

SECTION 14. NON-CONFORMING BUILDINGS, STRUCTURES, USES AND LOTS

Subdivision

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14.01 PURPOSE: It is the purpose of this section to provide for the regulation of non-conforming buildings, structures, uses, and lots, and to specify those requirements, circumstances, and conditions under which non-conforming buildings, structures, uses, and lots will be operated, maintained, and regulated. It is necessary and consistent with the establishment of this Ordinance that non-conforming buildings, structures, uses, and lots not be allowed to continue without restriction. Furthermore, it is the intent of this section that all non-conformities shall be eventually brought into conformity.

14.02 GENERAL PROVISIONS:

- A. **Conditional Uses:** Any established use, building or lot legally existing prior to October 7, 2003 and which is herein classified by this Ordinance as requiring a conditional use permit may be continued in like fashion and activity and shall automatically be considered as having received conditional use permit approval. Any change to such a use or building shall however require a new conditional use permit be processed according to this Ordinance.
- B. **Interim Uses:** Any established use, building or lot legally existing prior to October 7, 2003, and which is herein classified by this Ordinance as requiring an interim use permit may be continued in like fashion and activity and shall automatically be considered as having received interim use permit approval. Any change to such a use or building shall, however, require a new interim use permit be processed according to this Ordinance.
- C. **Threats to General Welfare:** Non-conforming buildings, structures, and/or uses, which based upon documented study and evidence, pose a danger and/or threat to the health, safety, and general welfare of the community, shall:
 - 1. Be legally declared a nuisance by the City Council.
 - 2. Upon being identified by the City Council and upon the owner being notified in writing by the Zoning Administrator, the owner shall provide to the City

Council a documented time schedule and program with rationale to support the proposed amortization of the building, structure, or use investments which will result in the termination or correction of the non-conformity.

- a. The termination/correction time schedule shall be based upon, but not be limited to factors such as the initial investment and the degree of threat or danger being posed.
- b. The acceptability of the time schedule shall be determined by the City Council with right of appeal.
- c. In no case shall a time schedule exceed two (2) years.

14.03 NON-CONFORMING USES:

- A. **Effective Date:** The lawful use of buildings or land existing at the effective date of this Ordinance which does not conform to the provisions of this Ordinance may be continued; provided, however, that no such non-conforming use of land shall be enlarged or increased, nor shall any such non-conforming use be expanded to occupy a greater area of land than that occupied by such use at the time of the adoption of this Ordinance, nor shall any such non-conforming use be moved to any other part of the parcel of land upon which the same was conducted at the time of the adoption of this Ordinance.
- B. **Continued Use:** A lawful, non-conforming use shall not be enlarged, but may be continued at the same size and in the same manner of operation as it existed on the date it became legally non-conforming except as hereinafter specified.
- C. **Changes to Non-Conforming Uses:**
 1. When a lawful non-conforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any non-conforming use.
 2. A lawful non-conforming use of a structure or parcel of land may be changed to lessen the non-conformity of use. Once a non-conforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the non-conformity.
- D. **Discontinuance:** In the event that a non-conforming use of any building or premises is discontinued for a period of one (1) year, the use of the same shall thereafter conform to the regulations of the district in which it is located.

- E. Normal Maintenance: Maintenance of a building or other structure containing or used by a non-conforming use will be permitted when it includes necessary non-structural repair and incidental alterations which do not extend or intensify the non-conforming use.

14.04 NON-CONFORMING BUILDINGS AND STRUCTURES:

- A. Restoration: No lawful non-conforming building or structure which has been damaged by fire, explosion, act of God or a public enemy, to the extent of more than fifty (50) percent of its value, as determined by the City Building Official, shall be restored, except in conformity with the regulations of this Ordinance.
- B. Alterations: Alteration and normal maintenance to a lawful non-conforming building or structure may be made provided:
 - 1. The alterations do not expand the building size.
 - 2. The alterations do not change the building occupancy capacity or parking demand.
 - 3. The alteration does not increase the non-conformity of the building or the use.
- C. Expansion of Non-Conforming Buildings or Structures:
 - 1. Administrative Approvals: The following expansions of lawful non-conforming building and structures may be approved through the administrative permit process by the Zoning Administrator subject to provisions of Section 6 of this Ordinance. The Zoning Administrator shall make a determination that the building expansion will have not external negative impacts upon adjacent properties or public rights-of-way.
 - a. Expansion of buildings found to be non-conforming only by reason of height, yard setback, or lot area may be permitted provided the structural non-conformity is not increased and the expansion complies with the performance standards of this Ordinance.
 - b. Lawful non-conforming single family and two family units may be expanded to improve the livability provided the non-conformity of the structure is not increased.
 - 2. Conditional Use Permit: Lawful non-conforming commercial, industrial, public, semi-public, and multiple family structures may be expanded on the

same lot by conditional use permit provided:

- a. The expansion will not increase the non-conformity of the building or site.
- b. The new building expansion will conform with all the applicable performance standards of this Ordinance. A conditional use permit shall not be issued under this section for a deviation from other requirements of this Ordinance unless variances are also approved.
- c. The request for conditional use permit shall be evaluated based on standards and criteria set forth in Section 4 of this Ordinance.

14.05 NON-CONFORMING LOTS:

A. Vacant or Redeveloped Lots:

1. **Lot Combination:** If an owner has an interest in more than one (1) lot of record contiguous to other lots of record, all such lots shall be combined to meet the requirements of this section or the applicable zoning district standards. If sufficient contiguous property is held in one ownership to comply with the standard of the applicable zoning district, then those more restrictive provisions will apply. In no circumstances will there be approval of any proposal for multiple lot developments based upon lots of record, and not conforming with the provisions of the existing zoning district.
2. **Single Family Detached Dwellings:** Legal non-conforming, vacant, substandard sized lots of record may be developed for single family detached dwellings upon approval of an administrative permit by the Zoning Administrator, provided that:
 - a. The lot in question was legally established in accordance with Ordinance requirements existing at the time of its creation and is a separate, distinct tax parcel with a parcel identification number.
 - b. The lot is properly zoned for single family land uses.
 - c. **Minimum Lot Size.**
 - (1) **Sewered Lots:** A lot of record having direct access to municipal sewer and water shall be considered buildable provided measurements for lot area and/or width are within seventy (70) percent of the requirements of the base zoning district.

(2) Unsewered Lots: A lot of record not having access to municipal sewer and water shall be considered buildable provided it can be demonstrated by means satisfactory to the City that no ground water, soil or other contamination will result.

- d. The lot in question has frontage on a public street.
- e. Public health concerns (potable water and sewage collection and treatment) can be adequately provided.
- f. The setback and yard requirements of the applicable zoning district or Section 16.04 of this Ordinance can be achieved while simultaneously resulting in development which complies with the character and quality of the immediate area and the objectives of the City's Comprehensive Plan and Zoning Ordinance.
- g. The lot in question and related potential development is evaluated based upon criteria outlined in Section 4.02.F and is found to be acceptable per these standards.

B. Developed Lots: An existing conforming use on a lot of substandard size and/or width may be expanded or enlarged if such expansion or enlargement meets all other provisions of this Ordinance.

14.06 SPECIAL PROTECTION DISTRICTS: Non-conforming buildings and uses within the special protection districts as described in Section 64 through 67 of this Ordinance shall be subject to the applicable regulations and standards relating to such buildings and uses in that section.