

ARTICLE II EXEMPTIONS AND NONCONFORMING USES

SECTION A. AGRICULTURAL USES EXEMPTED FROM PROVISIONS OF RESOLUTION ¹

The use of land for agricultural purposes or the construction or use of buildings or structures incident to the use of agricultural purposes or land on which buildings or structures are located is exempt from zoning districts established by this Resolution except as regulated in Article VII, Section C (Supplemental Regulations for Agricultural Land Uses).

SECTION B. NONCONFORMING USES

1. INTENT OF RESOLUTION CONCERNING NONCONFORMITIES

If within the districts established by this resolution or amendments that may later be adopted, there exist lots, uses of land, structures, buildings 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 nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this resolution 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. ²

2. SINGLE NONCONFORMING LOTS OF RECORD

- a. In any district 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.
 - (1) 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.
 - (2) 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, with the following exception: Where a lot of record at the time of the effective date of this Resolution is of less width than the minimum lot width required in the district in which the lot is located, the sum of the side yard requirements of nonconforming lots of record may be reduced administratively by thirty (30) percent. ³
- b. 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 Article XII, Section C.2.b. Variances may not be issued by the Board of Zoning Appeals for the required lot area or lot width.

¹ HISTORY: Amended Effective February 18, 2005

² HISTORY: Amended Effective February 17, 2011

³ HISTORY: Amended Effective February 18, 2005

SECTION B. NONCONFORMING USES (Contd.)

3. NONCONFORMING LOTS OF RECORD IN COMBINATION

If two or more nonconforming lots, or portions thereof, with continuous frontage are in single ownership, the Board of Zoning Appeals 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.

- a. 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.
- b. If each said parcel is developed separately, a finding shall be made by the Board of Zoning Appeals that such development and density will not be a detriment to the surrounding area.

4. 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:

- a. 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;
- b. No such nonconforming uses shall be moved in whole or in part of 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;
- c. Additional structures which do not conform to the requirements of this resolution shall not be erected in connection with such nonconforming use of land;
- d. 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:
 - (1) When the intent of the owner to discontinue the use is apparent, or
 - (2) 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
 - (3) When it has been replaced by a conforming use, or
 - (4) When it has been changed to another nonconforming use by first obtaining a permit from the Board of Zoning Appeals.

SECTION B. NONCONFORMING USES (Contd.)

5. NONCONFORMING STRUCTURES⁴

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, 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:

- a. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted classification. Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use. The nonconforming use of a building may be extended throughout those parts thereof which were manifestly arranged or designed for such use at the time of adoption of this Resolution or any amendment thereto.
- b. An owner of a single-family dwelling erected prior to the effective date of this Resolution shall be permitted to enlarge or structurally alter such dwelling to provide additional enclosed space for living or garage purposes, provided, however, no side yard shall be reduced to less than five (5) feet. No other 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.
- c. Nonconforming trailers or mobile homes located on a lot in any district, other than an R-6 District, once removed, shall not be replaced by any other unit except for those meeting the manufactured home definition of ORC 3781.10 or constructed in compliance with Federal Manufactured Housing Construction and Safety Standards Act of 1974. Those units not meeting the requirements of ORC 3781.10, shall be conditioned and require Board of Zoning Appeals review.
- d. A nonconforming building which has been damaged by fire, explosion, act of God, or the public enemy to the extent of more than sixty (60) percent of its reproduction value at the time of damage shall not be restored except in conformity with the regulations of the district in which it is located. When damaged by less than sixty (60) percent of its reproduction value, a nonconforming building may be repaired or reconstructed and used as before the time of damage, provided such repairs or reconstruction are completed within one (1) year of the date of such damage.
- e. Should a nonconforming 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 moved.

⁴ HISTORY: Amended Effective February 18, 2005

SECTION B. NONCONFORMING USES (Contd.)

6. 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:

- a. 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.
- b. 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
- c. If no structural alterations are made, any nonconforming use of a structure or structure and land may, upon appeal to the Board of Zoning Appeal, be changed to another nonconforming use provided that the Board of Zoning Appeal shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. The appeal procedure (See Article XII, Section C.2.a.) 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 Board of Zoning Appeal for the final determination. In permitting such change, the Board of Zoning Appeal may require appropriate conditions and safeguards in accord with other provisions of this resolution.
- d. 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.
- e. 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.
- f. When a nonconforming use of a structure, or structures 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:⁵
 - (1) When the intent of the owner to discontinue the use is apparent, or

⁵ HISTORY: Amended Effective February 18, 2005

SECTION B. NONCONFORMING USES (Contd.)

- (2) 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
- (3) When it has been replaced by a conforming use, or
- (4) When it has been changed to another nonconforming use by first obtaining a permit from the Board of Zoning Appeals.

7. EXPANSION, REPAIR, AND MAINTENANCE

- a. 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. Also, the attachment on a building or premises of additional signs intended to be seen from off the premises, or the addition of other uses of a nature which would be generally prohibited in the district in which such use is located are prohibited.
- b. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair 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.

8. PENDING APPLICATION FOR BUILDING PERMIT ⁶

Nothing herein contained shall require any change in the overall layout, construction, size, or designated use of any development, building, structure, or part thereof for which official approvals and required building permits have been granted before the enactment of this Resolution, the construction of which, conforming with such plans, shall have been started prior to the effective date of this Resolution and completion thereof carried on in a normal manner within the subsequent twelve (12) month period and not discontinued until completion, except for reasons beyond the control of the builder. The start of construction shall be defined as the first placement of permanent construction of a structure on a site such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Start of construction does not include land preparation such as clearing, grading and filling; installation of streets and/or walkways; excavation for basement, footing, piers or foundations; erection of temporary forms; or installation on the property of accessory structures such as garages or sheds not occupied as a dwelling unit or not part of the main structure. The actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

⁶ HISTORY: Amended Effective February 18, 2005