

## Article 11

### Non-Conforming Situations

#### 1.1. Purpose and Intent

1. The regulations of this article govern uses, structures and lots that were legally established prior to the effective date of this Ordinance but that do not comply with one or more requirements of this Ordinance.
2. Any non-conforming use, structure or lot which lawfully existed as of the effective date of this Ordinance and which remains non-conforming, and any use, structure or lot which has become non-conforming as a result of the adoption of this Ordinance or any subsequent amendment to this Ordinance, may be continued or maintained only in accordance with the terms of this article.
3. Normal repairs and routine maintenance of non-conforming structures shall be permitted unless such repairs increase the extent of the non-conformity or are otherwise expressly prohibited by this Zoning Ordinance. Nothing in this article shall be construed as to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official provided such work does not increase the extent of the non-conformity.
4. 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 for which a zoning permit was legally issued and actual construction started prior to the effective date of this Ordinance and upon which 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.

#### 11.2 Non-conforming Uses

1. The regulations of this section apply to all non-conforming uses which were legally established prior to the adoption of this Ordinance or subsequent amendment to this Ordinance but which no longer comply with the use regulations of the zoning district in which they are located.
2. If no structural alterations are made to a non-conforming use of land or building, a non-conforming use may be changed to another non-conforming use by Special Exception application in accordance with Article 16 of this Ordinance provided that the Council, either by general rule or by making findings in the specific case, finds that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In making such finding, the Council may specify appropriate conditions and safeguards in accordance with the provisions of this Ordinance. Such conditions and safeguards shall be incorporated into conditions of approval for the Special Exception.

3. Except as provided for herein, a non-conforming use shall not be expanded or extended beyond the floor area it occupied on the effective date of this Ordinance.
4. Non-conforming use shall not be moved in whole or part to any portion of the lot or parcel other than that occupied by such use on the effective date of this Ordinance except as may be allowed by Special Exception application in accordance with Article 16 of this Ordinance provided the Council, either by general rule or by making findings in the specific case, finds that the move results in decreasing the degree of non-conformity. In making such finding, the Council may specify appropriate conditions and safeguards in accordance with the provisions of this Ordinance. Such conditions and safeguards shall be incorporated into conditions of approval for the Special Exception.
5. If any non-conforming use ceases for any reason for a period of more than two years (except when Government action impedes access to the premises) after the enactment of this Ordinance, it shall be deemed abandoned and any subsequent use shall conform to the regulations specified by this Ordinance for the district in which such land is located.

### 11.3 Non-Conforming Structures

1. The regulations of this section shall apply to any structure, except signs, that was legally established prior to the adoption of this Ordinance or subsequent amendment to this Ordinance which has continued in existence and does not meet one or more requirements of the Zoning Ordinance.
2. A non-conforming structure may be used for any use permitted in the underlying zoning district, subject to all applicable use standards.
3. A non-conforming structure may be enlarged or expanded if the expansion does not increase the extent of the non-conformity. Expansion or enlargement of the structure shall meet all Zoning Ordinance requirements, including height, yard and setbacks for the applicable Zoning district. Expansion or enlargement of a non-conforming structure shall not increase the land area of the non-conforming portion of the structure or the total square footage of the non-conforming portion of the structure.
4. A non-conforming structure may be moved if the movement or relocation eliminates the non-conformity.
5. A structure which is non-conforming for reasons other than use, such as setbacks or other site conditions, may be repaired, restored or rebuilt provided that such restoration or repair shall not increase the land area of the nonconforming portion of the structure or the total square footage of the nonconforming portion of the structure. Repair work may include work done on ordinary repairs, or on repair or replacement of walls, fixtures, wiring, or plumbing provided that the square footage of the non-conformity does not increase. If a non-conforming structure or portion of a structure, or a structure or portion of a structure containing a non-conforming use,

becomes physically unsafe or illegal due to lack of repair and maintenance, and is declared by any duly authorized official to be unsafe or illegal by reason of physical condition, it may thereafter be restored, repaired, rebuilt or used in accordance with the prior nonconformity provided that the square footage existing when it became nonconforming shall not be increased.

6. Any non-conforming structure that is destroyed or substantially damaged to the extent that the cost of restoration to its condition before the occurrence shall exceed 50% of the cost of reconstructing the entire structure and reconstruction has not been diligently pursued for a period of two years, approval of the Board of Zoning Appeals shall be required for the structure to be restored to the previously existing non-conforming status.
7. The status of a non-conforming structure shall not be affected by changes of tenancy, ownership or management.

#### 11.4 Non-Conforming Lots

1. The regulations of this section apply to non-conforming lots of record, which are lots or land parcels that were legally created but which do not comply with current requirements of the zoning district regulations for lot area or width standards. Non-conforming lots may be occupied and used in accordance with the standards of this section.
2. A lot may only be established after the effective date of this Ordinance if such lot conforms with all requirements of this Ordinance.
3. Notwithstanding the provisions hereinabove, boundary line adjustments may be permitted between non-conforming lots provided that the Planning Commission finds that the degree of non-conformity is not increased due to such adjustment.
4. Any lot, which be reason of realignment of a Federal or State Highway, or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, shall be considered a non-conforming lot of record subject to the provisions set forth in this section. Any lawful use or structure existing at the time of such highway realignment or condemnation which would thereafter no longer be permitted under the requirements of this Ordinance shall be considered. a non-conforming use or structure.
5. Any lot which was vacant at the time it became non-conforming, may be used for any use allowed in the underlying zoning district. Development on nonconforming lots shall comply with the required setbacks and yards of the underlying district. Any modification of yard requirements shall require approval of a variance by the Board of Zoning Appeals.

6. Any lot which contained a building or structure at the time it became non-conforming, the maintenance of such building or structure shall be in accordance with the requirements of this article.
7. The status of a non-conformity shall not be affected by changes of tenancy, ownership or management.

11.5 Definitions. For the purpose of this Ordinance, certain words and terms are herein defined as follows:

1. Total Square Footage: The sum of the total of all horizontal floors of the subject structure(s) measured from the interior faces of exterior wall. Total square footage of buildings does not include exterior features of the building such as porches unless said features do not extend beyond the foundation of the structure.
2. Land Area: The sum of the total area occupied by a structure measured along the exterior walls of the structure and including the entire foundation of the structure.

**[Amended September 18, 2008]**