

ARTICLE 13. NON-CONFORMING SITUATIONS

The purpose of this Article is to avoid undue hardship by permitting the continued use of any building, structure, or property that was lawful at the time of the enactment of this Ordinance or any applicable amendment thereof, even though such use, structure, or property does not conform with the provisions of this Ordinance. However, this Article is also established to require that non-conforming situations be terminated under certain circumstances.

13.1 Continuation of Non-Conforming Situations

Non-conforming situations that were otherwise lawful on the effective date of this Ordinance, or amendments thereto, may be continued, subject to the restrictions and qualifications set forth in this Article.

13.2 Non-Conforming Lots of Record

Where the owner of a lot of record at the time of the adoption of this Ordinance or his successor in title thereto does not own sufficient land to enable him/her to conform to the area or lot width requirements of this Ordinance, such lot may be used as a building site provided all other dimensional requirements are met and provided that the use to be made of the property is not one to which larger than minimum lot area requirements are required by this Ordinance.

Notwithstanding the foregoing, whenever two or more adjoining vacant lots of record are in a single ownership at any time after the adoption of this Ordinance and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as one or more lots which meet the minimum requirements of this Ordinance for the district in which such lots are located.

13.3 Extension or Enlargement of Non-Conforming Situations

1. Except as specifically provided in this Section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation.
2. Subject to Paragraph 4 of this Section, a non-conforming use may be extended through any portion of a completed building that, when the use was made non-conforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, a non-conforming use may not be extended to additional buildings or to land outside the original building.

3. A non-conforming use may not be extended to cover more land than was occupied, or manifestly designed and arranged to be occupied, by that use when it became non-conforming.
4. The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this Section occur.
5. Physical alteration of non-conforming structures or structures containing a non-conforming use is unlawful if it results in:
 - a. an increase in the total amount of space devoted to a non-conforming use,
 - b. greater non-conformity with respect to dimension restrictions such as yard requirements, height limitations, or density requirements, or
 - c. the enclosure of previously unenclosed areas, even though those areas are or were used in connection with the non-conforming activity.
6. Minor repairs to and routine maintenance of property where non-conforming situations exist are permitted and encouraged. Major renovation - i.e., work estimated to cost more than 10% but not more than 50% of the taxed value of the structure to be renovated may be done provided that the work will not result in a violation of any other paragraphs of this Subsection, particularly Paragraph 5. In no case, however, shall work costing more than 50% of the taxed value of the structure be done, singularly or cumulatively, within any 5 year period.
7. Nothing herein, however, shall prevent the maintenance, repair, and extension of a single-family dwelling that is non-conforming as to use, provided done in conformance with the dimensional requirements of the R-10 Residential District.

13.4 Reconstruction Prohibited

Any non-conforming building or structure or any building or structure containing a non-conforming use for which major repair or reconstruction is proposed in any amount equal to more than 50% of the taxed value of the building or structure or which has been damaged by any cause to an extent equal to 50% or more of its taxed value shall only be repaired and/or reconstructed and used as a conforming structure and a conforming use.

Provided, nothing herein shall prevent the reconstruction of a single-family dwelling that is non-conforming as to use provided such reconstruction conforms to the dimensional requirements of the R-10 Residential District.

13.5 Change in Kind of Non-Conforming Use

1. A non-conforming use may be changed to a conforming use. Thereafter, the property may not revert to a non-conforming use.
2. A non-conforming use shall not be changed to another non-conforming use except upon a finding by the Board of Adjustment that the use is more in character with the uses permitted in the District than the previous use.
3. If a non-conforming use and a conforming use, or any combinations of non-conforming uses exist on one lot, the use made of the property may be changed only to a conforming use.
4. Conforming uses, except Adult Oriented Businesses, may be established or re-established in non-conforming buildings or structures provided that off-street parking is provided as required by this Ordinance and provided no other provision of this Ordinance for the establishment of new uses is violated.

13.6 Discontinuance of Non-Conforming Uses

1. When active operation or occupancy of a non-conforming use is discontinued, regardless of the purpose or reason, for a consecutive period of 180 days, the property involved may thereafter be used only for conforming uses.
2. For purposes of determining whether a right to continue a non-conforming situation is lost pursuant to this Subsection, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a non-conforming apartment building or one space in a non-conforming mobile home park for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or mobile home park as a whole is continuously maintained. But, if a non-conforming use is maintained in conjunction with a conforming use, cessation of operation or occupancy of the non-conforming use for the required period shall terminate the right to maintain it thereafter.

