ARTICLE XXII.
NONCONFORMING USES AND STRUCTURES

(Ord. No. 2835; 07/01/03)

Hereafter, no nonconforming use of land or buildings, nor any nonconforming structures shall be enlarged, changed, altered or repaired, except in accordance with the provisions of this Article.

SECTION A. TYPES OF NONCONFORMITY.

1. Any use of land or buildings which was in existence and lawfully operating on the effective date of this ordinance or amendments hereto, and has since been in regular and continuous use, but which does not conform to the use regulations prescribed in this ordinance or amendments hereto shall be deemed a nonconforming use.

2. Any building or structure which was in existence and lawfully constructed and located on the effective date of this ordinance or amendments hereto, and has since been in regular and continuous use, but which does not conform to the lot area, lot dimensions, front yard, side yard, rear yard, coverage, height, floor area ratio, parking, loading, building spacing, screening, landscaping, exterior brick or stone content or other regulations as prescribed in this ordinance shall be deemed a nonconforming building or structure, except as specifically exempted by other sections of this ordinance.

SECTION B. NONCONFORMING STATUS.

A nonconforming status under the provisions of this ordinance shall exist when:

1. A use or structure, which does not conform to the regulations prescribed for the district in which such use or structure is located, was in existence and lawfully constructed, located or operating on the effective date of this ordinance or amendments hereto and has since been in regular and continuous use; or

2. A use or structure, which does not conform to the regulations prescribed in the district in which such use or structure is located, was in existence at the time of annexation into the city of Carrollton and has since been in regular and continuous use.

SECTION C. NONCONFORMING USES.

1. TERMINATION OF NONCONFORMING USES:

a. It is the declared purpose of this ordinance that nonconforming uses be eventually discontinued and the use of the premises be required to conform to the regulations prescribed herein having due regard for the investment in such nonconforming uses. However, any single-family or duplex use lawfully existing on the effective date of this ordinance shall be hereafter deemed a lawful use.

b. A nonconforming use may be continued subsequent to the effective date of this ordinance or amendments hereto, provided that such continuance is in accordance with the provisions of this Article and all other applicable codes of the city of Carrollton necessary to ensure adequate protection and safety of adjacent property and the users and occupants of such nonconforming use. However, the right to operate a nonconforming use shall cease and such use shall be terminated under any of the following circumstances:

1. Whenever a nonconforming use is abandoned, all nonconforming rights shall cease, and the use of the premises shall henceforth be in conformance with this ordinance. Abandonment shall be the voluntary act of the user and/or owner to discontinue a use for a period of one hundred eighty (180) consecutive days or more; or
(Ord. No. 1947, 10/19/93)

2. The violation of any of the provisions of this ordinance or violation of any ordinance of the city of Carrollton with respect to a nonconforming use shall cause the immediate termination of the right to operate such nonconforming use; or

3. Whenever a nonconforming use is changed to a conforming use by a change of zoning so as to achieve compliance with the provisions of a new or different zoning district; or

4. Whenever a nonconforming use is changed to a conforming use; or

5. Whenever the structure containing a nonconforming use is totally destroyed, the structure can be rebuilt, and a use established, only in accordance with the current zoning regulations which have been applied to the land; or

6. Whenever the structure in which a nonconforming use is housed, operated or maintained is damaged by fire or other causes to the extent of more than fifty (50) percent, but less than the total, of the replacement cost of the structure on the date of the damage, the right to operate such nonconforming use shall cease, except upon action of the Board of Adjustment to permit reconstruction of such structure and continuance of the nonconforming use. Such action by the Board of Adjustment shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare, character of the area surrounding such structure, and the conservation, preservation and protection of property.

7. In the event that a structure in which a nonconforming use is housed, operated or maintained is partially destroyed, that is where damage does not exceed fifty (50) percent of the value of the structure on the date of the damage, the nonconforming use may be allowed to continue, and the structure may be rebuilt upon approval of a building permit by the City Manager or Designee.

c. The right to maintain or operate a nonconforming use may be terminated by the Board of Adjustment in accordance with the provisions of Article XXXII of this ordinance.

