of Zoning Appeals, be changed to another nonconforming use if the Board finds that the use proposed for substitution is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board may require that additional conditions and safeguards be met, which requirements shall pertain as stipulated conditions to the approval of such change, and failure to meet such conditions shall be considered a punishable violation of this Ordinance. Whenever a nonconforming use has been changed to a less intensive use or becomes a conforming use, such use shall not thereafter be changed to a more intensive use.

**25.07 Reserved for future use**

**25.08 Non-Conforming Lots of Record in Combination**

If two or more lots or a combination 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 with no buildings 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 a width or area below the requirements stated in this Ordinance.

**25.09 Non-Conforming Uses of Land**

Where, at the time of adoption of this Ordinance, lawful uses of land exist which would not be permitted by the regulations imposed by this Ordinance, the uses may be continued so long as they remain otherwise lawful, provided:

- (A) No such nonconforming uses 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 uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Ordinance;
- (C) If any such nonconforming uses of land are discontinued or abandoned for more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located. Where government actions impede access to the premises, the one year time period shall begin upon conclusion of the government action.
- (D) No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.

## **25.10 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, bulk, 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 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) Should such nonconforming structure or nonconforming portion of a structure be destroyed by any means, 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.

## **25.11 Non-Conforming Uses of Structures or Structures and Land in Combination**

If a lawful use involving structures, or of a structure and land 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 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 of structure and land in combination, may, upon appeal to the Board of Zoning Appeals, be changed to another nonconforming use provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with other 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 land in combination, is discontinued or abandoned for more than one (1) year, the structure, or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. Where government actions impede access to the premises, the one year time period shall begin upon conclusion of the government action.
- (F) 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.

## **25.12 Termination of Non-Conforming Uses**

When any nonconforming use is discontinued or abandoned for more than one (1) year, any new use shall be in conformity with the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.

## **25.13 Termination of Nonconformity by Damage or Destruction**

In the event that any nonconforming building or structure is involuntarily destroyed;

- (A) A Zoning Certificate pertaining to such restoration shall be applied for and issued within one (1) year of such destruction, and rebuilding shall be diligently pursued to completion.
- (B) Such restoration shall not cause a new nonconformity, nor shall it increase the degree of nonconformance or noncompliance existing prior to such damage or destruction.

## **25.14 Repairs and Maintenance**

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section 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. Where appropriate, a building permit for such activities shall be required.