

CHAPTER 7:

NONCONFORMITIES

Section 7.101. Purpose; applicability.

The purpose of this Chapter is to regulate and limit the continued existence of uses and structures lawfully established prior to the effective date of these regulations that do not conform to these regulations. Any nonconformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this Chapter, with the "effective date" referenced below being the date the text of these regulations or the Zoning Maps are amended to render a particular use, structure, or lot nonconforming.

Section 7.102. Nonconforming uses.

- (1) Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses may continue only in accordance with the provisions of this Section.
- (2) Normal repair and maintenance may be performed to allow the continuation of a nonconforming use.
- (3) A nonconforming use shall not be expanded, nor shall a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located or the occupation of additional lands.
- (4) A structure in which a nonconforming use is located shall not be moved unless the use thereafter shall conform to the standards of the zoning district or districts to which it is moved.
- (5) A nonconforming use of a structure may be changed to another nonconforming use of the same classification, a higher classification, or to a conforming use. The determination of the classification of the use is based on the district in which the use would be allowed by right under the ordinance. The change of a nonconforming use to another nonconforming use must not generate any more automobile or truck traffic, noise, vibration, smoke, dust, or fumes than the original nonconforming use. Once a nonconforming use is changed to a conforming use, the nonconforming use shall not be re-established.

- (6) Where a nonconforming use is visibly discontinued for 12 consecutive months, then the use shall not be re-established or resumed, and any subsequent use of the land or structure shall conform to the requirements of these regulations.
- (7) Where a structure in which a nonconforming use is located is destroyed or damaged by fire, flood, wind, other act of God, the structure may be repaired or restored to its original dimensions and conditions as long as a building permit for the repair or restoration is issued within 12 months of the date of the damage.

Section 7.103. Nonconforming structures.

- (1) A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this Section.
- (2) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- (3) Except as provided in subsections (4) and (5) below, a nonconforming structure shall not undergo a change of use, renovation or expansion.
- (4) A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that:
 - (a) The change in use or renovation does not increase the floor area of the structure;
 - (b) The change in use is to a permitted use within the district; and
 - (c) The number of parking spaces provided for the use is in conformity with the requirements of these regulations.
- (5) A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of these regulations.
- (6) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning district in which it is located.

- (7) Where a nonconforming structure is destroyed or damaged by fire, flood, wind, other act(s) of God, the structure may be repaired or restored to its original dimensions and conditions as long as a building permit for the repair or restoration is issued within 12 months of the date of the damage. Any residential building lawfully existing on the date the height restrictions of petition 2011-038 became effective (January 1, 2012) may be repaired or restored to its original height dimensions as long as a building permit for the repair or restoration is issued within 24 months of the date the building was destroyed or damaged.
(Petition No. 2011-038, §7.103(7), 07/18/2011)
- (8) An existing mobile home or manufactured home located in a nonconforming mobile home or manufactured housing park in operation at the time of adoption of these regulations may be replaced with another mobile home or manufactured home provided the number of mobile home or manufactured home units may not be increased beyond the number available before replacement and the replacing mobile home must not create nonconforming yards, separation distances, or increase existing nonconforming yards or separation distances.
- (9) An existing, nonconforming heating, ventilation, or air conditioning unit, backflow preventer, or accessory utility structure may be replaced provided the replacement structure does not increase the existing nonconforming side or rear yards. Nor may the replacement heating, ventilation, or air conditioning unit, backflow preventer or accessory utility structure exceed 42 inches in height if located in the required setback or the required side or rear yard along a public street.
(Petition No. 2011-078, §7.103(9), 02/21/11)

Section 7.104. Nonconforming accessory uses and accessory structures.

- (1) No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by discontinuance, damage, or destruction unless, such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located.
- (2) A nonconforming accessory use or accessory structure may be expanded only if the nonconforming features of that use or structure are not expanded so as to increase the degree of nonconformity.

Section 7.105. Nonconforming vacant lots.

- (1) Except as provided below in subsection (2), a nonconforming vacant lot (as of the effective date of these regulations) may be used for any of the uses permitted by these regulations in the zoning district in which it is located, provided that the use meets all limitations and minimum requirements for setback and yards, height, open space, buffers, screening parking, and floor area required in these regulations for the zoning district in which the lot is located.

(Petition No. 2005-047, §7.105(1), 01/17/06)

- (2) A nonconforming vacant lot shall not be used if it could be combined with adjoining lot(s) owned by the same person on or before the effective date of these regulations in order to create one or more conforming lots. When a single property owner owns two, and only two, existing adjoining non-conforming lots, and the combination would result in the creation of a single lot that is more than one-and-one-half times the width and area required in the zoning district, then the single lot may be divided into two lots of equal width and area without being further classified as nonconforming.

(Petition No. 2005-047, §7.105(2), 01/17/06)