

Attachment "B"

Nonconforming Structures and
Uses Article 3, Section 3.12

§ 3.12. Nonconforming Structures and Uses.

It is the purpose and intent of the regulations within this section to provide procedures whereby lawful nonconforming structures and uses, as herein defined, may be maintained, enlarged or modified where such maintenance, enlargement or modification will not have a detrimental effect upon other persons or property within the vicinity, and in so doing to bring such uses and structures up to present city standards to the maximum possible extent.

A. Nonconforming use. The lawful nonconforming use of a building may be continued, although such use does not conform to the regulations of the applicable zoning district within which the building is located. Any such use may be changed to a use of the same or more restrictive nature as determined by the Director of the Department of Planning and extended throughout the building, provided no structural alterations, except those required by law, are made therein and the cubical contents of the building are not enlarged. If such nonconforming use is discontinued for a period of three months or more, any further use of said building shall be in conformity with the regulations of the applicable zoning district unless otherwise approved by the Planning and Development Board pursuant to division G. of this section within 24 months of the abandonment. A lawful nonconforming use is reestablished by the approval of a Special Exception by the Planning and Development Board.

B. Conforming use of a nonconforming building. A lawful nonconforming building may be utilized for any use which conforms to the regulations of the applicable zoning district within which the building is located, provided no structural alterations except those required by law are made or cubical contents of the building enlarged except pursuant to division G. of this section.

C. Nonconforming use of a nonconforming building. The lawful nonconforming use of a lawful nonconforming building may be continued although such use and building do not conform to the regulations of the applicable zoning district within which the building is located. Such use may not be expanded to utilize additional floor area to that which existed at the time its lawful nonconformity was established, and no structural alteration (except as required by law) or enlargement of the cubical contents of the building is permitted except pursuant to division G. of this section.

D. Nonconforming Use of Land. The lawful nonconforming use of land may be continued although such use does not conform to the regulations of the applicable zoning district within which the land is located. However, no such use shall be enlarged, intensified or extended to occupy a greater area of land or reinstated following discontinuance for a period of six months or more, except as approved pursuant to division G. of this section.

E. Nonconforming structures. Lawful nonconforming structures other than buildings are likewise permitted to remain, provided no structural alterations other than those required by law are made, and further provided that the discontinued use of such structure or the use or building to which it is necessary for a period of six months or more shall require its modification so as to comply with the regulations of the applicable zoning district.

F. Maintenance and repairs. Necessary maintenance and repairs may be made to any nonconforming building or structure, provided no structural alterations are made, and further provided that such work does not exceed 50% of the value of such building or structure in any 12-month period as shown on the county tax assessment records or as established by an independent appraiser who is a designated member of any nationally recognized professional appraiser's organization.

G. Processing of applications. The Planning and Development Board shall hear applications for the following, according to procedures and criteria set forth for Special Exceptions outlined in Article 5 of these Zoning and Land Development Regulations.

1. Re-establishment of a nonconforming use which had lawfully existed as requested, but which has been discontinued for a period of six months or more.

2. Expansion of a lawful nonconforming use within a building to utilize additional floor area within such building not otherwise permitted.

3. Intensification of a lawful nonconforming use of land or extension of such use to occupy a greater area than otherwise permitted.

4. Establishment of a nonconforming use within a lawfully nonconforming building which, because of its unique design or orientation or location, is appropriate for such use.

5. Change, enlargement, expansion or restoration of a lawful nonconforming building.

H. Any approval of G.1. through G.5. above shall be based upon the findings by the Planning and Development Board that:

1. The approval of the application is necessary for the preservation and enjoyment of substantial property rights of the applicant.

2. The approval will not, under any circumstances of the particular case, be detrimental to the health, safety and general welfare of persons working or residing within the vicinity.

3. The approval will not be detrimental or injurious to property and improvements in the vicinity or to the general welfare of the city.

4. The approval will, to the maximum extent possible, bring the use or building and the site upon which it is located into compliance with city regulations.

In authorizing approval, the Board shall include such conditions as it deems necessary and reasonable under the circumstances to carry out the intent of this section.

I. Compliance With Regulations. Nothing in this section shall diminish the responsibility of an owner to maintain his use or structure in full compliance with all other city, county, state or federal regulations or licensing procedures.

J. Establishment of non-Conformity. For the purpose of this section, the mere possession of a valid approval to use land or buildings or valid license to do so without actual demonstrable use of such land or structure is an insufficient basis to establish lawful nonconformity.

K. Approvals. All approvals pursuant to the provisions of this section shall become null and void unless the appropriate building or other permit or license is applied for within 24 months of the date of such decision by the Board. All approvals shall run with the land and are not personal to the owner of such land at the time of approval.

(Ord. O-84-16, passed 2-15-84; Am. Ord. O-91-64, passed 9-4-91; Am. Ord. O-94-13, passed 4-6-94; Am. Ord. O-2001-16, passed 5-16-2001; Am. Ord. O-2009-39, passed 12-2-2009; Am. Ord. O-2011-14, passed 5-4- 11; Am. Ord. O-2015-13, passed 6-17-15) (O-94-13 renumbered from 3.18, 4-6-94)