

DIVISION 4

NON-CONFORMING BUILDINGS, STRUCTURES AND USES

- 4.01 Purpose: The purpose of this Division is to provide for the regulation of non-conforming buildings, structures and uses and to specify those circumstances and conditions under which those non-conforming buildings, structures and uses shall be gradually eliminated upon reaching the end of their respective normal useful life.

Such non-conforming buildings, structures and uses may be incompatible with and detrimental to permitted land uses and structures in the zoning districts in which they are situated; they inhibit present and future development of nearby properties; and they confer upon their owners and users a position of unfair advantage.

- 4.02 Non-Conforming Lots of Record: Any lot of record, as defined herein, which does not comply with the requirements of the district in which it is located as to lot area and width, may be used for the erection of a building intended for a use permitted in the district in which the lot is located; provided, that such building will comply with all setback and other applicable requirements of this Ordinance.

- 4.03 Non-Conforming Buildings and Structures: A lawfully existing non-conforming building or structure which does not contain any non-conforming use, but which does not comply with the applicable regulations for the zoning district in which it is located, including the applicable lot size requirements or building bulk regulations, may be continued so long as it remains otherwise lawful. Non-conforming buildings and structures shall be subject to the following regulations:

A. Enlargement, Repair or Alteration:

1. A non-conforming building or structure may be enlarged, maintained, repaired or structurally altered; provided, that no such enlargement, maintenance, repair or structural alteration shall create either any additional non-conformity or increase the degree of the existing non-conformity of all or any part of such building or structure, except as provided in paragraph 2, below. Damaged or destroyed buildings or structures shall be subject to the restrictions contained in paragraph B. of this Division.
2. An addition to a lawfully existing non-conforming building or structure that would not meet the strict letter of this Ordinance but would not extend further than the original building or structure into any required setback(s) or yard area(s) of the zoning lot that the original building or structure is located may be permitted. Before issuing a zoning certificate for an addition to be constructed under this provision, a notice of the intent to issue such a zoning certificate shall be sent by certified mail to all adjoining land owners and any affected highway authority. If any adjoining land owner or affected highway authority files a written objection with the Zoning Administrator within fifteen (15) days receipt of such notice, a zoning certificate shall not be issued. The applicant may, however, proceed with an application for a variation as set forth in Section 9.06 this Ordinance. (05/20/03)

B. Damage or Destruction:

In the event that a non-conforming building or structure is damaged or destroyed by any means, such building or structure may be restored or reconstructed, provided such restoration or reconstruction is on the existing foundation of such building or structure. If such restoration or reconstruction is not on the existing foundation, then such building or structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located.

C. Relocation:

No non-conforming building or structure shall be relocated or moved in whole or in part for any distance whatever to any location on the same or any other lot unless the entire building or structure shall then conform to the regulations for the district in which it is located after being relocated or moved.

4.04 Non-Conforming Uses: When the applicable district regulations of this Ordinance do not allow as a permitted use either (a) a lawfully existing use of part or all of a building or other structure, or (b) a lawfully existing use of land not involving a building or structure, such existing use may be continued so long as otherwise lawful. Non-conforming uses shall be subject to the following regulations:

A. Structural Alteration:

No structural alteration shall be made to a building or structure containing a lawfully existing non-conforming use unless the entire building, structure or use thereof shall thereafter conform to the regulations of the district in which it is located.

1. Work may be done for ordinary maintenance and repairs, or on repair and replacement of non-bearing walls, fixtures, wiring or plumbing; provided, however, that this paragraph shall not be deemed to authorize any violation of paragraphs B. through H. of this Division.
2. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of a building or other structure (other than a damaged or destroyed building or other structure subject to the provisions of Section 4.03 of this Division) in accordance with the order of a public official who is charged with protecting the public safety and who declares such building or other structure to be unsafe and orders its restoration to a safe condition.

