

## **ARTICLE 11**

### **NON-CONFORMITIES**

#### **SECTION 1101      INTENT AND PURPOSE**

- A. It is the intent and purpose of this Article to provide for the continuance of lawful uses of land or structures which existed before the enactment of this Ordinance or before the effective date of an amendment to this Ordinance, but not to encourage the survival of such non-conforming use in an expanded and intensified manner to further subjugate other intents and purposes of this Ordinance. Such nonconformities are permitted to continue under the provisions and conditions specified in this Article. which are intended to minimize disharmony and incompatibility between uses of land and provide for either the eventual discontinuance or conversion to a conforming use.
  
- B. Non-conformities shall not be enlarged, expanded, or extended, except as provided herein, and such enlargement, expansion and extension shall not be used as grounds for implementation of similar and like uses on other properties in the immediate vicinity, nor as a basis for amending district boundaries. Non-conformities are declared by this Ordinance to be incompatible with the structures and uses permitted in the various districts.

#### **SECTION 1102      CLASSIFICATION OF NON-CONFORMITIES**

- A. Use of structures or land existing at the effective date of this Ordinance that were established without approval of zoning compliance or without a valid building permit under previous or existing Ordinance, or those uses which cannot be proved conclusively as existing prior to the effective date of this Ordinance shall be declared illegal uses and are not entitled to the status and rights accorded legally established uses.
  
- B. An existing use of land, lot, or structure which does not fully comply with the provisions of this Ordinance, as amended, and either was lawfully established, created, commenced during a period of time when no valid zoning ordinance was in effect, or approved during a period of time under a previously adopted Ordinance, or was lawfully established under the jurisdiction of this Ordinance, and remains in compliance with the terms of a permit issued at that time shall be a considered a legal nonconformity.

#### **SECTION 1103      REGULATION OF NONCONFORMITIES**

- A. In order to meet the intent and purpose of this Article, the following provisions are provided for addressing the continuation and expansion of a legal nonconformity.

1. Any legal nonconforming use of land or structure that remains discontinued for a period of one (1) year shall be conclusively presumed to be abandoned and shall lose all rights to continuance as a legal nonconformity. Any future use of land or structure must be in conformance with this Ordinance and future amendment thereof.
2. No legal nonconforming use shall be permitted to expand in intensity, expand or enlarge the size of any building or structure, or extend the land area occupied by the nonconforming use. The expansion of the intensity of non-residential uses that does not change the structure or land utilized includes the following:
  - a. an increase in the number of employees;
  - b. a material change in the product or production conducted by the use; or
  - c. similar such changes that may increase increase traffic, congestion, and continuance of the use.
3. A legally nonconforming structure may be occupied by a legal conforming use as long as the nonconformity does not increase the potential of the legal conforming use have negative impacts on the use and personal enjoyment of adjacent property. A special land use may not be implemented where specific dimensional requirements and conditions set forth in provisions for a particular special land use can not be met by the legal nonconforming structure.
4. Structural change requiring a zoning or building permit shall not be undertaken for a nonconforming structure or structure occupied by a legal use or legal nonconforming use.
  - a. Building, mechanical, electrical, plumbing, sewage disposal, and well permits may however be issued for purposes the strengthening or restoring to safe condition of any building, structure, or part thereof declared to be unsafe by any public official charged with protecting the public health or safety.
5. Any existing lot lawfully created prior to Ordinance or under previous Ordinance that fails to meet the minimum lot area and minimum lot frontage requirements contained in this Ordinance shall be buildable insofar as other dimensional requirements, such as front, side and rear yard setback can be met.
  - a. The lot must be proven to be a legal nonconformity by examination of either a legal instrument of transfer of property, or property tax

assessment rolls prior to issuance of zoning permit for development of property.

6. A legal nonconforming use or structure shall not be changed in use to another nonconformity. A legal nonconformity which is succeeded by a use, building or structure in compliance with this Ordinance shall lose its vested right as a legal nonconformity and hereafter continue in compliance with the provisions of this Ordinance.
7. A legal nonconforming use or legal nonconforming structure which is damaged by fire, collapse, explosion, natural processes or weather, vandalism, or other means beyond the owner's control, may not be replaced but may be repaired to its former condition upon certification of a licensed appraiser or the insurance adjuster whose company insures the property that the cost of repair does not exceed the former value of the buildings and structures located on said property.
8. An illegal nonconformity shall be corrected to comply with the provisions of this Ordinance or be discontinued. Illegal nonconforming uses and structures shall be subject to enforcement action pursuant to this Ordinance.

**SECTION 1104      EXPANSION OF NON-CONFORMING USE AND/OR  
STRUCTURE**

- A. Nonconforming buildings or structures may be structurally changed, altered, or enlarged with the approval of the Board of Appeals when the Board finds that the request is a case of exceptional hardship in which failure to grant the relief requested would unreasonably restrict continued use of the property or would restrict valuable benefits that the public currently derives from the property as used in its nonconforming status, except that any approval for structural changes, alteration or enlargement may be granted only with a finding by the Board of Appeals that approval will not have an adverse affect on surrounding property and that it will be the minimum necessary to relieve the hardship.
- B. Approval of an expansion of a nonconforming use or structure does not relieve the petitioner of the responsibility of meeting other provisions of the Ordinance. The intended development must be reviewed and approved by the appropriate authority prior to issuance of a zoning permit and a building permit.

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