

DRAFT - Edited after Public Hearing.
Clarifications (in BLUE) have been made
based on residents input and concerns.

DRAFT

ZONING AMENDMENT

ARTICLE 4

NON-CONFORMITIES

SECTION 400

INTENT

Zoning regulations established by the adoption of this Zoning Resolution, or amendments to this Zoning Resolution, may cause properties and uses which were lawful prior to the adoption of certain regulation to not meet requirements after adoption of the regulations.

All uses, lots, and structures that do not conform to the current Zoning Resolution of the district in which they are located, and which were lawful when they were first established, shall be known as “non-conforming” and shall ~~meet the regulations of be~~ regulated under this Article.

The intent of this Article is to establish procedures and regulations for the use of those properties or structures which are in conflict with the requirements of the current Zoning Resolution. It is not the intent of this section to encourage the continuance of non-conformities that are out of character with the standards of the zoning district, but rather to allow certain non-conforming situations to continue as legal exceptions to the current Zoning Resolutions. It is the intent of this Article to permit these non-conformities to continue until they are removed.

Uses, lots, and structures that were not lawful when they were first established, or that changed in an unlawful manner, shall not have the right to continue, and shall be brought into conformity with the current Zoning Resolution.

This Article shall apply to all legal non-conforming uses and legal non-conforming structures.

~~Within the districts established by this resolution or amendments that may later be adopted there exists lots, uses of land, structures, and uses of structures and land in combination which were lawful before this resolution was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this resolution or future amendments. It is the intent of this resolution to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this resolution that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.~~

SECTION 410

DRAFT - Edited after Public Hearing.
Clarifications (in BLUE) have been made
based on residents input and concerns.

DRAFT

INCOMPATIBILITY DEFINITIONS OF NON-CONFORMITIES

A nonconformity is any use, lot, improvement, or structure that, as a result of amendments to this resolution or a preexisting condition, does not meet the current standards of the resolution.

Formatted: Normal (Web)

Nonconforming Use – A nonconforming use shall be any land use or type of residential use that was legally established but has become a prohibited use in the district in which it exists.

Nonconforming Lot – A nonconforming lot shall be any legally established parcel that does not conform to the current area or dimensional requirements of the zoning district in which it is located.

Formatted: header

Nonconforming Improvement or Structure – A nonconforming improvement or structure shall be any legally established improvement, building, or structure that fails to meet current Zoning Resolution standards for setback, height, or similar factors.

Non-conformities are declared by this resolution to be incompatible with permitted uses in the district in which such use is located. A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of a structure and land in combination shall not be extended or enlarged after passage of this resolution by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

SECTION 420

AVOIDANCE OF UNDUE HARDSHIP
COMPLETION OF BUILDINGS AND IMPROVEMENTS

Completion of buildings that become non-conforming as a result of passage of this resolution shall be allowed if an application for a building permit sufficient to allow approval was submitted prior to passage of this Resolution, and if the building is subsequently completed in accordance with an approved building permit within two years of initial issuance of the permit.

To avoid undue hardship, nothing in this resolution 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 resolution and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened 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 the work shall be carried out diligently.

**DRAFT - Edited after Public Hearing.
Clarifications (in BLUE) have been made
based on residents input and concerns.**

DRAFT

SECTION 430

SINGLE NON-CONFORMING LOTS OF RECORD

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this resolution, notwithstanding limitations imposed by other provisions of this resolution. Such lot must be in separate ownership and not of continuous frontage with other lots in the same 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 requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variances of requirements listed in Articles 9 and 10 of this resolution other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Sections 540 through 543.

SECTION 431

NON-CONFORMING LOTS OF RECORD IN COMBINATION

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage of amendment of this resolution and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this resolution and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this resolution, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this ~~resolution~~[resolution](#).

SECTION 440

NON-CONFORMING USES OF LAND

Where, at the time of adoption of this resolution, lawful uses of land exist which would not be permitted by the regulations imposed by this resolution, the uses may be continued so long as they remain otherwise lawful, provided ~~that no such non-conforming uses of land shall in any way be expanded, extended, or moved in whole or in part to any other portion of the lot of record. If such nonconforming use of land or any portion thereof is discontinued for a period of two years, or is otherwise changed, any future use of such land shall be in conformity with the provisions of this resolution.:~~

[If the property of such nonconforming use is in probate or litigation, the days in probate or litigation are not counted toward the two-year period.](#)

~~1. No such noneonforming uses shall be enlarged or increased, nor extended to occupy a greater area of the land than was occupied at the effective date of adoption or amendment of this resolution.~~

**DRAFT - Edited after Public Hearing.
Clarifications (in BLUE) have been made
based on residents input and concerns.**

DRAFT

- ~~2. No such non-conforming uses shall be mobbed in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this resolution;~~
- ~~3. If any such non-conforming uses of land are discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this resolution for the district in which such land is located;~~
- ~~4. No additional structure not conforming to the requirements of this resolution shall be enacted in connection with such non-conforming use of land.~~

SECTION 450

NON-CONFORMING STRUCTURE

Where a lawful structure exists at the effective date of adoption or amendment of this resolution that could not be built under the terms of this resolution by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful.

