

ARTICLE 25
NON-CONFORMING USES, STRUCTURES, AND LOTS

Sec. 25.01 Non-Conforming Uses, Structures, and Lots, in General

- a. Within the districts established by this Article, or amendments that may later be adopted, there exist lots, structures and uses of land which were lawful before this Article was enacted or amended, but which would be prohibited, regulated, restricted or otherwise unlawful under the provisions of this Article or future amendments.
- b. It is the intent of this Article to permit these non-conformities to continue until they are removed, but not to encourage their survival. Such non-conforming uses and structures are declared by this Article to be incompatible with permitted uses in the districts involved. It is further the intent of this Article 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.
- c. Non-conforming uses are considered to present a greater public burden than non-conforming lots and structures, therefore the intent of this chapter is to gradually eliminate non-conforming uses or decrease their non-conforming status, but to permit certain non-conforming uses to continue under certain conditions.
- d. Non-conforming lots and structures are typically those established prior to the current zoning standards. The City intends to allow continued use of these lots and structures in certain cases. Accordingly, this Article establishes regulations that govern the completion, restoration, reconstruction and expansion of non-conforming structures which do not increase the non-conforming situation.
- e. To avoid undue hardship, nothing in this Article shall be deemed to require a change in the plans, construction or designated use of any structure on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Article, and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner except that where demolition or removal of an existing structure has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the structure involved.

Sec. 25.02 Non-Conforming Uses

Where, at the effective date of this Article or amendment thereto, lawful use of land exists that is made no longer permissible under the provisions of this Article as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following limitations:

- a. 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 Article.
- b. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Article.
- c. A non-conforming use shall be determined to be abandoned if one or more of the following conditions exist, and which shall be deemed to constitute an intent on the part of the property owner to abandon the non-conforming use:
 - 1. Utilities, such as water, gas and electricity to the property, have been disconnected.
 - 2. The property, buildings, or grounds have fallen into disrepair.
 - 3. Signs or other indications of the existence of the non-conforming use have been removed.

4. Removal of equipment or fixtures which are necessary for the operation of the non-conforming use.
5. Other actions, which in the opinion of the Building Official/Zoning Administrator, constitute an intention on the part of the property owner or lessee to abandon the non-conforming use.
6. Those alleged non-conforming uses which cannot be proved to have been legally existing prior to the effective date of this section shall be declared illegal and shall be discontinued following the effective date of this section.

Sec. 25.03 Non-Conforming Structures

Where, at the effective date of this ordinance section or amendment thereto, a lawful structure exists that could not be built under the provisions of this section by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following limitations:

- a. No such structure may be enlarged or altered in a way which increases its nonconformity within the provisions of this chapter.
- b. Should such structure be destroyed by any means to an extent greater than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.
- c. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.
- d. Should such structure be altered or modified so as to eliminate, remove or lessen any or all of its non-conforming characteristics, then such non-conforming characteristics shall not be later reestablished or increased.

e. Expansion of a Non-Conforming Residential Building

1. A non-conforming residential building may be expanded into a required side or rear yard in a manner that does not comply with the setback standards with approval from the Building and Zoning Administrator. The Building Official/Zoning Administrator shall utilize the following standards:
 - (a) The expansion does not involve an additional story to the residential building.
 - (b) The expansion does not extend closer to the lot line than any existing, non-conforming part of the structure.
 - (c) The addition does not extend beyond the predominant existing building line along the same block.
 - (d) The addition retains compliance with all other setback, lot coverage, and height requirements.
 - (e) The addition will meet all minimum building code requirements.
 - (f) The resultant addition, in terms of dimensions and design, would be compatible with the established character of the neighborhood.
 - (g) The design of the addition must be compatible with the existing structure and not detract from the appearance of the site.
 - (h) The expansion of a residential building with a non-conforming yard, not meeting the requirements above, shall be prohibited unless a variance is granted by the Zoning Board of Appeals (ZBA).
2. A non-conforming residential building may be expanded into a required front yard in accordance with *ARTICLE 15 SCHEDULE OF REGULATIONS footnote (k)*

