

**ARTICLE VII
NONCONFORMING LOTS, STRUCTURES AND USES**

§ 130.40. Intent and purposes.

130.40.1. If, within the ZONING DISTRICTS established by this chapter or due to amendments that may later be adopted, there exist LOTS, STRUCTURES or USES of LOTS which were lawful before this chapter was passed or amended but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments, this chapter permits those nonconformities. Such USES are incompatible with AUTHORIZED USES in the ZONING DISTRICTS involved. Further, nonconformities may not be enlarged upon, expanded or extended nor be used as grounds for adding other SIGNS, STRUCTURES, or USES prohibited elsewhere in the same ZONING DISTRICT, unless the ZONING HEARING BOARD may determine that the enlargement, expansion or extension is necessitated by the natural expansion and growth of trade.

130.40.2. To avoid undue hardship, nothing in this chapter requires a change in the PLANS, CONSTRUCTION or designated USE of any STRUCTURE on which actual CONSTRUCTION was lawfully begun prior to the effective date of adoption or amendment of this chapter and upon which actual CONSTRUCTION had been diligently commenced. "Actual CONSTRUCTION" means the placing of CONSTRUCTION materials in permanent position and fastened in a permanent manner, except that where demolition or removal of an existing STRUCTURE has substantially begun preparatory to rebuilding, such demolition or removal is actual CONSTRUCTION, provided that work is diligently carried on until completion of the STRUCTURE involved.

§ 130.41. NONCONFORMING LOTS.

130.41.1. In any ZONING DISTRICT in which SINGLE-FAMILY DWELLINGS are permitted, a SINGLE-FAMILY DWELLING and customary ACCESSORY BUILDINGS may be erected on any single NONCONFORMING LOT if the LOT is in separate ownership and not of continuous frontage with other LOTS in the same ownership (provided that YARD dimensions and other requirements not involving LOT AREA or LOT WIDTH, or both, of the LOT must conform to the regulations for the ZONING DISTRICT in which such LOT is located). This provision applies even though such LOT fails to meet the requirements for LOT AREA or LOT WIDTH, or both that are generally applicable in the ZONING DISTRICT. Variation of YARD requirements may be obtained only through action of the ZONING HEARING BOARD as provided for by Article VIII, §130.54. **[Amended 4-4-83 by Ord. No. 1024]**

130.41.2. If two (2) or more NONCONFORMING LOTS or combinations of LOTS and portions of LOTS with continuous frontage are in single ownership, and if all or part of the LOTS do not meet the requirements for LOT WIDTH and LOT AREA as

established by this chapter, the LOTS involved will be considered an undivided LOT for the purposes of this chapter. No portion of the undivided LOT may be used or sold which does not meet LOT WIDTH and LOT AREA requirements established by this chapter, nor may any division of the LOT be made which leaves remaining any LOT not meeting the requirements of this chapter.

§ 130.42. NONCONFORMING USES of LOTS.

Where, at the effective date of adoption or amendment of this chapter, a lawful USE of a LOT exists that is made no longer permissible under the terms of this chapter as enacted or amended, such USE may be continued as long as it remains otherwise lawful, subject to the following provisions:

130.42.1. No such NONCONFORMING USE may be enlarged or increased or extended to occupy a greater LOT AREA than was occupied at the effective date of adoption or amendment of this chapter, unless the ZONING HEARING BOARD determines that the enlargement or extension is necessary by the natural expansion and growth of trade of the NONCONFORMING USE.

130.42.2. No NONCONFORMING USE may be moved in whole or in part to any other portion of the LOT occupied by such USE at the effective date of adoption or amendment of this chapter.

130.42.3. If any such NONCONFORMING USE of a LOT ceases for any reason for a period of more than twelve (12) consecutive months, any subsequent USE of such LOT must conform to the regulations specified by this chapter for the ZONING DISTRICT in which such LOT is located.

§ 130.43. NONCONFORMING STRUCTURES.

