

ARTICLE 5 - NONCONFORMITIES

SECTION 5-1. Nonconforming Uses of Lots, Structures, Land and Premises, and Characteristics of Use.

(A) *Intent.* Within the districts established by this ordinance or amendments thereto that may exist:

- (a) Lots;
- (b) Structures;
- (c) Uses of land and structures, and;
- (d) Characteristics of use

which were lawful before this ordinance was passed or amended, but uses which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit those nonconforming uses to continue until they are removed, but not to encourage their survival. Any nonconforming use which is discontinued or remains vacant with an intent to be discontinued for a period of six (6) months shall be considered to have been abandoned and all nonconforming rights shall cease. The determination of discontinued use or vacancy shall be by the Building Official. It is further the intent of this ordinance that nonconforming uses shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses shall be defined herein as the use of the lots, land, structures and premises, as well as characteristics of use, which do not conform to this ordinance or future amendments either as to permitted uses, lot dimension(s), setbacks, or other supplementary regulation contained herein. Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, or of land, or of structure and land in combination shall not be extended or enlarged after passage of this ordinance without the approval of the Board of Adjustment.

To avoid 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 or construction plans were approved prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction had been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Construction plans will continue to be deemed approved for a six month period following passage of this ordinance. In order to remain approved, actual construction must be completed within one (1) year.

(B) *Nonconforming 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 on the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. 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, width, or depth, any or all, that are generally applicable in such district, provided that yard dimensions and requirements, other than those applying to area, width, or depth, any or all, of the lot shall conform to the regulations of GR district. Variance from yard requirements shall be obtained only through action of the Board of Adjustment.

If two or more lots or 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 ordinance, and if all or part of the lots do not meet the requirements established for lot area and width, the land involved shall be considered to be an undivided parcel for the purpose of this ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot area and width requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with area or width below the requirements established herein.

(C) *Nonconforming uses of land or of land with minor structures only.* Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, and where such use involves no individual structure with a replacement cost exceeding \$1,000.00, the use may be continued as long as it remains otherwise lawful, provided:

- (i) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this ordinance;
- (ii) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use on the effective date of adoption or amendment of this ordinance;
- (iii) If any such nonconforming use of land ceases, then any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which the land is located;
- (iv) No additional structure not conforming to the requirements of this ordinance shall be constructed in connection with such nonconforming use of land.

(D) *Nonconforming use of structures.* Where a lawful structure exists at the effective date of

adoption or amendment of this ordinance that could not be built under the terms hereof by reason of restrictions, area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following provisions:

(i) No such nonconforming structure may be enlarged or altered in a manner which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.

(ii) Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of such destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.

(iii) Should any 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. Notwithstanding the foregoing, existing multi-family dwelling developments may be rebuilt in the event of any such damage or destruction, at the same unit per acre density that existed prior to such damage or destruction.

(E) *Nonconforming uses of structures or of structures and premises in combination.* If lawful use involving individual structures with a replacement cost of \$1,000.00 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued as long as it remains otherwise lawful, subject to the following provisions:

(i) No existing structure devoted to a use not permitted by this ordinance 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.

(ii) Any nonconforming use may be extended throughout any parts of a building where arranged or designed for such use at the time of the adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside a building.

(F) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations of the district, and the nonconforming use may not thereafter be resumed.

SECTION 5-2. Board of Adjustment

1. ORGANIZATION. There is hereby created a Board of Adjustment consisting of five (5) members, each to be appointed by the Mayor and subject to confirmation by the City Council for a term of two (2) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose place becomes vacant for any cause, in the same manner as the original appointment was made. Each member reappointed or each new appointee shall serve for a full term of two (2) years unless removed as herein provided. Provided, however, that the Mayor and City Council may appoint two (2) alternate members of the Board of Adjustment who shall serve in the absence of one or more of the regular members when requested to do so by the Mayor or City Manager, as the case may be, so that all cases to be heard by the Board of Adjustment will always be heard by a minimum number of four (4) members. The alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two years, and any vacancy shall be filled in the same manner and they shall be subject to removal the same as the regular members.

2. PROCEDURE. The Board shall adopt rules to govern its proceedings provided, however, that such rules are not inconsistent with this Ordinance or Statutes of the State of Texas. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the Acting Chairman, may administer oath and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

3. APPEALS

(a) Appeals to the Board of Adjustment can be taken by any person aggrieved, or by an officer, department or board of the municipality affected by the decision of the Building Official. Such appeal shall be taken within Ten (10) days after the decision has been rendered by the Building Official, by filing with the officer from whom the appeal is taken and with the Board of Adjustment, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(b) An appeal shall stay all proceedings of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril of life or property. In such case, proceedings shall not be

stayed, otherwise, than by a restraining order which may be granted by the Board of Adjustment or by court of record on application on notice to the officer from whom the appeal is taken and due cause shown.

(c) The Board of Adjustment shall fix a reasonable time for the hearing of an appeal, give the public notice thereof by posting such notice in regular USPS mail addressed to all owners of real property located within two hundred (200) feet of the property on which the appeal is made and by publishing notice of such hearing in a newspaper of general circulation in the City of Big Spring. Both the posted and published notice shall be given at least ten (10) days prior to the date set for the hearing. Upon the hearing, any party may appear in person or by attorney or by agent. If a protest against any proposed appeal has been filed with the City Secretary, duly signed and acknowledged by the owners of twenty (20) percent or more of the land area contained in the two hundred (200) foot notification boundary, then such appeal shall not become effective except by a three-fourths (3/4ths) majority vote of the Board of Adjustment.

4. JURISDICTION. When in its judgement, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the Board of Adjustment may, in specific cases, after public notice and public hearing, and subject to appropriate conditions and safeguards authorize the following special exceptions to the regulations herein established.

(a) Permit the reconstruction, extension or enlargement of a building occupied by a nonconforming use on the lot or tract occupied by such building provided such reconstruction does not prevent the return of such property to a conforming use and permit the expansion of off-street parking or off-street loading for a nonconforming use.

(b) Permit such modifications of the height, yards area, coverage, minimum access and parking regulations as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape, or slope that it cannot be appropriately developed without such modification.

(c) Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land and structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated non-conforming use and the conservation and preservation of property. The Board shall, from time to time, on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation or maintenance of any nonconforming use within the City.

5. ACTIONS OF THE BOARD.

(a) In exercising its powers, the Board may, in conformity with the provisions of the Civil Statutes of Texas, as amended; revised or reformed, wholly or partly, or may modify the order, requirement, decisions, or determination appealed from and make such order, requirement, decision or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken including the power to impose reasonable conditions to be complied with by the applicant.

(b) The concurring vote of four (4) members of the Board shall be necessary to revise any order, requirement, decision or determination of any such Building Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variance in said Ordinance.

(c) Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment or any taxpayer or any officer, department or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the filing of the decision in the office of the Board and not thereafter.

6. FEE. There shall be a nonreturnable fee as established by City policy, payable at the time of filing of an appeal with the Board Secretary.

SECTION 5-3 THROUGH 5-5. Reserved