

ARTICLE 10

NONCONFORMITIES

Section 10-1 PURPOSE

The requirements imposed by this ordinance are designed to guide the use of land by encouraging the development of structures and uses that are compatible with the predominant character of each of the various districts. Nonconforming lots, structures, and uses of land cause hardships on surrounding developments. Because these nonconformities can impede the appropriate types of development, the City shall work to gradually eliminate the nonconformity. The regulations of this Article outline the process to be followed in the documentation and elimination of nonconformities.

Section 10-2 NONCONFORMING LOTS

Any lot that does not conform to one or more of the lot size requirements of the district in which it is located may be used for a use that is considered a permitted use for that particular district. The use of a nonconforming lot shall only be permitted if the following requirements have been met:

- A) The lot is of record on the date of the adoption or amendment of this ordinance;
- B) The lot has continuously remained in separate ownership from abutting tracts of land throughout the entire period during which the creation of such lot was prohibited by any applicable zoning or other ordinance;
- C) Any use of the lot will comply with the setback requirements and all building requirements established for that district. Any intended use that will not comply with the setback or building requirements must receive a variance.

10-2.1 Two or More Lots in Common Ownership

If two or more nonconforming vacant lots, or combinations of lots and portions of lots, with continuous frontage were of record and in common ownership on the effective date of this ordinance, the land involved shall be considered an undivided parcel. This parcel of land shall not be developed except in compliance with this ordinance. A parcel of land created by the combination of nonconforming lots may not be subdivided and sold to another person as a means of avoiding the requirements of this section. Any conforming lot shall not be divided so as to create a lot that does not meet the requirements of this ordinance.

Section 10-3 NONCONFORMING STRUCTURES

Any lawful structure which exists on the effective date of this ordinance but which could not be erected under the terms of this ordinance because of restrictions on height, setbacks, or other characteristics of the structure or its location on the lot may lawfully remain, subject to the following provisions:

- A) Enlargement, Alterations: No such structure shall be enlarged or altered in any way which increases its nonconformity;

B) Relocation: No such structure shall be relocated unless, after relocation, it will conform to all the regulations of the district in which it is located;

C) Maintenance: Any nonconforming structure may be maintained through ordinary repairs and improvements, provided that any repairs do not substantially alter the character of the structure. Maintenance of a nonconforming structure is defined as repairs made on a routine basis. Periodic, substantial renovations of a nonconforming structure will not be considered as maintenance, but rather the reconstruction of a nonconforming structure;

D) Reconstruction: No such structure which is destroyed or damaged by any means shall be reconstructed if the Administrator determines that the costs of reconstruction exceeds fifty percent of the structure's market value at the time of the loss, unless after reconstruction the structure will conform to all applicable regulations of the district in which it is located. In the event the Administrator determines the estimated cost of reconstruction is less than fifty percent of the structure's market value at the time of loss, repairs or reconstruction shall be permitted, provided such work starts within six months from the date the damage occurred and is diligently prosecuted to completion.

A preliminary determination of whether or not the repairs will exceed fifty percent shall be made by the Administrator upon request for the required permits. If the Administrator, basing his determination on estimates of similar types of work, decides the repairs will exceed fifty percent, a detailed, written estimate of the repairs needed will be requested of the applicant. This estimate shall be submitted by a bona fide construction contractor. A bona fide contractor is one who can provide proof of liability insurance and a performance bond.

If the Administrator determines that the repairs will exceed fifty percent of the structures market value, the applicant will be required to obtain an appraisal of the structure in question. This appraisal shall determine the market value of the structure only, as it exists after the loss has occurred. The appraisal shall be made by a non-partisan, licensed real estate appraiser. Any costs incurred in obtaining the documents from a contractor and appraiser shall be accrued to the owner. If the Administrator disagrees with the estimate and appraisal submitted, the City may, at its own expense, obtain a second estimate and appraisal;

E) When the use of any nonconforming structure has been abandoned or discontinued for a period of twelve consecutive months, use of the structure shall not be allowed to resume until the structure is brought into compliance with the Zoning Ordinance.

Section 10-4 NONCONFORMING USES

Any lawful use of land existing on the effective date of this ordinance that would not be permitted under the terms of this ordinance may lawfully continue, subject to the following provisions:

- A) Intensification or Extension of Use: A nonconforming use shall not be intensified, or extended to occupy a greater area of land than was occupied by such use on the effective date of this ordinance. Any structure used for a non-conforming use shall not be expanded as a means of providing additional space for the non-conforming use. (Ord. 97-14)

- B) Relocation: No nonconforming use of land shall be moved, in whole or in part, unless such use, upon relocation, will conform to all pertinent regulations of the district in which it is proposed to be located;

- C) Changes of Use: A nonconforming use shall not be changed except to a permitted use under the applicable regulations. A nonconforming use may be changed to another nonconforming use, provided that the new use is less of a nonconformity than the original use and the new use complies with the other requirements of this section;

- D) Discontinuance: When a nonconforming use is discontinued for a period of twelve months consecutively, it shall not thereafter be resumed. Any subsequent use of such land shall conform to the applicable district regulations. Any discontinuance cause by government action and without any contributing fault by the owner or operator shall not be counted in calculating the length of discontinuance.

Section 10-5 NONCONFORMITIES UNDER PERMIT AUTHORITY

The regulations of this Article shall not apply to any change in an existing structure or to any change in the use of a structure or of land for which a permit was issued prior to the effective date of this ordinance or any such pertinent amendment thereto provided that the work authorized by such permit is completed within a reasonable time.