

## **ARTICLE 19**

## **NON-CONFORMITIES**

### **19A.00 PURPOSE**

In order to limit the number and extent of nonconforming lots, uses, structures, parking, signs, and characteristics of use created by adoption of this ordinance, it is the intent of this article to permit nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this article that nonconformities shall not be enlarged, expanded, extended, altered, moved, re-established after abandonment or restored after destruction, except as herein provided. The eventual intent is that non-conformities, including certain classes of nonconforming uses, nonconforming structures of nominal value, and certain uses having nonconforming screening or performance standards are altered to conform.

### **19.01 NON-CONFORMING LOTS**

A lot of record existing before the effective date of adoption of this Ordinance which does not conform to the area and dimension standards of this Ordinance may be used in accordance with other provisions of this Ordinance. Such a 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 generally applicable in the zone, provided that yard dimensions and requirements other than those applying to area or width of the lot shall conform to the regulations of the zone in which such lot is located.

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 adoption 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 diminished compliance with lot width and area requirements, nor shall any division of any parcel be made which creates a lot having width or area below the requirements stated in this Ordinance.

### **19.02 TIME OF BEGINNING OF NONCONFORMITY**

The effective date of this Ordinance shall determine the time of beginning for all existing nonconformities. The effective date of a change of zone boundaries or regulations shall determine the time of beginning of a

nonconforming use, structure, or nonconformity with screening performance, or parking standards.

The effective date of an annexation shall determine the time beginning for a non-conformity in a newly annexed area.

### **19.03 CONTINUATION, MAINTENANCE AND REPAIRS**

- (1) A use, lawfully occupying a site or a structure, that does not conform with the use regulations or the site area requirements per dwelling unit or the screening or performance standards for the zone in which the use is located or the off street parking requirements, shall be deemed to be a nonconforming use and may be continued subject to provisions of this article.
- (2) A structure, lawfully occupying a site, that does not conform with the standards for front yard, side yards, rear yard, height, site coverage, or distance between structures for the zone in which the structure is located shall be deemed to be a nonconforming structure and may be used maintained, and repaired subject to the provisions of this article.
- (3) Routine maintenance and minor repairs may be performed on a structure or site the use of which is nonconforming or nonconforming structure.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical conditions, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the zone in which it is located. However, any nonconforming use may remain.

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.

- (4) In a newly annexed area, a use will be considered nonconforming only if the use was previously recognized by the County as allowable or nonconforming when the property was unincorporated.
- (5) A use, lawfully occupying a site or structure that does not conform to the off-street parking regulations as far as number of spaces, surfacing,

and landscaping shall be deemed a non conforming use and may be continued subject to the provisions of this article.

- (6) Any signs pertaining to a use lawfully occupying a site or structure that does not conform with the regulations governing signs shall be deemed a nonconforming sign and may be continued subject to the provisions of this article, provided the sign is located on the same site as the use.

#### **19.04 ALTERATIONS AND ADDITIONS**

- (1) No nonconforming use shall be enlarged or extended in such a way as to occupy any part of the structure or site or another structure or site which it did not occupy at the time it became a nonconforming use, or in such a way as to displace and conforming use occupying a structure or site, except as permitted in this article.
- (2) No structure, the use of which is nonconforming, shall be moved, altered, enlarged unless required by law, or unless the moving, alteration, or enlargement will result in the elimination of the nonconformity, except as permitted in this article.
- (3) No nonconforming structure shall be altered or reconstructed so as to increase the discrepancy between existing conditions and the standards for front yard, side yard, rear yard, height of structures, or distances between structures, or usable open space prescribed in the regulations for the zone in which the structure is located. No nonconforming structure shall be moved or enlarged unless the new location or enlargement shall conform to the standards for front yard, side yards, rear yard, height of structures, and distances between structures, or usable open space prescribed in the regulations for the zone in which the structure is located.
- (4) No use which fails to meet the performance standards of the zone in which it is located, the parking standards, or landscape standards shall be enlarged or extended or shall have equipment that results in failure to meet performance standards replaced unless the enlargement, extension, or replacement will result in the elimination of nonconformity with performance standards, parking standards, or landscaping standards.

#### **19.05 ABANDONMENT**

- (1) Whenever a nonconforming use has been abandoned, discontinued, or changed to a conforming use for a continuous period of 180 days or

more, the nonconforming use shall not be re-established, and the use of the structure or site thereafter shall be in conformity with the regulations for the zone in which it is located, provided that this section shall not apply to nonconforming dwelling units or agricultural uses. Abandonment or discontinuance shall include cessation of a use regardless of intent to resume the use.

