

## **ARTICLE 5 NON-CONFORMING**

### **SECTION 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, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.

### **SECTION 5.02 Non-conforming lots of record**

Two or more legal lots of record that were under common ownership and were not separate tax parcels at the time of the adoption of this amendment to the Ordinance (adoption date) may not be treated as separate zoning lots, except in compliance with the requirements of this Ordinance.

(Amended: Ord. No. 681, 6-4-07)

### **SECTION 5.03 Non-conforming structures**

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

- A. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity, or in a way that neither increases nor decreases the non-conformity unless granted a variance by the Zoning Board of Appeals (see Figure 5-1). Adding to the height of a building located within the "sight line" or additions that encroach into a sight line as defined in this ordinance constitutes increasing its non-conformity (see Figure 5-2).

Figure 5-1

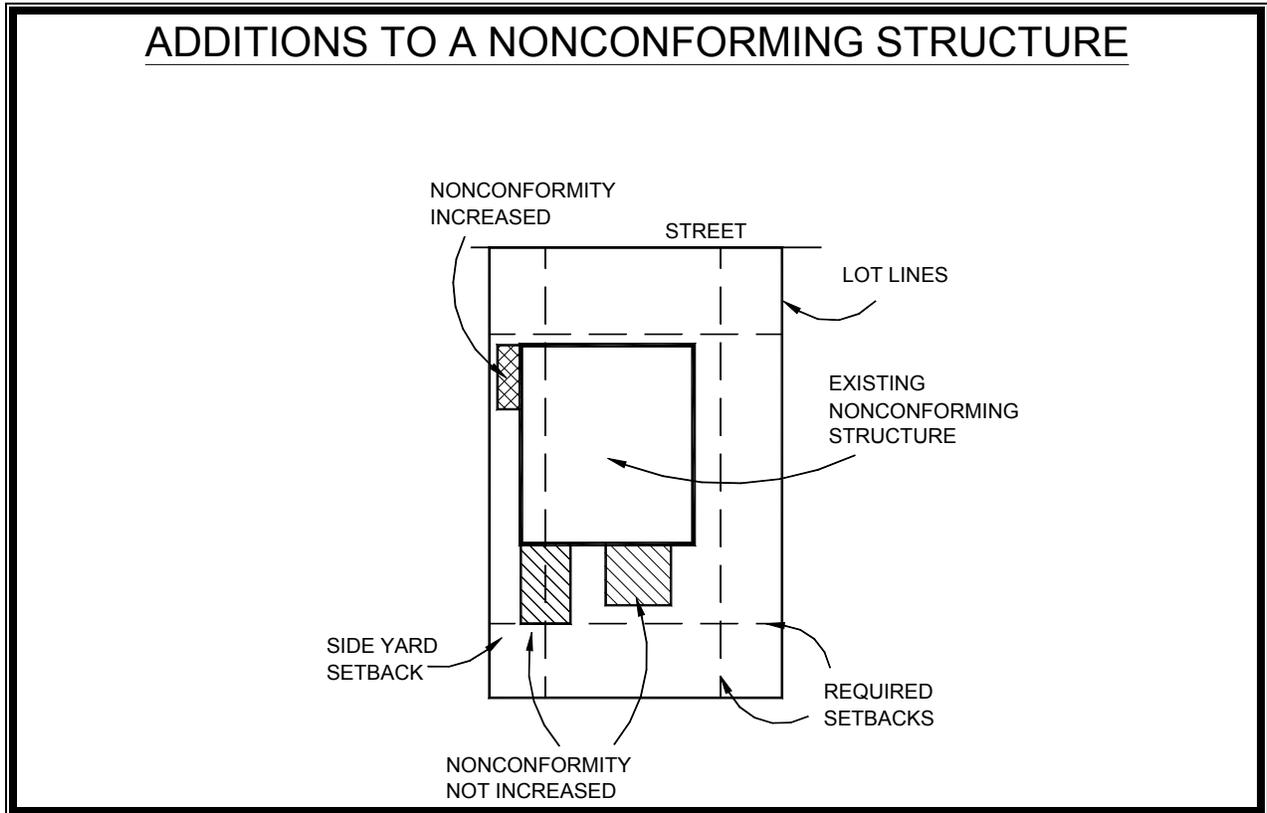
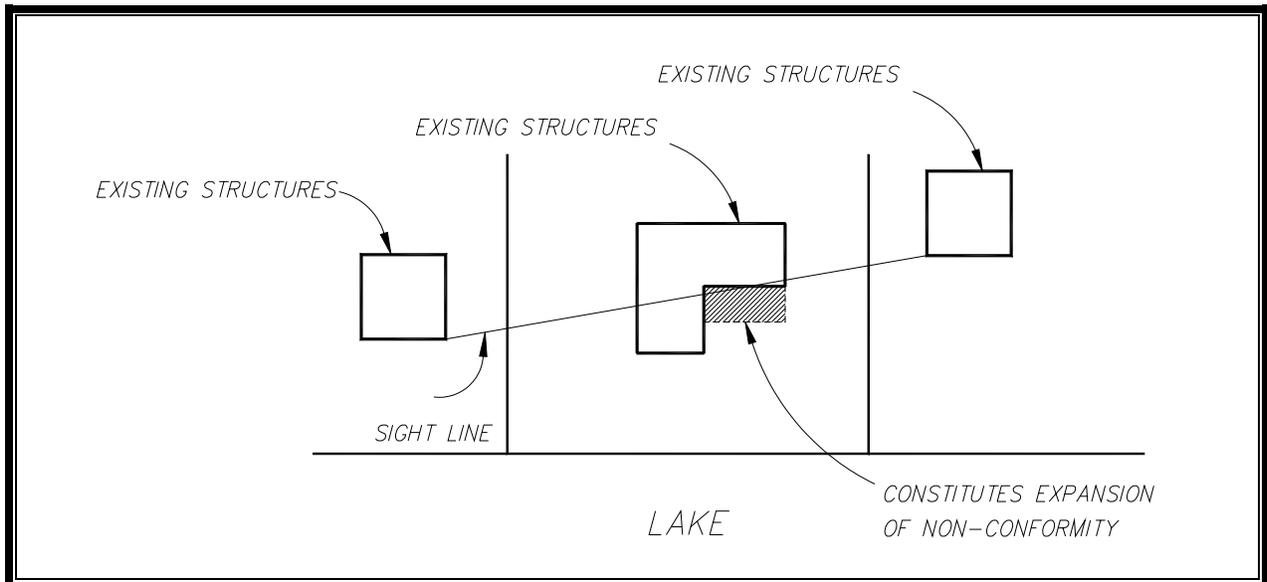


