

## ARTICLE XXV

### NONCONFORMITIES

#### SECTION 2500 - PURPOSE OF THIS ARTICLE

A nonconformity is any land, lot, building, structure or parts thereof, existing before the enactment of this Ordinance, which subsequent to the enactment of this Ordinance or amendment thereto, does not conform with the use regulations and/or dimensional regulations of the district in which it is situated, and/or does not comply with any other requirements herein.

It is the intent of this Ordinance to permit nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming USES (see definition under Section 2501 below) are declared by this Ordinance to be incompatible with permitted land use in the districts involved. Therefore, a nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this Ordinance by the addition of other uses of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change of plans, construction, or designated use of any building on which ACTUAL CONSTRUCTION WAS LAWFULLY INITIATED PRIOR TO THE EFFECTIVE DATE OF ADOPTION OR AMENDMENT OF THIS ORDINANCE and upon which actual building construction has 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. Where excavation or demolition or removal of an existing building has been substantially initiated preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be "actual construction," provided that work shall be carried on diligently.

#### SECTION 2501 - TYPES OF NONCONFORMITIES

Whereas the definition of a nonconformity has been given in Section 201 and under Section 2500, such nonconformities shall be further defined according to one of the types of nonconformities listed below, or combination thereof, for the purpose of regulation.

- 2501.01 Nonconforming Undeveloped "Lot of Record": This type of nonconformity is an undeveloped "lot of record" (i.e., part of a subdivision, the map of which has been recorded in the office of the Chancery Clerk of Lamar County or a lot described by metes and bounds, the description of which has been recorded in said office) the dimensions of which, subsequent to the passage of this Ordinance, do not meet the area or width requirements, or both, of the district wherein such lot is located.
- 2501.02 Nonconforming Structure (Including Buildings): This type of nonconformity includes anything lawfully constructed or erected with a fixed location on the ground (or attached to something having a fixed location on the ground) prior to the passage of this Ordinance, but which subsequently does not comply with the bulk, placement or other dimensional requirements of the zoning district wherein located.

- 2501.03 Nonconforming Use: This type of nonconformity includes the uses of any land, lot, building, structure, or parts thereof, which lawfully existed prior to the passage of this Ordinance but which subsequently does not comply with all or some part of the use requirements of the zoning district wherein located.

## **SECTION 2502 - REGULATIONS CONCERNING NONCONFORMING UNDEVELOPED LOTS OF RECORD**

- 2502.01 Erection of One-Family Dwellings Allowed on Single Nonconforming Undeveloped (or Vacant) Lots of Record in Separate Ownerships: In any district in which one-family dwellings are permitted, a one-family dwelling and customary accessory buildings may be erected on any SINGLE nonconforming undeveloped (or vacant) lot of record after the effective date of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lots must be in SEPARATE OWNERSHIP AND NOT OF CONTINUOUS FRONTAGE WITH OTHER LOTS IN THE SAME OWNERSHIP. This provision shall apply even though such single lot of record fails to meet the requirements for area or width, or both, that are generally applicable in the district, PROVIDED THAT:

The required yard dimensions and other requirements (than those applying to lot area or width, or both) of the proposed single-family residential use shall conform to the regulations in the district in which such single nonconforming lot of record is located.

Variance of yard requirements shall be obtained only through action of the Board of Supervisors following recommendation of the Lamar County Planning Commission. (See Section 2804 of this Ordinance).

(Explanatory note: Section 2502.01 provides the explicit guarantee that a single-family dwelling may be constructed on any lot of record in a district where single-family dwellings are permitted, provided that yard and other requirements NOT INVOLVING AREA OR WIDTH are met. This complies with the established legal principle that an individual must be allowed to do something with his lot. Furthermore, if the lot is too narrow or too shallow to build a house and yet provide the rear and/ or side yards required in a particular district, he/ she may apply for a variance in accordance with Section 2804 of this Ordinance.)

- 2502.02 Two or More Nonconforming Undeveloped (or Vacant) Lots of Record with Continuous Frontage Changing Ownership After the Effective Date of This Ordinance (This applies to non platted lots): If two or more undeveloped (or vacant) lots in single ownership with continuous frontage are “of record” at the time of enactment of this Ordinance, and if, subsequent to the passage of this Ordinance, such lots become nonconformities in the district where they are located; and if such lots change ownership after the enactment of this Ordinance, the lands involved shall be considered as UNDIVIDED PARCEL for the purposes of this Ordinance; and, nor shall any division of any parcel be made which creates a lot width or area (or both) below the requirements stated in this Ordinance.

The provisions of this subsection shall not apply to two or more undeveloped lots of record in single ownership with continuous frontage which remain in the same ownership (or if the lots are conveyed by inheritance or as a gift) following enactment of this Ordinance. Such lots not changing ownership shall continue to be considered divided parcels; and the owner of such lots may erect single-family dwellings on each lot in districts where single-family dwellings are permitted, subject to the regulations imposed by subsection 2502.01. However, further division of such nonconforming lots of record shall be prohibited.

No lot shall be created on or after the effective date of this Ordinance which does not meet the lot area and lot width requirements of the district wherein the lot is located.

### **SECTION 2503 - REGULATIONS CONCERNING NONCONFORMING STRUCTURES**

Where a lawful structure exists before the effective date of adoption or amendment of this Ordinance that could not subsequently be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its placement on the lot, or other dimensional requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, PROVIDED THAT:

- A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- B. Should such nonconforming structure or nonconforming portions of a structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed, except in conformity with the provisions of this Ordinance. However, structures can be rebuilt using the same footprint as the previous structure in cases of natural disasters as long as the structure is not in the road right-of-way.
- C. Should 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.

### **SECTION 2504 - REGULATIONS CONCERNING NONCONFORMING USES OF LAND (OR 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 so long as it remains otherwise lawful, PROVIDED:

- A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- B. 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 at the effective date of adoption or amendment of this ordinance;

- C. If any such nonconforming use of land ceases for any reason for a period of more than 90 days (except where government action has impeded access to the premises), any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located;
- D. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

**SECTION 2505 - REGULATIONS CONCERNING NONCONFORMING USES OF MAJOR STRUCTURES OR OF MAJOR STRUCTURES AND LAND IN COMBINATION**

If lawful use involving individual MAJOR structures (i.e., those with a replacement cost of \$1,000 or more) or of such MAJOR structures and land in combination, exists prior to 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 so long as it remains otherwise lawful, subject to the following provisions:

- A. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, 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.
- B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
- C. 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 for the district, and the nonconforming use may not thereafter be resumed.
- D. When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for twelve consecutive months or for twelve months during any three year period (except when government action has impeded access to the premises), the structure, or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. This period can be extended after review by the Plan Commission and approval by the Board of Supervisors.
- E. When owners of the manufactured homes desires to, they may upgrade a nonconforming manufactured home by purchasing a newer manufactured home in replacement of the older manufactured home. For purposes of this Ordinance, an upgrade will consist of a manufactured that is no older than five years than the current date or is larger in size. i.e., a double or triple wide or two story. It will also consist of upgrading from a mobile or manufactured home to a modular home.