

SECTION 5.00 NON-CONFORMING BUILDINGS AND USES

(Amended 3-21-2018 Ord. #2018-04)

5.01 PURPOSE AND SCOPE

- A. It is the purpose of this Section 5.00 to provide for the regulation of legally nonconforming structures, lots of record and uses, and to specify those circumstances and conditions under which such non-conformities shall be permitted to continue. It is necessary and consistent with the regulations prescribed by this Ordinance that those non-conformities which adversely affect orderly development and the value of nearby property not be permitted to continue without restriction.
- B. This Section 5.00 is intended to regulate and limit the development and continued existence of uses, structures, and lots established prior to the effective date of this Ordinance which do not conform to the requirements herein.
- C. The limitations of this Section 5.00 shall not apply to uses, structures, or lots whose nonconforming features are the subject of a variation or special use permit.

PART A NON-CONFORMING USES

5.02 CONTINUANCE OF NON-CONFORMING USES

- A. Any lawfully established use of a building or land, at the effective date of this amended ordinance, or of amendments thereto, that does not conform to the use regulations for the district in which it is located, shall be deemed to be a legal non-conforming use and may be continued, except as otherwise provided herein.
- B. No use, which is accessory to a principal nonconforming use, shall continue after such principal use shall have ceased or terminated, unless it shall thereafter conform to all regulations of this Ordinance.

5.03 TRANSFER OF A NON-CONFORMING USE

The purchaser of property constituting a legal nonconforming use is entitled to the same rights as the grantor of that property except as provided in Section 5.04 below.

SECTION 5.00 NON-CONFORMING BUILDINGS AND USES

(Amended 3-21-2018 Ord. #2018-04)

5.04 DISCONTINUANCE OF A NON-CONFORMING USE

- A. Whenever any part of a building, structure or land occupied by a non-conforming use is changed to or replaced by a use which conforms to the provisions of this amended ordinance, such premises shall not thereafter be used or occupied by a non-conforming use.
- B. Whenever a non-conforming use of a building or structure, or part thereof, has been discontinued for a period of twelve consecutive months, or whenever there is evident a clear intent on the part of the owner to abandon a non-conforming use, such use shall not after being discontinued or abandoned, be re-established and the use of the premises thereafter shall be in conformity with the use regulations of this Ordinance.
- C. Where no enclosed building is involved, discontinuance of a non-conforming use for a period of six months shall constitute abandonment, and said land shall not thereafter be used in a non-conforming manner.

5.05 REPAIRS AND ALTERATIONS TO BUILDINGS CONTAINING NON-CONFORMING USES

- A. So long as a building or structure is used or is eligible for use, normal maintenance of a building or other structure containing a non-conforming use is permitted, including necessary non-structural repairs, replacement of roof covering, veneering of outer walls, and incidental alterations which do not extend or intensify the non-conforming use.
- B. No structural alteration shall be made in a building or other structure containing a non-conforming use, except in the following situations:
 - 1. When the alteration is required by law.
 - 2. When the alteration will actually result in eliminating the non-conforming use.
 - 3. When a building containing residential non-conforming uses is altered in any way to improve livability, provided no structural alteration shall be made which would increase the number of dwelling units or the bulk of the building.

SECTION 5.00 NON-CONFORMING BUILDINGS AND USES

(Amended 3-21-2018 Ord. #2018-04)

5.06 EXPANSION OF NON-CONFORMING USES

- A. A building containing a non-conforming use may be enlarged or extended only if the entire building is thereafter devoted to a conforming use, and is made to conform to all the regulations of the district in which it is located.
- B. A nonconforming use of land shall not be increased in intensity, nor be expanded or extended beyond the area it occupied at the date of the adoption of this Ordinance or any amendment to this Ordinance.
- C. A nonconforming use shall not be expanded or extended beyond the floor area or lot area that it occupied on the effective date of this Ordinance, or the effective date of any amendment thereto rendering such use nonconforming, and shall not be expanded so that it displaces any conforming use in the same structure or on the same parcel.
- D. No building partially occupied by a non-conforming use shall be altered in such a way as to permit the enlargement or expansion of the space occupied by such non-conforming use.
- E. No non-conforming use may be enlarged or extended in such a way as to occupy any required usable open space, or any land beyond the boundaries of the zoning lot as it existed at the effective date of this amended ordinance, or to displace any conforming use in the same building or on the same parcel.

5.07 EXEMPTED USES

When a lawfully existing building or other structure otherwise conforms to the height, bulk and yard regulations of this amended ordinance, but is non-conforming only in the particular manner herein after specified, the building and use thereof shall be exempt from the requirements of sub-section 5.04 through 5.08.

- A. In any "R" District, where a dwelling is non-conforming only as to the number of dwelling units it contains provided no such building shall be altered in any way so as to increase the number of dwelling units therein.
- B. In any "R" District, where a use permitted in the B-1 District occupies ground floor space within a multiple-family dwelling located on a corner lot.
- C. In any "B" or "M" District, where the use is less distant from an "R" District than that specified in the regulation for the district in which it is located.

SECTION 5.00 NON-CONFORMING BUILDINGS AND USES

(Amended 3-21-2018 Ord. #2018-04)

- D. In any District, where an established use is non-conforming with respect to the standards prescribed in this amended ordinance for off-street parking or loading.
- E. In any A-1 District where an established non-farm dwelling was located on or before July 10, 1973, it shall be deemed to be a legal use.

