

ARTICLE

9

Nonconformities

9.1 Purpose and intent

- A. The purpose of this section is to regulate and limit the development and continued existence of uses, structures and lots established prior to the effective date of this ordinance.
- B. It is the intent of the aforementioned ordinance to permit these nonconformities to continue until they are eventually removed, but not to encourage their continuation.
- C. It is further the intent of this ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for placing additional signs, adding other structures or uses except in conformance with this ordinance.

9.2 Undue hardship

In an effort to prevent undue hardship, nothing in this ordinance shall be deemed to require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date or the adoption of this ordinance.

9.3 Nonconforming structure

Any non-conforming structure which was lawful before the adoption of this ordinance may continue

to be used as long as it is adequately maintained and does not constitute a public hazard or nuisance and provided that it is not expanded, extended, enlarged in floor area or changed in basic structural design and integrity. Nonconforming structures may be improved to an extent not exceeding fifty (50%) of the current market value of the existing structure.

9.4 Termination of nonconforming structure

- A. Any structure that is considered nonconforming upon the passage of this ordinance that is destroyed by fire accident or natural causes beyond fifty percent (50%) of its current market value shall thereafter conform to the regulations of the aforementioned ordinance for the district in which it is located.

- B. Any non-conforming structure which has been improved and altered to comply with the provisions set forth in this ordinance shall be considered conforming.

- 9.5 Nonconforming use of structures and premises
- Any nonconforming use of buildings and land which was lawful before the adoption of this ordinance may be continued, and provided further that these regulations shall not be construed to require a change in plans, construction or designated use of

9.5 Nonconforming use of structures & premises

any building or land upon which construction and/or other improvements were lawfully begun prior to the effective date of this ordinance.

9.6 Maintenance and minor repair

A. The maintenance and minor repair of a structure containing a nonconforming use is permitted, provided that the maintenance or minor repair does not extend or expand the nonconforming use. For purposes of this section, "maintenance or minor repair" shall mean:

1. repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure
2. maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses
3. repairs which are required to remedy unsafe conditions which cause a threat to public safety
4. maintenance or repair of a sign in a way which does not change the exterior message
5. a non-conforming use shall not be expanded, extended or enlarged in floor area or changed to another non-conforming use. Structures housing a non-conforming use may be improved to an extent not exceeding fifty (50%) of the current market value of the existing structure.

9.7 Termination of nonconforming use

- A. When use of either the premises and/or structure, in regard to its zoning classification, and not otherwise, ceases for a period which shall not exceed six (6) consecutive months, any subsequent use thereafter shall conform to the regulations of this ordinance for the district in which it is located. Only the Land Code Administrator may grant an extension prior to the six-month period based on the owner(s) request.
- B. Structures housing non-conforming uses when partially destroyed or damaged by fire, accident or natural causes beyond fifty percent (50%) of its current market value shall thereafter conform to the regulations of this ordinance for the district in which

it is located. Removal or destruction of the structure beyond fifty percent (50%) of its current market value shall also eliminate non-conforming use of the land.

9.8 Catastrophic provision

In the event of a natural disaster, which is determined by the state of Mississippi or the United States government; nonconforming uses may be continued, where such continuance is declared to be in the public interest by the Board of Aldermen, though existing structures and other improvements on the premises of the non-conforming use have suffered damages exceeding fifty percent (50%) of their market value.

9.9 Nonconforming signs

- A. All nonconforming signs shall be modified to conform with the regulations set forth in this ordinance or shall otherwise be removed, when the nature or the name of the business which the sign advertises is changed and/or if the sign is to be changed or modified, either in shape, size, message or if the face of the sign is replaced.
- B. Any sign not conforming to the provisions set forth in this ordinance, which is destroyed or damaged by more than fifty percent (50%) of its replacement cost at the time of the damage, shall not be repaired or replaced except in compliance with this ordinance.
- C. Any sign conforming to this ordinance, which becomes unsafe, hazardous, insecure or in danger of falling upon members of the general public, shall be removed or repaired by the owner or the owner of the property within fourteen (14) days of receipt of written notice from the Land Code Administrator and acknowledgement by the Board of Aldermen.
- D. Any sign not conforming to the provisions of this ordinance, which becomes unsafe, hazardous insecure or in danger of falling shall be removed by the owner, or the owner of the property upon which such sign is located, within fourteen (14) days of receipt of written notice from the Land Code Administrator with acknowledgement by the Board of Aldermen.

