

Article 6: Nonconforming Situations

Section 6.01: Continuation of Nonconforming Situations

Unless otherwise specifically provided for in this Ordinance, and subject to the restrictions and qualifications set forth in this Article, nonconforming situations that were lawful on the effective date of this Ordinance may be continued.

Section 6.02: Nonconforming Lots

- (A) When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the minimum dimensional requirements set forth in Section 4.01, then the lot may be used as proposed just as if it were conforming; provided however, no use (ie. a two-family residence) that requires a greater lot size than the established minimum lot size for a particular zone shall be permissible on a nonconforming lot.
- (B) When a use proposed for a nonconforming lot is conforming in all other respects but the applicable setback requirements cannot reasonably be complied with, the Administrator may allow deviations from the applicable setback requirements if he determines that:
- (1) The property cannot reasonably be developed for the use proposed without such deviations;
 - (2) Such deviations are necessitated by the size or shape of the nonconforming lot; and
 - (3) The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health and safety.
- (C) The maximum deviation permitted under subsection (B) above shall be limited to the following:
- (1) Side yard setback: Five (5) percent of the lot width or five (5) feet, whichever is less. Such setback deviation shall apply to both side yards.
 - (2) Front yard setback: The front yard setback shall not be deviated from except as provided in Section 4.05.
 - (3) Rear yard setback: Ten (10) percent of the lot depth or ten (10) feet, whichever is less.
- (D) For purposes of subsection (B), compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship shall not constitute grounds for finding that compliance is not reasonably possible.
- (E) This section shall apply only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures located on it. A change in use of a developed nonconforming lot shall be accomplished in accordance with Section 6.05.
- (F) If, on the date this section becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his successors in interest shall utilize the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street within a distance of five hundred (500) feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances

specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed.

Section 6.03: Extension or Enlargement of Nonconforming Situations

- (A) Except as specifically provided in this section, no person shall engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:
- (1) An increase in the total amount of space devoted to a nonconforming use; or
 - (2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.
- (B) Subject to subsection (D), a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, subject to Section 6.07, a nonconforming use shall not be extended to additional buildings or to land outside the original building.
- (C) Subject to Section 6.07, a nonconforming use of open land shall not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (ie. mineral extraction) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten (10) percent or more of the earth products had already been removed on the effective date of this Ordinance.
- (D) The volume, intensity, or frequency of a use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if such changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.
- (E) Any structure used for single-family detached residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a smaller or larger size, provided the enlargement or replacement does not create new nonconformity with respect to the dimensional requirements for the applicable zoning district set forth in Section 4.01. This paragraph is subject to the limitations stated in Section 6.06.
- (F) Whenever (i) there exists a lot with one or more structures on it, and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the parking or loading requirements of this Ordinance that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practically be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking in accordance with Section 10.11, if: (i) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (ii) such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning or conditional use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

- (G) A structure that is nonconforming because of encroachments into a required rear or side yard may be expanded to conform to an existing established building line provided the total width of any expansion shall not exceed the width of the existing encroachment.

Section 6.04: Repair, Maintenance and Reconstruction

- (A) Minor repairs to and routine maintenance of property where nonconforming situations exist shall be permitted and encouraged. Major renovations, which shall constitute work estimated to cost more than twenty-five (25) percent of the appraised valuation of the structure to be renovated, shall be done only in accordance with a zoning permit issued pursuant to this section.
- (B) If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed twenty-five (25) percent of the appraised valuation of the damaged structure, then the damaged structure shall be repaired or replaced only in accordance with a zoning permit issued pursuant to this section. This subsection shall not apply to structures used for single-family detached residential purposes, which may be enlarged or replaced as provided in Section 6.03 (E).
- (C) For the purposes of subsections (A) and (B):
- (1) The "cost" of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.
 - (2) The "cost" of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of subsections (A) or (B) by doing such work in increments.
 - (3) The "appraised valuation" shall mean either the appraised valuation for property tax purposes, updated as necessary by the change in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.
- (D) The Administrator shall issue a permit authorized by this section if he finds that, in completing the renovation, repair or replacement work:
- (1) No violation of Section 6.03 will occur; and
 - (2) The permittee will comply, to the extent reasonably possible, with all provisions of this Ordinance applicable to the existing use except that the permittee shall not lose his right to continue a nonconforming use. Compliance with a requirement of this Ordinance shall not be considered reasonably possible if compliance cannot be achieved without adding additional land to the lot where the non-conforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements, such as paved parking shall not constitute grounds for finding that compliance is not reasonably possible.

Section 6.05: Change in Use of Property Where a Nonconforming Situation Exists

- (A) A change in use of property, where a nonconforming situation exists, that is sufficiently substantial to require a new zoning or conditional use permit shall not be made except in accordance with subsection (B) and (D).
- (B) If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this Ordinance applicable to that use can be complied with, permission to make the change shall be obtained in the same manner as

permission to make the initial use of a vacant lot. Once conformity with this Ordinance is achieved, the property shall not revert to its nonconforming status.

- (C) If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this Ordinance applicable to that use cannot reasonably be complied with, then the change in use shall be permissible only if the permit-issuing authority finds, in addition to any other findings that may be required by this Ordinance, that:
- (1) The intended change will not result in a violation of Section 6.03; and
 - (2) All of the applicable requirements of this Ordinance that can reasonably be complied with will be complied with. Compliance with a requirement of this Ordinance shall not be considered reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements, as paved parking shall not constitute grounds for finding that compliance is not reasonably possible. And in no case shall an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.

