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Chapter 11 - NONCONFORMITIES

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ARTICLE 1. - GENERAL PROVISIONS

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Section 11.1.1. - Effect of a Variance.

The grant of a variance by the Board of Zoning Appeals shall eliminate a specific nonconformity or nonconformities, unless the applicant or owner fails to comply with specified time limits established by the Board. The grant of a variance shall place the nonconformity into a conforming status.

Section 11.1.2. - Existing Residential Lots of Record.

In any residential zoning district that allows a single-family dwelling, an existing lot of record that does not comply with minimum lot size or minimum lot dimensions of that district may be used for a detached single-family dwelling, subject to the standards listed below.

- A. *Minimum Side and Side Corner Yard.* A minimum side yard and side corner yard shall be provided consistent with the requirements of the zoning district shall be provided.
- B. *Minimum Front and Rear Yards.* A front and rear yard consistent with the requirements of the zoning district shall be provided.

Section 11.1.3. - Existing Nonresidential Lots of Record.

In any nonresidential zoning district an existing lot of record that does not comply with minimum lot size or lot dimensions of the applicable zoning district may be used for any permitted or special exception use, subject to the requirements of this UDO.

Section 11.1.4. - Permitted and Special Exception Uses as Legal Nonconforming Uses.

- A. *Permitted Uses and Nonconforming Uses.* For the purposes of this UDO, the term permitted use shall not be deemed to include a legal nonconforming use.
- B. *Special Exceptions as Legal Nonconforming Uses.*
 - 1. *Exclusion.* For the purposes of this UDO, the term special exception use shall not be deemed to include a legal nonconforming use.

2. *Uses Classified as a Special Exception.*

- (A) *Status.* A use legally established as a permitted use prior to the effective date of these regulations that now is considered a special exception use in the applicable zoning district shall be a permitted use.
- (B) *Compliance with Special Exception Criteria.* If an application for expansion, rehabilitation, renovation, repair or similar improvements to a structure or use is submitted to the City, special exception use approval shall be necessary if the application complies with either or both of the standards listed below.
- (1) The value of the proposed work is equal to or greater than 50 percent of the value of the improvements.
- (2) The structure or use is destroyed or damaged to an extent that is equal to or greater than 50 percent of the value of the improvements.

Section 11.1.5. - Lot Size.

- A. *Creation of Nonconforming Lot Prohibited.* A lot or group of adjacent lots in the same ownership as of April 1, 1984, shall not be reduced in size so as to be nonconforming with the requirements of this UDO.
- B. *Exemption.* In areas subdivided prior to April 1, 1984, and the resulting lots that were not substandard at the time of the subdivision, the lots that were legally created may be subdivided to allow the sale of a principal structure. The subdivision may occur even if the resulting lots are not consistent with the property development regulations of this UDO.

Section 11.1.6. - Illegal Nonconformities.

A nonconformity that was illegal prior to the effective date of these land development regulations shall remain an illegal nonconforming use.

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ARTICLE 2. - NONCONFORMING USES

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Section 11.2.1. - Nonconforming Uses.

Except as otherwise provided in this Section, the lawful use of any use, building, structure or land existing as of the effective date of these land development regulations or subsequent amendment, may be continued, although such use does not conform to the provisions of these regulations.

Section 11.2.2. - Termination of Nonconforming Uses.

If a nonconforming use is discontinued for a period of six months or the change of a nonconforming use to a more restrictive or conforming use occurs for any period of time, the nonconforming use shall be considered terminated and shall not be re-established.

Section 11.2.3. - Change of Use.

- A. *Change to a Conforming Use.*
1. *Change Permitted.* A nonconforming use may be changed into a conforming use, subject to applicable requirements of these land development regulations.
 2. *Reversion Prohibited.* When a nonconforming use is changed to a conforming use, the use of the

structure, building or land shall not thereafter be changed into a nonconforming use or a less restricted nonconforming use.

- B. *Change to Another Nonconforming Use.*** A nonconforming use or structure shall not be changed to another nonconforming use of an equal or more restricted classification provided that no structural change, enlargement, extension or reconstruction is made.

Section 11.2.4. - Reconstruction, Expansion or Extension.

