

**ARTICLE 10
NONCONFORMITIES**

SECTION 10.01 GENERAL PROVISIONS

- A.** Lots, structures, and uses of land and structures that were lawful before this Ordinance was adopted or amended and which would be prohibited, regulated, or restricted under the terms of this Ordinance, or its future amendments, may continue until they are discontinued, damaged, or removed, subject to the provisions of this Article, but their survival is not encouraged. These nonconformities are declared by this Ordinance to be incompatible with the current or intended use of land, lots, and structures in the district in which they are located.
- B.** Nonconformities shall not be enlarged, expanded, or extended except as provided in this Article. Nonconformities shall not be used as grounds for adding other lots, structures, or uses prohibited elsewhere in the same district.
- C.** Any nonconformity that cannot be proved to have legally existed prior to the effective date of this Ordinance shall be declared illegal and shall be discontinued.

SECTION 10.02 NONCONFORMING USES OF LAND

Where, on the date of adoption or amendment of this Ordinance, a lawful use of land exists that is no longer permitted by this Ordinance, such use may be continued, subject to the following provisions:

- A.** No nonconforming use of land shall be enlarged, expanded, or extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this ordinance; and no accessory use or structure shall be established therewith.
- B.** No nonconforming use of land shall be moved in whole or in part to any other portion of such land not occupied on the effective date of adoption or amendment of this Ordinance.
- C.** If a nonconforming use of land ceases for any reason for a period of more than 180 consecutive days, the subsequent use of such land shall conform to the regulations and provisions of this Ordinance for the district in which such land is located.

SECTION 10.03 NONCONFORMING STRUCTURES

- A.** A nonconforming structure shall be a structure that was lawful prior to the date of adoption or amendment of this ordinance and which, as a result of the

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10.03 (A) Cont.

NONCONFORMING STRUCTURES

adoption or amendment, does not conform to the regulations for lot area, lot area per dwelling unit, lot width, lot coverage, height, transition strips, off-street parking or loading, yard or impervious surface requirements of this ordinance.

- B. A nonconforming structure may continue after the date of adoption or amendment of this ordinance. A nonconforming structure, except a single-family dwelling and its accessory structures, which is damaged by any means to an extent of more than 50% of its replacement cost, shall not be reconstructed except in conformity with the regulations of the district in which it is located. Any nonconforming structure, except single-family dwellings and their accessory structures, that is damaged to an extent of 50% or less of its replacement cost, may be replaced in its location existing prior to such damage, provided replacement is commenced within one year of date of damage and is diligently pursued to completion. Failure to commence replacement within one year shall result in the loss of legal nonconforming status.
- C. A nonconforming structure that is moved shall conform, afterwards, to the regulations of the district in which it is located.
- D. Nonconforming single-family dwellings and their accessory structures may be continued, replaced, repaired, or remodeled, and shall be exempt from Section 10.03B preceding. Such dwelling and its accessory structures may be replaced or repaired, in accordance with the standards in Section 10.03E(1), following.
- E. Nonconforming structures may be replaced or expanded in accordance with the following requirements:
 - 1. A single-family dwelling unit and permitted accessory structures may be replaced or expanded, subject to the following standards: the dwelling is a permitted use in the district in which it is located; and any expansion shall meet yard, lot coverage floor area ratio, and impervious surface regulations of the zoning district in which it is located.
 - 2. All other nonconforming structures, in any zoning district, may be expanded only after approval by the Zoning Board of Appeals, as provided in Section 10.08 herein.

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10.03 (E) Cont.

NONCONFORMING STRUCTURES

- F. A nonconforming structure may be altered to decrease its nonconformity. Any nonconforming conditions that are removed may not be re-established.

SECTION 10.04 NONCONFORMING USES OF STRUCTURES

A lawful use of a structure that existed on the date of adoption or amendment of this Ordinance that is no longer permissible under the regulations of this Ordinance may continue so long as it remains otherwise lawful subject to the following provisions:

- A. A nonconforming use of a structure may be expanded into a part of a structure that was originally designed and constructed for such use, provided that no structural alterations are made, the floor area of the structure is not increased, and that such use shall not be extended to occupy any land outside such structure. No other enlargement, expansion, extension or alteration of a nonconforming use of a structure shall be permitted.
- B. When a nonconforming use of a structure is discontinued or abandoned for more than 180 consecutive days, the structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.
- C. Ordinary repairs or the repair or replacement of nonbearing walls, fixtures, wiring or plumbing, may be performed on a structure or building devoted to any nonconforming use under the following conditions:
 1. The cost of the work, within a 12 month period, does not exceed 10 percent of the then current replacement value of the structure or building;
 2. The volume of the structure or building shall not be increased, and
 3. The number of dwelling units, if it is a residential structure, shall not increase.
- D. If a structure containing a nonconforming use is moved for any reason and of any distance, it shall thereafter conform to the regulations of the district in which it is located after it is moved.
- E. If a structure devoted in whole or in part to a nonconforming use is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed and again be devoted to any use except

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10.04 (E) Cont.

NONCONFORMING USES OF STRUCTURES

in conformity with the regulations of the district in which it is located.

- F. A nonconforming use that is replaced by a use that is permitted in the district in which is located shall not be resumed.

SECTION 10.05 NONCONFORMITIES AND SITE PLAN REVIEW

The Planning Commission may require, as part of its review of a site plan, the applicant to bring the site into partial or complete compliance with standards such as, but not limited to, landscaping, building design, drainage, or exterior lighting standards in this Ordinance. The extent of compliance shall be reasonable in relation to the size and cost of the building or other site improvements proposed in the site plan.

