

ARTICLE IX
NON-CONFORMING USES AND STRUCTURES

Section 9.01. INTENT OF REGULATIONS

Within the districts established by this Ordinance or amendments that may later be adopted, there exist: (1) structures, (2) uses of land and/or structures, and (3) characteristics of use which were lawful before the effective date of this Ordinance or of an amendment thereto, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is also the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for the addition of other structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of a structure, land, or a structure and land in combination shall not be extended or enlarged by the installation of additional signs attached to a building or located on the premises if they are intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited in the district involved.

Section 9.02. 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 Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. 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 applicable in the district, provided that yard dimensions and other requirements other than these applying to area or width of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Zoning Adjustment.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots 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 Ordinance, 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 Ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Ordinance.

Section 9.03. NON-CONFORMING USES OF LAND WITHOUT STRUCTURES (OR WITH MINOR STRUCTURES ONLY)

(a) Continuance. In cases where a lawful use of land exists on the effective date of this Ordinance or an amendment thereto, and such use would not be permitted by the regulations imposed by this Ordinance or by an amendment thereto and if such use involves no individual structures with a replacement cost exceeding \$1,000, the use may be continued as long as it remains otherwise lawful.

(b) Enlargement. No such non-conforming use shall be enlarged or increased, or extended to occupy a greater area of land than was occupied on the effective date of this Ordinance or of an amendment thereto. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.

(c) Extension or Movement. No such non-conforming use shall be extended or moved to any portion of the premises or parcel of land other than that occupied by such use on the effective date of this Ordinance or of an amendment thereto.

(d) Change in Use. No such non-conforming use of land shall be changed to any other non-conforming use, unless the Board of Zoning Adjustment finds that the new non-conforming use is in

the same or a more restrictive classification.

(e) Cessation. If any such non-conforming use of land ceases for any reason for a period of more than thirty (30) days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located. However, for mobile homes, see Section 5.02(3)(i).

Section 9.04. NON-CONFORMING STRUCTURES

(a) Continuance. In cases where a lawful structure exists on the effective date of this Ordinance or of an amendment thereto and such structure could not be built under the terms of this Ordinance or amendment thereto by reason of restrictions on area, building site, coverage, height, yards, location on the building site, or other requirements concerning the structure, the structure may be continued as long as it remains otherwise lawful.

(b) Enlargement. 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.

(c) Movement. 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.

(d) Replacement. Should such non-conforming structure or non-conforming portion of a structure be destroyed by any means to an extent of more than sixty (60) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

Section 9.05. NON-CONFORMING USES OF STRUCTURES (AND/OR PREMISES)

(a) Continuance. In cases where a lawful use of a structure, or of structures and premises in combination, exists on the effective date of this Ordinance or an amendment thereto, and such use would not be permitted by the regulations imposed by this Ordinance or by amendment thereto, and such structures have a replacement cost of \$1,000 or more, the use may be continued as long as it remains otherwise lawful.

(b) Enlargement. No existing structure devoted to a use not permitted by this Ordinance or by amendment thereto in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

(c) Extension. Any non-conforming use may be extended throughout any parts of a structure which were manifestly arranged or designed for such use on the effective date of this Ordinance or of amendment thereto, but no such use shall be extended to occupy any land outside such structure that was not occupied at the time of adoption on this Ordinance or amendment thereto.

(d) Change in Use. If no structural alterations are made, any non-conforming use of a structure, or of structures and premises in combination, may as a conditional use be changed to another non-conforming use provided that the Board of Zoning adjustment, either by general rule or by making findings in the specific case, 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 Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this Ordinance. In any structure, or structure and premises in combination, where a non-conforming use is superseded by a permitted use, no non-conforming use shall thereafter be resumed.

(e) Cessation. When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for twelve (12) consecutive months or for any combination of twenty-four (24) months during any three (3) year period (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. However, for mobile homes, see Section 5.02(3)(i).

(f) Replacement. In cases where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. For the purposes of this section, "destruction" is defined as damage to an extent of more than sixty (60) percent of the replacement cost at the time of destruction.

Section 9.06. CONSTRUCTION BEGUN PRIOR TO ORDINANCE

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any structure on which actual construction was lawfully begun in good faith prior to the effective date of this Ordinance or of an amendment thereto and upon which actual construction has been carried on in a diligent manner. Substantial actual construction is hereby defined to include the placing of construction materials in a permanent position and the fastening of them in a permanent manner. If excavation or demolition or removal of an existing structure has been substantially begun preparatory to rebuilding,

such excavation, demolition, or removal shall be deemed to be actual construction, provided the work is carried on in a diligent manner.

Section 9.07. REPAIRS AND MAINTENANCE

(a) Ordinary Maintenance. On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any twelve (12) consecutive months on ordinary repairs or on the repair and replacement on nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the structure, provided that the cubic content existing when the structure or portion thereof became non-conforming shall not be increased.

(b) Unsafe Structures. If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Section 9.08. USES REQUIRING CONDITIONAL USE APPROVAL

Any lawful use which exists on the effective date of this Ordinance or an amendment thereto, and which would be required to be a conditional use under the terms of this Ordinance or amendment thereto, is, without further action conforming under these provisions.