

SECTION 1.04  
NON-CONFORMITIES

1.04 NON-CONFORMING LOTS, NON-CONFORMING USE OF LAND, NON-CONFORMING STRUCTURES, NON-CONFORMING USE OF STRUCTURES AND PREMISES, AND NON-CONFORMING CHARACTERISTICS OF USE.

1.04.01 - INTENT

With the districts established by this Ordinance there exists:

- A. lots,
- B. structures,
- C. uses of land and structures, and
- D. characteristics of use,

which were lawful before this Ordinance was passed or amended, but which are prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. Further 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.

Non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of structure, a non-conforming use of land, or a non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this Ordinance 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 prohibited generally in the district involved.

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 on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined in include the placing of construction in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition ore removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition ore removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

1.04.02 - 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 Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. This provision shall apply even though such lot fails to meet

the requirements for area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

#### 1.04.03 - NON-CONFORMING USES OF LAND (OR LAND WITH MINOR STRUCTURES ONLY)

Where at the time of passage of this Ordinance lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with a replacement cost exceeding \$1,000.00, the use may be continued so long as it remains otherwise lawful, provided:

- 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 Ordinance.
- B. No such non-conforming use shall be moved in whole or part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance.
- C. If any such non-conforming use of land ceases for any reason for a period of more than six (6) months or twelve (12) months in any eighteen (18) month period, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.
- D. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.

#### 1.04.04 - NON-CONFORMING STRUCTURES

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

- A. No non-conforming structure may be enlarged or altered in such a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.
- B. Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at any time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

- C. Should such structure be moved for any reason for any \_\_\_\_\_ whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

#### 1.04.05 - NON-CONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION

If lawful use involving individual structures with a replacement cost of \$1,000.00 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as \_\_\_\_\_ remains otherwise lawful, subject to the following provisions:

- A. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- B. 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 Ordinance, but no such use shall be \_\_\_\_\_ ed to occupy any land outside such building.
- C. If so structural alterations are made, any non-conforming use of a structure, or structure and premises, may as a special exception be changed to another non-conforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, 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 Adjustment may require appropriate conditions and safeguards in accord with the provisions 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, 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 abandoned for twelve (12) consecutive \_\_\_\_\_ ths or for eighteen (18) months during any three-year period (except when government action impedes access to the premises) the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- F. When 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. Destruction for the purpose of the subsection is defined as damage to an extent of more than 50 percent of the replacement cost a time of destruction.

#### 1.04.06 - REPAIRS AND MAINTENANCE

On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 10 percent of the current replacement cost of the non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance, and it declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulation of the district in which it is located.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

#### 1.04.07 - USES UNDER SPECIAL EXCEPTION PROVISIONS NOT NON-CONFORMING USES

Any use which is permitted as a special exception in a district under the terms of this Ordinance (other than a change through Board of Adjustment action from a non-conforming use to another use no generally permitted in the district) shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.