SECTION 10.06 CHANGE OF TENANCY OR OWNERSHIP

An existing nonconforming use, building or structure may have a change of tenancy, ownership, or management, provided there is no change in the nature or character of such nonconforming use, building or structure.

SECTION 10.07 NONCONFORMING LOTS

The following regulations shall apply to any lot which was lawful at the time of the effective date of adoption or amendment of this Ordinance, but does not comply with all the provisions of this Ordinance.

- A. A nonconforming lot may be used for a use that is permitted in the district in which it is located, provided the use complies with the applicable yard, floor area, lot coverage, and impervious surface regulations of the district in which it is located.
- B. If a use cannot comply with paragraph A, preceding, the use may be permitted only if a variance is granted by the Zoning Board of Appeals.
- C. To develop a nonconforming lot under paragraph A, preceding, the applicant shall submit evidence that the lot was not under contiguous single ownership with other lots that could have been combined to create a conforming or more nearly conforming lot.
- D. If two or more nonconforming lots of record are contiguous and are in the same ownership at the time of adoption or amendment of this ordinance, the lots shall be considered to be an undivided lot and one zoning lot. Such zoning lot may be divided only if

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10.07 (D) Cont.

NONCONFORMING LOTS

each lot that would result from the division complies with all regulations of the zoning district in which it is located.

- E.** A single-family dwelling unit and all accessory structures thereto may be constructed on a nonconforming lot of record upon approval by the Planning and Zoning Administrator provided:
1. The lot complies with paragraphs C and D, preceding.
 2. A single-family dwelling and accessory structure thereto is a permitted use in the district in which the lot is located.
 3. The dwelling unit will meet all yard, floor area, lot coverage, and impervious surface regulations of the district in which the lot is located.
 4. A variance from the Zoning Board of Appeals shall be required for a dwelling unit that cannot comply with item 3, preceding.
- F.** A building other than a single-family dwelling unit may be constructed on a nonconforming lot of record provided:
1. The lot complies with paragraphs C and D, preceding.
 2. The use is a permitted use in the district in which the lot is located.
 3. A variance is granted by the Zoning Board of Appeals.

SECTION 10.08 EXPANSION AND SUBSTITUTION

- A.** Where the Zoning Board of Appeals is required to determine whether a nonconforming structure may be enlarged, expanded, or extended, the following provisions shall apply:
1. The reasons for the nonconformity shall be limited to minimum lot area, lot width, required yards, off-street parking and loading requirements, and transition strip requirements of the zoning district in which the nonconforming structure is located. A structure that is nonconforming because of lot coverage, floor area ratio, lot area per dwelling unit, or height

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EXPANSION AND SUBSTITUTION

limits shall not be expanded without removing the nonconformity.

2. The existing and proposed uses of such structures shall be permitted in the district in which located.
 3. The proposed improvements shall conform to all regulations of the district in which located.
 4. The Zoning Board of Appeals shall determine the following in approving a request: that retention of the nonconforming structure is reasonably necessary for the proposed improvement, or that requiring the removal of such structure would cause undue hardship; that the proposed enlarged or otherwise improved nonconforming structure will not adversely affect the public health, safety, and welfare; and that the proposed improvement is reasonably necessary for continuation of the use on the lot.
 5. The Board of Appeals shall have authority to require reasonable modifications of the nonconformity as a condition of approval. The Board of Appeals may attach other conditions of its approval that it deems necessary to protect the public health, safety and welfare.
 6. All expansions permitted under this subsection meet all requirements of site plan review, herein.
- B.** A structure that does not conform to zoning ordinance regulations shall not be substituted for, or replace, any conforming or nonconforming structure.
- C.** A nonconforming use of a structure may be substituted for another nonconforming use upon approval by the Zoning Board of Appeals, provided that such other nonconforming use is more appropriate than the existing nonconforming use in the district in which it is located. The Zoning Board of Appeals may attach conditions to its approval.

SECTION 10.09 UNSAFE STRUCTURES

Nothing in this Ordinance shall be deemed to prevent the improvement, maintenance or reinforcement of a building or structure declared to be unsafe by any official charged with protecting the public safety, upon the order of such official.

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SECTION 10.10 NONCONFORMITIES CREATED BY GATEWAY OVERLAY DISTRICT AND COMMERCIAL DESIGN STANDARDS

Buildings or lots existing prior to the effective date of adoption of the Gateway Overlay District and the Commercial Design Standards might have become nonconforming with respect to one or more provisions of these Sections of the Zoning Ordinance. Such buildings may be expanded, and such sites improved, subject to the provisions of this Section

- A.** Sections 10.01-10.09 shall apply. Any conflict between Sections 10.01-10.09 and this Section shall be resolved in favor of Sections 10.01-10.09.

- B.** A building or site that became nonconforming as a result of adoption of the Gateway Overlay District or the Commercial Design Standards may be expanded or improved, subject to the site plan review procedures and requirements of Article 9, herein. The Planning Commission may require the applicant for site plan approval, as part of its review of a final site plan, to bring the building and site into partial or complete compliance with the requirements of the Gateway Overlay District or the Commercial Design Standards. The Planning Commission shall consider each of the following standards in determining the extent of compliance that will be required.
 - 1. The extent of compliance shall be reasonable in relation to the value of the existing building and the cost of the proposed expansion or other improvements.
 - 2. The extent of compliance required shall be reasonable in relation to the size of the existing building and the proposed expansion or other improvements.
 - 3. The extent of compliance required shall be feasible and reasonable in relation to structural and architectural characteristics of the existing building.
 - 4. The extent of compliance required shall be feasible and reasonable with respect to existing features and characteristics of the site.

- C.** The Planning Commission shall record the facts and reasons used in making its decision on the extent of required compliance in the minutes of the meeting at which its decision is made.