

ARTICLE 22
NONCONFORMING USES, BUILDINGS OR STRUCTURES, AND LOTS

22.01 PURPOSE AND SCOPE

This article permits the lawful use of land or a structure to continue exactly as the use or structure existed at the time of the enactment or any amendment of this ordinance, although the use or structure may not conform with the provisions of this ordinance as enacted or amended. However, it is recognized that nonconforming uses and structures may adversely affect the value of nearby property and orderly development within the city or may otherwise be inconsistent with the purposes and intent of the zoning ordinance and with the public health, safety, and general welfare. Accordingly, the gradual removal and elimination of nonconforming uses and structures is desirable. This article is intended to permit such uses and structures to continue only until they are removed, subject to restrictions on enlargement, expansion, or other change that would make them ore permanent or that would increase their adverse impacts. Nonconforming uses and structures may be continued, resumed, restored, reconstructed, extended, enlarged, or substituted only as provided by this article.

As used in this article:

- A. “Nonconforming use” means a use of land, a building, or a structure that was lawful prior to the effective date of this ordinance or of any amendment to this ordinance but that is no longer a permissible use under the terms of this ordinance as enacted or amended.

- B. “Nonconforming structure” means a building or structure that was lawful prior to the effective date of this ordinance or of any amendment to this ordinance but that, under the terms of this ordinance as enacted or amended, is no longer a permissible building or structure because of requirements regarding the height, yards, size, areas, coverage, or other characteristics of the building or structure or its location on the property in question.

- C. “Nonconforming lot” means a lot that was platted or otherwise lawfully of record prior to the effective date of this ordinance or of any amendment to this ordinance but that, under the terms of this ordinance as enacted or amended, does not comply with the area, depth, or width requirements of its zoning district.

NONCONFORMING USES

- A. Except as otherwise expressly provided by this article, a nonconforming use, other than a single-family use of a single-family dwelling, may be continued, so long as it remains otherwise lawful, subject to the following provisions:
1. A nonconforming use shall not be enlarged, expanded, extended, or increased so as to occupy a greater area of land, building, or structure than was occupied by the use on the effective date of adoption or amendment of this ordinance.
 2. A nonconforming use may be conducted only on the portion of the lot or parcel occupied by the use on the effective date of adoption or amendment of this ordinance and shall not be moved or relocated, in whole or in part, to any other portion of the lot or parcel or to any other location unless the use would then conform with the requirements of this ordinance.
 3. A nonconforming use may be extended throughout any part of a building that was purposefully and uniquely arranged or designed for the nonconforming use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside the building.
 4. An existing building or structure devoted to a use not permitted in the district in which it is located shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered unless it is changed to a use permitted in the district in which it is located.
- B. Except as otherwise expressly provided by this article, a nonconforming single-family use of a single-family dwelling may be continued, so long as it remains otherwise lawful, subject to the following provisions:
1. A single-family residential dwelling may be enlarged or extended up to an amount equal to 50 percent of the floor area of the dwelling as it existed when the residential use first became nonconforming under this ordinance, provided that the dwelling shall continue to meet all applicable yard and setback requirements.

2. Under no circumstances shall an enlargement or alteration of a single-family dwelling under single-family use extend beyond a neighboring property line.

22.03

NONCONFORMING STRUCTURES

Except as otherwise expressly provided by this article, a nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. A nonconforming structure shall not be enlarged, expanded, extended, or altered in a way that increases, to any degree, the extent of any existing nonconformance or that causes the structure to be more nonconforming, except as otherwise provided by this section. If approved by the planning commission as a special land use pursuant to the general standards and procedures specified in Article 19 and based on a finding by the planning commission that there is a reasonable need for the expansion requested and that adjacent property will not be adversely affected as a result of the expansion, a nonconforming structure may be enlarged or expanded as follows:
 1. A nonconforming structure may be enlarged beyond the required setback area, provided that the portion of the structure enlarged shall not be placed closer to the property line than the closest existing point of the structure to the property line.
 2. A single-family residential dwelling unit that is nonconforming, solely by reason of its failure to meet applicable lot coverage requirements or because of its location on a nonconforming, substandard-sized lot, may be enlarged or extended up to an amount equal to 50 percent of the floor area of the dwelling as it existed when the dwelling first became nonconforming under this ordinance, provided that the dwelling shall continue to meet all applicable yard and setback requirements.

Under no circumstances shall an enlargement or alteration of a nonconforming structure extend beyond a neighboring property line.

- B. A nonconforming structure shall not be moved or relocated, in whole or in part, to any portion of the lot or parcel (or to any other location) other than the portion of the lot or parcel occupied by the building or structure on the effective date of adoption or amendment of this ordinance unless the building or structure

thereafter fully complies with all applicable site development regulations as provided by this ordinance.