Figure 5-2



- B. Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than one hundred (100) percent of its state equalized value (SEV) value at time of destruction, or fifty (50) percent of its market value at the time of its destruction as determined by a certified appraiser hired by the

property owner, it shall not be reconstructed except in conformity with the provisions of this Ordinance, unless a variance is granted by the Zoning Board of Appeals.

- C. Should such structure be moved for any reason, it shall hereafter conform to the regulations for the zoning district in which it is located after it is moved.

#### **SECTION 5.04 Non-conforming uses of land**

Where a lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, or a future amendment to this Ordinance, the use may be continued so long as it remains otherwise lawful provided:

- A. No such non-conforming use shall be enlarged or increased, including the addition or enlargement of signs or the addition of other non-conforming uses, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
- B. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.
- C. If any such non-conforming use of land ceases for any reason for a period of more than twelve (12) consecutive months, such cessation of activity shall be determined to demonstrate an intent to abandon the non-conforming use and any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zoning district in which such land is located.
- D. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.
- E. A non-conforming use of land may be changed to another non-conforming use by approval of the Zoning Board of Appeals, provided that the Zoning Board of Appeals determines that the proposed use is more consistent with the current zoning classification than the current use. Whenever a non-conforming use of land has been changed to a conforming use, it shall not thereafter be changed to a non-conforming use.
- F. A non-conforming use of land may be expanded by approval of the Zoning Board of Appeals when an applicant has demonstrated practical difficulty under the standards in Section 13.04.

### **SECTION 5.05 Non-conforming uses of structures**

If a lawful use involving individual structures or involving structure and premises in combination exists at the effective date of adoption of this Ordinance, or future amendment to the ordinance that would not be allowed in the zoning district under the terms of this Ordinance, 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 Ordinance in the zoning 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 zoning district in which it is located.
- B. Any non-conforming 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 Ordinance, but no such use shall be extended to occupy any land outside such building.
- C. If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may be changed to another non-conforming use by approval of the Zoning Board of Appeals provided that the Zoning Board of Appeals determines that the proposed use is more consistent with the current zoning classification than the current use. Whenever a non-conforming use has been changed to a conforming use, it shall not thereafter be changed to a non-conforming use.
- D. When a non-conforming use of a structure, or structures and premises in combination, is discontinued or abandoned for twelve (12) consecutive months such cessation of activity shall be determined to demonstrate an intent to abandon the non-conforming use and the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which it is located.
- E. Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this section is defined as damaged to an extent more than one hundred (100) percent of the state equalized value (SEV) value at time of destruction, or fifty (50) percent of its market value as determined by a certified appraiser hired by the property owner.

### **SECTION 5.06 Repairs and maintenance**

- A. For any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of twelve (12) consecutive months for ordinary repairs, or on repair or replacement of non-bearing: walls, fixtures, wiring, or plumbing, to an extent not exceeding twenty (20) percent of the current state equalized value

(SEV) of the non-conforming structure or non-conforming portion of the structure, provided that the cubic content existing when it became non-conforming shall not be increased.

- B. If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by the Building Inspector to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulation of the zoning district in which it is located.
  
- C. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by the Building Inspector.

**SECTION 5.07 Change of tenancy or ownership**

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