

ARTICLE 14-26

NON-CONFORMING USES

CONTENTS

14-26-1	INTENT
14-26-2	CLASSIFICATION OF NON-CONFORMANCE
14-26-3	PERMITTED CONTINUANCE OF NON-CONFORMANCE
14-26-4	EXCEPTIONS
14-26-5	RECORD OF NON-CONFORMANCE
14-26-6	PURCHASE OR CONDEMNATION

14-26-1 INTENT

Within the zoning district established by this chapter, there exist certain lots, structures and uses of land and structures, which were lawful prior to the effective date of this chapter, but which are prohibited, regulated or restricted under the terms of this chapter. Such uses are declared to be non-conforming uses and to be incompatible with permitted uses in the districts involved; their elimination, as expeditiously as is reasonable, is declared to be of as much concern to the public health, safety and welfare, as are the provisions of this chapter. It is therefore, the intent of this chapter to define and classify non-conforming uses, and, according to such classification to establish the conditions under which they may be continued or shall be terminated and brought into conformity. It is the further intent that such non-conformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other structures or uses prohibited elsewhere in the same district. There may, however, be a change of ownership, tenancy or management of the various categories of non-conforming uses, provided that the extent of non-conformity is not increased.

14-26-2 CLASSIFICATION OF NON-CONFORMANCE

For the purposes of this chapter, non-conforming uses are classified as follows:

- A. *Class A Non-conformance -- non-conforming lots of record.* Single-family residential lots existing on February 9, 1971, which do not meet lot width or lot area requirements for the district in which located.
- B. *Class B Non-conformance -- non-conforming uses of land not involving buildings.* Uses of land existing on February 9, 1971 which are not permitted by this chapter in the district in which located.
- C. *Class C Non-conformance -- non-conforming buildings or structures.* Structures existing on February 9, 1971 that:

1. Do not conform to requirements for building height, setback or distance between buildings for the district in which located.
 2. All industrial or commercial buildings or structures not specifically permitted in the particular residential district in which located.
 3. All residential buildings not specifically permitted in the particular commercial or industrial zone in which located.
- D. *Class D non-conformance -- non-conforming uses of buildings.* Uses of buildings, or of buildings and premises in combination, existing on February 9, 1971, which are not permitted in the district in which located.
- E. *Class E non-conformance -- non-conforming uses of buildings.* Uses of buildings existing on February 9, 1971, which do not conform to lot area per dwelling unit requirements for the district in which located.

14-26-3 PERMITTED CONTINUANCE OF NON-CONFORMANCE

Non-conforming uses, buildings and structures may be continued so long as they remain otherwise lawful, subject to the following conditions:

- A. *Class A non-conformance -- non-conforming lots of record.* In any district in which single-family dwelling and customary accessory buildings may be erected on any single lot of record, even though such lot fails to meet area and width requirements established by this chapter for the district in which such lot of record is located; provided that:
1. Such lot is in separate ownership and not contiguous with other lots in the same ownership.
 2. Yard dimensions and other requirements not involving area or width, or both, conform to regulations for the district in which located.
 3. A minimum variance necessary to relieve the specific hardship has been granted by the Board.
 4. If two (2) or more lots, or combination of lots and portions of lots, having contiguous frontage in single ownership are of record, and if all or part of such lots do not meet requirements for lot width and lot area established by this chapter, the aggregate land involved shall be considered to be an undivided parcel, and no portion of said parcel shall be used or sold which does not meet lot width and lot area requirements of this chapter, nor shall any division of the parcel be made which leaves remaining any lot having width or area not meeting requirements of this chapter.
- B. *Class B non-conformance -- non-conforming uses of land not involving buildings.*
1. No such non-conforming use shall be enlarged or increased or extended to occupy a greater area of land than it occupied on February 9, 1971.

2. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use on February 9, 1971.
3. If any such non-conforming use ceases for any reason for a period of time of more than one hundred eighty (180) days, any subsequent use of land shall meet all provisions of this chapter for the district in which located.

C. *Class C non-conformance -- non-conforming buildings or structures.*

1. Any such building or structure may be enlarged or altered in any way which does not increase its non-conformity.
2. Should any such building or structure be destroyed by any means to an extent greater than fifty percent (50%) of its most recent assessor's full cash value at the time of destruction, it shall not be re-constructed except in conformity with provisions of this chapter.
3. Should any such building or structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which located after moving.

D. *Class D non-conformance -- non-conforming uses of buildings.*

1. No building devoted to such use shall be enlarged, extended, constructed, reconstructed, moved or structurally altered in any way which increases the extent of non-conformity of its use.
2. A non-conforming use of a building may be extended throughout any parts of the building which were manifestly arranged or designed for such use on February 9, 1971 provided that no such use shall be extended to occupy any land outside such a building.
3. If no structural alterations are made, a non-conforming use of a building and its premises may be changed to another non-conforming use, subject to the Board's granting a temporary use permit, wherein the Board, by making finding in the specific case, determines that the proposed use is equal or more appropriate in the district than the existing nonconforming use. In granting temporary use permit, the Board may impose such conditions and safeguards as it considers appropriate and in accord with the provisions and intent of this chapter.

E. *Class E non-conformance -- non-conforming uses of buildings.* In a residential district, any building containing any residential use may be altered, provided that the number of dwelling units or rental units on the lot shall not be increased.

F. *Non-conforming uses under variance.* Non-conforming uses, buildings and structures for which a variance or "special use permit" has been granted by the Board under the terms of any previous ordinance shall be permitted to continue under the conditions imposed in said variance or "special use permit".

G. *Non-conformity with performance standards.* Any existing use of land, buildings or structures which does not meet the performance standards for such use or for equipment employed in operation of such land use as provided in this chapter shall by February 9, 1976, be brought into conformity with such performance standards. Any use failing to conform to such standards by February 9, 1976, shall be discontinued and no license or permit shall be issued to continue operation beyond that time.

14-26-4 EXCEPTIONS

A. *Strengthening or restoration of buildings.* Nothing herein contained shall be construed as preventing the strengthening or restoration of any building or structure declared by the Building Inspector to be unsafe to the public or private health, safety and welfare; provided, however, that the cost of such reconstruction or restoration does not exceed fifty percent (50%) of the most recent assessor's full cash value of the building before the start of reconstruction.

B. *Reasonable repair or alteration.* Nothing herein contained shall be construed as preventing the reasonable repair or alteration of any non-conforming building, structure or land improvements for purposes of continued use; provided, however, that the cost of such repair or alteration shall not, in any period of twelve consecutive months, exceed fifty percent (50%) of the most recent assessor's full cash value of the building, structure or land improvement, and that such repair or alteration shall not increase the degree or extent of non-conformity.

14-26-5 RECORD OF NON-CONFORMANCE

The Zoning Inspector shall survey and make a complete record of all cases of non-conformance, and maintain such record thereafter, reviewing each case annually, or as often as the Council may prescribe. Such record shall include the name and address of the owner and occupant, if other than the owner, legal description of the property and classification and description of the non-conformance. The Zoning Inspector shall inform the owner of such property by mail as to the classification and nature of the non-conformity and the regulations applicable to its continuance, whereupon copies of the record shall be filed in the office of the Zoning Inspector. Such record shall constitute prima facie evidence of the character and extent of non-conformance existing on February 9, 1971 or any subsequent amendment thereto.

14-26-6 PURCHASE OR CONDEMNATION (Ord. No. 02-85)

The City Council by resolution may authorize the acquisition of private property by purchase or condemnation for the removal of non-conforming uses and structures (Ord. No 81-35)