

## TITLE 2: ZONING

### CHAPTER 8 - NONCONFORMING USES

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#### SECTION 2-8-1 INTENT

Within the districts established by this Title or amendments that may later be adopted there exists:

- Lots,
- Structures,
- Uses of land and structures, and
- Characteristics of use,

Which were lawful before this Title was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Title or future amendments, it is the intent of this Title to permit these nonconformities to continue until they are removed. It is further the intent of this Title that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this Title to be compatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination may be continued but shall not be extended or enlarged after the effective date hereof, shall not have attached on a building or premises, additional signs intended to be seen from off the premises, or shall not have the addition of other uses, of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Title 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 Title 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 excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

#### SECTION 2-8-2 NONCONFORMING LOTS OF RECORD FOR NEW SINGLE FAMILY DWELLINGS

In any district in which single family dwellings are permitted, a single family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of this Title or amendment thereof, notwithstanding limitations imposed by other provisions of this Title. Such lot must be in separate ownership and not continuous frontage with other lots in the same ownership. 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 yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the Titles for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Zoning Board of Appeals.

If two (2) or more lots or combinations of lots or portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Title, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be undivided parcels for the purpose of this Title, 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 Title, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Title.

#### SECTION 2-8-3 NONCONFORMING USES OF PRIMARILY OPEN LAND

Where at the time of passage of this Title lawful use of land exists which would not be permitted by the Titles imposed by this Title, and where such use involves no individual structure with a replacement cost exceeding one thousand dollars (\$1,000.00), the use may be continued so long as it remains otherwise lawful, provided:

- A. No such nonconforming use 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 Title.
- B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Title.
- C. If any such nonconforming use is abandoned for a period of six (6) consecutive months, and such abandonment is intentional, then any subsequent uses of such property shall conform to the Titles applicable in the district in which such property is located.

SOURCE 02-06

- D. No additional structure not conforming to the requirements of this Title shall be erected in connection with such nonconforming use of land.

#### SECTION 2-8-4 NONCONFORMING STRUCTURES DUE TO NOT MEETING BULK REQUIREMENTS

Where a lawful structure exists at the effective date hereof of amendment of this Title that could not be built under the terms of this Title by reason of restrictions on area, lot coverage, height, yards, its location on the lot 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 structure be destroyed by any means to an extent of more than fifty (50%) of its value (including land value) at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Title. However acts of peril, beyond the property owner's control, shall not be grounds for discontinuing a nonconforming use.
- C. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the Titles for the district in which it is located after it is moved.

SOURCE 96-3,98-23,01-04

#### SECTION 2-8-5 NONCONFORMING USES WITHIN STRUCTURES

If lawful use involving individual structures with a replacement cost of one thousand dollars (\$1,000.00) or more, of structure and premises in combination, exists at the effective date of adoption or amendment of this Title, that would not be allowed in the

district under the terms of this Title, 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 Title 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 Title, 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, or structure and premises, may as a special permit be changed to another nonconforming use provided that the Zoning Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the provisions of this Title.
- D. If any such nonconforming use is abandoned for a period of six (6) consecutive months, and such abandonment is intentional, then any subsequent uses of such property shall conform to the Titles applicable in the district in which such property is located.

SOURCE 02-06

- E. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty percent (50%) of the value (including land value) at the time of destruction. However, acts of peril beyond the property owner's control, shall not be grounds for discontinuing the non-conforming use.

#### SECTION 2-8-6 REPAIRS AND MAINTENANCE OF NONCONFORMING STRUCTURES

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, of non-bearing walls, fixtures, wiring or plumbing, provided that the cubic content of the nonconforming structure or portion of structure shall not be increased.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the Titles of the district in which it is located.

Nothing in this Title shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

#### SECTION 2-8-7 USES UNDER SPECIAL PERMIT PROVISIONS

Any use which is permitted as a special use in a district under the terms of this Title (other than a change through Zoning Board of Appeals action from a nonconforming use to another use not generally permitted in the district) shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.