2. CHANGING NONCONFORMING USES:

a. Any nonconforming use may be changed to a conforming use, and once such change is made, the use shall not thereafter be changed back to a nonconforming use.

b. A change of use from one nonconforming use to another nonconforming use may be made only upon approval of the Board of Adjustment, in accordance with Article XXXII of this ordinance, provided that such change is to a use of a more restricted classification. In the event that a nonconforming use is changed to a nonconforming use of a more restricted classification, the building or structure containing such nonconforming use shall not later be reverted to the former lower or less restricted classification.
(Ord. No. 1557, 07/11/89)

c. A nonconforming use may be expanded or enlarged only upon approval of the Board of Adjustment, in accordance with Article XXXII of this ordinance.

d. No structural alterations, which include expansion or enlargement, are permitted on a structure containing a nonconforming use, except upon approval by the Board of Adjustment in accordance with Article XXXII of this ordinance, unless such alterations are specifically authorized by this ordinance.

A structure or building within which a nonconforming use is located shall be maintained in a standard code condition, or modified as required by law, to ensure the safety and welfare of the occupants. Such structure or building can be remodeled without approval of the Board of Adjustment provided that no structural alterations are made.

3. LIMITATIONS ON CHANGING NONCONFORMING USES:

Consideration by the Board of Adjustment for changing a nonconforming use shall be contingent upon the following:

a. No nonconforming use shall be changed to another nonconforming use which requires more off-street parking spaces or off-street loading space than the original nonconforming use, unless additional off-street parking and loading space is provided so as to comply with the requirements of Article XXIV.

b. No nonconforming use may be expanded or increased beyond the lot or tract upon which such nonconforming use is located as of the effective date of this ordinance, except to provide off-street loading or off-street parking space for such use.

c. All nonconforming uses being expanded under the provisions of this ordinance shall comply with all other applicable provisions of this ordinance and the applicable codes of the city of Carrollton.

SECTION D. NONCONFORMING STRUCTURES.

1. TERMINATION OF NONCONFORMING STRUCTURES:

a. It is the declared purpose of this ordinance that nonconforming structures be eventually discontinued and that structures be required to conform to the regulations prescribed herein having due regard for the investment in such nonconforming structures. However, any single-family or duplex structure lawfully existing on the effective date of this ordinance shall be hereafter deemed a lawful structure.

b. The use of a nonconforming structure may be continued subsequent to the effective date of this ordinance or amendments hereto, provided that such continuance is in accordance with the provisions of this Article and all other applicable codes of the city of Carrollton necessary to ensure adequate protection and safety of adjacent property and the users and occupants of such nonconforming structure. However, the right to continue a nonconforming structure shall cease and such use contained therein shall be terminated under any of the following circumstances:

1. Whenever a nonconforming structure is abandoned, all nonconforming rights shall cease, and the structure shall henceforth be in conformance with this ordinance. Abandonment shall be the voluntary act of the user and/or owner to discontinue a use for a period of one hundred eighty (180) consecutive days or more.

   An abandoned nonconforming structure may be occupied, and the nonconforming rights reestablished, only upon approval of the Board of Adjustment in accordance with Article XXXII of this ordinance. ***(Ord. No. 1947, 10/19/93)***

2. The violation of any of the provisions of this ordinance or violation of any ordinance of the

city of Carrollton with respect to a nonconforming structure shall cause the immediate termination of the right to occupy such nonconforming structure; or

3. Whenever a nonconforming structure is changed to a conforming structure by a change of zoning so as to achieve compliance with the provisions of a new or different zoning district; or

4. Whenever a nonconforming structure is changed to a conforming structure; or

5. Whenever a nonconforming structure is totally destroyed, the structure can be rebuilt, and a use established, only in accordance with the current zoning regulations which have been applied to the land; or

6. Whenever a nonconforming structure is damaged by fire or other causes to the extent of more than fifty (50) percent, but less than the total, of the replacement cost of the structure on the date of the damage, the right to rebuild and occupy such nonconforming structure shall cease, except upon action of the Board of Adjustment to permit reconstruction and occupancy of such structure. Such action by the Board of Adjustment shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare, character of the area surrounding such structure, and the conservation, preservation and protection of property.

