

Article IV

NON-CONFORMITIES

Section 4.01 INTENT

Certain existing lots, structures, and uses of lots and structures were lawful before this Ordinance was adopted, but have become non-conformities under the terms of this Ordinance and its amendments. It is the intent of this Ordinance to permit such legal non-conforming lots, structures, or uses to continue until they are removed, but not to encourage their survival or where discontinuance or removal is not feasible, to gradually upgrade such non-conformities to conforming status. Non-conformities shall not be enlarged, expanded, or extended, except as provided herein, and shall not be used as grounds for adding other structures and uses of lots and structures which are prohibited. Non-conformities are declared by this Ordinance to be incompatible with the structures and uses permitted in the various districts.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding such demolition or removal shall be deemed to be actual construction, provided work shall be diligently carried on until completion of the building involved.

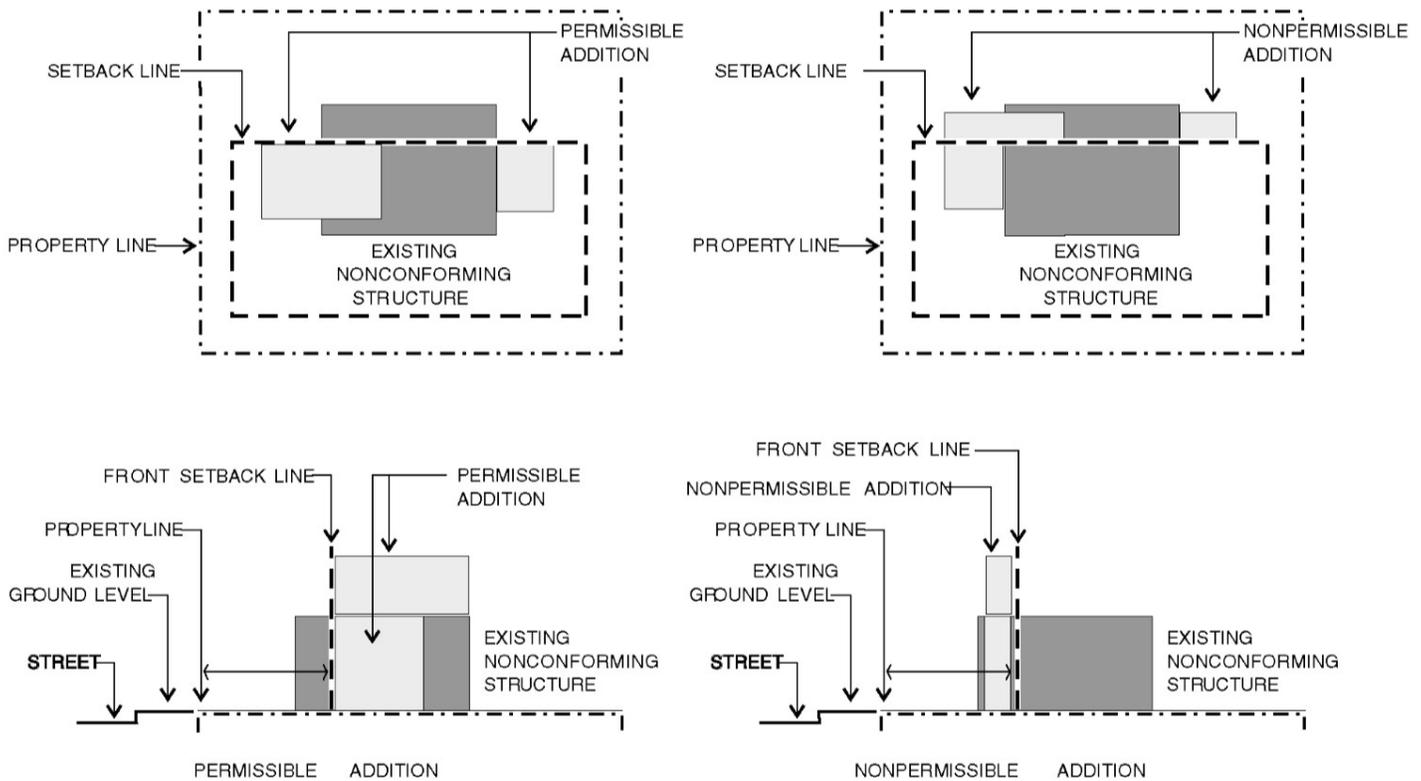
Section 4.02 DEFINITIONS

For the purposes of this Section, the following words and phrases shall have the meaning assigned to them:

