

176.33 NONCONFORMING USES, BUILDINGS AND STRUCTURES.

The purpose of this Section is to provide for the regulation of nonconforming buildings, structures, lots and uses, and to specify those circumstances and conditions under which nonconforming buildings, structures and uses shall be gradually eliminated upon reaching the end of their respective normal useful life

1. General Standards of Applicability
 - A. Authority to Continue
 - (1) Any nonconforming building, structure, lot, or use which existed lawfully at the time of the adoption of this Ordinance and which remains nonconforming, and any building, structure, lot or use which becomes nonconforming upon the adoption of this Ordinance or any subsequent amendments, may continue subject to the provisions of this Section, so long as it remains otherwise lawful.
 - B. Burden on Property Owner to Establish Legality
 - (1) In all cases, the burden of establishing the legality of a nonconformity under the provisions of this Ordinance shall be upon the property owner of the nonconforming building, structure, lot or use and not upon the City.
 - C. Safety Regulations
 - (1) The existence of a nonconformity does not affect the applicability to a property of any police power regulations enacted to promote public health, safety, comfort, convenience and general welfare including, but not limited to, all building, fire and health codes.
 - D. Governmental Action
 - (1) Notwithstanding any provision of this Section 176.33 to the contrary, no lawfully existing conforming lot, building, structure and/or use shall be rendered nonconforming, and subject to the provisions of this Section, as a result of the exercise of eminent domain by a governmental entity.
2. Nonconforming Uses of Land
 - A. This Section regulates land, buildings and structures that, on the effective date of this Ordinance, are used in whole or in part for purposes that are not allowed in the zoning district, overlay, or Planned Unit Development in which they are located.
 - B. Expansion of Use
 - (1) A nonconforming use of land, buildings or structures shall not be expanded, extended, enlarged or increased in intensity. Such prohibited activity shall include, without limitation:
 - (a) An expansion or extension of a nonconforming use or its accessory uses to any land area, building or structure, or part thereof,

other than that occupied by the nonconforming use on the effective date of this Ordinance.

(b) An expansion or extension of the nonconforming use or its accessory uses within a building or other structure, to any portion of the building or structure that was not occupied by the nonconforming use on the effective date of this Ordinance.

C. Relocation

(1) A nonconforming use of land, buildings or structures shall not be relocated, in whole or in part, to any other location on the same lot or parcel, or to any other lot or parcel, unless the lot or parcel to which it is relocated permits the nonconforming use.

D. Change of Use

(1) A nonconforming use shall not be changed to any use other than 1) a use permitted by right within the zoning district, overlay, or PUD in which it is located, or 2) a use allowed as a Conditional Use, for which a Conditional Use applicable to the property has been granted. Thereafter, that part of the land, building or structure occupied by the permitted use or granted Conditional Use shall not thereafter be changed back to a use that is not allowed within the zoning district or PUD in which it is located. Any change in use in violation of this Ordinance shall be deemed an abandonment of the previously existing lawful nonconforming use.

E. Abandonment

(1) If that part of a building or structure occupied by a nonconforming use becomes vacant and remains unoccupied for a continuous period of 180 days or more, such nonconforming use shall be deemed to be abandoned and shall not be reestablished or resumed. Any subsequent use or occupancy of such land, building or structure shall comply with all regulations of the zoning district in which such land, building, or structure is located. The period of such discontinuance caused by government action, acts of God, or other acts without any contributing fault by the user, such as the default or bankruptcy of a tenant, shall not be included in calculating the length of discontinuance for this Section.

F. Damage or Destruction

(1) A building, structure or portion thereof, all or substantially all of which is designed or intended for a use which is not allowed in the district in which it is located and which is destroyed or damaged by fire or other casualty or act of God to the extent that the cost of restoration to the condition in which it was before the occurrence will exceed fifty percent (50%) of the total cost of reconstructing the entire building or structure, shall not be restored unless said building or structure and the use thereof shall conform to all regulations of the district in which it is located or in conformity with Section 176.36-4B(4) of this Chapter pertaining to the powers of the Zoning Board of Adjustment. In the event that such damage

or destruction is less than fifty percent (50%) of the cost of reconstruction of the entire building or structure, repairs or construction for restoration may be made only if such work is started within one year from the date of the partial destruction and is diligently prosecuted to completion.

3. Nonconforming Buildings and Structures

A. This Section regulates land, buildings and structures existing on the effective date of this Ordinance that do not conform to the yard, height, lot coverage, or other dimensional or bulk provisions of this Ordinance. (See Section 176.31 for additional provisions relating to signs.)

