

CHAPTER 13: Nonconformities

13.1 PURPOSE AND APPLICABILITY

If, within the districts established by this Ordinance, or by amendments that may later be adopted, there exist lots, structures, and uses of land and structures which were lawful before this Ordinance was passed or amended, but which would be prohibited under the terms of this Ordinance or amendments to it, it is the intent of this Ordinance to permit these nonconformances to continue until they are removed, but not to encourage their continuance. Such nonconformances are declared by this Ordinance to be incompatible with permitted uses in the districts in which they are located.

It is further the intent of this Ordinance that nonconformances shall not be enlarged upon, expanded or extended, or used as ground for adding other structures, or uses prohibited elsewhere in the same district.

13.2 NONCONFORMITIES MAY CONTINUE

A single-family dwelling may be built on any lot that was recorded before the enactment of this Ordinance even though it may not meet the yard and area requirements established by this Ordinance. Any use of a lot or a structure that was lawful before this Ordinance was enacted may be continued even though such use would not be permitted under the terms of this Ordinance.

13.3 NONCONFORMING LOTS OF RECORD

In a district in which single-family dwellings are permitted, notwithstanding limitations imposed by the other provisions of this Ordinance, a single-family dwelling and customary accessory building may be erected on a single lot in separate ownership which was recorded prior to the effective date of this Ordinance or amendments to it. This provision shall apply even though such lot fails to meet the requirements for area and/or width that are generally applicable in the district in which the property is located. The structure placement on the parcel shall meet all other yard dimensions and other requirements of this Ordinance for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

If two (2) or more lots or a combination of lots and portions of lots with continuous frontage in single ownership were recorded prior to the adoption of this Ordinance and if all or part of the lots do not meet at least eighty percent (80%) of the required lot width and area of the district in which they are located, the land involved shall be considered to be an undivided parcel for purposes of this Ordinance. No portion of said parcel shall be used or sold which does not meet width and area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Ordinance.

13.4 NONCONFORMING OPEN USES OF LAND

This category of nonconformances consists of lots used for storage yards, used car lots, auto wrecking, junk yards, golf driving ranges, and other open uses where the only buildings on the lot are incidental and accessory to the open use of the lot, and where such use of the land is not permitted to be established hereafter under this Ordinance in the district in which it is located.

- A. When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- B. Nonconforming open uses of land shall not be changed to any but conforming uses.
- C. A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became non-conforming.
- D. When any nonconforming open use of land is discontinued for a period in excess of 120 days, any future use of the land shall be limited to those uses permitted in that district under the provisions of this Ordinance. Vacancy and/or nonuse of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

13.5 NONCONFORMING USES OF STRUCTURES

This category of nonconformances consists of structures used, at the time of passage of this Ordinance, for purposes not permitted in the district in which they are located.

- A. A nonconforming use of a structure may be changed to a conforming use.
- B. A nonconforming use of a structure shall not be changed to another nonconforming use.
- C. When a nonconforming use of a structure has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- D. A nonconforming use of a structure shall not be extended or enlarged except into portions of the structure which, at the time the use became nonconforming, were already erected and arranged or designed for such nonconforming use. No structural alterations shall be made in any structure occupied by a nonconforming use except those required by law or Ordinance or ordered by the Administrator to secure the safety of the structure.
- E. When any nonconforming use of a structure is discontinued for a period in excess of 120 calendar days, any future use of the structure shall be limited to those uses permitted in that district under the provisions of the Ordinance. Vacancy and/or nonuse of the building for a period of in excess 120 calendar days, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision, unless:
 - 1. The structure is located in a local historic district; and,
 - 2. The structure is a historic structure and is contributing to the character of the district; and,

3. The nonconforming use of the structure was legally established before it was discontinued; and,
4. The owner requests a return to the nonconforming historic use.
5. The structure is a single-family dwelling or related accessory structure.

13.6 NONCONFORMING STRUCTURES

Where a lawful structure exists on the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on the area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such structure may be enlarged or altered in a way which increases its nonconformity.
- B. Should such a structure be moved for any reason for any distance whatsoever, it shall hereafter conform to the regulations for the district in which it is located after it is moved.

13.7 REPAIRS AND MAINTENANCE

On any structure on a nonconforming lot, any structure containing a nonconforming use, or any nonconforming structure, work may be done in any period of 12 consecutive months for ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 20% of the current assessed value of the buildings, provided that the cubical content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased. Should such building or structure be destroyed or damaged by any means to an extent of 100% of its current assessed value, it shall not be reconstructed except in conformity with the provisions of this Ordinance. Lesser damage may be repaired or reconstructed.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by the Administrator.

13.8 NONCONFORMANCE CREATED BY CHANGES IN ZONING BOUNDARIES OR REGULATIONS

Any nonconformances created by a change in district boundaries or Ordinance regulations after the effective date of this Ordinance shall also be governed by the provisions of this section.

13.9 SPECIAL USES ARE CONFORMING

Any use for which a Special Use Permit had been issued before the adoption of this Ordinance shall be deemed a conforming use unless otherwise provided in this Ordinance. Any extension by or addition to such use shall meet all requirements of this Ordinance.