

CHAPTER 4
NONCONFORMING USES AND STRUCTURES

SECTION 4.01 CONTINUANCE OF USE. The lawful use of any premise exactly as such use existed at the time of adoption of this ordinance and any subsequent amendments may be continued even though such use does not conform to the provisions hereof, and shall be subject to all restrictions of operation imposed upon such use. Provided that this shall not be interpreted as an authorization for or approval of the use of lands or structures which violate the zoning regulations repealed by this ordinance.

SECTION 4.02 BUILDINGS UNDER CONSTRUCTION. Nothing in this ordinance shall be deemed to require a change in the plans, construction, or intended use of any structure for which a building permit has been issued and the actual construction of which has lawfully begun. Actual construction shall be defined as the placing of construction materials in a permanent position.

SECTION 4.03 REPAIR AND MAINTENANCE. Such repairs and maintenance as are required to keep a non-conforming structure in a safe and sound condition may be made. In the event any non-conforming structure is damaged by fire, wind, or other natural disaster or by the public enemy, it may be rebuilt or restored provided the cost thereof shall not exceed 60 percent of the market value as determined by the assessed value for tax purposes of such structure at the time of damage.

In the event any non-conforming structure shall be so damaged and the cost of rebuilding or restoration shall exceed 60 percent of the market value of such structure as determined by the assessed value for tax purposes at the time of damage, rebuilding or restoration shall only be permitted as a special use under the provisions of Chapter 27. The Planning Commission shall grant a special use permit only upon finding that:

- A. Such rebuilding or restoration will not substantially extend the probable duration of such non-conforming use, had such damage not occurred; or
- B. Circumstances are such that the land previously occupied by such non-conforming use cannot then be reasonably used for a use or structure conforming to the regulations of the district.

Permitted restoration shall be commenced within a period of six months from the date of said damage and diligently prosecuted to completion. In the event a request for a special use permit is denied, the structure can only be used if it is repaired or replaced in conformance with all of the conditions and requirements of this ordinance existing at the time of replacement.

SECTION 4.04 CHANGES IN TENANCY OR OWNERSHIP. There may be a change in tenancy, ownership, or management of an existing nonconforming use provided that there is no change in the nature or character of said nonconforming use except as herein permitted. Any change in ownership does not remove the nonconformity nor extend any time limits specified within this Chapter.

SECTION 4.05 CHANGE OR DISCONTINUANCE OF USE. The nonconforming use of a building, structure or any lot shall not be:

- A. Re-established after discontinuance, vacancy, lack of operation, or otherwise abandoned for a period of 12 consecutive months.
- B. Re-established after it has been changed to a conforming use.

- C. A nonconforming use may be changed to another nonconforming use, which is more restrictive than the current use, as a special use under the provisions of Chapter 27. However, once a nonconforming use is changed to a more restricted nonconforming use, it may not be changed back to its original use. (By way of example, a commercial use in an agricultural zone, if changed to residential, may be allowed, but it may not be changed back to commercial.)

SECTION 4.06 RELOCATION OF A NONCONFORMING BUILDING OR STRUCTURE.

Should a nonconforming building or structure be moved for any reason, for any distance whatsoever it shall thereafter conform to the regulations of the district in which it is located after it is moved.

SECTION 4.07 REMOVAL OF NONCONFORMING STATUS. A nonconforming use, building, structure or lot may be made conforming by appropriate action or modification which caused the use, building, structure or lot to fulfill the requirements of the district in which it is located. In order to remove the nonconforming status said modifications and changes must meet the requirements of the district at the time of said changes or modifications. However, once the nonconforming status of the use of a building or the nonconforming building, structure or lot has been made conforming to the conditions and requirements of the district in which it is located, the property forever loses its nonconforming status and this status may not be reasserted at any time in the future.

SECTION 4.08 EXPANSION OF A NONCONFORMING USE AND/OR NONCONFORMING BUILDING, LOT, OR STRUCTURE

A nonconforming use of a building, lot or structure or nonconforming physical standard dealing with a building, structure, or lot may be expanded only under the following terms and conditions.

- A. **NONCONFORMING USE.** A nonconforming use which existed prior to the adoption of this ordinance or amendments thereto and which exists in or on a conforming structure, building or lot may be extended or enlarged to occupy the entire lot, existing building or structure as a special use under the provisions of Chapter 27. In considering the grant or denial of a special use permit to allow the extension or expansion of this nonconforming use, the Planning Commission shall consider the following criteria and further, the Planning Commission has the discretion to grant a special use permit with any of the conditions it deems appropriate:
 - 1. Roads and streets leading to and from the nonconforming use, as well as any additional traffic flow problems to be created by said expansion.
 - 2. Any increase in noise, odor, fumes, lights, glare, waste, sewer discharge, or other like detrimental effects created by the proposed expansion.
 - 3. Whether the proposed expansion of the nonconforming use is compatible with the surrounding areas and properties.
 - 4. Whether the proposed expansion could be made less detrimental to surrounding properties and areas by the use of appropriate buffering and screening.
- B. **NONCONFORMING PHYSICAL STANDARDS WITH RESPECT TO A BUILDING OR STRUCTURE EXCEPT FOR SINGLE FAMILY AND TWO FAMILY DWELLINGS.** A nonconforming building or structure, which is nonconforming due to failing to meet all, required physical standards (i.e. setbacks, lot area, lot width, parking, etc.) may be enlarged or extended, provided that a special use permit is obtained under the provisions of Chapter 27

and further provided that the enlargement or extension complies with all required physical standards. In no event shall the Planning Commission approve extensions or enlargements to the nonconforming building or structure for a total of more than 50 percent of the original floor area of the building or structure at the time it became nonconforming. In considering the granting or denial or granting with conditions of a special use permit, the Planning Commission shall consider the following:

