

CHAPTER 2700
ZONING ORDINANCE
Non-Conformities

Enacted 9/18/2018 by Ordinance No. 22-2018

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SECTION 2701: Purpose.

Within the districts established by this Ordinance 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 ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. The legitimate interest of those who lawfully established these non-conformities are herein recognized by providing for their continuance, subject to regulations limiting their completion, their restoration, reconstruction, extension, and substitution. Nevertheless, while it is the intent of this Ordinance to permit these non-conformities to continue until they are removed, they should not be encouraged to survive. It is further the intent of this Ordinance that non-conformities shall not be enlarged, expanded or extended, nor used as grounds for adding other structures or uses prohibited elsewhere in the same district.

SECTION 2702: Conditional Use Provisions vs. Non-Conforming Uses.

Any use which is permitted as a conditional use in a district under the terms of this Ordinance shall not be deemed a non-conforming use in such district, but shall without further action be considered a conditional use.

SECTION 2703: Incompatibility of Non-Conformities.

Non-conformities are declared by this ordinance to be incompatible with permitted uses in the district 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 Ordinance. Additional signs on buildings or on the premises that are intended to be seen from off the premises are prohibited.

SECTION 2710: Avoidance of Undue Hardship.

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 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.

SECTION 2720: Certificates for Non-Conforming Use.

The Zoning Administrator, upon approval of the Planning Commission or upon his/her own initiative, or upon the request of any owner, may issue a certificate for any lot, structure, use of land, use of structure, or use of

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land and structure in combination, that certifies that the lot, structure or use is a valid non-conforming use. The certificate shall specify the reason why the use is a non-conforming use, including a description of the extent and kind of use made of the property in question, the portion of the structure or land used for the non-conforming use, and the extent that dimensional requirements are non-conforming. The purpose of this section is to protect the owners of lands or structures that are non-conforming. No fee shall be charged for such a certificate. One copy of the certificate shall be returned to the owner and one copy shall be retained by the Zoning Administrator, who shall maintain as a public record a file of all such certificates.

SECTION 2730: Substitution of Non-Conforming Uses.

So long as no structural alterations are made, except as required by enforcement of other codes or ordinances, any non-conforming use may, upon appeal to and approval by the Planning Commission, be changed to another non-conforming use of the same classification or of a less intensive classification. In addition, the Commission shall find that the use proposed for substitution is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Commission may require additional stipulations and safeguards as conditions for approval of such change, with failure to meet such conditions punishable as a violation of this Ordinance. Whenever a nonconforming use has been changed to a less intensive use or becomes a conforming use, such use shall not thereafter be changed to a more intensive use.

SECTION 2750: Non-Conforming Uses of Land.

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

1. No such non-conforming uses 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;
2. No such non-conforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Ordinance;
3. If any non-conforming uses of land are discontinued or abandoned for more than **two (2)** years, any subsequent use of land shall conform to the regulations specified by this Ordinance for the district in which such land is located.

SECTION 2760: 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, 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 that increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.
2. Should such non-conforming structure or non-conforming portion of a structure be destroyed by any means to an extent of more than sixty (60) percent of its fair market value, it shall not be reconstructed, unless in conformance to the district regulations and approval by the Planning Commission.

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3. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located.
4. Any non-conforming structure that is discontinued or abandoned for one (1) year, shall not re-continue unless all uses thereafter conform to the district regulations that it is located and all applicable regulations of this Ordinance.

SECTION 2770: Non-Conforming Uses of Structures and Land in Combination.

If a lawful use involving individual structures, or a structure and land 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 it remains otherwise lawful, subject to the following provisions:

1. 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, moved, or structurally altered except in changing the use of the structure to a permitted use.
2. Any non-conforming use may be extended throughout any parts of a building which were arranged or designed for such use at the time of adoption or amendment of this Ordinance, 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 in combination, may, upon appeal to and approval by the Planning Commission, be changed to another nonconforming use provided that the Planning Commission 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 Planning Commission may require additional appropriate conditions and safeguards in accordance with other provisions of this Ordinance.
4. Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, regardless of time, shall thereafter conform to the regulations for the district, and the non-conforming use shall not thereafter be resumed.
5. When a non-conforming use of a structure, or a structure and land in combination, is discontinued or abandoned for one (1) year, the 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 sixty (60) percent of the structure shall eliminate the non-conforming status of the land. Reconstruction of the structure destroyed shall conform to the district regulations and provisions of this ordinance.

SECTION 2790: Termination of Non-Conforming Use by Damage or Destruction.

In the event that any non-conforming building or structure is destroyed by any means to the extent of more than **sixty (60)** percent of the fair market value of the structure, exclusive of foundation, it shall not be rebuilt, restored, or reoccupied for any use unless it conforms to all regulations of this ordinance. When such a non-conforming structure is damaged or destroyed to the extent of **sixty (60)** percent or less of the fair market value, no repairs or rebuilding shall be permitted except in conformity with all applicable regulations of this ordinance and the following conditions:

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1. A Zoning Permit pertaining to such restoration shall be applied for within **six (6)** months of such destruction, and rebuilding shall be completed within **one (1)** year from the date the zoning permit is issued;
2. Such restoration shall not cause a new non-conformity, nor shall it increase the degree of non-conformance or non-compliance existing prior to such damage or destruction;
3. Reconstruction of any building destroyed to any extent shall conform to the district regulations and provisions of this ordinance.

SECTION 2795: 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 without Planning Commission approval. Nothing in this section is intended 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. When appropriate, a zoning permit for such activities shall be required.
(Ord 22-2018)