

CHAPTER 5

NONCONFORMING BUILDINGS AND USES

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5 - 1. Purpose.

Within the districts established by this ordinance or subsequent amendments thereto, there exist uses, structures and lots which were lawfully established or created, but which would be prohibited, regulated or restricted under the terms of this ordinance or future amendments. The intent of this chapter is to permit these non-conformities to continue but not to encourage their perpetuation or survival. Non-conformities are declared by this chapter to be incompatible with permitted uses, structures and lots in the districts involved. It is further the intent of this chapter that non-conformities shall not be enlarged upon, expanded, enjoy an increase in intensity of use, unless specified otherwise. (Ord 2009-06, 2/03/09)

5 - 2. Repairs and alterations.

Repairs and structural alterations may be made to a nonconforming building or to a building housing a non-conforming use. (Ord 2005-22, 9/13/05)

5 - 3. Additions, enlargements, and moving.

(1) An extension of a structure, or placement of an accessory building, which does not further encroach upon the violated height, area, or land requirement, may be granted upon approval by the zoning administrator, if it is found that the extension or placement of the structure is not detrimental to the intent of the land use ordinance.

(2) If the intended extension or placement of the nonconforming structure further encroaches upon the violated height, area, or yard requirement, the request shall be reviewed through the variance process and acted upon by the administrative hearing officer.

(3) A non-conforming building or structure shall not be moved in whole or in part to any other location on the property on which it is situated unless every portion of such building or structure is made to conform to all the requirements of the district in which it is located. (Ord 2005-22, 2/3/09)

5 - 4. Alteration where parking insufficient.

A building or structure lacking the automobile parking space required by the land use ordinance, may be altered or enlarged provided additional automobile parking space is supplied to fully meet the requirements of the land use ordinance. (Ord 2005-22, 9/13/05)

5 - 5. Restoration of damaged buildings.

A nonconforming building or structure, which is or is not occupied by a nonconforming use, that is damaged or destroyed by the public enemy, fire, flood, wind, earthquake or other calamity or Act of God may be restored and the occupancy or use of such building, structure, or part thereof, which existed at the time of the damage or destruction may be continued or resumed, provided that such restoration is started within a period of one year and is diligently pursued to completion. (Ord 2005-22, 9/13/05)

5 - 6. One-year vacancy or abandonment.

(1) A building or structure or portion thereof, nonconforming as to use, which is or hereafter becomes vacant and remains unoccupied for a continuous period of one year shall not be occupied except by a use which conforms to the use regulations of the zoning district in which it is located.

(2) Wherever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established, and any future use shall be in conformance with the provisions of the land use ordinance.

(3) Any building, structure, or use for which a valid building permit has been issued and actual construction was lawfully begun prior to the effective date of the land use ordinance, may be completed and used in accordance with the

plans, specifications and permit on which the building permit was granted.

(4) For purposes of this section, actual construction is hereby defined to be:

(a) The actual placing of construction materials in their permanent position, fastened in a permanent manner.

(b) actual work in excavating a basement; or

(c) the demolition or removal of an existing structure begun preparatory to rebuilding, provided that in all cases actual construction work shall be diligently carried on without delay until the completion of the building or structure involved. (Ord 2005-22, 9/13/05)

5 - 7. Continuation of use.

(1) The occupancy of a building or structure by a non-conforming use, existing at the time this land use ordinance became effective, may be continued.

(2) Except as provided in this chapter, a nonconforming use of land may be continued by the present or a future property owner. (Ord 2005-22, 9/13/05)

5 - 8. Occupancy within one year.

A vacant building or structure may be occupied by a use for which the building or structure was designed or intended, if so occupied within a period of one year after the use became nonconforming. (Ord 2005-22, 9/13/05)

5 - 9. Change of use.

(1) Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of the land use ordinance, the premises shall not thereafter be used or occupied by a nonconforming use, even though the building may have been originally designed and constructed for the prior nonconforming use.

(2) Whenever a nonconforming use of a building or structure, or part thereof, has been discontinued or abandoned for a period of one year, such use shall not be reestablished, and the use of the premises shall be in conformity with the regulations of the zoning district.

(3) Where no enclosed building is involved, discontinuance of a nonconforming use for a period of one year constitutes abandonment.

(4) A nonconforming use not authorized by the provisions of this ordinance shall be discontinued and not reestablished unless the use is conforming to the zoning district in which it is located. (Ord 2005-22, 9/13/05)

5 - 10. Expansion permitted.

A nonconforming use may be extended to include the entire floor area of the existing building in which it is conducted at the time the use became nonconforming.

(Ord 2005-22, 9/13/05)

5 - 11. Nonconforming use of land.

The nonconforming use of land, existing at the time this ordinance became effective, or through a change in the land use ordinance or zoning district boundaries, may be continued, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or on adjoining property, and provided that if such nonconforming use of land, or any portion thereof, is abandoned or changed for a period of one year or more, any future use of such land shall be in conformity with the provisions of this ordinance. (Ord 2005-22, 9/13/05)

5 - 12. The doctrine of diminishing assets.

Some nonconforming uses, such as mining or gravel extraction must be expanded in order for the use to continue at all. Such businesses shall be allowed to expand without limitation or restriction to the immediate area excavated at the time the ordinance was passed regardless of the current zoning onto the rest of the property acquired for such a use. This shall not allow for the purchase of additional property with which to expand, but does allow that all property held at the time the more restrictive ordinance was passed can be used for the intended purpose. (Ord 2005-22, 9/13/05)