5.08 CONVERSION TO SPECIAL USE

Any non-conforming use may be made a Special Use by the granting of a Special Use Permit as authorized by sub-section 13.00, if the use meets the requirements and standards applicable to Special Use approval, and if the use is authorized by the provisions of the Kendall County Zoning Ordinance.

PART B NON-CONFORMING STRUCTURES

5.09 CONTINUANCE OF NON-CONFORMING STRUCTURES

- A. Any legal non-conforming building or structure may be continued in use provided there is no physical change other than necessary maintenance and repair, except as otherwise permitted herein.
- B. Any building for which a permit has been lawfully granted prior to the effective date of this amended ordinance, or of amendments thereto, may be completed in accordance with the approved plans; provided construction is started within six months and diligently pursued to completion. Such building shall thereafter be deemed a lawfully established building.
- C. No structure in an R-3, R-4, R-5, R-6 or R-7 zoning district, which is accessory to a principal nonconforming structure, shall continue after such principal structure shall have ceased or terminated, unless it shall thereafter conform to all regulations of this Ordinance. This requirement may be waived if, in the opinion of the Zoning Administrator, maintaining the accessory structure will not adversely affect the health, safety, value, or general welfare of adjoining or neighboring properties. The Zoning Administrator may, at his or her discretion, refer the matter to the Planning and Zoning Committee for review and recommendation.

SECTION 5.00 NON-CONFORMING BUILDINGS AND USES

(Amended 3-21-2018 Ord. #2018-04)

5.10 REPAIRS TO NON-CONFORMING STRUCTURES

Normal maintenance of a non-conforming building or other structure is permitted, including necessary structural repairs, replacement of roof covering, veneering of outer walls, and incidental alterations which do not constitute additions or expansions as regulated by sub-section 5.11.

5.11 ADDITIONS AND EXPANSIONS TO NON-CONFORMING STRUCTURES

A building or structure which is non-conforming with respect to yards, maximum lot coverage, height, or any other element of bulk regulated by this amended ordinance shall not be altered or expanded in any manner which would increase the degree or extent of its non-conformity with respect to the yard, height or bulk regulations for the district in which it is located, except where a variation is granted according to the regulations of Section 13 of this Ordinance.

5.12 RESTORATION OF A DAMAGED NON-CONFORMING STRUCTURE

- A. No repairs or reconstruction shall be made unless construction is commenced within one year from the date of the fire or other casualty or act of God, and is diligently pursued until completion. The structure may be restored to its original condition and the occupancy or use of such structure may be continued which existed at the time of such partial destruction. Failure to initiate or conclude restoration within these limits shall constitute abandonment, after which said building must conform to the provisions of the zoning district in which it is located, except as otherwise specified in subparagraph 5.12.B.
- B. Any accessory building or structure located in a R5, R6 or R7 district that is damaged by any means if such damage results in a loss of property of 50% or greater, as based on floor area as determined by the Planning, Building and Zoning Department, shall not be reconstructed unless such reconstruction is in conformance with setback, height and other bulk regulations of this ordinance.

5.13 NON-CONFORMING SIGNS, BILLBOARDS AND OUTDOOR ADVERTISING STRUCTURES

Non-conforming signs, billboards, and outdoor advertising structures shall be subject to the rules and regulations as specified in Section 12.0 "Signs" of this ordinance.

SECTION 5.00 NON-CONFORMING BUILDINGS AND USES
(Amended 3-21-2018 Ord. #2018-04)

5.14 EXEMPTED BUILDINGS AND STRUCTURES

When a lawfully existing building or other structure otherwise conforms to the use regulations of this amended ordinance, but is non-conforming only in the particular manner herein after specified, the building shall be exempt from the requirements of sub-section 5.11 through 5.13.

- A. Any Single Family Dwelling which became non-conforming on the effective date of this ordinance and is non-conforming only as to total lot area, front, side or rear yard requirements, may be remodeled, extended, or structurally altered, if in the opinion of the Zoning Administrator such alteration will not adversely affect the health, safety, value, or general welfare of adjoining or neighboring properties. The Zoning Administrator may, at his or her discretion, refer the matter to the Planning and Zoning Committee for review and recommendation.

PART C NON-CONFORMING LOTS

5.15 DEVELOPMENT OF NON-CONFORMING LOTS

- A. A lot which met the lot area, lot width, and other dimension requirements of the zoning district at the time such lot was recorded shall be considered a legal non-conforming lot. Construction of new buildings, or repair of existing buildings that are being used for permitted uses, shall be permitted provided setback provisions of this ordinance are met. Where setback and/or lot area provisions cannot be met, the Planning, Building and Zoning Director may permit an exception. If the lot is served by a sanitary sewer line, exceptions may be granted up to the standards of the zoning district at the time such lot was recorded. If the lot is non-sewered, an exception of up to 25% of the required setback or lot size may be granted if requirements of the County Health Department are met. Where a setback reduction of more than 25% is required, a variance shall be required,
- B. A lot which was established in an agricultural district by recorded deed or is part of an approved plat of subdivision, or was otherwise legally established on or before the adoption of this amendatory ordinance, may be used for single family residence purposes provided that the yard requirements of the R-2 District are complied with.