- A. **Effective Date:** Whenever this Article refers to the "effective date," the reference shall be deemed to include the effective date of any amendments to this Ordinance if the amendments created a non-conforming situation.
- B. **Non-conforming Building:** A building or portion thereof which was lawfully in existence at the effective date of this Ordinance, that does not meet the limitations on building size, location on a lot, or other regulations for the district in which such building is located.
- C. **Non-conforming Lot:** A lot which was lawfully in existence at the effective date of this Ordinance, that does not meet the minimum area or dimensional requirements of the district in which the lot is located.

- D. **Non-Conforming Use:** A use which was lawfully in existence at the effective date of this Ordinance, and which does not now conform to the use regulations of this Ordinance for the zoning district in which it is now located.
- E. **Structural Non-Conformity:** A non-conformity that exists when the height, size, or minimum floor space of a structure, or the relationship between an existing building and existing buildings or lot lines does not conform to the standards of the in which the property is located, also sometimes referred to as a dimensional non-conformity.

Figure 4.02 Permissible and Non-Permissible Additions to an Existing Non-Conforming Structure



Section 4.03 NON-CONFORMING LOTS OF RECORD

Any non-conforming lot shall be used only for a use permitted in the district in which it is located. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance requests from district yard requirements may be applied for through the City of Dexter Zoning Board of Appeals.

If two or more lots or combination of lots with contiguous frontage in single ownership are of record at the effective date of this Ordinance, and if all or part of the individual lots do not meet the requirements established for lot width and area, the lots involved shall be considered to be an individual parcel for the purposes of this Ordinance. No portion of said parcel shall be used, occupied, or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of a parcel be made which creates a lot with width or area less than the requirements stated in this Ordinance. These provisions shall not apply to contiguous lots in single ownership where each of the lots is occupied by a dwelling unit.

Upon application, the Zoning Administrator may permit the combination, in whole or in part, of non-conforming lots of record into building sites less than the size requirements established by this Ordinance, provided that the combination of lots reduces the degree of non-conformity and results in a parcel which is capable of accommodating a structure that is in conformance with the building area, setback, and side yard requirements of this Ordinance.

Section 4.04 NON-CONFORMING USES OF LAND

The lawful use of any land existing on the effective date of this Ordinance may be continued even though such use does not conform to the provisions of this Ordinance or amendments subject to the following provisions:

- A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of this Ordinance.
- B. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date.
- C. If such non-conforming use of land ceases for any reason for a period of more than six months, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.
- D. Where non-conforming off-street parking, landscaping, signage, fences, and other similar land uses exist, those uses shall be made to conform to the terms of this Ordinance when any legal use, principal or accessory, located on the land in question is established or expanded in such a manner that would necessitate site plan review and approval in accordance with Article XXI.

Section 4.05 NON-CONFORMING BUILDINGS AND STRUCTURES

Where a lawful building or structure exists at the effective date of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful subject to the following provisions:

- A. **Restriction on Creating Non-conformities:** No such building or structure may be enlarged or altered in a way which increases its non-conformity.
- B. **Restriction on Movement:** Should such structure be moved for any reason or for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is relocated or moved.
- C. **Restrictions on Alteration or Modification:** If a non-conforming structure or building is altered or modified so as to eliminate, remove, or lessen any or all of its non-conforming characteristics, then such non-conforming characteristics shall not be later re-established or increased. The Zoning Board of Appeals shall determine if a proposed alteration should decrease the degree of non-conformity.
- D. **Restrictions on Replacements:** Nothing in this Ordinance shall prevent the reconstruction, repair, or restoration and the continued use of any non-conforming structure damaged by fire, collapse, explosion, acts of God or acts of public enemy, subsequent to the effective date of this Ordinance.

Any non-conforming building which has been damaged substantially or destroyed may be repaired, rebuilt or replaced within 18 months of such damage or destruction, provided that such repairs or rebuilding or replacement does not extend or expand the previously existing non-conforming structure.