9.10 Change, re-establishment, expansion, alteration or major repair of nonconformities

A. Intent

The intent of this Section is to allow the continuation of any nonconformity and the normal maintenance and repair thereof, but to require any change, re-establishment, expansion, alteration or major repair of a nonconformity to obtain a conditional use permit to determine whether it will substantially injure the value, use and enjoyment neighboring properties. Major repair to nonconforming structures shall, in accordance to Section 9.6 be permitted without the necessity of obtaining such conditional use.

B. Conditional use procedure

Unless this Section expressly provides otherwise, change, re-establishment, expansion, alteration or major repair of any nonconformity shall be deemed a conditional permitted use, and shall occur only as approved by the Planning Commission in accordance with the procedures set forth in Section 3.15.

C. After holding a public hearing on the conditional use, the Planning Commission shall determine whether to approve the proposed change, re-establishment, expansion, alteration or major repair. The Planning Commission shall not approve the proposed change, re-establishment, expansion, alteration, or major repair unless and until it finds, based on evidence and testimony received at a public hearing or otherwise appearing in the record of the case, that the proposed change, reestablishment, expansion, alteration or major repair meets the standards set forth in this ordinance as well as the following:

1. all access roads and entrance or exit drives to the nonconformity will be adequate with respect to automotive and pedestrian safety and convenience, traffic flow, and control and access in the case of fire or other emergency
2. all off-street parking, loading, refuse collection and other service areas will be adequate with respect to automotive and pedestrian safety and convenience, traffic flow, economic, noise, glare, odor and other impacts on adjoining properties

3. all water, wastewater treatment, schools, fire and police protection and other necessary public and private utilities and services will be adequate with respect to their location, availability and compatibility with adjoining properties

4. all landscaping, screening and fencing will be adequate, with respect to the effectiveness of their type, dimensions and character; will be adequate with respect to minimizing the economic, noise, glare, odor and other impacts of the nonconformity on adjoining properties and other properties in the neighborhood

5. the type, size and intensity of the proposed conditional use, including such considerations as storage of items and arrangement the size of the site and the location of the use upon it, and the hours of operation and numbers of people who are likely to utilize or be attached to the use, will be adequate with respect to minimizing the impact of the nonconformity upon adjoining properties, other properties in the neighborhood and the purposes of the use district in which the property is located

6. surface drainage will be adequate with respect to on-site erosion, siltation, pollution, flooding or other detrimental effects of the nonconformity

D. In determining whether the proposed change, re-establishment, expansion, alteration or major repair will substantially injure the value, use and enjoyment of other properties, the Planning Commission shall also consider and balance:

1. the possible detriment or benefit to the owner of the nonconformity resulting from denying the approval, from approving the request
2. the possible detriment or benefit to the owner of the nonconformity resulting from denying and the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request
3. the possible detriment or benefit to the general public resulting from denying the approval, from approving the request but requiring that the

9.10 Change of nonconformities

- nonconformity be brought wholly or partially into compliance or from approving the request
- E. The Planning Commission may impose any conditions on approval of the request as it deems necessary to mitigate any potential hazards or problems or to bring the nonconformity into compliance to the extent necessary to protect the rights and interests of nearby property owners and the general public.
- F. In acting upon applications for such conditional uses, the Planning Commission shall not order the discontinuation or termination of a nonconformity. If an applicant is denied, then the continuation, maintenance and repair of the nonconformity shall still be allowed in accordance with the terms of this Article.