

Effective Date: 2/1/05

09. NON-CONFORMING USES, BUILDINGS, STRUCTURES AND LOTS

09.01. Non-Conformities, General

Any non-conforming use or building lawfully existing at the time of adoption of these Regulations, or any amendment thereof, may be continued and any building so existing which was designed, arranged, intended for or devoted to a non-conforming use may be reconstructed or structurally altered and the non-conforming use therein changed in accordance with these Regulations.

Nothing in these Regulations shall prevent the restoration of any portion of a building or structure declared unsafe by the proper authorities.

Nothing in these Regulations shall be construed as authorization for, or approval of, the continuation of a use for a structure or premises in violation of the Zoning Regulations.

09.02. Non-Conforming Lots

A non-conforming lot may be built upon for any purpose permitted in the zone in which it is located, without a variance, despite its failure to comply with the area, width, depth or any other requirements of these Regulations, provided:

- (1) the non-conformity results solely from the adoption of these Regulations or any amendments thereof;
- (2) the non-conformity has not been increased in degree by any act or event subsequent to the effective date of the Regulation which rendered the lot non-conforming;
- (3) any building or structure to be located on a non-conforming lot must comply with all the requirements of the Zoning Regulations existing at the time of application for a zoning permit including, without limitation, all front, rear and side yard requirements of these Regulations.

09.03. Non-Conforming Uses

A non-conforming use of land, buildings or any other structures may be continued, expanded or extended only in accordance with the following provisions:

09.03.01. Expansion of Non-Conforming Uses

If any existing structure, devoted to a use not permitted by these Regulations in the zone in which it is located, is proposed to be enlarged, extended, constructed, reconstructed, moved or structurally altered (except for the changing of the use to a use permitted in the zone in which

it is located) then such enlargement, extension, construction, reconstruction, move or structural alteration shall require a Special Exception from the Planning and Zoning Commission.

09.03.02.

All non-conforming manufacturing establishments, as distinguished from home occupations (see definition 02.08.02.) in any district, and all non-conforming retail stores in the Main Street Residential (MR) District may be expanded provided that such expansion is:

- (1) not over 150% of the area occupied at the time of enactment of these Regulations;
- (2) on a plot of land presently occupied for such non-conforming use or abutting and contiguous to the area presently occupied for such non-conforming use;
- (3) in conformance with the front, side and rear yard requirements for the district in which it is located;
- (4) in compliance with the parking provisions as specified in Section 10. of these Regulations.

09.03.03.

All other non-conforming uses in any district may be expanded on an existing lot provided that such expansion is:

- (1) not over 50% of the area occupied at the time of enactment of these Regulations;
- (2) in conformance with the front, side and rear yard requirements for the district in which it is located;
- (3) in compliance with the parking provisions as specified in Section 10. of these Regulations.

09.04. Relocation of Use

Except as provided in Section 09.03.01., no non-conforming use shall be moved to another lot, or any portion thereof, no non-conforming use of a building or accessory structure shall be moved or extended to any other part of a building or to another structure, and no building or other structure containing a non-conforming use shall be moved unless the result of such move is to end the non-conformity.

09.05. Change of Non-Conforming Use

09.05.01.

Any change of use shall require that a zoning permit be issued by the Commission or its duly

authorized agent.

09.05.02.

No non-conforming use of land, buildings or other structures shall be changed to any use which is substantially different in nature or purpose from the existing non-conforming use, except to a use which is permitted by right in the district in which the land, building or other structure is located, unless a Special Exception is granted by the Commission pursuant to section 13.05. of these Regulations and upon the further finding that the new use will have no greater injurious impact upon the surrounding area than the existing use and that the use is as conforming or more conforming than the previous non-conforming use.

09.05.03.

A change of use will be deemed by the Commission to be substantially different from the existing non-conforming use if:

- (1) the proposed use is a higher generator of traffic than the existing non-conforming use as shown in the Institute of Transportation Engineers' (ITE) reports;
- (2) the proposed use requires increased parking pursuant to Section 10. of these Regulations;
- (3) the hours and/or days of operation of the proposed use are to be expanded beyond those of the existing use;
- (4) the number of employees in connection with the proposed use is to be increased over those of the existing use;
- (5) the proposed use is permitted in a lower zoning classification or district than the existing use as, shown in the Table of Uses in these Regulations.
- (6) the proposed use includes any other factors the Commission may deem significant including, but not limited to, a use which will have a detrimental effect on adjacent properties or a use which will constitute a hazard to health or public safety either on or off the property.

09.05.04.

A non-conforming use of land, buildings, or other structures that has been changed to a conforming use shall not thereafter be changed to a non-conforming use.

09.06. Termination of Use

A non-conforming land use, building or other structure which is not occupied by reason of voluntary discontinuance or abandonment for a continuous period of at least twelve (12) months shall not thereafter be occupied except by a use which conforms to the use regulations of the district in which it is located. In determining whether a non-conforming use has been discontinued, any one of the following items shall constitute voluntary discontinuance or abandonment:

- (1) Any positive act indicating the intent to discontinue the use;
- (2) Any conscious failure to take all necessary steps to resume the non-conforming use;
- (3) Substitution of a conforming use.

09.07. Reconstruction of Non-Conforming Use

Any non-conforming building or structure, or one or more of a group of non-conforming buildings or structures, which has been or may be damaged by fire, flood, explosion, earthquake, war, riot, an act of God or an act of any governmental authority may be reconstructed and used as before if a building permit is issued within eighteen (18) months of such calamity or act.