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ARTICLE 7. NONCONFORMITIES

SECTION 7.1. GENERAL PROVISIONS

A. PURPOSE AND SCOPE

- (1) Nonconformities are uses of land or other development (including structures, lots, signs, parking, and landscaping) that were lawfully established before this Ordinance was adopted or amended, that are rendered non-compliant with this Ordinance. This article allows such uses, structures, lots, signs, parking, and landscaping to continue, subject to the requirements of this Article.
- (2) The purpose and intent of this Article is to recognize the interests of the landowner in continuing to use the land, but to limit the alteration, expansion, reconstruction, and reestablishment of nonconformities to ensure that the nonconformity does not increase and the purposes of this Ordinance are achieved.

B. AUTHORITY TO CONTINUE

- (1) Any nonconforming use, structure, lot, sign, parking, or landscaping may be continued, repaired, and maintained in accordance with this article. Where a lot includes more than one nonconformity (e.g., nonconforming structure and nonconforming use), each nonconformity may be continued in accordance with the requirements of this article.
- (2) Any alteration, expansion, reconstruction, reestablishment, or relocation of a nonconformity shall comply with the requirements in this article.

C. CERTIFICATE OF NONCONFORMITY ADJUSTMENT REQUIRED

Approval of a certificate of nonconformity adjustment in accordance with Section 2.5.E(4), Certificate of Nonconformity Adjustment, is required prior to:

- (1) Any change of use of a structure or land from one nonconforming use to another nonconforming use;
- (2) Any expansion of or addition to structural parts of a nonconforming structure; and
- (3) Restoration or reconstruction of any structure housing a nonconforming use, except the replacement of a manufactured home in accordance with Section 7.2.E, Nonconforming Manufactured Home, or where the structure is damaged or destroyed by fire, storm, or other casualty (see Section 7.2.D, Reconstruction of Structure Housing Nonconforming Use, and Section 7.3.B, Reconstruction of Nonconforming Structure).

D. DETERMINATION OF NONCONFORMITY STATUS

In all cases, the burden of establishing that a nonconformity lawfully exists shall fall on the owner of the land on which the nonconformity is located.

E. CHANGE OF TENANCY OR OWNERSHIP

A change of tenancy or ownership shall not, in and of itself, affect the nonconformity status of a structure, lot, sign, or site feature.

F. MINOR REPAIRS AND MAINTENANCE

No provision of this Ordinance shall be construed to prohibit the routine repair and maintenance of structures housing nonconforming uses, nonconforming structures, nonconforming lots, nonconforming signs, or nonconforming site features, in order to keep the structure, lot, sign, or site feature in the same condition as when the nonconformity was established; to accomplish modifications necessary for compliance with stormwater management regulations or the Americans with Disabilities Act (ADA); or to bring to a safe condition any structure declared to be unsafe by any official charged with protecting the public safety, health, or welfare.

SECTION 7.2. NONCONFORMING USES

A. EXPANSION OR ENLARGEMENT OF NONCONFORMING USE

- (1)** Except as otherwise provided in subsection (3) below, a nonconforming use shall not be expanded or enlarged unless such expansion or enlargement complies with all applicable zoning district dimensional standards.
- (2)** Except as otherwise provided in subsection (3), structural alterations shall not be made to a structure housing a nonconforming use, except as necessary:
 - a.** To comply with the requirements of federal, state, or local laws or regulations;
 - b.** To accommodate a conforming use; or
 - c.** To make the structure conform to the applicable dimensional regulations.
- (3)** Any single-family dwelling that is nonconforming as to use may be expanded in any zoning district if the expansion complies with the dimensional standards for the R8 District.

B. DISCONTINUANCE OR ABANDONMENT OF NONCONFORMING USE

- (1)** Subject to subsection (2) below, the discontinuance of day-to-day operation of a any nonconforming use for a continuous period of 180 days, regardless of the reason or intent of the discontinuance, shall constitute abandonment of the use, and the use shall not be subsequently reestablished.
- (2)** Time spent renovating or repairing a structure that houses a nonconforming use is not considered a discontinuance of the use, provided:
 - a.** All appropriate permits are obtained;
 - b.** The renovation or repair is completed within 18 months after commencement of the repair or renovation;
 - c.** The use is reestablished within one month after completion of the renovation or repairs; and

- d. Any discontinuance of use caused by government action without the contributing fault by the nonconforming use shall not be considered in determining the length of discontinuance.
- (3) The Planning Director shall make determinations as to whether an existing nonconforming use has been abandoned in accordance with subsection (1) above. The Planning Director's determination may be appealed to the Board of Adjustment by the affected property owner within 30 days of the Planning Director's determination.

C. CHANGE OF USE

- (1) Except as provided in subsection (2) below, a nonconforming use may not change to, or change to include, another use unless the new use is allowed in the zoning district in which the nonconforming use is located. Where such a change occurs, the new use shall comply with all standards in Article 4: Use Regulations, and Article 5: Development Standards; however, where the structure housing the new use is a nonconforming structure or the lot on which the new use is located is a nonconforming lot, those nonconformities may continue in accordance with Section 7.3, Nonconforming Structures, and Section 7.4, Nonconforming Lots of Record, as applicable. Once changed to a conforming use, the nonconforming use shall not be reestablished on the parcel.
- (2) A Nonconforming use may be changed to another nonconforming use which more closely approximates permitted uses in the zoning district, with respect to scale and intensity of use, upon issuance of a certificate of nonconformity adjustment in accordance with Section 2.5.E(4), Certificate of Nonconformity Adjustment.

