



ZONING ORDINANCE

DIVISION 706 NONCONFORMING USES

706.01 Intent

Within the districts established by this article or amendments that may later be adopted there may exist; lots, structures, uses of land and structures, and characteristics of use which were lawful before this article was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this article or such amendment. It is the intent of this article to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this article that non-conformities 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.

706.02 Continuance of nonconforming use

The lawful use of any building or structure or land existing at the time of enactment of this ordinance or amendment thereto may be continued, even though such use does not conform with the provisions of this article, except that the nonconforming use shall not be:

- A. Changed to another nonconforming use;
- B. Reestablished after discontinuance for a continuous period of 6 months (except when government action impedes access to the premises);
- C. Expanded, extended or enlarged in any manner which increase its non-conformity, but such structure may be altered to decrease its non-conformity.

706.03 Continuance of a nonconforming building or structure.

Any nonconforming building or structure existing as of June 9, 2010, may be retained, except that it shall not be:

- A. Expanded, extended or enlarged in any manner which increase its non-conformity.
- B. Rebuilt, altered or repaired over a 12-month period if such construction costs would exceed 50% of the replacement costs of the building, as calculated according to the Square Foot Construction Costs table produced by the International Code Council, or the total appraised building value as shown on the current tax record, or an appraisal made by a licensed appraiser; whichever is the greater value of the three options. If an appraisal is used, the appraisal must be provided for review prior to issuance of the building permit. This section shall apply when work is being done to the entire site and/or the building footprint or existing square footage increases. Any increase of the building square footage must be for a use that is conforming and all other zoning and development standards must be met for the new addition.
- C. Rebuilt, altered or repaired over a 12-month period if such construction costs would exceed 75% of the replacement costs of the building, as calculated according to the Square Foot Construction Costs table produced by the International Code Council, or the total appraised building value as shown on the current tax record, or an appraisal made by a licensed appraiser; whichever is the greater value of the three options. If an appraisal is used, the appraisal must be provided for review prior to issuance of the building permit. This section shall apply in cases where there is no sitework, and neither the footprint nor square footage of the existing building expand.
- D. Except that, in the event that a nonconforming building or structure is destroyed wholly or in part by accidental or unintentional fire, flood or natural disaster, then said building or structure may be repaired or rebuilt, or a new building or structure may be built, on the same building footprint as the original structure. In these cases, all permitting must be obtained within 24 months of documented damage to the structure(s).



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- E. Section 706.03 B and C does not apply to signs. See Section 714.06 C Non-Conforming Signs of the City of Marietta Zoning Ordinance. (Ord. No. 6187, 11/8/2000, Sec. 1; Ord. No. 7470, 6/9/2010)

706.04 Exceptions

- A. Nothing in this article shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety.
- B. In any district in which single family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any vacant single lot of record existing on July 11, 1984, notwithstanding limitations imposed by other provisions of this article, only so long as it is used for a single-family residence. 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 or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements in order to build upon any such vacant single lot of record shall be obtained only through action of the Board of Zoning Appeals.
- C. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this article, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purpose of this article, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this article, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this article.

(Code 1996, Sec. 7-8-2-10-060; Ord. No. 6187, 11/8/2000, Sec. 2; Ord. No. 7470, 6/9/2010)¹

¹ #20200234 (CA2020-03) approved 5/13/2020