

CHAPTER 1175
Supplementary District Regulations

- 1175.01 Nonconforming uses, lots,
buildings and structures.
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1175.01 NONCONFORMING USES, LOTS, BUILDINGS, AND STRUCTURES.

- (a) Purpose. The purpose of this Section is to recognize the existence of uses, buildings, lots and structures that lawfully existed at the time of this Planning and Zoning Code's enactment, or amendment thereto, but which now do not conform with one or more of the regulations contained in this Planning and Zoning Code. Nonconforming status is considered to be incompatible with permitted uses in the zoning district in which it exists. Therefore, nonconforming uses, buildings, lots, and structures are subject to regulations limiting their use, restoration, reconstruction, extension, and substitution. Such nonconforming status shall be continued only in conformance with this Section.
- (b) Variances. A nonconforming lot, use, building or structure does not include nonconformity with regulations pursuant to a legally granted variance from a zoning regulation.
- (c) Maintenance and Repair of Structures. Ordinary repairs, or repair or replacement of non-bearing walls, fixtures, wiring, or plumbing may be performed on a nonconforming structure or on any portion of a structure that contains a nonconforming use provided that the cubic content shall not be increased and no structural parts shall be replaced except when required by law to restore such building or structure to a safe condition or to make the building or structure conform to the regulations of the district in which it is located.
- (d) Nonconforming Use of Buildings and Land. A nonconforming use may continue so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions:
 - (1) Alteration or Reconstruction of a Building Occupied by a Nonconforming Use. No building or structure occupied by a nonconforming use shall be altered, improved, or reconstructed except when the use is changed to a use permitted in the district in which it is located or upon prior approval of the Planning Commission, and then only if the cumulative cost of the alteration, reconstruction, or improvement does not exceed 50% of the building's replacement value. However, no such building shall be enlarged or expanded to increase the nonconforming use.
 - (2) Expansion or Relocation of Nonconforming Use of Land. A nonconforming use of land shall not be physically enlarged, increased, extended, or relocated to a part of the lot that was not

occupied by the use at the time it became nonconforming. No additional structures shall be constructed in connection with such nonconforming use.

- (3) Expansion or Relocation of Nonconforming Use of Structures. A nonconforming use of an existing structure may be extended throughout any parts of a building that were manifestly arranged or designed for such use at the time of adoption or amendment to this Planning and Zoning Code. However, no such use shall be extended to occupy any land outside such building not previously occupied by such nonconforming use.
 - (4) Change or Substitution of Use. A nonconforming use of a building, structure or land shall not be changed or substituted to another nonconforming use unless the Planning Commission, on appeal, finds that the use proposed is equally appropriate or more appropriate to the district than the existing nonconforming use, and that the use proposed is in less conflict with the character of uses permitted in the applicable zoning district than the existing nonconforming use. In permitting such change, the Planning Commission may require appropriate conditions and safeguards in accordance with other provisions of this Planning and Zoning Code. Whenever a nonconforming use is changed to a less intensive use, such use shall not thereafter be changed to a more intensive nonconforming use.
 - (5) Discontinuance of Use. Discontinuance of the nonconforming use of a building, part of a building, lot or part of a lot for a period of 24 consecutive months or longer shall constitute voluntary abandonment of such use and thereafter any use of the premises shall conform to the use regulations of the district in which the building or lot is located.
 - (6) Damage or Destruction. In the event a building or structure that is occupied by a nonconforming use is destroyed by any means to the extent of more than 50% of its replacement value, it shall not be rebuilt, restored or reoccupied for any use unless such use conforms to the use regulations of the district in which the building or structure is located.
- (e) Nonconforming Buildings or Structures. A nonconforming building or structure may continue to be used or occupied by a use permitted in the district in which it is located so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions:
- (1) Additions and Moving. A nonconforming building or structure shall not be added to, enlarged or moved unless the addition(s) or

part(s) moved is made to conform to the regulations of the district in which it is located.

