

## CHAPTER 15

### NON-CONFORMING BUILDINGS, STRUCTURES AND USES

#### SECTION:

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**01-15-1: PURPOSE:** It is the purpose of this chapter to provide for the regulation of non-conforming buildings, structures and uses and to specify those requirements, circumstances and conditions under which non-conforming buildings, structures and uses will be operated and maintained. This Article establishes separate districts, each of which is an appropriate area for the location of uses which are permitted in that district. It is necessary and consistent with the establishment of these districts that non-conforming buildings, structures and uses not be permitted to continue without restriction. Furthermore, it is the intent of this chapter that all non-conforming uses shall be eventually brought into conformity.

#### **01-15-2: GENERAL PROVISIONS:**

- A. **Conditional Uses/Interim Uses/Uses By Administrative Permit:** Any established use or building legally existing prior to February 10, 2003, and which is herein classified as a conditional use, interim use, or use by administrative permit may be continued in like fashion and activity and shall automatically be considered as having received the applicable approval. Any change to such a use, including, but not limited to, building and/or site alteration, shall however require a new permit be processed according to this Article.
- B. **Moving Non-Conforming Buildings:** Subject to Section 01-17-12 of this Article, no non-conforming building, structure or use shall be moved to another lot or to any other part of the parcel of land upon which the same was constructed or was conducted prior to February 10, 2003, hereof unless such movement shall bring the non-conformance into substantially closer compliance with the requirements of this Article.
- C. **Subdivision:** No parcel of land or portion thereof shall be subdivided if such action results in buildings and/or uses becoming non-conforming.

### **01-15-3: NON-CONFORMING USES:**

- A. **Effective Date:** Except as provided in Section 01-15-2.B of this chapter, the legal use of buildings or land existing on February 10, 2003, which do not conform to the provisions of this Article may be continued at the same size and in the same manner of operation; provided, however, that no such non-conforming use of land shall be enlarged or increased, nor shall any such non-conforming use be expanded to occupy a greater area of land than that occupied by such use at the time of the adoption of this Article, nor shall any such non-conforming use be moved to any other part of the parcel of land upon which the same was conducted at the time of the adoption of this Article.
- B. **Changes To Non-Conforming Uses:**
1. When a legal, non-conforming use of any structure or parcel of land in any district has been changed to a conforming use, it shall not thereafter be changed to any non-conforming use.
  2. A legal, non-conforming use of a structure or parcel of land may be changed to lessen the non-conformity of use. Once a non-conforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the non-conformity.
  3. In cases of non-conformities not addressed by Section 01-15-4.C or 01-15-4.D. of this chapter, legal, non-conforming single-family and two-family units may be improved to maintain the livability of the dwelling, provided the structure is not expanded.
- C. **Discontinuance:** In the event a non-conforming use of any building or premises is discontinued for a period of one year, the use of the same shall thereafter conform to the regulations of the district in which it is located. If a non-conforming use is interrupted or prevented from operating because of governmental action, such as road construction, that period shall not be deemed as discontinuance of the non-conforming use.

### **01-15-4: NON-CONFORMING BUILDINGS AND STRUCTURES:**

- A. **Proposed Structure:** Any proposed structure which will, under this Article, become non-conforming but for which a building permit has been legally granted prior to February 10, 2003, may be completed in accordance with the approved plans; provided construction is started within sixty (60) days of February 10, 2003, is not abandoned for a period of more than one hundred twenty (120) days, and continues to completion within two (2) years. Such structure shall thereafter be a legally non-conforming structure.

- B. **Restoration:** Any legal, non-conforming building or structure which has been damaged by fire, explosion, act of God or the public enemy, to the extent of more than fifty percent (50%) of its fair market value, as determined by the Building Official, shall not be restored, except in conformity with the regulations of this Article.
- C. **Alterations:** Alteration and normal maintenance to a legal non-conforming building or structure may be made through the building permit process provided:
  - 1. **The alterations do not expand the foundation and/or building volume, unless specifically allowed by this Article.**
  - 2. The alterations do not increase the building occupancy capacity or parking demand.
  - 3. The alteration does not increase the non-conformity of the building or the use.
- D. **Expansion Of Non-Conforming Buildings Or Structures:**
  - 1. Administrative Approvals: Except in the environmental protection districts established by Chapter 50 of this Article, the following expansions of legal, non-conforming single and two-family residential buildings may be approved through the administrative permit process by the Zoning Administrator subject to the provisions of Chapter 8 of this Article. The Zoning Administrator shall make a determination that the building expansion will comply with the intent and purpose of this chapter and this Article.
    - a. Expansion of principal buildings found to be non-conforming only by reason of height and yard setback may be allowed provided the expansion complies with the performance standards of this Article.
      - b. Expansion of non-conforming detached accessory structures shall not be allowed.
  - 2. Conditional Use Permit: Legal, non-conforming commercial, industrial, public, semipublic, and multiple-family residential principal structures may be expanded on the same lot by conditional use permit provided:
    - a. The expansion will not increase the non-conformity of the building or site.
    - b. The new building expansion will conform with all the applicable performance standards of this Article. A conditional use permit shall not be issued under this Chapter for a deviation from other requirements of this Article unless variances are also approved.

- c. The request for conditional use permit shall be evaluated based on standards and criteria set forth in Chapter 5 of this Article.

#### **01-15-5: NON-CONFORMING LOTS:**

##### **A. Zoning Lots:**

- 1. The designation of zoning lots will be required if either of the following situations occurs:
  - a. When a development is proposed that is to be located on two (2) or more lots, both of which are platted or described by metes and bounds, and combination of the two (2) lots into one zoning lot is required to accommodate the use.
  - b. Except as may be allowed pursuant to this Chapter, when two (2) or more lots, both of which are platted or described by metes and bounds, are located in the same zoning district, one or more of which lack adequate area or width to qualify for use under the current district requirements and the lots are contiguous and held in one ownership, the lots shall be combined into one zoning lot for use in order to meet the lot requirements.
- 2. The designation of a zoning lot shall be approved by the Zoning Administrator if it complies with the lot requirements of the district in which it is located and has a single tax identification number.
- 3. Interior lot lines within a zoning lot shall be disregarded in applying setbacks and other zoning ordinance standards.
- 4. The subdivision of a zoning lot shall be in accordance with the Subdivision Ordinance.

##### **B. Vacant Or Redeveloped Lots:** Except in environmental protection districts, legal, non-conforming, vacant lots of record may be developed for single family detached dwellings upon approval of an administrative permit, provided that:

- 1. The lot in question was legally established in accordance with city code requirements existing at the time of its creation and is a separate, distinct tax parcel.
  - 2. The lot is properly zoned for single-family residential land uses.
3. Minimum Lot Size:

- a. Sewered Lots: A lot of record as of February 10, 2003, having direct access to municipal sewer shall be considered buildable provided measurements for lot area and/or width meet minimum requirements or are within seventy percent (70%) of the requirement of the district.
  - b. Unsewered Lots: A lot of record as of February 10, 2003, not having access to municipal sewer shall be considered buildable provided it complies with Section 01-17-9 of this Article.
- 4. The lot in question has frontage on and will directly access an improved public street.
- 5. Public health concerns (potable water and sanitary sewer) can be adequately addressed.
- 6. The setback and yard requirements of the base zoning district can be achieved while simultaneously resulting in development which complies with the character and general design of the immediate area and the objectives of the City's Comprehensive Plan and this Article.
- C. **Developed Lots:** An existing conforming use on a lot of substandard size and/or width may be expanded or enlarged if such expansion or enlargement meets all other provisions of this Article.