An existing building or structure devoted to a nonconforming use shall not be enlarged, extended, reconstructed or structurally altered except as provided below.

- A. *Restoration.*** Any building devoted to a nonconforming use that is damaged to an extent that is less than 50 percent of the value of the improvements, may be restored, reconstructed, or used as before.
- 1. *Limits of Reconstruction.***
 - (A) *Reconstruction Permitted.*** The reconstruction shall not exceed the location and dimension of the existing structure, including bulk, height, setbacks and number of square feet that existed prior to the damage.
 - (B) *Time for Compliance.*** The restoration must be completed within 12 months from the date of the damage, or the use of such building, structure, or land as a legal nonconforming use shall thereafter be terminated.
- B. *Restoration Prohibited.*** Any building devoted to a nonconforming use that is damaged to an extent that is equal to or greater 50 percent of the value of the improvements shall not be restored, reconstructed, or used as before.
- C. *Extension.***
- 1. *Extension Prohibited.*** Unless otherwise provided herein, a nonconforming use shall not be extended or enlarged throughout a building.
 - 2. *Exception.*** A single-family or two-family dwelling that is located on an individual lot within a RMD, RMF1, RMF2, or RO zoning district may be extended or enlarged.
 - (A)** The extension shall comply with the property development regulations of the RMF2 zoning district.
 - (B)** The extension shall not increase the number dwelling units contained within such residential buildings.

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ARTICLE 3. - NONCONFORMING STRUCTURES

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Section 11.3.1. - Unsafe Structures.

Any nonconforming building or structure or portion thereof declared unsafe by a proper authority shall not be restored to a standard condition, except in conformance with the requirements of this Article.

Section 11.3.2. - Reconstruction, Expansion or Extension.

A nonconforming structure shall not be enlarged, extended, reconstructed or structurally altered except as provided below.

- A. *Reconstruction or Restoration.*** A nonconforming structure that is damaged to an extent that is less than 50 percent of the value of the improvements may be reconstructed or restored.
- 1. *Limits of Reconstruction.***

- Reconstruction Permitted.* The reconstruction shall not exceed the location and dimension of the existing structure, including bulk, height, setbacks and number of square feet that existed prior to the damage.
- (A) *Time for Compliance.* The restoration must be completed within two years from the date of the damage, or the use of such building, structure, or land as a legal nonconforming use shall thereafter be terminated.
- (B) *Reconstruction or Restoration Prohibited.*
1. *Nonconforming Uses.* Any building devoted to a nonconforming use that is damaged to an extent equal to or greater 50 percent of the value of the improvements shall not be reconstructed or restored unless the new construction complies with the requirements of these land development regulations. The nonconforming use that occupied the prior structure may be re-established, subject to all other requirements of this Article.
 2. *Conforming Uses.* The use of any nonconforming structure that is damaged to an extent equal to or greater 50 percent of the value of the improvements shall not be reconstructed or restored unless the new construction complies with the requirements of these land development regulations.

Section 11.3.3. - Alterations and Repairs.

- A. *Nonresidential Structures.*
1. *Alterations and Repairs.* A nonconforming building or structure shall not be structurally altered or repaired during its life to an extent that such cumulative alterations and repairs exceed 25 percent of the value of all improvements, unless the use of structure is changed to a conforming use.
 2. *Expansion of Use Prohibited.* Normal maintenance, repairs and incidental alteration of a conforming structure containing a nonconforming use are permitted, provided that repairs and alterations do not extend the number of square feet occupied by the nonconforming use.
- B. *Residential Structures.* A nonconforming structure containing a residential use may be altered to improve interior livability, provided that an alteration shall not be made that increases the nonconformity with regard to the number of dwelling units, the bulk or number of square feet of the structure, or applicable property development regulations.

Section 11.3.4. - Prior Approval.

On the effective date of this Article, adoption of this Article shall not require any change in the plans, construction or designated use of a structure complying with existing laws, subject to the standards listed below.

- A. *Permit Granted.* A building permit for structure has been granted.
- B. *Completion.* The structure shall be completed, according to such plans as filed, within six months from the effective date of this Article.

Section 11.3.5. - Administrative Appeals.

Appeal from a decision relating to these land development regulations by an administrative official may be made to the Board of Zoning Appeals as provided herein.