

## Article 29

### Nonconforming

#### Section 29.01 Nonconforming Uses

A use of a building or premises, lawfully existing at the time it was established, but is made nonconforming by the passage of a new ordinance or amendment, may be continued, except as hereinafter provided, although such use no longer conforms to all provisions of the ordinance or amendments to this ordinance.

- (a) A nonconforming use may be extended throughout a building provided no structural alterations are made therein, except those required by law.
- (b) A nonconforming use may be changed to another nonconforming use of the same or greater restrictions, provided no structural changes are made in the building. Whenever a nonconforming use has been changed to a conforming use or to a use permitted in a district of greater restrictions, it shall not thereafter be changed to a nonconforming use or a less restricted one.
- (c) No building shall be erected upon any premises devoted to a nonconforming use, except in conformance with regulations of this ordinance.
- (d) When a building containing a nonconforming use is damaged by any means or in any manner to the extent that the cost of reconstruction or restoration is equal to or less than 50% of the value of the structure prior to the damaging occurrence, it may be restored, within 12 months, provided that its original use is not changed and size is not increased. Where the damaged is greater than 50% of the value of the structure, it may not be restored. The value of the structure prior to the damaging occurrence shall be as determined by the most recent assessment of the market value of the structure, exclusive of the market value of land.
- (e) In the event that a nonconforming use of any building or land is abandoned or discontinued for a period of one (1) year, the use shall thereafter conform to the uses permitted in the district in which it is located.

#### Section 29.02 Nonconforming Structures and Buildings

Structures and buildings that are existing and lawful on the effective date of this ordinance or amendments thereto, may be continued even though the structure or building does not conform with the dimensional or other provisions of this ordinance, subject to the following provisions of this section.

- (a) If a nonconforming structure or building is altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then the nonconforming characteristics shall not be later re-established or increased.
- (b) In the event that any nonconforming structure or building is damaged by any means or in any manner to the extent the cost of reconstruction or restoration is equal to or less than 50% of the value of the structure prior to the damaging occurrence, reconstruction or restoration shall be permitted, provided a building permit for reconstruction or restoration is issued within one (1) year of the occurrence of the damage. The value of the structure prior to the damaging occurrence shall be as determined by the most recent assessment of the market value of the structure, exclusive of the market value of land,
- (c) In the event that any nonconforming structure or building is damaged by any means or in any manner to the extent the cost of reconstruction or restoration exceeds 50% the value of the structure prior to

the damaging occurrence, reconstruction or restoration shall only be permitted in conformity with the provisions of this ordinance, except residential structures or buildings as provided for below.

- (d) In the event a nonconforming residential structure or building is damaged by fire or other natural cause, a residential structure may be reconstructed on the same foundation provided the first floor footprint and the total floor area does not exceed the size of the previous residence.
- (e) Repairs, improvements, or modernization of non-conforming structures and buildings shall be permitted provided the repairs or improvements do not exceed 50% of the value of the building or structure during any period of 12 consecutive months. This cost/value calculation shall not include any costs associated with modernization of electrical, plumbing, heating or cooling systems. However, if a non-conforming structure or a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of maintenance and repairs and is declared as such by the county or city, as applicable, it shall not thereafter be restored, repaired, or rebuilt except in full conformity with the regulations in the district in which it is located.
- (f) A building that is nonconforming may be altered or rehabilitated if that activity will make the building conform to the regulations of this zoning ordinance and the building code.
- (g) A residential nonconforming building may be expanded provided the expansion will be within required setbacks; other dimensional requirements are met (spacing between structures, height, maximum lot coverage, etc.). (Example: a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming and maximum lot coverage is not exceeded). The addition must comply with all health department and building code requirements. Additional height above the nonconforming portion of the building shall not be permitted. The total cost of the expansion shall be limited by the improvements allowed by subsection (e) above.
- (h) Nonresidential nonconforming buildings shall not be expanded, unless a variance is obtained from the board of zoning appeals.
- (i) Nonconforming structures and buildings shall not be enlarged nor altered in a way which increases the nonconformity within the provisions of this ordinance or beyond the limits set in this section, unless approved by the board of zoning appeals.

### Section 29.03 Nonconforming Lots

- (a) In any zoning district, notwithstanding limitations imposed by other provisions of this ordinance, where an existing lot of record fails to meet the requirements of this ordinance for minimum lot area, minimum lot width or both, of the zoning district in which it is located, the lot may be used for the permitted uses of the zoning district, including permitted accessory uses, provided other requirements of the zoning district in which the lot is located are met. The lot must be an existing lot of record, created prior to the effective date of the original zoning ordinance or the amendment that made the lot nonconforming.
- (b) A principal building and customary accessory buildings for a permitted use may be erected on any single lot of record existing at the effective date of this zoning ordinance, provided all other standards of the zoning ordinance are met. This provision shall apply even though the lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that the buildings are in conformance with all other applicable yard setback, minimum floor area, maximum height and access requirements for the district in which they are located.
- (c) Where there are multiple contiguous nonconforming lots under single ownership they may be combined and used as a single lot. Combined use of multiple contiguous lots shall be permitted;

provided approval under the subdivision regulations shall be required if any lots are divided or any lot boundaries changed.

#### **Section 29.04 Nonconforming Sites**

The county or city, as applicable, may permit improvements and minor modifications to a conforming use and building on a site that does not meet all of the various site improvement related regulations of this zoning ordinance. This section is intended to allow gradual compliance with the site related requirements for sites which predate the various zoning ordinance standards for landscaping, paving, lighting and other non-safety items in proportion to the amount of expansion or improvement proposed. Improvements or expansions may be permitted by the enforcement official during site plan review without a complete upgrade of all site elements under the following conditions:

- (a) The applicant is proposing reasonable site improvements on the overall site in relation to the scale and construction cost of the building improvements or expansion.
- (b) The applicant has addressed safety related site issues on the overall site.
- (c) The improvements or minor expansion will not increase noncompliance with site requirements.
- (d) All driveways that do not conform to the access standards of this zoning ordinance shall be eliminated, provided that the minimum reasonable access shall be maintained.

#### **Section 29.05 Nonconformity Resulting In Right-Of-Way Dedication**

Where a nonconforming front yard setback, parking lot setback or greenbelt is created as a result of additional road right-of-way width being acquired by the city, county or state, the building or parking lot may be improved or expanded without the need to obtain a variance from the board of zoning appeals, provided the following conditions are met:

- (a) The building or parking lot complied with the front yard setback prior to the acquisition of the additional road right-of-way.
- (b) The building or parking lot expansion will not reduce the remaining depth of the front yard setback.
- (c) All other ordinance requirements are met and necessary approvals obtained.