B. Extensions:

A non-conforming use shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities shall include, without being limited to, the following:

1. Extension of a non-conforming use to any building or structure or land area other than one occupied by such use on the effective date of this Ordinance (or on the effective date of a subsequent amendment or subsequent amendments hereto that causes such use to become non-conforming).
2. Extension of a non-conforming use within a building or structure to any portion of the floor area that was not occupied by such use on the effective date of this Ordinance (or on the effective date of a subsequent amendment or subsequent amendments hereto that causes such use to become non-conforming); provided, however, that a nonconforming use may be extended throughout any part of such a building or structure that was lawfully and manifestly designed or arranged for such use on such effective date.
3. Operation of a non-conforming use in such a manner as to conflict with, or to further conflict with, if already conflicting on the effective date of this Ordinance (or on the effective date of a subsequent amendment or subsequent amendments hereto that results in such use becoming non-conforming), any performance standards established for the zoning district in which the use is located.

C. Enlargement:

No building or structure that is devoted in whole or in part to a non-conforming use shall be enlarged or added to in any manner unless such building or structure and the use thereof shall thereafter conform to the regulations of the zoning district in which it is located.

Moreover, on any lot that is the site of any non-conforming use, no building, or structure shall be constructed, enlarged or added to in any manner unless, after such construction, enlargement or additions, all buildings, structures and uses located on such lot thereafter conform to the regulations of the zoning district in which it is located.

D. Damage or Destruction:

In the event that any building or structure that is devoted in whole or in part to a non-conforming use is damaged or destroyed, by any means, to such an extent that the cost of restoration to the condition in which it was before such damage or destruction exceeds fifty (50) percent of the current replacement cost of the entire building or structure, exclusive of foundations, such building or structure and the use thereof shall thereafter conform to the regulations of the zoning district in which it is located. Moreover, even if such damage is fifty (50) percent or less, no repairs or restoration shall be made unless restoration is actually begun within one (1) year after the date of such partial destruction and is diligently pursued to completion.

E. Relocation:

No building or structure that is devoted on whole or in part to a non-conforming use shall be relocated or moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire building or structure and the use thereof thereafter conform to the regulations of the zoning district in which it is located after being so relocated or moved. Moreover, no non-conforming use of land shall be relocated or moved, in whole or in part for any distance whatever, to any other location on the same or any other lot, unless such use thereafter conforms to the regulations of the zoning district in which it is located after being relocated or moved.

F. Change:

A non-conforming use of a building or structure, all or substantially all of which was originally designed or intended for a use which is permitted in the district in which it is located, shall not be changed to any use other than a use permitted in the district in which the land is located. When a non-conforming use has been changed to a permitted use, it shall not thereafter be changed back to a non-conforming use.

G. Discontinuance of a Non-Conforming Use of Building, Structure or Land:

1. In the event that operation of a non-conforming use of land is discontinued for a period of twelve (12) months or more, such non-conforming use shall not thereafter be re-established, and any subsequent use or occupancy of such land shall conform to the regulations of the zoning district in which it is located. The intent to resume active operation shall not affect the foregoing restriction.
2. In the event that operation of a non-conforming use of all or part of a building or structure is discontinued for a period of twelve (12) months or more, such non-conforming use shall not thereafter be re-established, and any subsequent use or occupancy of such building or structure shall conform to the regulations of the zoning district in which it is located. The intent to resume active operation shall not affect the foregoing restriction.

H. Non-Conforming Accessory Uses:

No non-conforming accessory uses shall continue after the principal use to which it is necessary has been abolished.

- 4.05 Special Uses: Where a use exists on the date that this Ordinance becomes effective (or on the effective date of a subsequent amendment or subsequent amendments hereto) and is permitted only as a special use in the district in which it is located, such use shall not be deemed a non-conforming use, but shall, without further action, be deemed a lawful special use in such district. No such lawful special use shall be substantially expanded unless a supplementary special use permit is secured in accordance with the provisions for this Ordinance pertaining to special use permits.