

ARTICLE 5
NON-CONFORMING

§5.01 PURPOSE

Within the zoning districts established by this Ordinance there exist: lots, structures, uses of land and structures, and characteristics of use which were lawful prior to adoption of this Ordinance, but do not conform to provisions of this Ordinance or which may be made non-conforming as a result of future amendments to this Ordinance. These include structures that were granted variances under the provisions of a previous ordinance. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded or extended in a way that increases the non-conformity, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.

§5.02 NON-CONFORMING USE

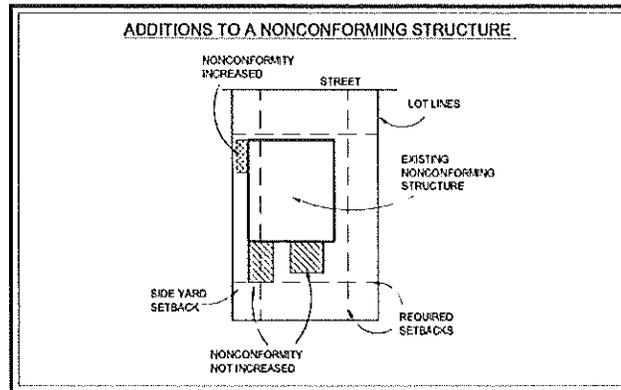
Any use of land or structure, which use was lawful or a legal non-conforming use at the time of the effective date of this Ordinance, may be continued; provided, however, such use shall not be enlarged, altered, or changed in area, activity, or content during its continuance, except as provided otherwise by proper authority, as defined herein.

- A. Any non-conforming use which has ceased its usual conduct of such business for a period of one (1) year or more shall be considered to have terminated, and may not thereafter commence operation.
- B. Any non-conforming use in a residential zoning district may only change to a use that is conforming to the district it is located in. A non-conforming use in a commercial or industrial zoning district may change to a use that, in the opinion of the Zoning Board of Appeals, is equally or less non-conforming than the current use. That determination will be made by the Zoning Board of Appeals following a public hearing which meets the notice requirements of Section 9.02E and findings of fact based on the anticipated off-site impacts of the proposed and current uses.
- C. No non-conforming use in a residential district may be enlarged by increasing the area of land or structures it occupies. A non-conforming use in a commercial or industrial district may be permitted to expand if the Zoning Board of Appeals determines that the expansion will not be detrimental to character of the area. That determination will be made following a public hearing which meets the notice requirements of Section 9.02E.

§5.03 NON-CONFORMING STRUCTURE

The use of or occupancy of a non-conforming structure, which was a lawful structure or a legal non-conforming structure at the time of the effective date of this Ordinance, may be continued; provided, however, no enlargement, change, or alteration shall be permitted upon such non-conforming structure, except upon a finding by the Zoning Administrator that such enlargement, change or alteration does not constitute an expansion of the non-conformity; and that the use within such structure is in conformity with the requirements of this Ordinance (See Figure 5-1)

Figure 5-1



- A. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure, or part thereof, declared to be unsafe by any official charged with providing for the public safety, and which strengthening or restoration is ordered by such official.

§5.04 NON-CONFORMING LOT

Any lot which was lawful or legally non-conforming at the time of the effective date of this Ordinance, but does not comply with all the provisions of this Ordinance may be continued in use; provided, however, a change in the location, modification, or construction of any structure on such lot shall be permitted, provided the change complies with the setback requirements of the district in which it is located.

§5.05 DESTRUCTION OF STRUCTURE

Nothing in this Ordinance shall prevent the restoration, rebuilding, or repairing of any non-conforming structure, or a structure housing a non-conforming use, which structure has been damaged by fire, acts of God, or any act of a public enemy, subsequent to the effective date of this Ordinance, in an amount up to and including sixty-five (65) percent of the replacement value of the structure as determined by the City Assessor and provided that the restoration or repairing shall have commenced and is diligently prosecuted within one (1) year after the date of destruction. A non-conforming single family residence may be replaced even if the structure is completely destroyed.

§5.06 MAINTENANCE

Nothing in this Ordinance shall prevent the renovation or repair of non-structural members, or the maintenance of a non-conforming structure made necessary by ordinary wear and tear, provided the cost per year of such repair or maintenance does not exceed twenty-five (25) percent of the value of the structure as determined by its state equalized valuation.

§5.07 CHANGE IN TENANCY OR OWNERSHIP

A non-conforming lot, structure, or use of land or structure, may be sold or change tenants without affecting its non-conforming status.