

ARTICLE 5

NONCONFORMING USES AND BUILDINGS

5.100 STATEMENT OF INTENT

- (a) The zoning districts established by this Ordinance are designed to guide future use of land in the municipality by encouraging the development of desirable residential commercial and manufacturing areas, with appropriate groupings of compatible and related uses, to the end of promoting and protecting the public health, safety, comfort, prosperity and other aspects of the general welfare.

To achieve this end, lawful existing uses which would be prohibited or restricted under the terms of this Ordinance, or future amendments, and which do not conform to the character and regulations of the zoning district in which they are located must be subject to certain limitations. The regulations set forth below are intended to provide a gradual remedy for the undersirable conditions resulting from indiscriminate mixing of uses, and to afford a means whereby nonconforming uses can be eliminated gradually and reestablished in more suitable locations within the municipality. Similarly, buildings or other structures which do not comply with one or more of the applicable district requirements as to lot width, minimum lot area and yard spaces, width of lot, coverage, or height are deemed to be nonconforming.

- (b) To avoid undue hardship, nonconforming uses of land, buildings, and structures shall generally be permitted to remain; the purpose of this regulation in nonconforming uses which are not appropriate in their location is to restrict further investment, when economically reasonable, in such nonconforming uses; exceptions shall be made in these instances where extensive investment is involved to avoid any unnecessary harassment in the use of such facilities.
- (c) To eliminate any undue hardship, nothing in this Ordinance shall be deemed to require any change in plans, specifications construction or intended use of any building or structure for which plans, specifications, and contract negotiations, or construction started, prior to the effective date of this Ordinance, or amendments thereof.

5.200 CONTINUATION OF USE

5.201 A use, building or structure which shall be made nonconforming, as defined in Section 2.200, at the time of passage of this Ordinance by this Ordinance, or any applicable amendment thereto, may be continued except as otherwise set forth in this Article.

5.202 A use, building or structure in existence at the time of passage of this Ordinance shall not be considered nonconforming if the yards, area, height, coverage, dimensions, or off-street parking do not conform with the regulations for the district (as enumerated in Article 4) in which the use, building or structure is located.

5.300 REGISTRATION OF NONCONFORMING USES

The owner of the premises occupied by a lawful nonconforming use or building may secure within a year a Certificate of Nonconformance from the Zoning Official. Such certificate shall be authorized by the Board and shall be for the purpose of insuring to the owner the right to continue such nonconforming use.

In order to administer this Ordinance, the Building Inspector or any other person designated by the municipality as Zoning Official shall prepare, immediately after the adoption of this Ordinance, a complete list of all nonconforming uses, buildings, lots and signs then in existence.

5.400 REGULATION OF NONCONFORMING USES

An existing nonconforming use, building or structure cannot be enlarged, reconstructed, substituted or structurally altered unless required to do so by law or order and as follows:

5.401 Enlargement.

- (a) Any registered nonconforming use, building or structure may be enlarged up to, but not more than thirty-five (35) percent of its floor area and/or lot area, as it existed at the time of passage of this Ordinance. Such enlargement must conform to all other regulations of the District where it is situated. This provision may be used only once for each zone lot.

5.402 Repairs and Maintenance.

- (a) Normal maintenance repairs and incidental alteration of a building or other structure containing a nonconforming use is permitted, provided it does not extend the area or volume of space occupied by the nonconforming use.
- (b) A building or other structure containing residential nonconforming uses may be altered in any way to improve interior livability, provided that no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.

5.403 Displacement and Change of Use.

- (a) A nonconforming use may be changed into a conforming use only, or to another nonconforming use which is either in the same Use Class category or which more closely approaches the uses permitted in the District in which such use is located as determined by the Planning Commission, excepting that in the case of written objections to the Commission's determination(s) the determination shall be made by the Board in the manner set forth for the review of "Special Uses".
- (b) A nonconforming use shall not be extended to displace a conforming use, except to provide room for parking or loading facilities which will serve the nonconforming use and which will substantially lessen congestion resulting from the nonconforming use.
- (c) Buildings or structures, regardless of conformity or ownership, shall not be combined for the purpose of extending an existing nonconforming use, or for creating a different nonconforming use.

5.404 Restoration

When a nonconforming building, or structure is destroyed, or partially destroyed by fire, explosion, or other disaster, or is otherwise damaged to the extent of 75% of the appraised replacement value of such building or structure, such nonconforming building, or structure shall not be restored, or rebuilt, except in such manner as to conform

to the regulations of this Ordinance, and amendments thereto. When a nonconforming building or structure is partially destroyed by fire, explosion or other disaster to less than 75% of its appraised replacement value, it may be restored to its original use in accordance with provisions of this Ordinance but must be restored within one (1) year of such happening.

5.405 Termination.

- (a) When seventy-five (75%) percent or more of the existing floor area, volume or use of land is destroyed by fire, a casualty, or act of God, it shall thereafter be terminated as a nonconforming use, building or structure.
- (b) When discontinued for a period of one (1) year or more, a nonconforming use shall be terminated. If, however, in the opinion of the Zoning Hearing Board, the structure is not substandard and the design of the structure does not lend itself to conversion to conforming uses, this provision shall not apply. Change to a conforming use shall be considered an abandonment thereof, and such nonconforming use cannot be revived.

5.406 Approval Granted Prior to Passage of Ordinance.

A building, structure or use, planned, constructed or designed in compliance with existing laws prior to the passage of this Ordinance, shall be deemed a legal nonconforming use, provided that:

- (a) The construction or use was actually started prior to passage of this Ordinance.
- (b) The ground story framework including the second tier of beams is completed with six (6) months of passage of this Ordinance.
- (c) The entire building, structure or use is completed or installed and ready for occupancy or operation within one year of the passage of this Ordinance.