Sec. 25.04 Continuance of Non-Conforming Uses of Structures and Land

Where, at the effective date of this ordinance or amendment thereto, lawful use of a structure, or of a structure and land in combination, exists that is made no longer permissible under the provisions of this chapter as enacted or amended, such use may be continued as long as it remains otherwise lawful, subject to the following limitations:

- a. No existing structure devoted to a use not permitted by this chapter in the zoning 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 zoning district in which it is located.
- b. Any non-conforming use may be extended throughout any parts of a structure which were arranged or designed for such use, and which existed at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such structure.
- c. If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may be changed to another non-conforming use provided that the ZBA, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate in the district than the existing non-conforming use; in permitting such change, the ZBA may require appropriate conditions and safeguards in accord with the purpose and intent of this ordinance.
- d. 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 in which such structure is located, and the non-conforming use may not thereafter be resumed.
- e. When a non-conforming use of a structure, or structure and premises in combination, is discontinued or ceases for six (6) consecutive months or for eighteen (18) months during any three-year period, the structure, or structure and premises in combination, shall not thereafter be used, except in conformance with the regulations of the zoning district in which it is located; structures occupied by seasonal uses shall be excepted from this provision. These provisions may be waived, as determined by the Building Official/Zoning Administrator, upon substantiation that there is intent to continue the nonconformity.
- f. Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.

Section 25.05 Non-conforming Sites

The intent of this Section is to permit improvements and minor modifications to sites containing uses and building(s) which do not meet all of the various site improvement related regulations of this Zoning Ordinance, including provisions such as landscaping, signage, building materials and architecture, paving and other non-safety site related items. The purpose is to allow gradual compliance with these and other site related requirements, for the entire site, for sites that predate the Ordinance requirements.

Site improvements or expansions on nonconforming sites may be permitted by the Building Official/Zoning Administrator or the Planning Commission during special land use, site plan review or as required under *SECTION 16.02* without a complete upgrade of all site elements under the following conditions. The city may require a performance guarantee to ensure that all improvements permitted under this Section will be made in accordance with the approved plan.

- a. There are reasonable site improvements proposed to the overall site in relation to the scale and

construction cost of the proposed building improvements or expansion.

- b. Safety-related site issues, or those regulated by State and Federal laws, are met.
- c. Driveways that do not conform with the access management requirements of this Ordinance shall be eliminated to the extent practical, provided that the minimum reasonable access shall be maintained, as determined by the standards of *ARTICLE 20 ACCESS MANAGEMENT AND DRIVEWAY STANDARDS*, and as approved by the Planning Commission.
- d. Landscaping shall be required to conform to the requirements of *ARTICLE 21 LANDSCAPE STANDARDS AND TREE REPLACEMENT*; exceptions will be permitted only where the existing site conditions prevent full compliance.
- e. All signs must conform with *ARTICLE 22 SIGNS*. Existing pole signs shall be replaced with monument signs. Some size allowances may be granted where site conditions warrant such consideration.
- f. All lighting, including pole and building mounted, must conform with *ARTICLE 23 LIGHTING STANDARDS*.
- g. The improvements or minor expansions shall not increase any existing nonconformity with the site requirements.
- h. A site plan shall be submitted and reviewed in accordance with *ARTICLE 16 SITE PLAN REVIEW*.

Sec. 25.06 Repairs and Maintenance

- a. On any structure devoted in whole or in part to any non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding fifty percent (50%) of the estimated value of the structure, as determined by the most recent assessment of the market value of the structure for purposes of taxation, provided that the cubic content of the structures as it existed at the time of enactment or amendment of this chapter shall not be increased.
- b. Nothing in this Article shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

Sec. 25.07 Change of Tenancy or Ownership

A change of tenancy, ownership or management of any existing non-conforming uses of land, structures and premises shall not alter the non-conforming status of a non-conforming building, structure, use, or lot, provided there is no change in the nature or character of such non-conforming uses.