13.7 Discontinuance of Non-Conforming Sexually Oriented Businesses

Notwithstanding the provisions of Section 13.6 above, Sexually Oriented Businesses shall be governed by the following:

1. Any Sexually Oriented Business that fails to comply with the use and locational requirements of this Ordinance, but which was lawfully operating before the effective date of this Ordinance shall not be deemed to be in violation of this Ordinance, but shall be a non-conformity. Any such business, which ceases active operation for a period of 30 days regardless of the purpose or reason, shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.
2. Any Sexually Oriented Business lawfully operating as of the effective date of this Ordinance, but which subsequently fails to comply with the use and locational requirements of this Ordinance as the result of changes within the vicinity or amendment to this Ordinance shall not be deemed to be in violation of this Ordinance, but shall be a non-conformity. Any such business that ceases active operation for a period of 30 days regardless of purpose or reason shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.
3. Any Sexually Oriented Business that is rendered a non-conforming use as a result of the conditions described in 1 and 2 above shall either cease to operate or meet all of the requirements of this Ordinance for the use no later than 60 months from the date that the Sexually Oriented Business becomes a non-conforming uses.

13.8 Non-Conforming Signs

The following requirements are established to regulate non-conforming signs.

13.8.1 Conformance Required

Any sign legally in use prior to the effective date of this Ordinance or any amendments hereto which does not satisfy the requirements of this Ordinance is declared to be non-conforming and may be continued subject to the regulations of Section 13.8.2 below, provided, however, prohibited signs in Article IX other than roof or projecting signs shall immediately be brought into compliance with the requirements of this Article or removed entirely, including the entire sign and any associated components or equipment. The eventual elimination, as expeditiously and fairly as possible, of non-conforming signs is as much a subject of health, safety, and welfare as is the regulation of new signs.

13.8.2 Regulations of Non-Conforming Signs

A non-conforming sign may be continued but it shall not be:

1. changed or replaced with another non-conforming sign, except that copy may be changed,
2. expanded or modified in any way which increases the sign's non-conformity or adds illumination,
3. moved except to bring the sign into complete conformity with this Article,
4. re-established once the sign structure has been removed,
5. re-established after damage or deterioration as defined in Section 13.8.4, or
6. re-established after it has been discontinued regardless of reason or intent for 120 days or more.

13.8.3 Illumination of Signs for Illegal Non-Conforming Uses

Signs for legal non-conforming uses in residential districts shall be illuminated only between sunrise and 10:00pm.

13.8.4 Damaged or Deteriorated Non-Conforming Signs

If a non-conforming sign suffers more than 50% of its value by damage or deterioration it must be brought into conformance with this Ordinance or removed. The value shall be determined by the Zoning Administrator or his/her designee as the depreciated replacement value of the sign.

13.8.5 Maintenance of Non-Conforming Signs

Non-conforming signs shall be subject to all requirements of this Ordinance regarding safety, maintenance, and repair. Non-conforming signs shall be maintained in good condition including necessary non-structural repairs, incidental alterations, or copy alterations, such as repainting and electrical repairs, which do not extend or intensify the non-conforming features of the sign.

13.8.6 Non-Conforming Site Features

Site features, such as vehicular parking areas, landscaping, buffer yards, lighting, and similar features that were lawfully established, but that do not conform to the current provisions of this

Ordinance may remain until such time as their alteration, installation or improvement is required subject to the provisions of this Section.

13.8.7 Circumstances Requiring Alteration of Nonconforming Site Features

Nonconforming site features shall be brought into conformance with the current regulations of this Ordinance upon the following triggering actions:

1. The design of vehicular parking areas, including compliance with all landscaping and screening requirements shall be required whenever an existing nonconforming parking area is expanded or enlarged to the extent that the number of spaces is increased by 10% or more, including cumulative expansions.
2. Sites with unscreened solid waste storage areas shall be brought into compliance with the current provisions of this ordinance if the location of the solid waste storage area is changed from the current location on the site.
3. Nonconforming buffer yards shall be brought into conformance when the use or structure on the site that is providing the required buffer is enlarged in area or occupies a greater portion of the site.
4. Nonconforming landscaping shall be brought into conformance when the use or structure on the site is enlarged in area or occupies a greater portion of the site.

Alterations to bring nonconforming site features into conformance with the current requirements of the Ordinance shall be accomplished to the maximum extent that is physically practical based on the limitations of the site. The Administrator shall have the authority to alter the requirements to allow such improvements to be made. No alteration of a requirement shall be permitted without a Variance when the triggering event is a change in use, redevelopment of a site, or similar generally applicable circumstance that would require the installation or modification of existing improvements.

13.9 Non-Conforming Architectural Features

Where regulated, existing structures shall be brought into conformance with current architectural design requirements whenever significant changes are proposed to an architecturally nonconforming structure. For the purposes of this section the term “significant changes” shall mean alterations to the exterior of a building that materially alter the appearance of one or more regulated architectural aspects of the structure. The maintenance of existing features or repair or replacement of like-kind materials or features shall not be considered a significant change.

Whenever an architecturally non-conforming structure is enlarged in size to the extent that the gross floor area increases by more than 10% (including cumulative expansions), the exterior architectural features of the structure as a whole shall be brought into compliance with current regulations.