Article VII: Non-conformities

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A. Purpose and Intent

This ordinance seeks to protect the public health, safety, and general welfare, and avoid any unreasonable invasion of established private property rights. The elimination of existing buildings and structures or uses that are not in conformance with the provisions of this ordinance is as much a subject of health, safety and general welfare as is the prevention of the establishment of new uses that would violate the provisions of this ordinance. Lawful non-conformities can adversely affect orderly development, maintenance, and use and taxable values throughout the City. To avoid undue hardship, non-conformities that came into existence lawfully should be allowed to exist subject to conditions in this Article; however, the conditions should seek to ultimately secure compliance with the comprehensive plan.

B. Non-conforming Structures

Structures that were legally constructed prior to the adoption of this ordinance, but which could not be constructed under the terms of this ordinance are considered legal non-conforming structures. A legal non-conforming structure may continue to exist subject to the following:

a. Non-conforming structures, or those parts of a structure that are non-conforming may not be expanded either horizontally, or vertically. Alteration and expansions shall conform to all current regulations.

b. The structure shall remain legal in all other regards except for the non-conformance that existed upon adoption of the ordinance that made the structure non-conforming.

c. A non-conforming structure, which is not intentionally damaged, destroyed, or removed, may be restored within one year from the date of the event. If the structure is not re-constructed in one year all restorations and improvements shall be in compliance with applicable ordinances. The burden of proof of date of damage or destruction shall be on the person proposing the restoration.

C. Non-conforming Uses

Use of land or structure that legally existed prior to the adoption of this ordinance, but which could not be initiated under the terms of this ordinance is considered a legal non-conforming use. A legal non-conforming use of land or structures may continue to exist subject to the following:

a. The use shall be restricted to the lot and building occupied by the use as of the effective date of the ordinance creating the non-conformance. A legal non-conforming use shall not be extended to any other building or lot or part of a lot.

b. A lawful non-conforming use that ceases for any reason for a period of more than 180 consecutive days shall not be reinitiated unless it is in compliance with all ordinances. If a legal non-conforming use is replaced by a conforming use, the legal non-conforming use shall not be reinitiated.

c. Any site characteristic of a use, whether conforming to this ordinance or a legal non-conforming use, in existence prior to adoption of this ordinance (such as parking, landscaping, or driveways) shall be considered legal. However, any change in use, expansion of the use, or expansion of the structure associated with the use shall require all non-conforming site characteristics to be brought in conformance with this ordinance.

d. A change of a legal non-conforming use shall only be allowed if the change is to a conforming use or to a use that is considered less non-conforming, as determined by the Director of Planning and Zoning, either in extent of non-conformance or in intensity.

D. Non-conforming Lots

Where a lot, tract or parcel of land has an area or width that does not conform to the requirements of the district in which it is located, the lot may be used for a detached single-family dwelling except in the M-1 and M-2 Industrial Districts. A detached single-family dwelling may be constructed on a non-conforming lot in an R-1, R-2, R-3, R-4, or R-5 Residential District provided the lot to be so used has a minimum area of four thousand (4,000) square feet and a minimum lot width at the building line of forty (40) feet, provided it is located on a public sewer.

Yard requirements shall be modified subject to the following conditions:

a. On double frontage lots (interior lots abutting two (2) streets) the required front yard shall be provided on each street.

b. The side yard requirements for non-conforming lots of record may be reduced for each side yard at the rate of one (1) foot for each four (4) feet by which the lot width lacks fifty (50) feet, provided in no event shall such side yard be reduced to less than five (5) feet on each side.

c. The minimum front setback required for the district (and, on corner lots, the street side setback) shall not apply to any lot where the average front building line(s) of the adjacent lot(s), is less than the minimum setback required for the district. In such cases, the front building line may be the same as the average front building lines(s) of the adjacent lot(s). In no case, shall the front building line be more than 5' less than the minimum setback required for the district.

d. On corner lots, the street side yard shall be that part of the lot having its greatest frontage abutting that right-of-way and the required setback shall be 20 feet, unless otherwise provided herein.

E. Maintenance of Non-conformities

In the interest of public safety and health, and general welfare, routine maintenance of non-conforming situations shall continue as warranted by the property owner or otherwise required by law, provided that no maintenance involves continuance or expansion of the non-conformity contrary to this Article

F. Adjacent Land

The presence of a non-conforming use in a zoning district shall not be allowable as grounds for the granting of variances for other surrounding properties by the Board of Adjustment.