- (2) Whenever a nonconforming dwelling unit outside a residential zone has been vacated, abandoned, or changed to a conforming use for one year or more, the nonconforming use shall not be re-established, and the use of the structure of site thereafter shall be in conformity with the regulations for the zone in which it is located.
- (3) When ever a nonconforming agricultural use has been abandoned, discontinued or changed to a conforming use for two years or more, the nonconforming use may only be reestablished in accordance with Article 14E. (ARTICLE 1905 (3) Amended 7-5-95)

#### **19.06 RESTORATION OF A DAMAGED STRUCTURE**

- (1) Whenever a structure which does not comply with the standards for front yard, side yards, rear yard, height of structures, or distances between structures prescribed in the regulations for the zone in which the structure is located, or the use of which does not conform with the regulations for the zone in which it is located, is destroyed by fire or other calamity, by act of God, or by the public enemy to the extent of 50 percent of the value or less, the structure may be restored and the nonconforming use may be resumed, provided that restoration is started within 180 days and diligently pursued to completion. When destruction exceeds 50 percent or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the zone in which it is located and the nonconforming use shall not be resumed.
- (2) The extent of damage or partial destruction shall be based upon the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior to thereto. Estimates for this purpose shall be made by or shall be review and approved by the Building Official and shall be based on the minimum cost of construction in compliance with the Building Code.

### **19.07 NOTICE OF ELIMINATION DATE**

The Planning Director shall determine the existence of nonconformities listed in Section 19.08, (Elimination of Nonconformities), and by certified or registered mail shall promptly notify the owner of the date by which compliance with the provisions of Article 19.08 will be required. The first notification shall precede the date by which elimination is required by not less than the time periods prescribed in Article 19.08. Thereafter, notification shall be given annually in the same manner as the first notification.

### **19.08 ELIMINATION OF NONCONFORMITIES**

Except as permitted in Article 19.09, (Exceptions to Provisions for Elimination of Nonconformities) nonconforming uses and structures shall be discontinued and removed from their sites, altered to conform, or altered as prescribed to decrease the degree of nonconformity, within the specified time after the become nonconforming.

#### (1) Uses

(a) In any zone, removal of a nonconforming use that does not occupy a structure and does not have an approved site plan or a use occupying a structure having an actual value as determined by the County Assessor's Office of less than \$5,000:

2 years

(b) In an R Zone a use that is neither a permitted use nor a conditional use in an R-P Zone. In a C Zone, a use that is not a permitted use or a conditional use in any C Zone or M Zone:

- Type IV & V buildings\* 10 years
- Type III buildings\* 15 years
- Type I & II buildings 20 years

\*As defined in the Building Code

#### (2) Structures

(a) Removal or alteration of a nonconforming structure having an actual value as determined by the County Assessor's Office of less than \$5,000:

2 years

(b) Structure over \$5,000 actual valuation (excepting dwellings in a nonresidential zone):

- Type IV & V buildings\* 10 years
  - Type III buildings\* 15 years
  - Type I & II buildings 20 years
- \* As defined in the Building Code

(3) Screening and Performance Standards

Elimination of nonconformity with screening requirements and performance standards of and R-P, C or M Zone:  
2 years

(4) Off Street Parking and Landscaping

Elimination of nonconformity as far as required amount of off street parking, surfacing, and landscaping for all but residential uses:

10 years (Except when a change increases the amount of off street parking required, in which case parking shall be provided immediately)

(5) Signs

Elimination of all nonconforming signs in all zones

5 years (Excepting any sign that is relocated, changed structurally, or receives new sign face shall be made to conform immediately)

**19.09 EXCEPTIONS TO PROVISIONS FOR ELIMINATION OF NONCONFORMITIES**

(1) The following uses, when nonconforming, need not be removed and under certain conditions may be expanded provided that they shall be subject to the provisions of Article 19.05 (Abandonment), and Article 19.06 (Restoration of a Damaged Structure).

(a) In any zone, a residential use may be continued and the floor area expanded by not more than 200 square feet, provided that the number of dwelling units shall not be increased.

- (b) In an R zone, a non residential use that is a permitted use or a conditional use in an R-P zone may be continued and a conditional use permit may be granted for expansion of the floor area or the site area occupied by the use by not more than 10 percent in an five year period. Landscaping, parking, and screening will be required in accordance with the appropriate Articles in this Ordinance.
  - (c) In a C Zone, a use that is a permitted use or a conditional use in a C Zone or M Zone may be continued and a conditional use permit may be granted for expansion of the floor area or the site area occupied by the use by not more than 25 percent in any five year period. Landscaping, parking, and screening will be required in accordance with the appropriate Articles in this Ordinance.
  - (d) In an M Zone or C-M Zone, a use that is a permitted use or a conditional use permit in any M-Zone may be continued provided that nonconformity with screening, performance, parking and landscaping requirements shall be eliminated. A conditional use permit may be granted for expansion of the floor area or the site area.
  - (e) Nothing in this Ordinance pertaining to nonconforming structures and uses shall be construed or applied so as to require the termination, discontinuance or removal or so as to prevent the modernization, replacement, repair, maintenance, alteration, reconstruction or rebuilding and continued use of public utility buildings, structures, equipment and facilities provided that there be no change of use nor enlargement of those area so used.
- (2) A conditional use permit may be granted to extend the life of nonconforming sign for no more than five years.

Ordinance No. 753, Adopted 06-21-83, Ordinance no. 1-03, Adopted ????????