

ARTICLE 11

NON-CONFORMING LOTS, USES AND STRUCTURES

Section 11.1 Intent.

Certain existing lots, structures, and uses of lots and structures were lawful before this Ordinance was adopted, but have become non-conformities under the terms of this Ordinance and its amendments. It is the intent of this Ordinance to permit such non-conformities to remain until they are discontinued or removed, but not to encourage their survival or, where discontinuance or removal is not feasible, to gradually upgrade such non-conformities to conforming status. Non-conformities shall not be enlarged, expanded, or extended, except as provided herein, and shall not be used as grounds for adding other structures and uses of lots and structures which are prohibited. Non-conformities are declared by this Ordinance to be incompatible with the structures and uses permitted in the various Districts.

Section 11.2 Non-Conforming Lots.

In any district in which residential dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a residential 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. 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 other requirements not involving area or width, or both, of the lots shall conform to the regulations for the district in which such lot is located.

If two (2) or more lots or combinations 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 do not meet the requirements for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purpose of this Ordinance, and no portion of said parcel or lot shall be used or sold which does not meet lot width and area requirements established by this Ordinance, nor shall any division of the parcel or lot be made which leaves remaining any parcel or lot with width or area below the requirements stated in this Ordinance.

Section 11.3 Non-Conforming Uses of Land.

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of the Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such non-conforming uses shall be enlarged or increased, or 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 non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance.
- (c) If such non-conforming use of land ceases operation with the intent of abandonment for a period of more than six (6) months, any subsequent use of such land shall conform to the regulations specified by the Ordinance for the district in which such land is located.

Section 11.4 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, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such structure may be enlarged or altered in a way which increases its non-conformity.
- (b) Should such structure be destroyed by any means to an extent of more than fifty (50%) percent of replacement value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the 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.

Section 11.5 Non-Conforming Uses of Structures and Land.

If a lawful use of a structure, or of 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 of 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 non-conforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use, and which existed 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) Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations pertaining to the uses permitted in the district in which such structure is located, and the non-conforming use may not thereafter be resumed. Section 11.4 of this article shall apply to any non-conformity relating to the structure(s).

(d) When a nonconforming use of a structure, or structures and premises in combination, is abandoned for six (6) consecutive months or for any eighteen (18) months during any three (3) year period, whichever occurs first, the structure or structures and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located. Structures occupied by seasonal uses shall be exempt from this provision only so long as seasonal uses shall continue.

(e) Where non-conforming use status applies to a structure and premises in combination, removal, or destruction of the structure shall eliminate the non-conforming status of the land.

(f) If no structural alterations are made, any non-conforming use of structure, or structure and premises, may be changed to another non-conforming use of the same or a more restricted classification provided that the 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 non-conforming use. In permitting such change, the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a non-conforming use of a structure, land, or structure and land in combination is hereafter changed to a more restrictive classification, it shall not thereafter be changed to a less restricted classification.

Section 11.6 Repairs and Maintenance.

On any building devoted in whole or in part to any non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing to an extent not exceeding fifty (50%) percent of the replacement value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased.

A nonconforming structure, nonconforming portion of a structure, or a structure containing a nonconforming use which is physically unsafe or unlawful due to lack of repairs and maintenance, as determined by the Zoning Administrator may be restored to a safe condition. Where enlargement or structural alternation is necessary to allow compliance with health and safety laws or ordinances, the cost of such work shall not exceed twenty-five (25%) percent of the structure's fair market value, as determined by the Assessor at the time such work is done.

Section 11.7 Uses Allowed As Special Approval Uses, Not Non-Conforming Uses.

Any use for which special approval is permitted as provided in this Ordinance shall not be deemed a non-conforming use, but shall without further action be deemed a conforming use in such district.

Section 11.8 Change of Tenancy or Ownership.

There may be a change of tenancy, ownership, or management of any existing non-conforming uses of land, structures, and premises provided there is no change in the nature or character of such non-conforming uses except in conformity with the provisions of this Ordinance.

Section 11.9 Completion of Pending Construction

The adoption of the Ordinance shall not limit the construction of any building or structure for which a permit had been obtained prior to its adoption and upon which work had been commenced and carried on within thirty (30) days of obtaining of such permit, even though such building or structure does not conform to the provisions of this Ordinance.