

NON-CONFORMING USES AND BUILDINGS

1 Intent.

It is the intent of this Ordinance to allow the continuation of non-conforming uses and buildings existing at the time of adoption of this Ordinance and legal uses which become non-conforming by adoption of this Ordinance, but not to encourage their survival or allow an increase in size or intensity of non-conforming uses.

2 Avoidance of Undue Hardship.

To avoid undue hardship, nothing in this Article shall be deemed to require a change in the plans, construction, or designated use of any building for which a building permit has been issued prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried out diligently.

3 Non-conforming Lots of Record.

3.1 Where an individual lot was held in separate ownership from adjoining properties or was platted in a recorded subdivision approved by the City Council prior to the effective date of this Ordinance and fails to meet the requirements for area or width or both, that are generally applicable in the District, such lot may be occupied according to the permitted uses provided for in the Zone District provided all other regulations including setbacks for the District are met. No multi-family project shall be developed on any lot or property smaller than the minimum area required by this Ordinance.

3.2 If two (2) 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 adoption or amendment to this Ordinance 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 Ordinance 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 Ordinance, nor shall any division of any

parcel be made which creates a lot with a width or area below the requirements stated in this Ordinance.

4 Continuation of Use.

A non-conforming use may be continued, subject to the provisions of this Article.

5 Change in Use.

A non-conforming use may be changed only to a conforming or less intensive use.

13.6 Expansion of Use.

A non-conforming use may not be enlarged or extended including without limitation any increase in the total amount of space devoted to the non-conforming use, thereby increasing the degree of non-conformity. Criteria used to determine enlargement or extension shall include, but not be limited to, areas of land covered, square footage of building or use space, number of dwelling units, hours of operation, traffic generated, and volume of goods handled. A non-conforming use shall not be used as justification for adding other structures or uses prohibited in the same district. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made non-conforming by the Ordinance, was designed to accommodate such use. A non-conforming use may not be extended to additional buildings or to land outside the original building.

7 Expansion of Non-conforming Buildings.

A non-conforming building may not be enlarged, extended, reconstructed, moved, or structurally altered so as to increase the degree of non-conformity. A non-conforming building may be enlarged so long as the enlargement does not create new nonconformities with respect to such matters as setbacks and parking requirements. Minor repair, as defined in Section 13.9, of non-conforming buildings is encouraged.

8 Discontinuance of Use.

8.1 If active and continuous operations of a non-conforming use are not carried on, the tract of land where such a non-conforming use previously existed shall thereafter follow Idaho State Statute 67.6538.

8.2 Notwithstanding the provisions of this Article, if a non-conforming manufactured home is removed from the tract of land on which it was located, said tract of land shall thereafter be occupied by only a conforming use.

9 Repair.

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 wall fixtures, wiring or plumbing, provided that the repair does not increase the degree of non-conformity of the use or building as described in Sections 13.6 and 13.7. 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 the City Building Inspector upon order of such official.

10 Restoration.

10.1 A non-conforming building (not to include buildings continuing a nonconforming use) which has been damaged, partially destroyed, or completely destroyed, either by fire or other calamity or natural causes or by intentional demolition by the owner of said building, may be rebuilt so long as the repaired or rebuilt building in no way increases the degree of non-conformity, including non-conformity with respect to such matters as setbacks and parking requirements. Any enlargement of such a non-conforming building shall not increase the degree of any non-conformity, and shall also meet the requirements of Section 13.7 herein, with regard to prohibition against the creation of any new non-conformities. The height of the repaired or reconstructed building

shall not exceed the height of the building that existed prior to repair or reconstruction unless design review approval for a building with an increased height has been granted by the Victor Planning and Zoning Commission.

10.2 Notwithstanding the provisions of Section 13.10.1, a non-conforming manufactured home used as the residence of the owner which is destroyed by fire or natural causes may be replaced with a manufactured home having the same overall dimensions as the previously existing manufactured home, provided that such replacement occurs within six (6) months of the calamity. Non-conforming manufactured homes used as rental residences or for business purposes shall not be replaced.