

ARTICLE 9
NONCONFORMITIES

900 NONCONFORMING USES AND STRUCTURES

Any nonconforming use or structure legally existing at the effective date of this Ordinance or that is created whenever a district is changed by amendment hereafter, may be continued, altered, reconstructed, changed, sold or maintained even though it does not conform to the regulations of the district in which it is located, except as may be provided below. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, discontinued or abandoned. (See Section 901 for nonconforming lots.)

A. General Application of Provisions

Nothing contained herein shall require any change in plans, construction, or designated use of a building or structure which complies with existing laws or for which a Zoning Permit was granted and/or where the construction shall have started before the date of adoption of this Ordinance or applicable amendment thereto.

B. Abandonment

If any nonconforming use, or building or structure occupied by a nonconforming use, is abandoned for a period of one (1) year, the future use of such building, structure or land shall be in conformity with the District Regulations of this Ordinance. A nonconforming use shall be judged to be abandoned when there occurs a cessation of any such use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

C. Repairs, Alterations and Reconstruction

1. Exterior repairs, non-structural alterations, and other general maintenance adjustments may be made to a nonconforming building or structure or to a building or structure occupied by a nonconforming use. Such adjustments shall however be subject to all applicable Zoning Permit requirements. (See Section 1202)
2. A nonconforming building or structure, or a building or structure occupied by a nonconforming use, which is damaged by fire, flood or other natural cause may be reconstructed, restored and used as before provided that:
 - a. the Zoning Hearing Board approves the method of said reconstruction or restoration;
 - b. said reconstruction commences within six (6) months of the damage, or within such additional time as may be authorized by the Zoning Hearing Board for due cause (See also Section 1202 G);
 - c. said reconstruction shall not exceed the size, height and area that existed prior to

- the damage, unless approved by the Zoning Hearing Board;
- d. where the nonconformity is located in a Flood Fringe or General Floodplain District, the new construction shall comply, to the greatest extent possible, with all of the floodproofing requirements contained in Section 602 of this Ordinance; and
 - e. where the nonconformity is located in a Floodway District, such nonconformity may only be reconstructed, replaced and used as before provided that:
 - 1) the property owner does not own adjoining vacant or undeveloped land located outside of the Floodway District where the use could be relocated;
 - 2) the reconstruction will cause NO rise in elevation of the 100 year flood; and
 - 3) the reconstruction will be floodproofed in accordance with the requirements contained in Section 602 of this Ordinance.

In reviewing applications for reconstruction or restoration, the Zoning Hearing Board shall give due consideration to the welfare of the community in its entirety and may attach such reasonable conditions and safeguards as they deem appropriate to implement the purposes of this Ordinance.

D. Extensions and Enlargements

1. Exterior structural alterations may be made to extend or enlarge a nonconforming building or structure or a building or structure occupied by a nonconforming use, except in the Floodway District. Such extension or enlargement shall however be subject to all applicable Zoning Permit requirements (See Section 1202) and may only be authorized where:
 - a. the Zoning Hearing Board approves the proposed extension or enlargement;
 - b. the extension or enlargement does not extend the structure or use beyond the remainder of the lot or parcel as it existed at the effective date of this Ordinance, nor extend the structure or use by an aggregate total of more than 25% of the gross floor area occupied by the use at the time it became nonconforming;
 - c. the extension or enlargement conforms to the yard and height requirements of the district in which it is located; and
 - d. the use may not be expanded or extended into a more restrictive zoning district.

In reviewing applications for extension or enlargement, the Zoning Hearing Board shall give due consideration to the welfare of the community in its entirety and may attach such reasonable conditions and safeguards as they deem appropriate to implement the purposes of this Ordinance.

2. A nonconforming use shall not be extended to displace a conforming use, unless

authorized by the Zoning Hearing Board.

3. For nonconforming uses whose normal operations involve non-structural expansion (i.e. junk yards, cemeteries, etc.), expansion shall be permitted by right up to 25% of the volume or area of the nonconformity which existed at the effective date of this Ordinance. For expansion beyond 25%, approval must be obtained from the Zoning Hearing Board.
4. Any nonconforming building or structure, or building or structure occupied by a nonconforming use, which is moved for any reason, must meet all requirements of the district in which it is to be located.