Where pending insurance claims require an extension of time, the Zoning Administrator may grant a time extension provided that the property owner submits a certification from the insurance company attesting to the delay. Until such time as the debris from the fire or act of God is fully removed, the premises shall be fenced and secured from pedestrian or unauthorized access.

- E. A non-conforming structure, except a single-family dwelling and its accessory structures, which are damaged by any means to an extent of more than 50% of its assessed value as determined by the City Assessor, shall not be reconstructed except in conformity with the regulations of the district in which it is located. Any non-conforming structure, except single-family dwellings and their accessory structures, that are damaged to an extent of 50% or less of its replacement cost may be replaced in their location existing prior to such damage, provided replacement is commenced within 18 months of date of damage and is diligently pursued to completion. Failure to commence replacement within 18 months shall result in the loss of legal non-conforming status.

Non-conforming structures may be replaced or expanded in accordance with the following requirements:

- 1. A single-family dwelling unit and permitted accessory structures may be replaced or expanded, subject to the following standards:
 - a. The dwelling is a permitted use in the district in which it is located; and

- b. Any expansion shall meet yard, lot coverage, floor area ratio, and impervious surface regulations of the zoning district in which it is located.
- 2. All other non-conforming structures, in any zoning district, may be expanded only after approval by the Zoning Board of Appeals, as provided in Section 24.05 F.

Section 4.06 NON-CONFORMING USES OF STRUCTURES AND LAND

If a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be permitted in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful subject to the following provisions:

- A. **Prohibition or Enlargement of a Building Housing Non-conforming Use:** No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- B. **Extension Throughout Building:** Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
- C. **Changing Use:** If no structural alterations are made, any non-conforming use of a structure, or structure and land in combination, may be changed to another non-conforming use of the same or a more restricted classification provided that the Zoning Administrator either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Zoning Administrator may require conditions and safeguards in accord with the purpose and intent of this Ordinance and/or may request review and determination by the Planning Commission. Where a non-conforming use of a structure, land, or structure and land in combination is hereafter changed to a more conforming use, it shall not thereafter be changed to a less conforming use.
- D. **Prohibition of Re-establishment if Replaced by Conforming Use:** A non-conforming use of any structure which is replaced by a permitted use shall thereafter conform to the regulations for the district in which such structure is located, and the non-conforming use may not thereafter be resumed.
- E. **Discontinuance or Termination of Non-conforming Use of Structure:** When a non-conforming use is discontinued or ceases to exist for six consecutive months the non-conforming structure or use of land shall not thereafter be used except in

conformance with the regulations of the district in which it is located. Structures occupied by seasonal uses shall be exempt from this provision.

- F. **Repairs to Non-Conforming Use:** On any building devoted in whole, or in part, to any non-conforming use, work may be done in any period of 18 consecutive months on ordinary repairs, improvements, modernization, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing to correct deterioration, obsolescence, depreciation, and wear. Such repairs, improvements, replacement, or modernization activities shall be permitted providing the total area (in square feet) of the building as it existed at the effective date of this Ordinance shall not be increased. Repairs begun within the required 18 consecutive months but not completed upon the expiration of the permitted time period may be completed provided the repairs have been issued and approved and valid building permit and the work has continued without interruption to eventual completion.
- G. **Safety Repair.** Nothing in the Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building, or part, thereof declared unsafe by an official charged with protecting public safety, upon order of such official.
- H. **Destruction of Non-Conforming Structure.** If a structure devoted in whole or in part to a non-conforming use is destroyed by any means to an extent of more than 50% of its assessed value as determined by the City Assessor at the time of destruction, it shall not be reconstructed and shall not be devoted to any use except in conformity with the regulations of the district in which it is located.

Section 4.07 NON-CONFORMING SITES

- A. **Intent:** The purpose of this Section is to encourage improvements to existing sites in the City that were developed before the site design standards of this Ordinance were established or amended. This section is intended to:
 - 1. Allow for reasonable re-use, maintenance, and improvements to these sites that will gradually improve compliance with these requirements.
 - 2. Permit a proportionate amount of improvements to non-conforming sites relative to the amount of expansion or improvement proposed to the use or building.
 - 3. Allow the needed flexibility in the regulations to encourage gradual site improvements and increased compliance with the intent of the Zoning Ordinance Requirements.
- B. **Required Reviews.** This Section provides for the conditions under which re-occupancy, improvement, and modification to non-conforming sites may occur. It does not replace other reviews and requirements contained elsewhere in this Ordinance. Where improvements and modifications are proposed to non-

conforming sites, they shall be subject to Site Plan Review in accordance with Article XXI.

