

## SECTION 31 - NON-CONFORMING USES

A use lawfully occupying a structure or site on the effective date of this Ordinance or amendments thereto, which does not conform to the use regulations for the district in which it is located, shall be deemed to be a non-conforming use and may be continued, subject to the following regulations:

1. Routine maintenance and repairs may be performed on structures or sites, the use of which is non-conforming.
2. No structure, the use of which is non-conforming, shall be moved, altered or enlarged without permission of the Planning and Zoning Commission unless required by law or unless the moving, alteration or enlargement will be performed in the elimination of the non-conforming use.
3. No structure partially occupied by a non-conforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the non-conforming use, without permission of the Planning and Zoning Commission.
4. The Planning Commission may grant an application for a change of use, filed in accordance with the provisions of Section 27, if on the basis of the application and the application and the evidence submitted, they make the following findings:
  - A. That the proposed use is classified in a more restrictive category than existing or pre-existing use by the district regulations of this Ordinance. the classifications of a non-conforming use shall be determined on the basis of the district in which it is first permitted, provided that a conditional use shall be deemed to be in a less restrictive category than a permitted use in the same district.
  - B. That the proposed use will not more adversely affect the character of the district in which it is proposed to be located than the existing or pre-existing use.
  - C. That the change of use will not result in the enlargement of the space occupied by a non-conforming use, except that a non-conforming use of a building may be extended throughout those parts of a building which were designed or arranged for such use prior to the date when such use of the building became non-conforming provided that no structural alterations, except those required by law are made.

(Amended by Ord. 1129, effective 10/20/93)

5. If a non-conforming use has been changed to a conforming use, or if the non-conforming use of a building, structure, or premises ceases for the period of one (1) year or more, said use shall be considered abandoned, and said building, structure or premises shall thereafter be used only for uses permitted as a matter of right or as a conditional use in the district in which it is located.

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6. If a structure containing a non-conforming use is destroyed by any cause, it may be rebuilt for that use subject to the requirements that, if the structure is not returned to that use within one (1) year from the date of destruction, a future use on the site shall conform to the Ordinance.
7. Nothing contained in this Ordinance shall require any change in the plans, construction, alteration, or designated use of a structure for which a valid permit exists prior to the adoption of this Ordinance and subsequent amendments thereto, except that if the designated use will be non-conforming, it shall for the purpose of Section 31, 5 be a discontinued use if not in operation within one (1) year of the date of issuance of the building permit.
8. The Planning and Zoning Commission may grant an application for the expansion of a non-conforming use existing at the date of passage of this Ordinance when filed in accordance with the provisions of Section 27. Permission may be given if, on the basis of the application and the evidence submitted, the Commission makes the following findings:
  - A. That the proposed expansion will not more adversely affect the character of the district in which it is proposed to be located than the existing or pre-existing use.
  - B. That there is public need for the expansion of such use.
9. If an existing non-conforming use, or portion thereof not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded, nor shall the use, or any part thereof, be moved to any other portion of the property not theretofore regularly and actually occupied by such use; provided, that this shall not apply where such increase in area is for the purpose of increasing an off-street parking or loading facility to the area specified in this Ordinance for the activity carried on in the property; and providing further, that this shall not be construed as permitting unenclosed commercial activities where otherwise prohibited by this Ordinance.

A building or structure lawfully occupying a site on the effective date of this Ordinance or amendments thereto, which does not conform to the setback or coverage regulations for the district in which it is located, shall be deemed to be a non-conforming structure and may be continued, subject to the following regulations:

- A. If a building or structure, in existence on the effective date of this Ordinance and subject to any yard, location or coverage restriction imposed by this Ordinance, fails to comply with such restriction, such building or structure may be enlarged or altered to the extent that such alteration or enlargement does not itself encroach upon a required area of the building or structure that it violated the coverage restriction; but this right shall be subject to all other restrictions contained in this Ordinance.
- B. If a non-conforming structure is destroyed by any cause other than a willful act by the owner(s) or his agent, it may be rebuilt within the foundation and building outlines of that pre-existing structure subject to the requirement that, if destruction exceeds 80 percent of its assessed value as indicated by the records of the County Assessor and it is not returned to

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use within (1) year, a future structure on the site shall conform to this Ordinance. The willful removal or destruction of the structure by the owner(s) or his agent does not entitle the right to replace the structure to its original form and, hence, any new structure on the property must conform to the lot requirements as specified for the applicable zoning district.