1. The scope of the nonconformity of the existing building or structure in contrast to the minimum physical standards as called for within the zoning district, including but not limited to:
 - a. Parking
 - b. Setbacks
 - c. Height
 - d. Lighting
 - e. Drainage
 - f. Required public utilities
 - g. Lot area
 - h. Lot width
 - i. Landscaping
 - j. Compatibility with adjacent properties
2. The Planning Commission has the discretion to grant with conditions a special use permit to extend or enlarge a nonconforming building or structure. It is expressly conveyed to the Planning Commission the authority or power to make conditions effecting the existing structure or building, as a condition of granting the permission to extend or enlarge a structure or building. The Planning Commission has the discretion to impose conditions on the original nonconforming structure or building to make it less nonconforming up to all conditions which would be required to make it a conforming structure or building.

C. **NONCONFORMING PHYSICAL STANDARDS WITH RESPECT TO SINGLE FAMILY AND TWO FAMILY DWELLINGS.** A nonconforming building or structure, which is nonconforming due to failing to meet all, required physical standards (i.e. setbacks, lot area, lot width, parking, etc.) may be enlarged or extended, provided that the enlargement or extension is approved by the Zoning Board of Appeals and further provided that the enlargement or extension complies with all required physical standards. In no event shall the Zoning Board of Appeals approve extensions or enlargements to the nonconforming building or structure for a total of more than 50 percent of the original floor area of the building or structure at the time it became nonconforming. In considering the grant or denial or grant with conditions of a variance, the Board of Appeals shall consider the following:

1. The scope of the nonconformity of the existing building or structure in contrast to the minimum physical standards as called for within the zoning district, including but not limited to:
 - a. Parking
 - b. Setbacks
 - c. Height
 - d. Lighting
 - e. Drainage
 - f. Required public utilities
 - g. Lot area
 - h. Lot width
 - i. Landscaping
 - j. Compatibility with adjacent properties
2. The Board of Appeals has the discretion to grant with conditions a variance to extend or enlarge a nonconforming building or structure. It is expressly conveyed to the Board of Appeals the authority or power to make conditions effecting the existing structure or building, as a condition of granting the permission to extend or enlarge a structure or building. The Zoning Board of Appeals has the discretion to impose conditions on the original nonconforming structure or building to make it less nonconforming up to all conditions which would be required to make it a conforming structure or building.

SECTION 4.09 NONCONFORMING LOTS OF RECORD Where an existing lot has a lot area of not less than 90 percent of its zone district requirements and where such lot can provide the side, front and rear yard requirements of its district, the permitted uses of the district shall be allowed. An existing lot in single ownership with a lot area that is less than 90 percent of its district requirements may be utilized for permitted uses and for such purpose the required side and rear yards may be reduced by the same percentage the lot area of such lot bears to its district requirements, provided that no side yard shall be less than five feet, no rear yard less than 35 feet (unless the specific district requirements permit a lesser side or rear yard) and that the off-street parking requirements are met.

Where two or more adjacent lots are in single ownership and where such lots contain less than 90 percent of the lot area requirements, such lots shall be utilized only in conformance with the minimum requirements of the district. In the event two or more adjacent lots containing less than 90 percent of the lot area requirements are in single ownership and the Board of Appeals shall find that there is no practical possibility of obtaining additional land, it may permit their use as separate lots having less than the required lot area if it shall determine that they can be so used without adversely affecting the character of the neighborhood. Provided, however, that no side yard shall be less than five feet, no rear yard less than 35 feet (unless the specific district requirements permit a lesser side or rear yard), and that off-street parking requirements are met.

SECTION 4.10 EXISTING RESIDENTIAL STRUCTURES AND ADDITIONS An existing residential structure or addition to residential structures in non-residential zones may not be used for commercial and industrial purposes unless in conformance with the building code. Nonconforming residential lots in non-residential districts, including non-residential PUD, (Planned Unit Development Zones), which are used for residential purposes shall conform to height and area regulations for the R-1 Zone, Chapter 8. Despite provisions of the underlying district, no nonresidential use other than home occupations, shall be permitted on such lot until the residential use is abandoned.

SECTION 4.11 REQUIRED AREA OR SPACE Any lot or lots in common ownership and yards, courts, parking areas or other spaces may be divided, altered or reduced if said area or dimension as divided, altered or reduced meets the minimum requirements of the Zoning Ordinance. If already less than the minimum required under the Zoning Ordinance, said area or dimension shall not be further divided or reduced.