

ARTICLE 4

PRE-EXISTING NONCONFORMING USES

SECTION 400 – Pre-existing Nonconforming Lots, Uses and Structures

Within the districts established by this order or amendments to districts that may later be adopted, lots, uses of land, and structures may exist which were lawful before this order was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or further amendments. It is the intent of this order to permit these nonconforming lots, uses and structures to continue.

Uses or structures legally established before this order was passed or amended shall not be considered a violation of this ordinance and shall not be subject to penalties as outlined in Article 6 of this Ordinance.

1. The following provisions shall apply in determining the nonconforming status and whether the use, structure or lot may be altered or developed.
 - a. A nonconforming use or structure shall not be enlarged, moved, changed or extended beyond the scope and area of its operation at the time it became a legal nonconforming use. Nor shall other uses or structures, which are prohibited elsewhere in the same district, be permitted on lots of nonconforming uses or structures.
 - b. If any legal pre-existing nonconforming use of land, structure, or combination, is changed to a permitted use, then the legal nonconforming use status is removed and cannot be resumed.
 - c. When a legal, pre-existing nonconforming use of land, structure, or combination is discontinued or abandoned for twelve (12) consecutive months, the nonconforming use status is removed and cannot be resumed.
 - d. Normal maintenance and repair of a nonconforming structure may be performed provided there is no significant physical change to the structure and such maintenance and repair does not extend, enlarge or intensify the nonconforming structure or the use of the nonconforming structure, unless otherwise authorized by this Article.
 - e. A pre-existing nonconforming residential structure used solely for a residential purpose may be enlarged provided the number of dwelling units is not increased. The floor area of the dwelling unit may not be increased more than twenty-five percent (25%), and compliance with all development standards of this ordinance must be followed.
 - f. Any nonconforming structure damaged by fire, flood (as permitted in Article 8), explosion or other casualty may be reconstructed and used as before. However,

every effort shall be made to make the structure comply with this Ordinance. Reconstruction must be undertaken within twelve months of such casualty and completed within one year. In addition, the restored structure cannot have greater lot coverage or square footage (except as permitted by subsection E above) than before such casualty.

SECTION 410 - Nonconforming Parcels or Subdivisions

If any lot of record does not meet the minimum lot size and frontage requirements as established within this Ordinance and that lot existed at the effective date of adoption or amendment of this order, the owner may develop that lot in conformance with the dimensional standards previously in effect. The previous standards can be used only if the current development standard can not be applied to the lot. However, the lot must be developed in conformance with all other requirements of this order. If the lot cannot be developed under the existing standards or if the previous standards cannot be determined, a variance will be required from the Board of Zoning Appeals as identified in Section 320 of this Ordinance.

SECTION 420 - Nonconforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this order that could not be built under the terms of this Ordinance, such structure may be continued so long as it remains otherwise lawful. The following provisions shall apply:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity;
2. Should such structure be moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved;
3. When an addition is proposed for a pre-existing structure that does not meet the current setback requirements, the addition may be located along the nonconforming building line established by the existing structure. However, it may not encroach any further into such nonconforming setback unless the Board of Zoning Appeals grants a variance.

SECTION 430 - Change of Nonconforming Use

The Board of Zoning Appeals shall have the power to hear and decide on applications to permit a change from one nonconforming use to another. The Board shall not permit such a change unless the new nonconforming use is equally or more compatible with permitted uses in the district in which it is located as the existing nonconforming use. The intent of this section is to allow a non-conforming use to adapt to changing economic considerations and prevent the use from becoming a blight. An application for a change of nonconforming use shall conform to the procedures for other Board applications.

The Board shall not allow any changed nonconforming use to be increased or enlarged, nor extended to occupy a greater area of land than was occupied by the original nonconforming use. In permitting such change in nonconforming use, the Board can require appropriate conditions and safeguards in accord with other provisions of this order, such as the provision of landscaping and buffering, the improvement of parking areas, and restrictions on the hours of operation.

SECTION 440 - Burden of Establishing Status

The burden of establishing legal, pre-existing nonconforming use status shall rest on the person asserting such status. Such persons shall provide sufficient proof to the Director or designated staff that such a pre-existing nonconforming status exists.

SECTION 450 - Avoidance of Undue Hardship

To avoid undue hardship, nothing in this order 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 order. If actual building construction has been carried on diligently and such construction is not found to have been or to be a purposely-planned evasion of the intent of this order, development may continue. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastening them in a permanent manner. Where demolition or removal of an existing building has begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently, but subject to the same clarifications of planned intent. Neither shall this order be deemed to require a revision in the preliminary plans of subdivisions which had been approved prior to the adoption of these regulations provided that schedules for submission of improvement plans and final plans are met.

SECTION 460 – Agricultural Exceptions

Any agricultural use existing prior to the adoption of this Ordinance which is located in a zoning classification where agricultural uses are not Principally Permitted shall still be considered a non-conforming use by this Ordinance. However, these uses shall not be prevented from enlarging or continuing to operate as permitted before the adoption of this Ordinance.