

SECTION 9 NON-CONFORMING LOTS, STRUCTURES AND USES

SECTION 9.1 Intent of Resolution Concerning Non-Conformities

Within the districts established by this Resolution or amendments that may later be adopted there exists lots, uses of land, structures, and uses of structures and land in combination, which were lawful before this resolution was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Resolution or future amendments. It is the intent of this resolution to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this resolution that non-conformities 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.

SECTION 9.2 Avoidance of Undue Hardship

To avoid undue hardship, nothing in this Resolution shall be deemed to require a change in the plans, construction, or designated use of any building on which a valid building permit was issued, or actual construction was lawfully begun prior to the effective date of adoption or amendment of this Resolution and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. 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 that the work shall be carried out diligently.

Any nonconforming structure that is ready for or under construction at the time of adoption or amendment of this Resolution may be completed and occupied in accordance with the requirements of a valid building permit and zoning permit issued prior to such adoption or amendment data.

SECTION 9.3 Single Nonconforming Lots of Record

In any district in which single family dwellings are permitted, a single family dwelling and customary accessory buildings may be erected on any single lot of record existing at the effective date of adoption or amendment of this Resolution, notwithstanding limitations imposed by other provisions of this Resolution. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area and/or width that are generally applicable in the district. Yard dimensions and requirements other than those applying to area and/or width shall conform to the regulations for the district in which such lot is located.

Variances for district requirements, other than lot area or lot width, shall be obtained only through action of the Board of Zoning Appeals as provided in Section 12.

SECTION 9.4 Nonconforming Lots of Record in Combination

If two or more nonconforming lots, or portions thereof, with continuous frontage are in single ownership, the BZA may, upon appeal of the Zoning Inspector's decision to deny a zoning permit for failure to meet the requirements of this Resolution, determine that these lots are or are not to be an undivided parcel for the purpose of this Resolution. If considered an undivided parcel, no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Resolution, nor shall any division of said parcel be made which creates a lot with a width or area below the requirements stated in this Resolution.

SECTION 9.4 Nonconforming Lots of Record in Combination (cont'd)

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If each said parcel is developed separately, a finding shall be made by the BZA that such development and density will not be a detriment to the surrounding area.

SECTION 9.5 Nonconforming Uses of Land

Where, at the time of adoption of this Resolution, lawful uses of land exist which would not be permitted by the regulations imposed by this Resolution, the uses may be continued so long as they remain otherwise lawful, provided:

1. No such nonconforming uses 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 resolution;
2. No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Resolution;
3. Additional structures which do not conform to the requirements of this Resolution shall not be erected in connection with such nonconforming use of land;
4. If any such nonconforming uses of land are discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this Resolution for the district in which such land is located. A nonconforming use shall be considered voluntarily discontinued or abandoned:
 - a) When the intent of the owner to discontinue the use is apparent, or,
 - b) When the characteristic equipment and the furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within the 2 year period, or,
 - c) When it has been replaced by a conforming use, or,
 - d) When it has been changed to another nonconforming use by first obtaining a permit from the Board of Zoning Appeals.

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SECTION 9.6 Nonconforming Structures

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

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;

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SECTION 9.6 Nonconforming Structures (cont'd)

2. Should such nonconforming structure or nonconforming portion of structure be damaged so extensively that such structure is rendered unfit for occupancy by any means, it shall not be reconstructed except in conformity with the provisions of this Resolution;
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is move.

SECTION 9.7 Nonconforming Uses of Structures or of Structures and Land in Combination

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

1. No existing structure devoted to a use not permitted by this resolution 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;
2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Resolution, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure or structure and land, may, upon appeal to the Board of Zoning Appeals, be changed to another nonconforming use provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. The appeal procedure (See Section 12.2.1) requires that the request for substitution be made first to the Zoning Inspector, who must deny the zoning permit. The appeal is then taken to the BZA for the final determination. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with other provisions of this Resolution;
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
5. 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;

SECTION 9.7 Nonconforming Uses of Structures or of Structures and Land in Combination (cont'd)

6. When a nonconforming use of a structure, or structure and land in combination is discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. A nonconforming use shall be considered voluntarily discontinued or abandoned:
- a) When the intent of the owner to discontinue the use is apparent, or,
 - b) When the characteristic equipment and the furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within the two year period, or,
 - c) When it has been replaced by a conforming use, or,
 - d) When it has been changed to another nonconforming use by first obtaining a permit form the Board of Zoning Appeals.

SECTION 9.8 Expansion, Repair, and Maintenance

A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this resolution by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that the cubic content (floor area) existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.