

ARTICLE 4

NON-CONFORMITIES

Section 400 Intent

Within the district established by this resolution or amendments that may later be adopted there exists lots, uses of land, structures, and uses of structures, and land in combination which were lawful before this resolution was passed and 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 non-conformities to continue until they are discontinued or abandoned for more than twenty four (24) months (except when government action impedes access to the premises), but not to encourage their survival. It is further the intent of this resolution that non-conformities shall not be as grounds for adding other structures or uses prohibited elsewhere in the same district.

Section 401 Incompatibility of Non-Conformities

Non-conformities are declared by this resolution to be incompatible with permitted uses in the districts in which such use is located. A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of a structure and land combination shall not be extended or enlarged after passage of the resolution by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

Section 402 Avoidance of Undue Hardship

To avoid undue hardship, nothing in this resolution shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this resolution and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently.

Section 403 Single Non-Conforming Lots of Record

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 at the effective date of adoption or amendment of this resolution. 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 or width, or both that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variances of requirements listed on Articles 9 and 10 of this resolution other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Sections 508 and 518.

Section 404 Non-Conforming Lots of Record in Combination

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this resolution and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this resolution and 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 any parcel be made which creates a lot with a width or area below the requirements stated in this resolution.

Section 405 Non-Conforming Use 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 non-conforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied by such uses, by more than 10% of the non-conforming use at the effective date of adoption or amendment of this resolution.
- 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 uses at the effective date of adoption or amendment of this resolution.
- C.** If any such non-conforming uses of land are discontinued or abandoned for more than twenty four (24) months (except when government action impedes access to the premises), any subsequent use of land shall conform to the regulations specified by this resolution for the district in which such land is located.
- D.** No additional structure not conforming to the requirements of this resolution shall be erected in connection with such non-conforming use of land.

Section 406 Non-Conforming Structures

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, lot coverage, 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.** No such non-conforming structure may be enlarged or altered in a way, which increases its non-conformity, except as specified in Section 406 (D) below, but any structure or portion thereof may be altered to decrease its non-conformity.
- B.** Any such non-conforming structure or non-conforming portion of a structure which is removed, partially removed, damaged, destroyed or partially destroyed by fire, flood, explosion, earthquake, war, riot, or act of God, may be restored to its condition and use prior to the removal or damage so long as the restoration is started within two (2) years of such removal or damage and diligently pursued to completion, as determined by the Zoning Inspector.
- C.** Should such 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.
- D.** Any such non-conforming structure may be altered, modified, or extended only in such a manner that the alteration, modification, or extension itself does not exceed ten percent (10%) of the current non-conformity and does not increase the degree or severity of the non-conformity, or shall be conforming to the district in which the structure is located.

The following Figures 1-4 are offered for clarity:

Figure 1 depicts a structure that is encroaching into the required front yard setback.

Figure 2 depicts an extension to the structure that encroaches into the front yard setback, but does not increase the degree or severity of the encroachment. The extension shall be permitted so long as the portion of the extension that is encroaching is equal to 10% of the portion of the structure that encroaches into the required front yard setback; i.e., the total square footage of Figure 2A shall be 10% or less than the total square footage of Figure 2B.

Figure 3 depicts an extension to the structure that does not encroach into the required front yard setback; therefore, the extension shall conform to the zoning district in which it is located.

Figure 4 depicts an extension to the structure that increases the degree or severity of the non-conformity by encroaching further into the required front yard setback, therefore, the extension shall not be permitted.

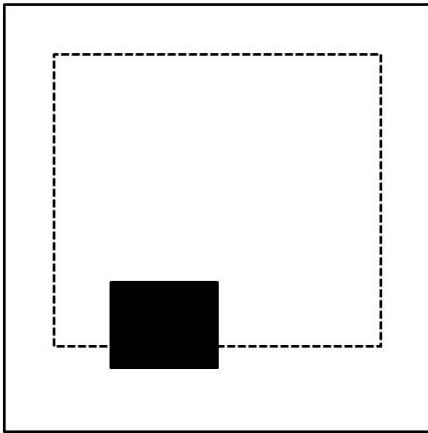


Figure 1
Existing Non-Conforming Structure
(Front Yard Setback)