~~If a lawful non-conforming structure is, or is proposed to be, destroyed or torn down by any means, a permit for its reconstruction shall be issued, provided the application for permit for reconstruction is made within six months prior to or two years after the date of such destruction or tear down. All reconstructed structures must meet all of the following requirements:~~

- ~~1. be built within the existing building footprint;~~
- ~~2. the square footage of the building may not be increased from the structure that was destroyed or torn down;~~
- ~~3. The height of the structure may not exceed the greater of:
 - a. The original height from the structure that was destroyed or torn down.;
 - b. 15 feet (or 18 feet if the roof pitch is 6/12 or steeper).~~

~~subject to the following provisions:~~

- ~~1. No such non-conforming structure may be enlarged or altered in any way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity;~~
- ~~2. Should such non-conforming structure or non-conforming portion of structure be destroyed by any means, it shall not be reconstructed except in conformity with the provisions of this resolution;~~
- ~~3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.~~

SECTION 460

DRAFT - Edited after Public Hearing.
Clarifications (in BLUE) have been made
based on residents input and concerns.

DRAFT

NON-CONFORMING USES OF STRUCTURES ~~OR OF STRUCTURES AND~~
LAND IN COMBINATION

The lawful use of a structure existing at the time of the enactment of this resolution, or amendments thereto, although such use does not conform to the provisions of this resolution, may be continued and such use may be extended throughout the structure provided that the extension of the use does not displace a use conforming to the district as designated by this resolution.

In any district, a lawful non-conforming use may be changed to a permitted use or conditional use for that district.

A lawful nonconforming use shall only be expanded if it does not exceed a 50% maximum increase, in aggregate, over the entire life of the nonconformity. For example, if a building permit is issued for a 10% expansion one year, and a 35% expansion of the original size ten years later, any further requests for a permit for an expansion for more than 5% of the original nonconformity would be denied. Any expansion of a nonconforming use shall meet all required setbacks and all other requirements of this resolution. No new nonconformity shall be created.

Whenever a non-conforming use of a structure, or a portion thereof, has been abandoned or discontinued for a period of two years or more, it shall not again be used except in conformity with the regulations of the district in which such structure is located.

A change from one non-conforming use to another non-conforming use may be permitted by the Zoning Inspector with notice of this determination to be posted conspicuously on the property and written notice to be provided to adjoining property owners. The change of use must adhere to the following guidelines:

1. The same general type of use is involved;
2. The operator of the new use agrees in writing as a condition of the permit to abide by any applicable conditions that were established for the previous use of the property;
3. The new use involves similar or less intensive characteristics compared to the previous use.
4. The new use does not involve the sale of alcohol, unless the previous use also involved the sale of alcohol in a similar manner.

If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of adoption or amendment of this resolution that would not be allowed in the district under the terms of this resolution, the lawful use may be continued so long as it remains otherwise lawful
, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this resolution in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or

DRAFT - Edited after Public Hearing.
Clarifications (in BLUE) have been made
based on residents input and concerns.

DRAFT

- ~~structurally altered except in changing the use of this structure to a use permitted in the district in which it is located;~~
- ~~2. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this resolution, but no such use shall be extended to occupy any land outside such building;~~
 - ~~3. If no structural alterations are made, any non-conforming use of a structure or structure and land, may, upon appeal to the Board of Zoning Appeals, be changed to another non-conforming use provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with other provisions of this resolution;~~
 - ~~4. Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the requirements for the district, and the non-conforming use may not thereafter be resumed;~~
 - ~~5. When a non-conforming use of a structure, or structure and land in combination is discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located;~~
 - ~~6. Where non-conforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.~~

SECTION 470

REPAIRS AND MAINTENANCE

~~On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done on o~~Ordinary repairs, ~~or on~~ repair or replacement of ~~non-bearing~~ walls, fixtures, wiring, or plumbing, ~~are permitted to any non-conforming structure or portion of a structure, or to a structure containing a non-conforming use,~~ provided that the cubic content existing when it became non-conforming shall not be increased. Nothing in this section 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.

SECTION 480

USES UNDER CONDITIONAL USE PROVISIONS NOT NON-CONFORMING USES

Any use which is permitted as a conditional use in a district under the terms of this resolution shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.