

Article XI – Nonconforming Structures and Uses

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Article XI – Nonconforming Structures and Uses

§ 21-1101 Purpose and Scope.

(a) The purpose of this Article is to recognize the existence of nonconforming buildings, structures, and uses, and to specify how those circumstances and uses incompatible with the character of the districts in which they are located shall be regulated.

(b) All structures, uses of structures, and uses of land not conforming to the regulations of the district in which they are located prior to April 4, 1975 shall be known and regarded as nonconforming, and the following regulations shall apply to them.

[Ord. 415 10-29-2003]

§ 21-1102 Continuance of Nonconforming Use.

(a) **In General.** Where, at the effective date of adoption or amendment of this Chapter or any predecessor zoning ordinance, a lawful structure, use of structure, or use of land exists that is thereafter not allowed following such adoption or amendment by reason of restrictions on use, area, lot coverage, height, yards, or other characteristics of the structure, the structure, use of structure, or use of land may be continued so long as it remains otherwise lawful, subject to the provisions of this Article.

(b) **Change of District Boundaries.** Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the provisions of this Article shall also apply to any uses or structures existing therein which become nonconforming by virtue of the boundary change.

[Ord. 415 10-29-2003]

§ 21-1103 Enlargement or Alteration of Area or Volume.

No nonconforming structure or use shall be enlarged or altered in volume or area unless the following requirements are met:

(a) **Yard, Height, and Coverage.** All enlargements or alterations shall conform to all yard, height and coverage requirements in the district in which the structure or use is located.

(b) **Screen or Fence.** Along side and rear lot lines which abut uses or structures which are conforming in the district or which abut another district in which the subject use or structure would be nonconforming, a solid and continuous landscape screen or fence or a combination thereof shall be planted or installed and shall be maintained. Landscaping shall consist of massed evergreen and/or deciduous trees and shrubs of at least three and one-half (3 1/2) feet in height and of such species as will produce within three (3) growing seasons a screen of at least six (6) feet in height so as to continually restrict a clear view beyond said buffer strip. Fencing shall be at least six (6) feet in height. Fences shall be constructed of a material approved by the Zoning Officer and plant materials shall be approved by the Zoning Officer in accordance with the list of recommended plant materials in § 21-1507.

(c) **Extension Throughout a Building.** Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for use at the time the use became nonconforming.

(d) **No Displacement of a Conforming Use.** No nonconforming use shall be extended to displace a conforming use.

[Ord. 415 10-29-2003]

§ 21-1104 Repair, Maintenance, and Alteration.

Repairs, maintenance, alterations, and modernization may be made to a nonconforming building or structure, except that no structural alterations shall be made in or to such building or structure except those required by law and except those making the building or structure and use thereof conform, or more closely conform, to the regulations of the district in which it is located. Nothing in this Chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

[Ord. 415 10-29-2003]

§ 21-1105 Movement.

(a) Should a structure or use be moved off the premises for any reason and for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(b) A nonconforming structure may not be moved to another location unless it becomes conforming by such move.

[Ord. 415 10-29-2003]

§ 21-1106 Removal or Destruction.

(a) **Removal or Total Destruction of a Structure.** Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure and accessory materials on the land shall eliminate the nonconforming status of the land.

(b) **Significant Damage.** Should a structure or use be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, as determined by the Zoning Officer, it shall not be reconstructed except in conformity with the provisions of this Chapter.

[Ord. 415 10-29-2003]

§ 21-1107 Discontinuance or Abandonment.

(a) **In General.** When a nonconforming use of a structure, or of a structure and premises in combination, is discontinued or abandoned for twelve (12) consecutive months or for twenty-four (24) months during any three (3) year period, the structure or the structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located.

(b) **Signs.** Upon discontinuance of a nonconforming use of a structure or land, all signs pertaining to such nonconforming use shall be removed by the owner or shall be completely covered with a material compatible with the architectural design and material composition of the structure as determined by the Zoning Officer.

[Ord. 415 10-29-2003]

§ 21-1108 Change to a Conforming Use.

(a) **No Reversion After Change to Conforming Use.** Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.

(b) **Nonconforming Use Superseded By a Permitted Use.** Any structure, or any structure and land in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulation for the district in which such structure is located and the nonconforming use may not thereafter be expanded or enlarged.

[Ord. 415 10-29-2003]

§ 21-1109 Change From One Nonconforming Use to Another.

A nonconforming use may be changed to another nonconforming use only under the following conditions:

(a) Such change shall be permitted only by special exception, under the provisions of § 21-1810 (relating to Special Exceptions).

(b) The applicant shall show that a nonconforming use cannot reasonably be changed to a conforming use.

(c) The applicant shall show that the proposed change will be less objectionable in external effects than the existing nonconforming use with respect to: traffic generation and congestion, including truck, passenger car, and pedestrian traffic; noise, smoke, dust, fumes, vapors, gases, heat, odor, glare, and vibration; storage and waste disposal; and appearance.

(d) If no structural alterations are made, any nonconforming use of a structure or of a structure and premises may be changed to another nonconforming use, *provided* that the Zoning Hearing Board, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Hearing Board may require appropriate conditions and safeguards in accord with the provisions of this Chapter.

[Ord. 415 10-29-2003]

§ 21-1110 Residential Uses.

Notwithstanding the other provisions of this Article, any nonconforming residential use of a structure may be constructed, enlarged, extended, reconstructed, moved, or structurally altered, *provided* that the proposed use is for residential purposes and such residential use may be subject to all other provisions of this Chapter in the district wherein such residential use is located.

[Ord. 415 10-29-2003]

§ 21-1111 Transition Rules.

(a) **Prior Actual Construction.** Nothing in this Chapter shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Chapter and upon which actual building construction has been diligently carried on. "Actual construction" is hereby defined to include the placing of construction materials in permanent position and fastening in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, *provided* that work shall be diligently carried on until completion of the building involved.

(b) **Prior Permit.** Nothing contained in this Chapter shall require any change in plans, construction, or designated use of a structure for which a building permit was issued more than thirty (30) days prior to the adoption or amendment of this Chapter or change in zoning district,

and the construction of which is begun within three (3) months after such adoption, amendment, or change and diligently carried on. The approved plans shall not be altered in any way to increase the nonconformity.

[Ord. 415 10-29-2003]

§ 21-1112 Nonconforming Lots of Record.

Notwithstanding limitations imposed by other provisions of this Chapter, a building and its customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Chapter. Such lot must be in separate ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of area, width, and yard requirements shall be obtained only through action of the Zoning Hearing Board.

[Ord. 415 10-29-2003]

§ 21-1113 No Protection for Pre-existing Unlawful Nonconformities.

A nonconforming building altered or erected, or a nonconforming use created, in violation of any previous provisions shall be regarded as continuing in such violation and shall not enjoy the privilege of legal continuance conferred by this Article upon other nonconforming buildings and uses.

[Ord. 415 10-29-2003]