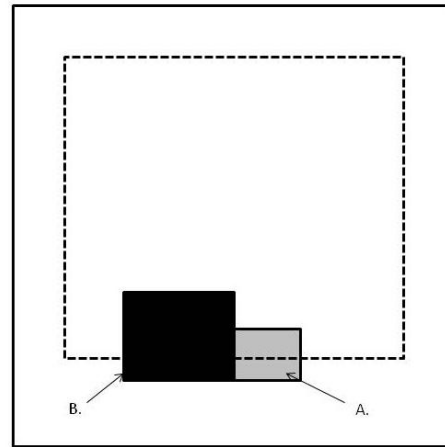


Figure 2
Extension (Flush With Structure)

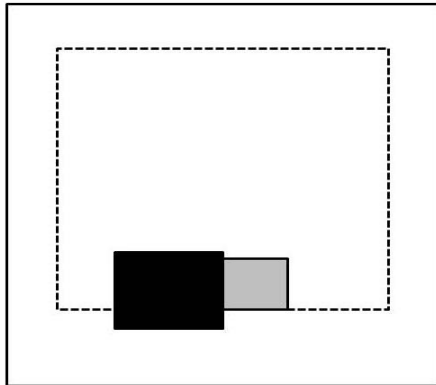


Figure 3
Extension (Compliant With Front
Yard Setback)

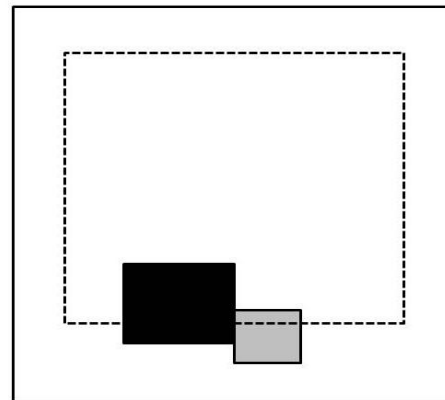


Figure 4
Extension (Increase In Existing Non-
Conformity)

Section 407 Non-Conforming 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, except as permitted by Section 406.
- 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 resolution, but no such use shall be extended to occupy any land outside such building that was not previously used for such non-conforming use at the time of the adoption of this Resolution or amendment thereto.

- C. If no structural alterations are made, any non-conforming use of a structure or structure and land, may, upon appeal to the Board of Zoning Appeals, be changed to another non-conforming use provided that the Board of Zoning Appeals finds that the proposed use is equally appropriate or more appropriate to the district in which the existing non-conforming use is located. In permitting such change, the Board of Zoning Appeals 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 non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed.
- E. When a non-conforming use of a structure, or structure 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.
- F. When non-conforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.
- G. No such non-conforming uses shall be enlarged or increased, nor extended to occupy a greater area of land that was occupied by such uses at the effective date of adoption or amendment of this resolution, except as permitted by Section 405.

Section 408 Repairs and Maintenance

On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became non-conforming 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 any by official charge with protecting the public safety, upon order of such official.

Section 409 Uses Under Conditional Use Provisions Not Non-Conforming Uses

Any use, which is permitted as a conditional use in a district under the terms of this resolution, shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

Section 410 Non-Conforming Certificate

The Zoning Inspector may, upon his/her initiative, or shall, upon the request of any property owner, issue a certificate for any lot, structure, use of land, use of structure, or use of land and structure in combination that certifies that the lot, structure or use is legally non-conforming to the Zoning Resolution, once the non-conformity is researched and verified.

The certificate shall specify the reason for the non-conformity, including a description as to the extent and type of non-conformity of the property in question, the extent that dimensional requirements are non-conforming, and the portion of the lot and/or structure used for the non-conforming use.

The purpose of this Section is to protect the owners of land or structures that are or that become legally non-conforming, by certifying that the structure and /or use is in fact non-conforming. Once certified, the owner is entitled to all rights and regulations as defined in Ohio Revised Code §519.19 and Article 4 "Non-Conformities" of the Zoning Resolution. There may be properties and/or uses that are non-conforming, whose owners do not have certificates. A fee may be charged for a certificate as determined by the Board of Trustees.