

ARTICLE 1.3 NONCONFORMING USES, LOTS, AND STRUCTURES:

Section 1.3.1 Purpose:

(A) Within the zoning districts established by Chapter Four, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before the passage of said Chapter Four but are now prohibited, regulated, or restricted. It is the intent to allow such nonconformities to continue until they are removed, but not to encourage their continuation. Nonconformities shall not be enlarged upon, expanded, extended, or used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.

(B) Nonconforming uses are declared to be incompatible with uses allowed in the zoning districts involved. A nonconforming use of a structure, land, or structure and land in combination, shall not be extended or enlarged, either by erecting additional signs, adding additional square footage to a structure, or adding other uses of a nature which would be prohibited in the zoning district involved.

(C) To avoid undue hardship, nothing herein shall require a change in the plans, construction, or designated use of any building on which actual construction has been carried on diligently. Actual construction shall include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition, excavation, or removal of an existing building has been substantially started preparatory to rebuilding, such demolition, excavation, or removal shall be considered actual construction, provided the work is carried on diligently, and the development becomes established pursuant to 2.4.4(C).

Section 1.3.2 Nonconforming Lots of Record: Any lot or parcel which qualifies as a lot of record may be used only as allowed in Section 4.1.4.

Section 1.3.3 Nonconforming Uses of Land, or Land with Minor Structures Only: Where lawful use of the land existed on September 1, 1990, that would not now be allowed and where the use involves no individual structures with a replacement cost exceeding \$1,000, the use may be continued, subject to the following provisions:

(A) A nonconforming use shall not be enlarged, increased, nor extended to occupy a greater area of land than was occupied at the effective date of this chapter.

(B) A nonconforming use shall not be moved in whole or in part to any portion of the lot or parcel, other than that occupied by such use on September 1, 1990.

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(C) If any nonconforming use of land only, ceases for any reason for a continuous period of 30 days, every subsequent use of the land shall conform to the requirements specified for the zoning district in which the land is located.

(D) No additional structures shall be erected unless they conform to the requirements of the zoning district in which the land is located.

Section 1.3.4 Nonconforming Structures: Where a lawful structure existed on September 1, 1990, that could not now be built, such structure may be continued, subject to the following provisions:

(A) A nonconforming structure shall not be altered or enlarged in any way which increases its nonconformity. Any structure may however, be altered to decrease its nonconformity.

(B) Except as provided in Section 1.3.8, should the nonconforming structure be destroyed by any means to an extent exceeding 50% of its replacement cost, the structure shall only be reconstructed in conformance with the requirements for the zoning district in which it is located. **[Amd. Ord. 17-95 03/21/95]**

(C) Should the nonconforming structure be moved for any reason, for any distance whatever, it shall thereafter conform to the requirements for the zoning district in which it is located.

Section 1.3.5 Nonconforming Uses of Structures and Land: Where lawful use of a structure and land existed on September 1, 1990, that would not now be allowed, such use of a structure and land may be continued, subject to the following provisions:

(A) The nonconforming use may be extended internally throughout any part of the structure, provided the use is not extended to occupy any land outside the existing structure.

(B) When a nonconforming use is discontinued or abandoned for a continuous period of 180 days, every subsequent use shall be in conformity with the requirements for the zoning district in which it is located.

(C) Except as provided in Section 1.3.8, should the structure involving a nonconforming use be destroyed by any means to an extent exceeding 50% of its replacement cost, the structure shall only be reconstructed in conformance with both the development and use requirements for the zoning district in which it is located. **[Amd. Ord. 17-95 03/21/95]**

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Section 1.3.6 Repairs and Maintenance:

(A) On any nonconforming structure or on a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of fixtures, nonbearing walls, plumbing, or wiring, provided the repair work does not exceed 10% of the current replacement cost of the structure in any 12 month period, unless the damage is caused by an act of God in which case Section 1.3.8 shall apply. In addition, the Site Plan Review and Appearance Board (SPRAB) or Historic Preservation Board (HPB) may approve exterior modifications to a nonconforming structure or a structure containing a nonconforming use, provided the modifications do not exceed 15% of the current replacement cost of the structure in any 12 month period, unless the damage is caused by an act of God in which case Section 1.3.8 shall apply. However, improvements to contributing structures within historic districts or to individually listed historic structures can exceed the established 10% interior and 15% exterior maximum thresholds. **[Amd. Ord. 55-06 10/17/06]; [Amd. Ord. 62-04 11/16/04];[Amd. Ord. 28-94 5/17/94]**

(B) If the Chief Building Official declares a nonconforming structure or structure containing a nonconforming use to be unsafe or unlawful due to its physical condition, such structure shall not be rebuilt, repaired, or restored, except in conformance with the requirements for the zoning district in which it is located.

(C) Nothing herein shall prevent the strengthening or restoring to a safe condition, any building or part thereof declared to be unsafe by the Chief Building Official.

Section 1.3.7 Uses Allowed as Conditional Uses: Any use which is now allowed as a conditional use in a zoning district but which, prior to September 1, 1990, was an established permitted use shall not be deemed a nonconforming use but shall without further action be considered a conforming conditional use. A use previously established as a conditional use and now allowed as such, shall be subject to conditions as originally imposed thereon.

Section 1.3.8 Reconstruction Necessitated by An Act of God: [Amd. Ord. 17-95 3/21/95]

(A) If a lawful nonconforming residential or commercial structure is damaged or destroyed by an Act of God (the event), the owner shall be permitted to rebuild the structure in accordance with the use and number of units and square footage permitted by the certificate of occupancy in existence prior to the occurrence of the event. Where necessary, in order to accommodate the use or the same number of such units, structures may be reconstructed to heights previously established on building permit plans approved prior to the occurrence of the event. All rebuilding shall comply with fire and building codes in effect at the time of reconstruction, and

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shall comply to the greatest extent possible with applicable provisions of the Land Development Regulations. **[Amd. Ord. 36-08 8/19/08]; [Amd. Ord. 81-06 1/2/07]; [Amd. Ord. 17-95 3/21/95]**

(B) In order to receive approval for rebuilding pursuant to this section, applications for building permits must be submitted within one year of the date on which the event occurred and all reconstruction must be completed within three years from the date of the event. **[Amd. Ord. 17-95 3/21/95]**

(C) The following definitions apply for the purposes of this section: **[Amd. Ord. 17-95 3/21/95]**

(1) **Commercial Structure**: A Commercial Structure is a structure that is not residential as defined below. **[Amd. Ord. 81-06 1/2/07]**

(2) **Residential Structure**: A Residential Structure is a structure that includes permanent dwelling units such as homes, townhouses, condominiums, and apartments, as well as temporary dwellings such as hotel/motel rooms and resort dwelling units. **[Amd. Ord. 81-06 1/2/07]; [Amd. Ord. 17-95 3/21/95]**

(3) **Act of God (The Event)**: An Act of God (the event) is an unusual, extraordinary, sudden and unexpected manifestation of the forces of nature which man cannot resist which may include, but not be limited to, floods, storms, fire and other catastrophes. An event shall not be considered an Act of God if it results from or is contributed to by the intentional or deliberate act or negligence of the owner that may have been prevented by the exercise of reasonable diligence or ordinary care. When an Act of God combines or occurs with the intentional or deliberate act or negligence of the owner and the damage necessitating the reconstruction would not have resulted but for the owner's intentional or deliberate act or negligence or omission the event shall not be considered an Act of God. **[Amd. Ord. 81-06 1/2/07]; [Amd. Ord. 17-95 3/21/95]**