- C. **Standards for Review.** Applications to improve or modify non-conforming sites shall be reviewed in accordance with Article XXI for new development, redevelopment, or change of use as listed in Section 21.02. Such activity may only be permitted if the following standards are met:

1. **General Standards.**

- a. Expansions to non-conforming structures or buildings comply with Section 4.05.
- b. Changes to non-conforming uses comply with Section 4.06.
- c. The applicant is proposing reasonable site improvement to the overall site in relation to the scale and construction cost of any proposed building improvements or expansion.
- d. The applicant has addressed safety related site issues on the overall site.
- e. The improvements or minor expansion will not increase non-compliance with other site requirements.

2. **Driveways.** Driveways that do not conform to the City of Dexter design standards shall be removed or redesigned to the greatest extent possible.

3. **Sidewalks.** Whenever modifications are proposed, or any expansion of the building, parking lot or site, the sidewalks shall be installed along the site frontage, as required by the City of Dexter design standards.

4. **Parking.** Existing parking areas must be in good condition, as determined by the Zoning Administrator, and any improvements necessary to provide a safe durable surface have been proposed. For projects involving new development, redevelopment, or change of use, parking areas that are non-conforming in terms of required number of spaces, landscaping, setbacks, lighting or other requirement of this Ordinance, shall be brought into full compliance with this Ordinance if any of the following occur:

- a. The non-conforming parking area is expanded or altered by an area that is 50% or more of the original area.
- b. Twenty-five percent (25%) or more of the surface area of the parking lot is reconstructed (existing pavement removed and replaced).
- c. Where full compliance is not possible due to existing site conditions, a variance may be requested.

- d. Whenever re-occupancy is proposed, or the parking area is not proposed to be expanded or reconstructed beyond the percentages noted in a. and b. above, then any necessary repairs shall be made to the existing parking lot pavement as determined by the Zoning Administrator.
- 5. **Screening.** Whenever modifications are proposed, or any expansion to the building or site proposed, then required screening walls for waste receptacles, fencing of outdoor storage or screening from adjacent residential uses shall be provided.
 - a. Where existing screening walls are in disrepair, they shall be improved to a sturdy and attractive condition.
 - b. All outdoor storage areas shall be screened from adjacent residential uses as required in Section 6.05 and all waste receptacles shall be screened as required in Section 6.10.
- 6. **Landscaping.** For projects involving new development, redevelopment, or a change of use on sites that are non-conforming by reason of landscaping required by this Ordinance, either by required area, materials, or other requirement of this Ordinance, the site shall be brought into compliance under the following conditions:
 - a. Whenever the size of the non-conforming site (building, parking, and outdoor storage) is redeveloped or expanded by an area that is 50% or more of the original non-conforming area, all landscaping on the site shall be brought into compliance.
 - b. Whenever 25% or more the surface area of the landscaped area is redeveloped or reconstructed (existing materials and ground cover removed and replaced) the reconstructed portion of the landscape area shall be brought into compliance with this Ordinance.

Section 4.08 GENERAL REQUIREMENTS

- A. **Structure and Land in Combination.** Where non-conforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.
- B. **Illegal Non-conforming Uses:** Those alleged non-conforming uses which cannot be proven conclusively to have been in existence prior to the date of the enactment or amendment of this Ordinance shall be declared illegal uses and shall be discontinued following the enactment of this subsection.

Section 4.09 USES UNDER EXCEPTION PROVISIONS NOT NON-CONFORMING USES

Any use for which a special exception is permitted as provided in this Ordinance shall not be deemed a non-conforming use, but shall, without further action, be deemed a conforming use in such district.

Section 4.10 CHANGE OF TENANCY OR OWNERSHIP

There may be a change of tenancy, ownership, or management of any existing non-conforming uses of land, structures and land in combination provided there is no change in the nature or character of such non-conforming uses except in conformity with the provisions of this Ordinance.

Section 4.11 ACQUISITION OF NON-CONFORMING USES

The City Council may acquire private property, or an interest in private property, to remove a non-conformity, as provided in Act 207, PA of 1921, as amended.