Where a lawful STRUCTURE exists at the effective date of adoption or amendment of this chapter that could not be built under the requirements of this chapter, such STRUCTURE may be continued as long as it remains otherwise lawful, subject to the following provisions:

130.43.1. No such STRUCTURE may be enlarged or otherwise have any STRUCTURAL ALTERATIONS made to it in a way which increases its nonconformity, except when the ZONING HEARING BOARD may determine undue hardship and may authorize a reasonable modification of such STRUCTURE.

130.43.2. Should such STRUCTURE be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it may not be reconstructed except in conformity with the provisions of this chapter. In the event that such damage or destruction is fifty percent (50%) or less than the replacement cost of the STRUCTURE, it may be restored if such restoration is started within twelve (12) months of the date of damage.

130.43.3. Should such a STRUCTURE be moved for any reason for any distance whatever, it must therefore conform to the requirements of the ZONING DISTRICT in which it is located.

130.43.4. In addition to the requirements of §130.43.1., 130.43.2., and 130.43.3. STRUCTURES existing in any IDENTIFIED FLOODPLAIN AREA prior to March 5, 1984, may continue, provided that no expansion or enlargement of any existing STRUCTURE will be allowed within any identified Floodway ZONING DISTRICT that would cause any increase in FLOOD heights. **[Added 4-7-86 by Ord. No. 1194]**

§ 130.44. NONCONFORMING USE of STRUCTURES.

If a lawful USE of a STRUCTURE or of a STRUCTURE and LOT in combination exists at the effective date of adoption or amendment of this chapter that would not be allowed in the ZONING DISTRICT under this terms of this chapter, the lawful USE may be continued, subject to the following provisions:

130.44.1. No existing STRUCTURE devoted to a USE not permitted by this chapter in the ZONING DISTRICT in which it is located may be enlarged, extended, constructed, reconstructed, moved or otherwise have any STRUCTURAL ALTERATIONS made to it except in changing the USE of the STRUCTURE to an AUTHORIZED USE in the ZONING DISTRICT in which it is located, unless the ZONING HEARING BOARD determines that the enlargement, extension, CONSTRUCTION, reconstruction or STRUCTURAL ALTERATION is necessitated by the natural expansion and growth of trade of the NONCONFORMING USE.

130.44.2. Any NONCONFORMING USE may be extended throughout any part of a STRUCTURE which was manifestly arranged or designed for such USE at the time of adoption or amendment of this chapter, but no such USE may be extended to occupy any LOT or portion of a LOT outside such STRUCTURE, except on a LOT or portion of a LOT owned at the time the use became NONCONFORMING.

130.44.3. Any STRUCTURE or STRUCTURE and LOT in combination in or on which a NONCONFORMING USE is superseded by an AUTHORIZED USE must thereafter conform to the regulations for the ZONING DISTRICT in which such STRUCTURE is located, and the NONCONFORMING USE may not thereafter be resumed.

130.44.4. When a NONCONFORMING USE of a STRUCTURE or STRUCTURE and LOT in combination is discontinued for twelve (12) consecutive months or for eighteen (18) months during any three-year period, it shall be presumed that the use is abandoned and the APPLICANT (owner) shall have the burden of presenting evidence to show that the use was not abandoned. **[Amended 4-1-96 by Ord. No. 1708]**

130.44.5. Where nonconforming status applies to both the USE and the STRUCTURE on the LOT, removal or destruction of the NONCONFORMING STRUCTURE must eliminate the NONCONFORMING USE on the LOT.

§ 130.45. Repairs and maintenance.

Nothing in this chapter prevents the strengthening or restoring to safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the safety of the populace.

§ 130.46. USES approved under CONDITIONAL USE provisions.

Any USE for which a CONDITIONAL USE is approved in accordance with Article VIII, §130.55., of this chapter, is not a NONCONFORMING USE but a conforming USE in the ZONING DISTRICT.

§ 130.47. Standards for Change from One Nonconforming Use to Another Nonconforming Use.

A change from one nonconforming use to another nonconforming use may be authorized by the ZONING HEARING BOARD provided the new USE is no more detrimental to both the purposes of the ZONING CODE and the neighborhood than is the USE that is to be discontinued and replaced. [Added 10-6-97 by Ord. No. 1750]

§§ 130.48-49. Reserved for Future Use.

PAGES 485-490 RESERVED FOR FUTURE USE.