B. Ordinary Repairs and Maintenance

(1) Normal maintenance and incidental repair or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing may be performed on any nonconforming building or structure. No repairs or reconstruction shall be made that would create any new nonconformity, or increase the degree of any previously existing nonconformity.

C. Structural Alterations

(1) Structural alterations, other than additions and enlargements, may be performed on a nonconforming building or structure, only in the following situations:

- (a) When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.
- (b) When the alteration will not create any new nonconformity or increase the degree of any existing nonconformity.
- (c) When the alteration will result in eliminating the nonconformity.

D. Additions and Enlargements

(1) A building or structure, which is nonconforming with respect to its bulk, shall not be enlarged or added on to unless the addition does not create any new nonconformity or increase the degree of any existing nonconformity, except as follows: Where a wall of an existing single-family or two-family building is nonconforming with respect to the minimum yard or setback requirement, the nonconforming wall may be extended vertically and/or horizontally by adding to the existing building, subject to the following:

- (a) The wall extension shall not be any closer to the lot line than the existing nonconforming wall.
- (b) The extended building wall shall not create any additional nonconformities on the site.
- (c) The maximum building coverage and building height shall not be exceeded.

E. Relocation

(1) A nonconforming building or structure shall not be relocated, in whole or in part, to any other location on the same zoning lot or parcel, or to any other zoning lot or parcel, unless the building or structure shall thereafter conform to all regulations of the zoning district in which it is relocated.

F. Damage or Destruction

(1) In the event that any nonconforming building or structure is damaged or destroyed by any means not within the control of the property owner or tenant to the extent of fifty percent (50%) or more of its replacement value at that time, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation, thereafter conforms to all regulations of the zoning district in which it is located.

(2) The replacement value of the building or structure shall be based on: 1) the sale of that building or structure within the previous year or, if that is not applicable; 2) an appraisal within the last two (2) years or, if that is not available; 3) the amount for which the building, structure or property was insured prior to the date of the damage or destruction or; 4) an alternative method determined acceptable by the City Council.

(3) When a nonconforming building or structure is damaged or destroyed by any means not within the control of the property owner or tenant to the extent of less than fifty percent (50%) of the replacement value at that time, it may be repaired or reconstructed provided that no new nonconformities are created and that the degree of nonconformity existing prior to the damage or destruction is not increased. A building permit shall be obtained for such rebuilding, restoration, repair or reconstruction within one (1) year of the date of damage or destruction, and the construction shall be completed within one (1) year of issuance of the building permit.

(4) In the event that a building permit is not obtained within one (1) year, or that repairs are not completed within one (1) year of the issuance of the building permit, then the building or structure shall not be restored unless it conforms to all regulations of the district in which it is located.

(5) In the event that any nonconforming building or structure or part thereof is removed, demolished or destroyed by means within the control of the property owner or tenant, the building or structure or part thereof that was removed, demolished or destroyed, as restored or repaired, shall comply with all requirements of this Ordinance.

4. Nonconforming Lots of Record

A. This Section regulates lots of record, existing on the effective date of this Ordinance, which do not conform to the lot area or lot width requirements of the district in which they are located. No nonconforming lot of record may be improved except in compliance with this Section.

B. Individual Lots of Record in Residential Districts

(1) In residential districts, a single-family dwelling may be constructed and maintained on a lot which is nonconforming as to minimum lot area and/or minimum lot width, if the lot was of record on March 24, 1962, was in separate ownership on the effective date of this Ordinance and conforms to all other requirements of the zoning district in which it is located.

C. Lots of Record Held in Common Ownership

(1) If on the effective date of this Ordinance there are two (2) or more lots of record with contiguous frontage in single ownership, and one (1) or more of the lots is nonconforming as to minimum lot area and/or minimum lot width, the lots shall be considered to be a single undivided parcel for the purposes of this Ordinance. No portion of said parcel shall be used or conveyed which does not meet the lot width and lot area requirements established by this Ordinance. No division of the parcel shall be made which

leaves the remaining lot(s) with lot width or lot area below the requirements of this Ordinance. No building permit shall be issued for the use of any lot or portion of a lot, transferred or conveyed in violation of this Section.

(2) If the Board of Zoning Appeals grants a variation or variations to the required minimum lot area or width that renders the contiguous nonconforming lots buildable, then the provisions of this section shall be considered satisfied and the lots of record may be conveyed and building permits may be issued, to the extent authorized by the variation.

(Ord. 18-21 – Nov. 18 Supp.)