

## ARTICLE VI

### NONCONFORMING USES OF LOTS, LAND AND STRUCTURES

#### Section 6-1 General

Within the districts established by this ordinance or amendments that are later adopted, there exist lots, structures and uses of land and structures which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated or restricted under the provisions of this ordinance or future amendment. Such lots, structures and uses of such land and structures are called nonconformities. It is the intent of this ordinance to permit these nonconformities until they are removed or discontinued but not to encourage their survival. It is thus the intent of this ordinance that nonconformities 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 and that when a nonconforming use of land or of a building or structure has been changed to a conforming use, it shall not thereafter be used for any nonconforming use. Nonconforming uses are declared by this ordinance to be incompatible with the permitted uses in the district involved. The rights of a nonconformity under this article shall not be passed on to a successor in title thereto, except as allowed specifically by Sections 6-2, 6-3, 6-4.

#### Section 6-2 Nonconforming Lots (Lots of Record)

In any district other than M-1, C-2, C-3, C-4, C-5, O/I, and R-6 a dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of this ordinance or amendment of this ordinance, even though other provisions of this ordinance may impose limitations. The lot must be in separate ownership and not be in continuous frontage with other lots in the same ownership. This provision shall apply even though the lot fails to meet the requirements of width or area that are generally applicable in the district, provided that yard dimensions and requirements, other than those applying to area and width, of the lot shall conform to the regulations for the district in which the lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment as established by Article X of this ordinance.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street and within 500' 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 herein, but not to require such a combination when that would be out of character with the way the neighborhood has previously been developed.

In any district where single-family dwellings are permitted, a lot of record, which is conforming in all other respects but the applicable setback requirements cannot reasonably be complied with, then the Board of Adjustment, may allow deviations from the applicable setback requirements if it finds that:

1. The property cannot reasonably be developed for the use proposed without such deviations;
2. These deviations are necessitated by the size or shape of the nonconforming lot;
3. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety; and
4. The property can meet the average distance of the building setbacks of the developed properties on the same and opposite sides of the street to which the subject property abuts

#### Section 6-3 Nonconforming Uses of Land

Where, at the passage of this ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, the use may be continued so long as it remains otherwise lawful, provided, that:

- 6-3.1 No such nonconforming 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.
- 6-3.2 No such nonconforming use shall be moved in whole or in part to any portion of a lot or parcel, other than that occupied by such use of the effective date of adoption or amendment of this ordinance.
- 6-3.3 If such nonconforming use of land ceases for any reason for a period of more than ninety (90) days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.
- 6-3.4 No existing nonconforming use of land may be changed to another nonconforming use, except that the Board of Adjustment may permit as a conditional use a change in a nonconforming use if the Board finds that such new use would be more in character with the use permitted in the district, provided that once the Board of Adjustment has permitted such substitution, the substituted use shall lose its status as a legal nonconforming use and become subject to any conditions required by the Board of Adjustment. Once such change has been made, use of the land or structure may not revert to the previous nonconforming use.
- 6-3.5 Mobile homes on individual lots which are nonconforming use in the district in-which they are located may remain, provided that once any such mobile home is removed from the lot on which it is located it shall lose its status as a nonconformity and the same or another mobile home may not thereafter be placed on the lot.

#### Section 6-4 Nonconforming 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 converge, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- 6-4.1 No such nonconforming structures may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- 6-4.2 Should such structure or nonconforming portion of such structure be destroyed or damaged by fire, flood, wind, or other act of God to an extent or more than fifty (50) percent of the replacement cost at the time of destruction, the structure may be reconstructed or repaired provided that the reconstruction or repairs
- Do not increase, extend, or expand the existing nonconformities
  - Do not create any new nonconformities
  - A building permit for the reconstruction or repairs is applied for within one year of the date of destruction
- An extension of time may be granted as a variance by the Zoning Board of Adjustments provided extenuating circumstances warrant additional time.
- 6-4.3 Should a structure be moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- 6-4.4 Nonconforming existing residential structures in either business or industrial districts may be enlarged, extended or structurally altered provided no additional dwelling units result and the extension or alteration shall comply with the dimensional requirements for the district in which it is located.
- 6-4.5 Normal maintenance and repair of a structure occupied by a nonconforming use is permitted provided it does not extend or enlarge the nonconforming use.

#### Section 6-5 Non-Conforming Mobile Home Park

Where a nonconforming mobile home park is located in a zoning district in which mobile home parks are not permitted, the park may not be expanded in any manner. The park may continue to be operated as a nonconforming use with the same number of spaces for which improvements had been made on the date of adoption of this ordinance as long as all other applicable state and county requirements are met. When such nonconforming mobile home park is discontinued or abandoned for six consecutive months (except when government action impedes access to the premises), the land shall thereafter be used in conformity with the regulations of the district in which it is located.