Section 6.06: Abandonment and Discontinuance of Nonconforming Situations

- (A) When a nonconforming use is discontinued for a consecutive period of one hundred eighty (180) days, the property involved shall thereafter be used only for conforming purposes.
- (B) If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of one hundred eighty (180) days, then that property shall thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the permit-issuing authority finds that the elimination of a particular nonconformity is not reasonably possible. Compliance with a requirement of this Ordinance shall not be considered reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements, such as paved parking shall not constitute grounds for finding that compliance is not reasonably possible. The permit shall specify which nonconformities need not be corrected.
- (C) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for one hundred eighty (180) days shall not result in loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.
- (D) When a structure or operation made nonconforming by this Ordinance is vacant or discontinued at the effective date of this Ordinance, the 180-day period for purposes of this section begins to run on the effective date of this Ordinance.
- (E) Nonconforming manufactured homes located in I-1 and I-2 zones shall be exempt from the provisions of subsection (A) provided water, sewer, and electric connections are still in existence on the property (or septic tanks in situations where sewer is not available). The provisions of this subsection shall be retroactive for manufactured homes removed prior to the adoption of this

Ordinance. The provisions of Section 5.12 shall be applicable to any manufactured homes permitted pursuant this subsection.

Section 6.07: Completion of Nonconforming Projects

- (A) All nonconforming projects on which construction was begun at least one hundred eighty (180) days prior to the effective date of this Ordinance as well as all nonconforming projects that are at least ten (10) percent completed in terms of the total expected cost of the project on the effective date of this Ordinance may be completed in accordance with the terms of their permits, so long as such permits were validly issued and remain unrevoked and unexpired. If a development is to be completed in phases, this subsection shall apply only to the particular phase under construction.
- (B) Except as provided in subsection (A), all work on any nonconforming project shall cease on the effective date of this Ordinance, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a zoning, conditional use, or sign permit issued in accordance with this section by the permit-issuing authority. The permit-issuing authority shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial way in reasonable reliance on the land-use law as it existed before the effective date of this Ordinance and thereby would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the permit-issuing authority shall be guided by the following, as well as other relevant considerations:
- (1) All expenditures made to obtain or pursuant to a validly issued and unrevoked building, zoning, sign, or conditional use permit shall be considered as evidence of reasonable reliance on the land-use law that existed before this Ordinance became effective.
 - (2) Except as provided in subsection (B)(1), no expenditures made more than one hundred eighty (180) days before the effective date of this Ordinance shall be considered as evidence of reasonable reliance on the land-use law that existed before this Ordinance became effective. An expenditure is made at the time a party incurs a binding obligation to make that expenditure.
 - (3) To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.
 - (4) To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.
 - (5) An expenditure shall be considered substantial if it is significant both in dollar amount and in terms of the total estimated cost of the proposed project, and the ordinary business practices of the developer.
 - (6) A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the land-use law affecting the proposed development site could not be attributed to him.
 - (7) Even though a person had actual knowledge of a proposed change in the land-use law affecting a development site, the permit-issuing authority may still find that he acted in

good faith if he did not proceed with his plans in a deliberate attempt to circumvent the effects of the proposed ordinance. The permit-issuing authority may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that (i) at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development, and (ii) the developer had legitimate business reasons for making expenditures.

- (C) When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection (B). In addition to the matters and subject to the guidelines set forth in subdivisions (1) through (7) of subsection (B), the permit-issuing authority shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:
- (1) Whether any plans prepared or approved regarding uncompleted phased constitute conceptual plans only or construction drawings based upon detailed surveying, architectural, or engineering work.
 - (2) Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.
 - (3) Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if such approved but uncompleted phases are constructed in conformity with existing regulations.
- (D) The permit-issuing authority shall not consider any application for the permit authorized by subsection (B) that is submitted more than sixty (60) days after the effective date of this Ordinance. The permit-issuing authority may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.
- (E) The Administrator shall send copies of this section to the persons listed as owners for tax purposes (developers, if different from the owners) of all properties in regard to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be in some stage of development. This notice shall be sent by certified mail not less than fifteen (15) days prior to the effective date of this Ordinance.
- (F) The permit-issuing authority shall establish expedited procedures for hearing applications for permits under this section. These applications shall be heard, whenever possible prior to the effective date of this Ordinance, so that construction work is not needlessly interrupted.

Section 6.08: Termination of Nonconforming Situations

- (A) Certain nonconforming situations shall be terminated after a sufficient period of time has allowed them to amortize. A schedule to amortize certain nonconforming uses may be devised after careful consideration of:
- (1) Degree of neighborhood disruption caused by the nonconformity;

- (2) Period of amortization; and
 - (3) Particularities of this Ordinance's enforcement.
- (B) The amortization period shall begin on the date of legal notification from the Code Enforcement Officer to the nonconforming situation property owners affected by this section. Such notification shall be by sent registered or certified mail, with a copy of this and other pertinent sections of this Ordinance.
- (C) After the amortization period has elapsed, the Code Enforcement Officer shall order the nonconforming situation owner to cease, and the property shall thereafter be used only for conforming purposes.
- (D) The Board of Adjustment may extend an amortization period for one (1) calendar month for each one hundred dollars (\$100.00) of the owner's unused investment in the nonconforming situation. The term "unused investment" shall mean the original actual dollar cost for federal income tax purposes, as certified in writing at the request of the owner by a certified public accountant.