

CHAPTER 7

NON-CONFORMING USES

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9-7-1: INTENT

It is the intent of this chapter to permit nonconforming uses to continue until they are removed, but not to encourage their survival. It is further the intent of this Title that nonconforming uses 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.

9-7-2: AUTHORITY TO CONTINUE NONCONFORMING USE

If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of this Title that would not be allowed in the district under the terms of this Title, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. Additions Or Alterations: No existing structure devoted to a use not permitted by this Title 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 use permitted in the district in which it is located.
- B. Expansion: No nonconforming use shall be extended to occupy any additional land area.
- C. Change Of Nonconforming Use: If no structural alterations are made, any nonconforming use of a structure and land may, upon the issuance of a conditional use permit, be changed to another nonconforming use; provided that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, appropriate conditions and safeguards in accord with other provisions of this Title may be required.
- D. Change To Conforming Use: Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
- E. Discontinuance Of Nonconforming Use:
 - 1. If the nonuse continues for a period of one (1) year or longer, the city or county may, by written request, require that the owner declare his intention with respect to the continued nonuse of the improvements in writing within twenty-eight (28) days of receipt of the request. If the owner elects to continue the nonuse, he shall notify the city or county in writing of his

intention and shall post the property with notice of his intent to continue the nonuse of the improvements. He shall also publish notice of his intent to continue the nonuse in a newspaper of general circulation in the county where the property is located. If the property owner complies with the requirements of this subsection, his right to use such improvements in the future for their designed purpose shall continue, notwithstanding any change in the zoning of the property.

2. The property owner may voluntarily elect to withdraw the use by filing with the clerk of the city or the county, as the case may be, an affidavit of withdrawn use. If the property is redesigned for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.
 3. For purposes of this section "designed purpose" means the use for which the improvements were originally intended, designed and approved pursuant to any applicable planning and zoning ordinances.
- F. Elimination Of Nonconforming Structure: Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

9-7-3: EXTENSION OR ENLARGEMENT OF NONCONFORMING USE

- A. Nonconforming uses are declared by this Title to be incompatible with permitted uses in the districts in which such use is located. A nonconforming use shall not be extended or enlarged after the effective date of this Title 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 generally prohibited in the district in which such use is located.

9-7-4: REPAIRS AND MAINTENANCE

On any nonconforming structure, or portion of a structure containing a nonconforming use, work may be done on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing; provided, that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section 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.

9-7-5: NONCONFORMING LOTS OF RECORD

- A. Single Nonconforming 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 this Title, notwithstanding limitations imposed by other provisions of this Title. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided, that hard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

9-7-6: BUILDINGS UNDER CONSTRUCTION

- A. To avoid undue hardship, nothing in this Title 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 hereof and upon which actual building construction has been carried on diligently. (Ord. 38, 11-5-1984; Ord. 2008-4)