7. In the event that a nonconforming structure is partially destroyed, that is where damage does not exceed fifty (50) percent of the value of the structure on the date of the damage, the structure may be rebuilt upon approval of a building permit by the City Manager or Designee.

8. The right to maintain or operate a nonconforming structure may be terminated by the Board of Adjustment in accordance with the provisions of Article XXXII of this ordinance.

c. Nothing contained herein shall be construed to prohibit the strengthening or repair of any part of any nonconforming structure declared unsafe by the City Manager or Designee, unless such repairs exceed fifty (50) percent of the replacement cost of the structure. In such case the right to operate, occupy or maintain such structure may be terminated by action of the Board of Adjustment, and such structure shall be demolished.

2. CHANGING NONCONFORMING STRUCTURES:

   a. A nonconforming structure may be expanded or enlarged up to fifty (50) percent of its value, as such value is established at the time of application for a building permit. However, all expansion or enlargement of such structure shall be in compliance with all applicable regulations of the district in which such structure is located.

   b. A nonconforming structure may be expanded or enlarged in excess of fifty (50) percent of its current value only upon approval of the Board of Adjustment. In such instance, current value shall be established at the time of application for a hearing before the Board of Adjustment.

      If such expansion or enlargement is approved by action of the Board of Adjustment, all provisions of the district in which such structure is located shall apply to the entire lot or parcel upon which such structure is located, and shall be applicable to the existing structure(s) as well as any new construction on the lot or parcel.

SECTION E. MISCELLANEOUS REQUIREMENTS.

1. CONSTRUCTION APPROVED PRIOR TO THIS ORDINANCE:

   Nothing contained herein shall require any change in the plans, construction, or designated use of a building legally under construction, or for which a permit for construction has been issued, at the time of passage of this ordinance or amendment hereto. Legally under construction shall mean that, at a minimum, the foundation of such building is lawfully under construction at the time of passage of this ordinance or amendment hereto.

2. NONCOMPLIANCE DUE TO OUTSIDE ACTION:

   Where a lot, tract, or parcel is occupied by a lawful structure, and where the acquisition of right-of-way, by eminent domain, dedication or purchase, by a city, county, state, or federal agency creates noncompliance of the structure regarding any requirement of this ordinance, such structure shall be deemed a lawful structure. Such designation shall apply only to noncompliance that results directly from the acquisition of right-of-way. In the event that such structure is partially or totally destroyed by fire or other causes, the structure may be rebuilt upon approval of a building permit by the City Manager or Designee.

   Any new construction on the lot, tract, or parcel, including expansion of any existing structure, shall comply with all applicable zoning standards, and building setbacks of the expansion or new construction shall be measured relative to the new right-of-way line. ***(Ord. No. 1977, 04/19/94)***

3. VALIDATION OF NON CONFORMING USES AND STRUCTURES:
(Ord. No. 2258, 04/15/97; Ord. No. 3331, 10/06/09)

Any use of land or building or any building or structure which was in existence on January 1, 1997, but which does not conform to the use regulations or does not conform to the lot area, lot dimensions, front yard, side yard, rear yard, lot coverage, height, floor area ratio, parking, loading, building spacing, screening, landscaping, exterior brick, stone or masonry regulations of this ordinance shall be hereafter deemed lawful in the (FWY) Freeway District, as established on the Official Zoning Map, dated January 1, 1997. Application for validation of uses in existence on January 1, 1997, that are not included on a current Certificate of Occupancy, must be received on or before October 15, 1997.

a. Property which is sold or leased shall continue to retain the lawful status.

b. The existing use may be expanded in conformance with the current, applicable area regulations by a maximum of 100%.

c. New uses shall be permitted by Article V of the Comprehensive Zoning Ordinance.

d. If a use is discontinued for a period of 270 or more days, the subsequent use of the property shall be permitted in conformance with Article V of the Comprehensive Zoning Ordinance.

e. Whenever a structure is partially or completely destroyed by fire or any cause, the use shall be allowed to continue unless it is discontinued for a period of 270 or more days. After that period of time, use of the property shall be permitted in conformance with Article V of the Comprehensive Zoning Ordinance. Any new construction shall be in accordance with the current development standards of the applicable zoning district.

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