

## ARTICLE IV. NON-CONFORMING USES, BUILDINGS, AND STRUCTURES

### SECTION 401. DISCONTINUANCE

A. No non-conforming use, building or structure may be reestablished after it has been discontinued or abandoned for a period of one (1) year. Vacating of buildings or structures, non-use of land, or non-operative status of such land, buildings, or structures shall be conclusive evidence of a discontinued use.

B. Any non-conforming building or structure may be rebuilt, if said building or structure is damaged or destroyed by fire, explosion, flood or other phenomena, or legally condemned to an extent of less than fifty percent (50%) of its replacement cost at the time of destruction or condemnation. However, the rebuilt building or structure shall conform as closely as possible with the provisions of this Ordinance and the nonconformity of the new building or structure with respect to height, area and yard requirements, as established by other provisions of this Ordinance, shall not exceed that of the original building or structure. Rebuilding shall commence within one (1) year from the time of the damage to the building or structure, or the non-conformity of the building or structure shall be considered as having been discontinued. If the structure is damaged or condemned to an extent of more than fifty percent (50%) of its replacement cost (as aforesaid) at the time of damage or condemnation, any rebuilding or construction shall be in strict conformity with this Ordinance. Notwithstanding anything above, a non-conforming (either non-conforming as to use or as to location) single-family dwelling destroyed by casualty may be rebuilt, as a matter of right, and reoccupied for the purposes previously allowed, if rebuilt in conformance with its actual size and location prior to destruction.

*[Amended by Ord. 02-061190, 6/11/90, §3.]*

C. All non-conforming directional signs and directional sign standards shall be removed by the owner, property owner, or person who placed the sign by December 31, 1991. Additionally, any non-conforming directional sign or directional sign standard injured or destroyed prior to December 31, 1991, shall not be replaced or repaired, but instead shall be removed by the owner, property owner, or person who placed the sign. [Added by Ord. 01-3-25-85, 3/25/85, §II.]

### SECTION 402. CONTINUANCE

Except as is otherwise provided in this Article, any validly existing non-conforming use or structure may be continued, although it is not in conformity with the regulations specified in this Ordinance.

### SECTION 403. EXPANSION

No expansion of a non-conforming structure or use shall hereafter be made unless such expansion has been approved by the Zoning Hearing Board, as a Special Exception, subject to the following additional limitations and criteria:

A. The expansion of a non-conforming use of open land shall be limited to a distance of two hundred fifty (250) feet in any direction from the initial non-conforming use or to an area equal to fifty percent (50%) of the initial non-conforming use, whichever is the lesser.

B. The expansion of structures shall be limited to a lot coverage equal to fifty percent (50%) of the existing total lot coverage of the initial non-conforming structures.

C. The expansion of a non-conforming structure or use shall be limited to the lot limits which existed for the property in question at the time of adoption of this ordinance or at the time of initial non-conformity, whichever is the lesser.

D. In considering a request for an expansion of a non-conforming use, the Zoning Hearing Board shall give proper consideration to the necessity of the expansion caused by new techniques, new methods in industry, new product development, new markets, etc. However, the Zoning Hearing Board may also consider the fact that any expansion due to an increase in volume of business not relating to the foregoing which reasonably could be conducted elsewhere need not be conducted upon the premises, especially if it would cause increased traffic or if it would otherwise adversely affect the health, safety, and welfare of the area in which the non-conforming use is situated, in which case the Zoning Hearing Board may further limit the expansion.

E. The Zoning Hearing Board may require screening of any non-conforming use or structure which is expanded in order to further protect the adjoining properties.

F. Any expansion of a non-conforming use or structure shall be required to conform as well as is possible with all requirements for parking, signs, traffic, yards, etc.

G. In considering an expansion of a non-conforming use, the Zoning Hearing Board may consider the fact that the present owner and/or operator of the premises at the time the same became a non-conforming use and therefore had no notice of the non-conforming character of their premises and could guide the further development and use thereof in a manner consistent with this Ordinance. If the Zoning Board makes such a determination it may deny or appropriately limit the expansion. Transfer of ownership of more than fifty percent (50%) of the stock in a corporation shall be considered the same as transfer of ownership of land, if the land is owned by a corporation.

H. Should all structures relating to a non-conforming use themselves be conforming, but only the use itself be non-conforming; then the Zoning Hearing Board may in that particular case permit expansion of that use even beyond the lot upon which the use is conducted at the time it becomes non-conforming, provided that all other requirements of this Article are met and that any additional structures conform completely to the requirements of yards, area, etc. for the district in which they are situated and provided further that any screening which the Zoning Hearing Board deems necessary is provided.

I. When a non-conforming use in any district is a detached single-family dwelling, expansion shall be allowed, without the necessity of Special Exception, subject, however, to the limitation that the expansion does not exceed fifty percent (50%) of the total square footage of the detached single-family dwelling and that all yard requirements are met for the District in which the detached single-family dwelling is located. *[Added by Ord. 02-61190, 6/11/90, §4.]*

J. Whenever there is an expansion of a non-conforming use or structure, such expansion and the original use and structure must also comply with all provisions of the SWMO. *[Added by Ord. 051214A; 05/12/14 §8]*

#### **SECTION 404. SUBSTITUTION**

A. No non-conforming use or structure may be changed to any other non-conforming use or structure unless the Zoning Hearing Board shall, in granting a Special Exception, additionally find (by evidence presented by the owner) that the proposed non-conforming use or structure is not more detrimental to the District than the existing non-conforming use or structure. The Zoning Hearing Board may specify such appropriate conditions and safeguards as may be required in connection with such change and the granting of such special exception.

