

Article IV

NONCONFORMITIES

Section 4.01 INTENT

It is the intent of this Ordinance to permit legal nonconforming lots, structures, or uses to continue until they are removed, but not to encourage their survival.

Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

It is recognized that there exists within the districts established by this Ordinance and subsequent amendment, lots, structures and uses of land and structures which were lawful before this Ordinance was passed or amended would be prohibited, regulated, or under the terms of this or future amendments. (Amended April 22, 1996. Effective May 13, 1996)

A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by addition of other uses of a nature which would not be permitted generally in the district involved. (Amended April 22, 1996. Effective May 13, 1996)

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 nonconforming situation.

- B. Nonconforming Building:** A building or portion thereof which was lawfully in existence at the effective date of this Ordinance, or amendments thereto, 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. Nonconforming Lot:** A lot which was lawfully in existence at the effective date of this Ordinance, or amendments thereto, that does not meet the minimum area or lot dimensional requirements of the district in which the lot is located.
- D. Nonconforming Use:** A use which was lawfully in existence at the effective date of this Ordinance, or amendment thereto, 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 Nonconformity:** A nonconformity 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 nonconformity.

Section 4.03 NONCONFORMING LOTS

Any nonconforming 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 (*as defined in Article II of this ordinance*) 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 time of adoption or amendment 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 an 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 nonconforming 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 nonconformity 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 NONCONFORMING USES OF LAND

The lawful use of any land existing on the effective date of this Ordinance or amendment thereto, 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 nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- B. No such nonconforming 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 of adoption or amendment of this Ordinance;
- C. If such nonconforming use of land ceases for any reason for a period of more than six (6) 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. *(Adopted 9/13/04, Effective 10/20/04)*
- 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 XXII.

Section 4.05 NONCONFORMING BUILDINGS AND STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment 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 Nonconformities:** No such building or structure may be enlarged or altered in a way which increases its nonconformity. Such structures may be enlarged or altered in a way which does not increase its nonconformity.
- 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 nonconforming structure or building is altered or modified so as to eliminate, remove, or lessen any or all of its nonconforming characteristics, then such nonconforming 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 nonconformity.

- D. **Restrictions on Replacements:** Nothing in this Ordinance shall prevent the reconstruction, repair, or restoration and the continued use of any nonconforming structure damaged by fire, collapse, explosion, acts of God or acts or public enemy, subsequent to the effective date of this Ordinance.

Any nonconforming building which has been damaged substantially or destroyed may be repaired, rebuilt or replaced within eighteen [18] months of such damage or destruction, provided that such repairs or rebuilding or replacement does not extend or expand the previously existing nonconforming 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 is fully removed, the premises shall be fenced and secured from pedestrian or unauthorized access.

Section 4.06 NONCONFORMING 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 on Enlargement of a Building Housing Nonconforming 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 nonconforming 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 nonconforming use of a structure, or structure and land in combination, may be changed to another nonconforming use of the same or a more restricted classification provided that the Board of Appeals 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 nonconforming use. In permitting such change, the Board of Appeals may require conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a nonconforming 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 nonconforming 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 nonconforming use may not thereafter be resumed.
- E. **Discontinuance or Termination of Nonconforming Use of Structure:** When a non-conforming use is discontinued or ceases to exist for six (6) consecutive months the nonconforming 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 excepted from this provision. Appeals for continuation of such uses shall be provided and determined by making application to the City of Dexter Zoning Board of Appeals. (adopted 9/13/04, effective 10/20/04)
- F. **Repairs to Nonconforming Use:** On any building devoted in whole, or in part, to any nonconforming use, work may be done in any period of eighteen [18] consecutive months on ordinary repairs, improvements, or 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 time of passage or amendment of this Ordinance shall not be increased. Repairs begun within the required eighteen [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.

Section 4.07 GENERAL REQUIREMENTS

- A. **Structure and Land in Combination.** Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
- B. **Illegal Nonconforming Uses:** Those alleged nonconforming 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 4.08 USES UNDER EXCEPTION PROVISIONS NOT NONCONFORMING USES

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

Section 4.09 CHANGE OF TENANCY OR OWNERSHIP

There may be a change of tenancy, ownership, or management of any existing nonconforming uses of land, structures and land in combination.

Section 4.10 ACQUISITION OF NONCONFORMING USES

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

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