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# NON-CONFORMITIES

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## **8.0 INTENT**

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with such resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two (2) years or more, any future use of said land shall be in conformity. Within the districts established by this resolution or amendments that may later be adopted there exists lots uses of land, structures and uses of structures and land in combination which were lawful before this resolution was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this resolution or future amendments. It is the intent of this resolution that non-conformities 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

After passage of this resolution, a non-conforming use of a structure or land, or of a structure and land in combination shall not be extended or enlarged by attachment on a building or premises, or 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.

## **8.1 AVOIDANCE OF UNDUE HARDSHIP**

To avoid undue hardship, nothing in this resolution 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 resolution 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.

## **8.2 SINGLE NON-CONFORMING LOTS OF RECORD**

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected, upon the approval of the Board of Zoning Appeals, on any single lot of record at the effective date of adoption or amendment of this resolution, not withstanding limitations imposed by other provisions of this resolution. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, or the lot shall conform to the regulations for the district in which such lot is located.

Adopted Date: 6/1/98  
Effective Date: 7/1/98

### **8.3 NON-CONFORMING USE OF LAND**

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

1. No such non-conforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied by such uses at the effective date of adoption or amendment of this resolution;
2. No such non-conforming 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 resolution;
3. If any such non-conforming uses of land are discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), any subsequent use of land shall conform to the regulations specified by this resolution for the district in which such land is located;
4. No additional structure not conforming to the requirements of this resolution shall be erected in connection with such non-conforming use of land.

### **8.4 NON-CONFORMING STRUCTURES**

Where a lawful structure exists at the effective date of adoption or amendment of this resolution that could not be built under the terms of this resolution by reason of restriction 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:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity;
2. Any non-conforming building or structure, or one or more of a group of non-conforming buildings or structures related to one industry and under one ownership, which have been or may be damaged by fire, flood, explosion, earthquake, war, riot, or act of God, may be reconstructed and used as before, if it be done within twelve (12) months of such calamity or if the area restored does not exceed the square foot area as it existed at the time of such calamity.
3. 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.

## **8.5 NON-CONFORMING USES OF STRUCTURES or STRUCTURES and LAND IN COMBINATION**

If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of adoption or amendment of this resolution that would not be allowed in the district under the terms of this resolution, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this resolution 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;
2. Any non-conforming 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 resolution, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any non-conforming use of a structure or structure and land, may, upon appeal to the Board of Zoning Appeals, be changed to another non-conforming use provided that the Board of Zoning Appeals 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 Board of Zoning Appeals may require appropriate conditions and safeguards in accordance with other provisions of this resolution;
4. 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 for the district, and the non-conforming use may not thereafter be resumed;
5. When a non-conforming use of a structure, or structure and land in combination is discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), 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;
6. Where non-conforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.

## **8.6 REPAIRS AND MAINTENANCE**

On any non-conforming structure or portion of a structure containing a non-conforming 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 non-conforming 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.

## **8.7 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 resolution shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

## **8.8 NONCONFORMITY - PERFORMANCE STANDARDS**

All uses non-conforming at the time of adoption of this Resolution, by reason of noncompliance with the provisions of Article 9 if not otherwise stipulated by the Board of Zoning Appeals shall adopt necessary measures to conform within one (1) year of adoption of this Resolution.