D. RECONSTRUCTION OF STRUCTURE HOUSING NONCONFORMING USE

- (1) Except as otherwise provided in subsection (2) below, the restoration or reconstruction of a structure housing a nonconforming use is allowed only if a certificate of nonconformity adjustment for the restoration or reconstruction is approved in accordance with Section 2.5.E(4), Certificate of Nonconformity Adjustment, and only if the restored or reconstructed structure complies with the dimensional standards of the district in which it is located.
- (2) Where a structure housing a nonconforming use is damaged or destroyed by fire, storm, or other casualty, the structure may be reconstructed and the nonconforming use may be continued if the reconstruction does not increase the extent of nonconformity.

E. NONCONFORMING MANUFACTURED HOME

A manufactured home that is nonconforming solely because it is located outside the MHO District may be replaced by another manufactured home that complies with Section 4.2.D(3)a.2(b) through Section 4.2.D(3)a.2(e) in Section 4.2.D(3)a.2, Manufactured Home.

SECTION 7.3. NONCONFORMING STRUCTURES

A. EXPANSIONS AND ADDITIONS

- (1) An expansion of or addition to structural parts of a nonconforming structure is allowed only if:

- a. The expansion or addition complies with all applicable zoning district dimensional standards; and
 - b. A certificate of nonconformity adjustment is approved for the expansion or addition in accordance with Section 2.5.E(4), Certificate of Nonconformity Adjustment.
- (2) Repairs to nonconforming structures that do not include an expansion or addition in accordance with subsection (1) above, shall not require a certificate of nonconformity adjustment.
- (3) For purposes of subsection (1) above, the erection of multiple ground signs in an existing development containing multiple uses shall be considered an expansion or addition.

B. RECONSTRUCTION OF NONCONFORMING STRUCTURE

- (1) Except as otherwise provided in subsection (2) below, a nonconforming structure that is removed or destroyed may be reconstructed only if it complies with the standards in this Ordinance.
- (2) A nonconforming structure that is damaged or destroyed by fire, storm, or other casualty may be restored or reconstructed if the restoration or reconstruction does not increase the extent of nonconformity. Such reconstruction shall not require a certificate of nonconformity adjustment.

SECTION 7.4. NONCONFORMING LOTS OF RECORD

A. USES ALLOWED ON NONCONFORMING LOTS

- (1) Subject to subsections (2) and (3) below, any lot of record that does not comply with the dimensional standards for the district in which it is located (nonconforming lot) may be used for any use allowed in the district, if the use complies with all other applicable standards in this Ordinance, except as otherwise provided in this article.
- (2) In any Residential district, one single-family attached dwelling may be located on any nonconforming lot, provided the dwelling complies with the dimensional standards of the zoning district in which it is located to the extent practicable.
- (3) Use of a nonconforming lot in accordance with subsection (1) or subsection (2) above, is prohibited where the nonconforming lot shares continuous frontage with abutting lots in the same ownership, unless the lots are combined or recombined to create one or more conforming lots, or lot(s) that are less nonconforming.

SECTION 7.5. NONCONFORMING SIGNS

A. MAINTENANCE AND REPAIR

Any sign lawfully erected and maintained prior to July 1, 2022, that does not comply with this Ordinance may remain in accordance with this Article. Nonconforming signs shall be maintained and repaired in accordance with Section 5.9.C(3), Construction and Maintenance, and Section 7.1.F, Minor Repairs and Maintenance.

SECTION 7.6. NONCONFORMING PARKING AND LANDSCAPING

- A.** Where there is nonconforming parking and/or landscaping on a site where a building addition or expansion is proposed, the nonconforming parking or landscaping shall be brought into compliance with the standards of this Ordinance to the extent required by Section 5.2.B(1)b, Addition or Expansion, and/or Section 5.3.B(1)b, Addition or Expansion, as applicable.
- B.** Where there is nonconforming parking and/or landscaping on a site where a change of use is proposed, the parking and/or landscaping, as applicable, shall be brought into compliance with this Ordinance to the maximum extent practicable, taking into consideration Section 5.2.E(2), Off-street Parking Alternatives, and Section 5.3.B(3), Alternative Landscaping.

SECTION 7.7. NONCONFORMITIES CREATED BY EMINENT DOMAIN OR VOLUNTARY DONATION OF LAND FOR A PUBLIC PURPOSE

If a nonconforming lot or structure is created due to eminent domain or voluntary donation of a portion of the lot for a public purpose that results in a nonconformity, the lot or structure, as applicable, shall be deemed conforming upon the Planning Director approving a site plan for development of the lot that demonstrates the development existing or proposed on the lot:

- A.** Complies with Section 4.2.B(5), Principal Use Table;
- B.** Complies with the dimensional standards of the zoning district in which it is located, to the maximum extent practicable;
- C.** Complies with the off-street parking and landscaping standards of this Ordinance, to the maximum extent practicable;
- D.** Complies with all other standards and requirements of this Ordinance; and
- E.** Is designed and configured in a way that is compatible with surrounding development.