- (2) Restoration of Damaged Building or Structure. If a nonconforming building or structure is damaged or destroyed by any means, those portions so destroyed or damaged may be restored to the original footprint and floor area of the building or structure, provided the reconstruction is begun within 12 months of the damage or destruction and the cumulative replacement costs do not exceed 50% of the replacement cost of the building or structure at the time of such damage. Any restoration that exceeds the original footprint and/or floor area shall comply with subsection 1175.01(e)(1).
- (3) Change in Principal Use of Building. The principal use of a nonconforming building may be changed to any other use permitted in the district in which it is located so long as the new use complies with all regulations of this Planning and Zoning Code specified for such use, except the regulations to which the building did not conform prior to the change in use.
- (f) Nonconforming Parking Facilities. A building or use existing lawfully at the time of this Planning and Zoning Code, or an amendment thereto, became or becomes effective, but which does not comply with the off-street parking regulations for the use may continue without such parking facilities. In the event an existing building is altered or a use is changed or substituted in accordance with these regulations, then additional off-street parking spaces shall be provided in compliance with Section 1175.01(h).
- (g) Nonconforming Signs. A sign, lawfully existing at the time this Planning and Zoning Code, or any amendment thereto, became or becomes effective, but which fails to conform to the sign regulations of the district in which it is located is a nonconforming sign. Nonconforming signs shall comply with the regulations set forth in Chapter 1163.
- (h) Existing Nonconforming Site Condition at the Time of Development Plan Review. If a nonconforming site condition(s) exists when a revised development plan is required pursuant to Section 1183.02, then such site condition(s) must be brought into compliance with district regulations, unless the Planning Commission determines that such conformance cannot be reasonably achieved because of existing site conditions. In such case, the Planning Commission shall approve a development plan that reduces the existing nonconforming site condition(s) to the maximum extent practicable.
- (i) Nonconforming Lots. A lot of record that does not comply on the effective date of this Planning and Zoning Code, or any amendment

thereto, with the lot area and/or lot width regulations of the district in which the lot is located may be used as follows:

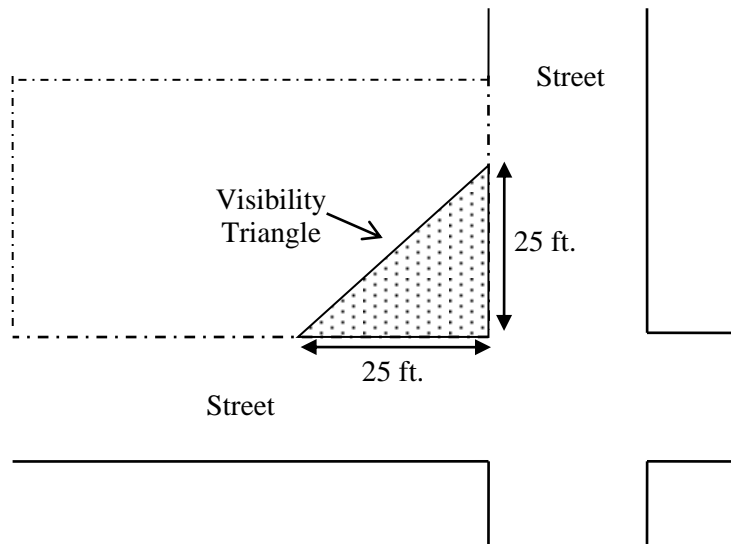
- (1) Existing Dwelling on a Residential Lot. If the lot is occupied by a dwelling, such dwelling shall be maintained and may be repaired, modernized or altered, provided that the building shall not be enlarged in floor area unless the enlarged section(s) complies with all regulations of this Planning and Zoning Code, except for the lot area and lot width regulations of the district in which the lot is located. The number of dwelling units shall not be increased unless all regulations, including lot area, are complied with.
 - (2) Single Nonconforming Lot of Record in a Residential District. A nonconforming lot in a Residential District that is in separate ownership and not of continuous frontage with other lots in the same ownership shall be permitted to be developed as a site for a single-family dwelling provided that the dwelling and its accessory uses comply with all regulations of this Planning and Zoning Code, except for the lot area and lot width regulations of the district in which the lot is located.
 - (3) Lots in Combination. If a vacant nonconforming lot adjoins one or more lots in common ownership on the effective date of this Planning and Zoning Code, or applicable amendment thereto, such lots shall be replatted to create conforming lots as a prerequisite for development.
- (j) Nonconforming Use Due To Reclassification. The provisions of this Section shall also apply to any building, structure, land or other use hereafter becoming nonconforming as a result of amendments made to this Planning and Zoning Code or Zoning Map.
 - (k) Change From Nonconforming Use. A nonconforming building or use shall cease to be considered as such whenever it first comes into compliance with the regulations of the district in which it is located. Upon such compliance, no nonconforming use shall be made, resumed or reinstated.
 - (l) Existing Use Deemed Conditional Use; Permit Required For Change. Any lawfully existing use that, at the time of its establishment, was not classified as a conditional use, but which now, because of the passage of this Planning and Zoning Code, or amendment thereto, is listed as a conditional use in the district in which it is located, shall be deemed without further action to be a conditional use. Any change, modification, enlargement or alteration of such use, site development conditions or signs, or change in ownership shall only be permitted upon review and approval by the Planning Commission according to the procedures for conditional uses set forth in Chapter 1185.