22.04 NONCONFORMING LOTS

Except as otherwise expressly provided by this article, a nonconforming lot may be used so long as it remains otherwise lawful, subject to the following provisions:

- A. A nonconforming lot with a minimum lot area of 6,200 square feet may be used for a single-family residential dwelling unit if the dwelling unit and permitted accessory structures comply with all yard requirements for the zoning district in which the lot is located. In all other cases, the use of a nonconforming lot shall be permitted only if approved by the planning commission as a special land use pursuant to the general standards and procedures specified in Article 19 and based on a finding by the planning commission that there is a reasonable need for the use of the lot requested and that adjacent property will not be adversely affected as a result of the use.
- B. Where two or more nonconforming lots are adjacent to each other and in common ownership, the lots shall be combined, if possible, so that the lot or lots created by this combination comply with the minimum requirements of this ordinance.

22.05 CHANGE OF NONCONFORMING USE OR STRUCTURE

- A. A non conforming use may be changed to another nonconforming use if approved by the planning commission as a special land use pursuant to the general standards and procedures specified in Article 19 and if the planning commission finds that the new use would decrease the degree of nonconformance and would not adversely affect adjacent property.
- B. A nonconforming use that is changed, in whole or in part, for any reason, to a conforming use (or to a more conforming use) shall, to that extent, thereafter continue to be used for a conforming use (or more conforming use) and shall not revert to its prior nonconforming status or to a less conforming use. Similarly, a nonconforming structure that is changed, in whole or in part, for any reason, so as to conform (or more closely conform) with the applicable site development regulations shall to that extent thereafter continue to conform (or more closely conform) with those regulations and shall not revert to its prior nonconforming status or to a less conforming condition.

22.06**ABANDONMENT**

Upon a finding based on reasonable evidence by the board of zoning appeals that there has been the intent and some act or omission on the part of the owner or holder of a nonconforming use or structure that clearly manifests the owner's or holder's voluntary decision to abandon the nonconforming use or structure, the nonconforming use or structure shall be deemed abandoned. The nonconforming use shall not thereafter be reestablished or recommenced, and any future use of the property shall fully conform with the provisions of this ordinance.

22.07**REESTABLISHMENT OF USE OR STRUCTURE AFTER DAMAGE, DESTRUCTION, OR REMOVAL**

- A. A nonconforming use shall not be continued, reestablished, or recommenced after damage, destruction, or removal of the structure in which the nonconforming use is conducted (whether or not it is a nonconforming structure) if the estimated expense of repair or reconstruction of the structure, at the time of the damage, destruction, or removal, exceeds 50 percent of the replacement value of the use or structure (exclusive of the value of foundations and the land), as determined by the ordinance enforcement officer.
- B. A nonconforming structure shall not be continued, reestablished, or reconstructed in its nonconforming condition after damage, destruction, or removal of the structure if the estimated expense of repair or reconstruction of the structure, at the time of the damage, destruction, or removal, exceeds 50 percent of the replacement value of the structure (exclusive of the value of foundations and the land), as determined by the ordinance enforcement officer.
- C. If a structure occupied by a nonconforming use or a nonconforming structure is damaged, destroyed, or removed to the extent that the estimated expense of repair or reconstruction of the structure exceeds 50 percent of the replacement value of the use or structure (exclusive of the value of foundations and the land), as provided by Section 22.07, Paragraph A, or Paragraph B., as applicable, the right to continue the nonconforming use or structure shall immediately terminate, and the property shall thereafter be used or occupied only in full compliance with the use and site development regulations provided by this ordinance.

22.08**REPAIRS AND MAINTENANCE**

- A. Ordinary repairs and normal maintenance may be performed on any structure devoted, in whole or in part, to a nonconforming use or on any nonconforming structure, including repair or replacement of nonbearing walls or partitions, fixtures, wiring, or plumbing, provided that the expense of such repairs and maintenance do not exceed, during any consecutive 12-month period, 50 percent of the replacement value of the use or structure (exclusive of the value of foundations and the land), as determined by the ordinance enforcement officer.

- B. Any nonconforming structure or part thereof declared to be unsafe by an official charged with protecting the public safety may be strengthened or resorted for a safe condition. However, repairs, maintenance, or other restoration of a nonconforming structure, as permitted by this section or any other provisions of this ordinance, shall not cause the nonconforming use or structure to be enlarged, expanded, extended, increased, relocated, or charged to any degree as prohibited by this article.

22.09**BUILDING OR STRUCTURE UNDER CONSTRUCTION**

This article shall not be deemed to require a change in the plans, construction, or designated use of any structure for which, prior to the effective date of adoption or amendment of this ordinance, a building permit was obtained, actual construction was lawfully commenced on the site, and construction is thereafter completed within a 12-month period.

22.10**CHANGE OF OWNERSHIP OR OCCUPATION**

The ownership, occupation, or management of an existing nonconforming use or nonconforming structure may be changed; but the use or structure shall not be enlarged, expanded, extended, increased, relocated, or changed as otherwise prohibited by this article.