

## ARTICLE 4

### NON-CONFORMITIES.

#### Section 400

##### INTENT.

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 to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further 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.

#### Section 410

##### INCOMPATIBILITY OF NON-CONFORMITIES.

Non-conformities are declared by this resolution to be incompatible with permitted uses in the districts in which such use is located. A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of a structure and land in combination shall not be extended or enlarged after passage of this resolution by attachment on a building or premises of 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.

#### Section 420

##### 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 within one (1) year of date of resolution.

#### Section 430

##### 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 on any single lot of record at the effective date of adoption or amendment of this resolution, notwithstanding limitations imposed by other provisions of this resolution. Such lot must be in separate ownership and not of 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 regulations for the district in which such lot is located. Variances of requirements listed in Articles 9 and 10 of this resolution other than lot area or lot width shall be obtained only through action by the Board of Zoning Appeals as provided in Sections 540 through 549.

#### Section 431

##### NON-CONFORMING LOTS OF RECORD IN COMBINATION.

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this resolution and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purpose of this resolution 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 resolution, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this resolution.

Section 440

NON-CONFORMING USES OF LAND.

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

- 1) No such non-conforming 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 resolution;
- 2) No such non-conforming uses shall be moved in whole or in part of 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 one (1) year (except when government action impedes access to the premises), any subsequent use of such 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.

Section 441

NON-CONFORMING FRONT YARD SETBACKS IN EXISTING DEVELOPED RESIDENTIAL DISTRICTS

In present neighborhoods where four (4) or more dwellings exist on one side of a street, between two (2) intersecting streets, or within 600 feet on either side of the proposed building, the required front setback shall be the average of the existing non-conforming dwellings but not less than thirty-five (35) feet from the road right-of-way. (Rev. 01/03/2001)

Section 442

NON-CONFORMING SIDE YARD SETBACKS IN EXISTING DEVELOPED RESIDENTIAL DISTRICTS

Any pre-existing lot with a frontage of 70' feet or less, which is located in a developed residential district, a side yard setback of five feet (5') will be allowed for the following types of construction projects; attached or detached garages, additions to the principal structure and all accessory structures.

Section 450

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 restrictions 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 building or structure existing as a non-conforming use at the time this Resolution takes effect, which is destroyed by fire or the elements, may, upon securing a zoning certificate therefore, be reconstructed and restored as previously existing, providing the same is done within two (2) years from the date of said destruction. (Rev. – 01/10/09)
- 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.
- 4) Recreational vehicles and mobile homes as defined by Article 2 of this resolution (excepting manufactured homes as defined by this Resolution) are not structures, and Sections 450 and 460 of this

Resolution do not apply.

#### Section 460

##### NON-CONFORMING USES OF STRUCTURES OR OF 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 accord 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 one (1) year (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;
- 7) Removal of a non-conforming manufactured home from a lot in a Residential Zone shall be deemed voluntary abandonment.

#### Section 470

##### 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 an official charged with protecting the public safety, upon order of such official.

#### Section 480

##### 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.