

Article 19

LEGALLY NONCONFORMING USES, LOTS, AND STRUCTURES

(SEE ARTICLE 22.45 FOR LEGALLY NONCONFORMING SIGNS)

Section 19.01: PURPOSE

- A. It is the intent of this Article to permit legally nonconforming *lots, structures, and uses* lawfully existing at the time of adoption of this Ordinance or subsequent amendment thereto to continue as required by state statute, and in the case of structures and uses until they are removed or discontinued, and for their maintenance, repair, or replacement in a manner that does not have a negative impact on the health, safety, or welfare of surrounding properties, but not in any way which increases its specific *legal nonconformity*, except as otherwise provided by this Article.
- B. Establish standards for the continuation of *legally nonconforming lots, uses, structures, and Site Plans*.
- C. Permit part of a conforming or *legally nonconforming lot* to be combined to a contiguous *legally nonconforming lot* to make it more conforming

Section 19.02: ILLEGAL NONCONFORMITIES

Nonconforming lots, uses, or structures existing at the effective date of this Ordinance that were established without zoning compliance as existing prior to the effective date of this Ordinance, shall be declared illegal *nonconformities* and are not entitled to the status and rights accorded established *legal nonconformities*.

Section 19.03: LEGALLY NONCONFORMING LOTS

- A. In any district in which *single family dwellings* are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, *a single family dwelling* and customary *accessory structures* may be erected on a *lot of record* in existence and legally established at or before the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such *lot* fails to meet the standards for *area, width, and/or frontage*, that are generally applicable in the district; provided that *yard setbacks* and other standards not involving *lot area, lot width, and/or lot frontage*, shall conform to the standards for the district in which such *lot* is located, unless *yard setbacks* and other standards are modified through an approved *variance* or *interpretation* pursuant to Article 4 Appeals.
- B. A *lot* shall not be divided in a manner which diminishes compliance with *lot width, lot frontage, and lot area* standards established by this Ordinance. This provision shall not apply to a proposed diminished *lot* when the result is to make an adjoining *lot* more conforming and the proposed diminished *lot* receives an approved *variance* pursuant to Article 4 Appeals.

Section 19.04: LEGALLY NONCONFORMING USES OF A LOT

When, on the effective date of adoption or amendment of this Ordinance, a lawful *use* of a *lot* exists that is made no longer permissible or does not meet the standards under the terms of this Ordinance as enacted or amended, such *use* may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. If such legally *nonconforming use* shall be *enlarged, increased, or extended*, in whole or in part to any portion of the *lot* as of the effective date of adoption or amendment of this Ordinance by the placement of *structures* or a change in *parking* or ingress or egress, an Administrative Site Plan must be approved unless the Director of Planning and Zoning elects to or must send the Site Plan to the Planning Commission for their approval.
- B. A *legally nonconforming use* may be changed or altered to a *permitted use* in the district in which it is located.
- C. If any *legally nonconforming use* is superseded by a *permitted use*, the *legally nonconforming use* may not thereafter be resumed.
- E. If such *legally nonconforming use* ceases for any reason other than government action and the fact it is a seasonal *use* for a period of more than three hundred sixty-five (365) consecutive days, such *legally nonconforming use* shall not be renewed and the subsequent *use* of such *lot* shall conform to the regulations of the district in which such *lot* is located.

Section 19.05: CHANGE in LEGALLY NONCONFORMING USES

Irrespective of other requirements of this Article, any *legally nonconforming use* may be changed to another *use* of similar or less *legally nonconformance*, provided that the Director of Planning & Zoning by making findings in the specific case, shall find that the proposed *use* is equally appropriate or more appropriate to the district than the existing *legally nonconforming use*. The Director of Planning & Zoning findings and decision are subject to review by the Zoning Board of Appeals on appeal of interpretation pursuant to Article 4.

Section 19.06: LEGALLY NONCONFORMING STRUCTURES

Where a *legally nonconforming structure* exists on the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of standards on *height, lot coverage*, or other characteristics of the *structure(s)*, such *structure(s)* may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such *structure* may be *enlarged*, altered, or moved in a way which increases its specific *legal nonconformity* without obtaining a *variance* pursuant to Article 4 .
- B. Should such *structure* be destroyed, repaired, renovated, or otherwise altered, by any means, and to any extent including the razing of such *structure*, it may be reconstructed, repaired, renovated or altered provided that it is not *enlarged* or otherwise altered in any way which increases its specific *legal nonconformity* as it existed prior to being destroyed, repaired, renovated, or otherwise altered. Such reconstruction, repair, renovation or alteration shall commence for any reason other than government action within two (2) years of the date of damage and shall be diligently pursued to completion, and:

1. No construction shall be initiated until the applicant has submitted and received a *Preliminary Certificate of Zoning Compliance* from the Director of Planning & Zoning.

2. In the case where the Director of Planning & Zoning finds a proposed increase in the specific *legal nonconformity*, the applicant may seek a *variance* or appeal an interpretation pursuant to Article 4. No construction shall be initiated unless the applicant has obtained such *variance*, and received a Preliminary Certificate of Zoning Compliance from the Director of Planning & Zoning.

Section 19.07: CHANGE of TENANCY or OWNERSHIP

A change of tenancy or ownership of a *legally nonconforming use* is allowed provided there is no increase in the degree of nonconformance of the *legally nonconforming use*.

Section 19.07: DISTRICT CHANGES

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of another classification, the provisions of this Article shall also apply to any existing *uses* that become *legally nonconforming* as a result of the boundary changes.

End of Article 19

DEFINITIONS

Enlarged, Extended, Increased, or Moved: When applied to *uses*, means the change in *use* of a lot beyond which was initially permitted, when the nature of the change does or is likely to materially negatively impact the *use* of one or more adjoining properties. It is assumed a *use* should prosper and the fact that it does shall not, in and of itself, be an indication that the *use* has been Extended, Increased, or Moved.

Yard Setbacks : A required space which is *structure-free* from the ground upward except for the exceptions noted in (Exception Article)

Front Yard Setback: The space between the *front lot line* and a line parallel to the *front lot line* extending the full width of the *lot*, at a distance:

(a) required by the zoning district, or if closer

(b) to the nearest point of a *legally nonconforming* existing *principle building* or *garage* if less than the zoning district's requirement's distance, but whose parallel line extension is limited to not more than the width of the present *legally nonconforming structure's* width.

For corner and through lots, there shall be one *front yard setback* adjacent the front elevation of the *principal building*.

Rear Yard Setback: The space between the *rear lot line* and a line parallel to the *rear lot line* extending the full length of the *lot*, at a distance:

(a) required by the zoning district, or if closer

(b) to the nearest point of a *legally conforming existing principle building* or garage if less than the zoning district's requirement's distance, but whose parallel line extension is limited to not more than the width of the present *legally nonconforming structure's* width.

Side Yard Setback: The space between the *side lot line* and a line parallel to the *side lot line*, at a distance:

(a) required by the zoning district, or if closer

(b) to the nearest point of a *legally nonconforming existing principle building* or garage if less than the zoning district's requirement's distance, but whose parallel line extension is limited to not more than the length of the present *legally nonconforming structure's* length.

Waterbody Front Yard: The space between the *lot line* adjacent to the *waterbody* or the *shoreline* if outward of the that *lot line* and a line parallel to that *lot line* extending the full width of the *lot*, at a distance:

(a) required by the zoning district, or if closer

(b) to the nearest point of a *legally conforming existing principle building* if less than the zoning district's requirement's distance, but whose parallel line extension is limited to not more than the width of the present *legally non-conforming structure's* width.

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