- (m) Completion of Construction with Zoning Certificate. Nothing in this Planning and Zoning Code shall prohibit the completion of the construction and use of buildings for which a zoning certificate has been issued prior to the effective date of this Planning and Zoning Code, or amendments thereto, provided that construction is commenced within 90 days after the issuance of such certificate, that construction is carried on diligently and without interruption and the entire building is completed within two years after the issuance of the zoning certificate. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction.

1175.02 VISUAL CLEARANCE ON CORNER LOTS.

Except for lots in the C-3 District, nothing shall be erected, placed, planted, or allowed to grow on a corner lot in such a manner as to block vision between a height of 2 ½ and 10 feet above the center line grades of the intersecting streets, within the triangular area bounded by the street right-of way lines of the corner lot and a line adjoining two points on the street right-of-way lines, each 25 feet from the point of intersection of the street right-of-way lines. Figure 1175.02 illustrates the visibility triangle.

Figure 1175.02 Visibility Triangle



1175.03 HEIGHT EXEMPTIONS.

Roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building; fire or parapet walls, skylights, towers, steeples, stage lofts, and screens, flagpoles, chimneys, smokestacks, radio and television aerials, wireless masts, water tanks or similar structures shall be permitted to exceed the maximum height set forth for the district in which the structure is located provided:

- (a) No such structure shall exceed the height limits of the district in which it is located by more than 15 feet; and
- (b) No such structure shall have a total area greater than 25 percent of the roof area of the building.

1175.04 TEMPORARY USES.

Temporary uses such as carnivals, festivals or similar community events or temporary outdoor sales and displays including, but not limited to, sales of plants, flowers, arts and crafts, Christmas trees, temporary inventory reduction or liquidation sales, shall be permitted in compliance with the following regulations:

- (a) Review Required. Temporary uses shall be reviewed and approved according to the following:
 - (1) Temporary uses that extend for a period no longer than 3 days shall be authorized by the Zoning Administrator.

- (2) Temporary uses that extend longer than 3 days but not more than 90 days shall require development plan review and approval by the Planning Commission except as otherwise set forth in Subsection (3) below.
 - (3) Temporary uses in residential districts that extend longer than 7 days but not more than 90 days shall require review and approval by the Planning Commission as a conditional use.
 - (4) In no case, however, shall a temporary use exceed a 90-day period.
 - (5) Regardless of the duration of the use, in all instances the owner of the property on which the activity is to be conducted shall sign the permit application.
- (b) Location. Temporary use activities shall not be conducted in the public right-of-way unless the appropriate license is obtained from the City.
- (c) Related Facilities.
- (1) Adequate parking for the temporary use must be available within 1,400 feet of the proposed site.
 - (2) Any outdoor lighting shall be shielded or directed away from adjoining residential properties and streets.
 - (3) Temporary signs shall be permitted in compliance with Chapter 1163.
- (d) Temporary Construction Facilities. Temporary construction facilities for use incidental to construction work may be erected in any zoning districts herein established; however, such facilities shall be removed upon completion or abandonment of the construction work. Such facilities shall not be occupied for human habitation. Temporary construction facilities, and their duration of use, shall be authorized by the Zoning Administrator.
- (e) Temporary Permit Required. Temporary use permit applications shall be filed in the Office of the Zoning Administrator, along with the application fee as established by Council.

