

**ARTICLE 16**  
**STANDARDS FOR NONCONFORMING SITUATIONS**

**SECTION 16.01 INTENT**

A. Legal Nonconformities

Certain existing lots, buildings, structures and uses of land were lawful prior to adoption of the zoning ordinance, but have become nonconforming under the terms of this Ordinance and its amendments. Such nonconformities, particularly nonconforming uses which are more intense than the uses permitted within the zoning district, are declared by this Ordinance to be incompatible with permitted uses and in conflict with the purposes of this Ordinance. An intent of this Ordinance is to permit such legal nonconforming lots, buildings, structures or uses to remain until they are discontinued or removed, but not to encourage their survival, or where discontinuance or removal is not considered feasible, to gradually upgrade such nonconformities to a more conforming status. A nonconforming use, building, structure or combination thereof, shall not be extended, enlarged, expanded or replaced, except as provided herein, and shall not be used as grounds for adding other nonconforming uses, buildings or structures

To avoid undue hardship, nothing in this Ordinance 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 Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that 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 work shall be diligently carried on until completion of the building involved.

B. Illegal Nonconformities

Any lot, use, building, structure or any combination thereof that was not lawful at the date of adoption of this Ordinance or any amendments shall be classified as an illegal nonconformity and shall not receive any of the rights, privileges or protection conferred by this Article. Such illegal nonconformity shall be in violation of this Ordinance and shall be terminated and removed.

## **SECTION 16.02      NONCONFORMING LOTS OF RECORD**

A lot of record in separate ownership and not contiguous with other lots in the same ownership that existed at the date of adoption or amendment of this Ordinance which fails to meet the requirements for area, width or both, that are applicable in the district, shall be considered to be a legal non-conforming lot. Permitted principal and accessory uses and structures shall conform to the regulations for the district.

- A. A reduction of minimum setbacks and other requirements shall only be permitted upon granting of a variance by the Zoning Board of Appeals.

## **SECTION 16.03      NONCONFORMING USES OF LAND**

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. The nonconforming use shall not be enlarged, expanded or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- B. No accessory use, building or structure shall be established;
- C. The nonconforming use shall not be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance;
- D. If such nonconforming use of land ceases for any reason for a period of more than three hundred sixty five (365) days, such use shall not be re-established. Subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.

## **SECTION 16.04      NONCONFORMING BUILDINGS AND STRUCTURES**

Where a lawful building or structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, landscape buffer, off-street parking, loading space, minimum setback, or other characteristics of the structure or its location on the lot, such building or structure may be continued provided it remains otherwise lawful, subject to the following provisions:

A. Permitted Expansions

No such structure may be enlarged or altered in a way which increases its nonconformity, unless a variance is granted by the Zoning Board of Appeals. Nonconforming buildings and structures may be enlarged or altered in a way which decreases its nonconformity or which does not increase its nonconformity provided the costs of alteration or expansion does not exceed fifty percent (50%) of the replacement cost of the building at the time of alteration or expansion. (Example, if the side yard setback is nonconforming, the building may be extended on the other side, rear or front yard provided that those setbacks remain conforming).

B. Replacement of Nonconforming Single Family Dwellings

A nonconforming single family dwelling and its accessory structures may be continued, replaced, repaired or remodeled if damaged by vandalism, fire or natural causes, if approved by the Zoning Board of Appeals. Such approval requires a finding that the resulting building footprint will be the same size or smaller than that of the building before such change. Replacement of such nonconforming single family building shall commence within one (1) year of the date of damage and work shall be diligently pursued toward completion. Failure to complete replacement or diligently work toward completion shall result in the loss of legal, nonconforming status unless good cause for the delay is accepted at a hearing before the Zoning Board of Appeals.

C. Damaged Nonconforming Buildings and Structures

Except as noted in paragraph B above, a nonconforming building or structure, which is damaged by vandalism, fire or natural causes to an extent of more than sixty percent (60%) of its replacement costs, exclusive of the foundation, shall be reconstructed only in conformity with the provisions of this Ordinance, unless the lot is a nonconforming lot of record, in which case the provisions of Section 16.02 also apply. Such nonconforming building may be replaced provided replacement is commenced within one (1) year of the date of damage and is being diligently pursued toward completion. Failure to complete replacement shall result in the loss of legal, nonconforming status unless good cause for the delay is accepted at a hearing before the Zoning Board of Appeals.

D. Relocation of a Nonconforming Building or Structure

Should any nonconforming building or structure be relocated or moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is relocated or moved.

## **SECTION 16.05     REPAIRS AND MAINTENANCE**

- A.     On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50) percent of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased (see also Section 16.04 (A)).
  
- B.     A nonconforming structure or any structure containing a nonconforming use that has structurally deteriorated to an extent that it has been condemned by a duly authorized official, and the cost of repair to meet standards for occupancy exceeds fifty (50%) percent of the structure's replacement cost, shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.
  
- C.     Nothing in this Ordinance 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.