B. If a non-conforming use of land is proposed to be changed to a conforming use, the Zoning Officer may grant a permit for such action, provided that all applicable regulations of the particular district are met.

C. If a non-conforming building or structure is proposed to be changed to a conforming building or structure, the Zoning Officer may grant a permit for such action, provided that all applicable regulations of the particular district are met.

D. If a non-conforming use or structure is proposed to be eliminated and a conforming use or structure substituted, but any land regulations cannot be met (such as area, yard, etc.) the Zoning Hearing Board, with such additional appropriate conditions and safeguards as it may see fit may grant a special exception to permit such conforming use or structure, but only if the exceptions to conformance are limited to the least reasonable violation of such requirements.

E. Whenever there is a substitution of a non-conforming use or structure, such substitution must also comply with all provisions of the SWMO. *[Added Ord. 051214A; 5/12/14 §9]*

#### **SECTION 405. DISCONTINUED USE OF OPEN LAND**

All non-conforming signs, billboards, junk and, storage areas, and other non-conforming uses of open land, when discontinued for a period of sixty (60) days, or damages or deteriorated to an extent of fifty percent (50%) or more of replacement costs, (or, in the case of signs, when the supporting structure needs to be replaced) shall not be continued, repaired or reconstructed any and all remains of such non-conforming uses of structures shall be removed from the premises in no less than six (6) months.

## **SECTION 406. NON-CONFORMING LOTS**

A. LOT AREA EXCEPTION. Any lot represented on the effective date of this ordinance by an existing deed or approved final or preliminary subdivision plan which does not meet the minimum area and lot size requirement of the Zoning District in which it is located shall be regarded as non-conforming and may be used for any permitted use in that District. However, all yard height and open space requirements of that District shall be met, unless a special exception is granted by the Zoning Hearing Board, which said special exception shall restriction-compliance to the least reasonable violation of such requirement.

B. LOT SIZE REDUCTION. No lot shall be reduced in areas so that yards, lot area, lot width or other requirements of this Ordinance are not maintained. This shall not apply when a portion of a lot is acquired for a public purpose.

## **SECTION 407. DISTRICT CHANGES**

Whenever the boundaries of a District shall be changed, the foregoing provisions of this Article shall also apply to any non-conforming uses, building, or structures existing therein or created thereby.

## **SECTION 408. REGISTRATION**

A. Any person wishing to receive the benefits of this Article shall register with the Zoning Officer within three (3) years after the date of adoption of this Ordinance any non-conforming building, structure or use for which the benefits of this Article might be sought in the future. Such registration, shall be under oath, include a fee (to be set by resolution by the Board of Supervisors) and shall contain the following information:

1. Names and addresses of the owner of the land at the time of registration.
2. Deed reference to the land involved.
3. The non-conforming use, building or structure involved.
4. The names and addresses of the registrant.
5. The way in which the same is non-conforming, together with all applicable dimensions and an appropriate drawing showing in reasonable detail the non-conformity.

B. This provision shall apply as to any amendment to this ordinance. In such event, registration of the non-conforming use, building or structure shall occur no later than two (2) years from the date of the adoption of said amendment.

C. The failure of any person to so register shall constitute a waiver for that person or for any subsequent owners or any subsequent persons having any interest in the land or use to take any advantage of any of the provisions contained herein concerning expansion, reconstruction, changes, and substitution of non-conforming uses and structures.

D. Within ninety (90) days following the filing of the registration references in paragraph A. hereof, the Zoning Officer shall investigate the filing to determine if the building, structure or use is in fact properly a non-conforming building, structure or use under the terms of this Ordinance and whether the non-conformity is correctly stated in the filing. In the event that the Zoning Officer finds that it does, the Zoning Officer shall certify that on the records. In the event that the Zoning Officer finds that for any reason the registration or filing is, in his determination, incorrect, he shall reject the writing, mailed to the address of the registrant as appearing on the registration. The registrant shall then have thirty (30) days in which to appeal the finding of the Zoning Officer to the Zoning Hearing Board, who shall hold a hearing on the matter, or, in the registrant's sole and uncontrolled discretion, the registrant can re-file a corrected filing anytime within the time limitations contained within Paragraphs A. and B. hereof the failure to timely appeal or refill shall constitute a withdraw of the registration.

#### **SECTION 409. CONFORMANCE WITH OTHER PROVISIONS**

No permit shall be issued or registration approved under this Article unless the lot and/or structure (whether prepared or existing), at the time of application, conforms to all Other Provisions and all remaining provisions of this ordinance whether or not relating directly to the purpose of the proposed permit or registration.

#### **SECTION 410. DISTRICT CRITERIA FOR NON-CONFORMING USES AND STRUCTURES**

For non-conforming uses and structures, lot, yard, parking, sign, and other criteria set forth in this Ordinance relating to uses or structures shall be the more restrictive of such criteria for the most restrictive use criteria in the District where the use or structure is located or such criteria for similar uses generally found in this Ordinance. Notwithstanding the foregoing any applicant may request the Zoning Hearing Board to grant a special exception from the requirements of this Section if the granting of such special exception would be consistent with sound and logical planning objectives, while at the same time would not in any way hinder the health, safety and welfare of the community. *[Added by Ord. 01-3-25-85, 3/25/85, §II.]*

#### **SECTION 411. NON-CONFORMITIES IN THE FLOODPLAIN ZONING DISTRICT**

The provisions of Section 401, 403, 404, 405, 406 and 410 hereof shall not apply in the FP-Floodplain Zoning District and the provisions of Floodplain Zoning District (Section 308) shall supercede anything inconsistent contained in this Article IV." *[Added by Ord. 032216, 03/22/16, §II.]*