1175.05 SEXUALLY ORIENTED BUSINESSES.

Bryan has determined that permitting sexually oriented businesses, as defined in this Section, in proximity to residential, institutional, and non-adult oriented retail uses would have a detrimental effect on such adjacent uses. It has been demonstrated that sexually oriented businesses, as defined in this Section, have been known to cause undesirable secondary effects on residential and institutional uses, particularly those where children are present, as well as adjacent non-sexually oriented business oriented

retail uses. Therefore, in order to prevent potential deterioration in Bryan's retail areas; and to avoid potential adverse impacts on residential and institutional uses particularly those where children are present, and thereby protecting the public health, safety and welfare, sexually oriented businesses, as defined in this Section, shall be permitted only in the I-2 District subject to the following requirements.

(a) For purposes of this Planning and Zoning Code sexually oriented businesses shall include but not be limited to any of the following:

(1) Adult book/video store. An establishment which utilizes 5 percent or more of its retail selling area for the purpose of retail sale or rental, or for the purpose of display or viewing, for any compensation, of books, magazines, other printed material, films, tapes and video cassettes, or any other visual representation, which are distinguished by their emphasis on adult materials as defined in this Section.

(2) Adult motion picture theater. An enclosed motion picture theater which regularly uses or utilizes 5 percent or more of its total viewing time, for presenting material distinguished or characterized by an emphasis on matter depicting, describing or related to adult material as defined in this Section.

(3) Adult motion picture drive-in theater. An open air drive-in theater which regularly uses or utilizes 5 percent or more of its total viewing time for presenting material distinguished or characterized by an emphasis on matter depicting, describing or related to adult material as defined in this Section.

(4) Adult only live entertainment business. An establishment where the patron directly or indirectly is charged a fee, and where the establishment features:

A. Entertainment or services which constitute adult material as defined in this Section; or

B. Exhibitions, dance routines, or gyrational choreography of persons totally nude, topless, bottomless, or strippers, male or female impersonators or similar entertainment or services which constitute adult material as defined in this Section.

(b) To further determine whether the above facilities are sexually oriented businesses, the following definitions shall apply.

(1) Adult material. Any book, magazine, newspaper, pamphlet, poster, print, picture, slide, transparency, figure, image,

description, video cassette, motion picture film, record or, other tangible thing, or any service, capable of creating sexual interest through sight, sound or touch, and;

- A. Which material is distinguished or characterized by an emphasis on matter displaying, describing, or representing sexual activity, masturbation, sexual excitement, nudity, bestiality, or human bodily functions of elimination; or
 - B. Which service is distinguished or characterized by an emphasis on sexual activity, masturbation, sexual excitement, nudity, bestiality, or human bodily functions of elimination.
- (2) Bottomless. Less than full opaque covering of male or female genitals, pubic area or buttocks.
 - (3) Nude or nudity. The showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than full, opaque covering of any portion thereof, or female breast(s) with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.
 - (4) Topless. The showing of a female breast with less than a full opaque covering of any portion thereof below the top of the nipple.
 - (5) Sexual activity. Sexual conduct or sexual contact, or both.
 - (6) Sexual contact. Any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is female, a breast, for the purpose of sexually arousing or gratifying either person.
 - (7) Sexual excitement. The condition of the human male or female genitals, when in a state of sexual stimulation or arousal.
- (c) Sexually oriented businesses shall be located in accordance with the following distance requirements:
- (1) A minimum of 1,000 feet from the boundaries of any lot containing a church or other place of worship, library, public park or playground, day care center, school or any other institution where children are kept day or night;
 - (2) A minimum of 1,000 feet from any residentially zoned parcel in Bryan or any adjacent township; and

- (3) A minimum of 1,000 feet from any other sexually oriented business.