E. Change of Use

1. A nonconforming use of a building, structure or land may be changed to a nonconforming use of the same or a more restricted classification, subject to the following conditions.
 - a. The Zoning Hearing Board shall approve all such proposed changes; and,
 - b. The applicant shall show that the proposed change will be no more objectionable in external effect than the existing nonconforming use with respect to:
 - 1) traffic generation and congestion, including truck, passenger car and pedestrian movement;
 - 2) noise, smoke, dust, fumes, vapor, gases, heat, odor, glare, vibration, or lighting;
 - 3) outside, unenclosed storage, and waste collection and disposal; and,
 - 4) appearance, character, and nature of the neighborhood or area.

In reviewing applications for change of use, the Zoning Hearing Board shall give due consideration to the welfare of the community in its entirety and may attach such reasonable conditions and safeguards as they deem appropriate to implement the purposes of this Ordinance.

2. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed back to a nonconforming use.
3. Whenever a nonconforming use has been changed to another nonconforming use in accordance with the provisions of this Ordinance, such use shall not thereafter be changed again, except in conformance with these regulations.

F. Certification

A Certification of Nonconformance shall be issued by the Zoning Officer for all

nonconforming uses or structures, upon written request of the property owner or occupant. Sufficient evidence shall be provided by the applicant at the time of such request which documents the existence of the nonconformity at the time of enactment of this Ordinance.

901 NONCONFORMING LOTS

Any nonconforming lot legally existing at the time of adoption of this Ordinance or that is created whenever a district is changed by amendment hereafter, may be continued and/or maintained even though it does not conform to the regulations of the district in which it is located. It is not the intent of this Ordinance to be overly restrictive or to cause a hardship for any property owner, but rather to allow these nonconforming lots to continue until they are eliminated as single entities, possibly through the addition of such lots to adjacent property.

A. Lot Changes

If any nonconforming lot becomes conforming through its addition to adjacent land, said lot shall not thereafter be changed back to a nonconforming lot.

B. Repairs, Alterations and Reconstruction

1. Exterior repairs, non-structural alterations, and other general maintenance adjustments may be made to a conforming structure on a nonconforming lot. Such adjustments shall however be subject to all applicable Building/ Zoning Permit requirements. (See Section 1202.)
2. A conforming use situated on a nonconforming lot which is damaged by fire, flood, or other natural cause may be reconstructed, restored, and used as before provided that:
 - a. said reconstruction shall not exceed the size, height, and area that existed prior to the damage, unless approved otherwise by the Zoning Hearing Board; and
 - b. if located in any designated floodplain area, the provisions of Sub-Sections 900 C.2.d. and e. shall be met.

C. Existing Undeveloped Lots of Record

In the case of an undeveloped lot of record which existed at the effective date of this Ordinance which does not meet the minimum area requirements for the district in which it is located, a permitted principal structure may be placed on the parcel provided that:

1. the owner does not own adjoining land which could be combined to form a conforming lot;
2. each side yard is not less than 15 feet in the EDD and I/OP Districts; not less than 12 feet in the C and M Districts where such lots abut another lot in the same district; not less than ten (10) feet in the R-1, R-2, PRD, and OS Districts; and not less than five (5)

feet in the R-3 and CBD Districts 1 & 2 (except that no side yard is required where fire-rated party walls are used);

3. the rear yard is not less than 25 feet in the M, EDD, I/OP, and OS Districts; not less than 15 feet in the R-1, R-2, R-3, PRD and C Districts, and not less than 10 feet in the CBD Districts 1 & 2;
4. the front yard conforms to the minimum distance required; and
5. provided that the site and its intended use complies with all other applicable provisions of this Ordinance.

D. Certification

A Certification of Nonconformance shall be issued by the Zoning Officer for all nonconforming lots, upon written request of the property owner or occupant. Sufficient evidence shall be provided by the applicant at the time of such request which documents the existence of the nonconformity at the time of enactment of this Ordinance.