

ARTICLE IV

CONDITIONAL USE AND NON-CONFORMING

SECTION 1. Conditional Uses, General Guide

The purpose of the conditional use procedure is to provide for certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations. These uses either have unusual characteristics or are generally of a public or semi-public character and are essential and desirable for the general convenience and welfare of the public. However, because of the nature of the use, the importance of its relationship to the Comprehensive Plan, and its possible impact not only on neighboring properties, but on the entire community, exercise of planning judgment on location and site plan is required.

A conditional use should be approved only if it is found that the location is appropriate and not in conflict with the Comprehensive Plan, that the public health, safety, morals, and general welfare will not be adversely affected, that adequate off-street parking facilities will be provided, and that necessary safeguard will be provided for the protection of surrounding property, persons and neighborhood values, and further provided that the additional standards of this section are complied with. Unless otherwise specified in this section or specified as a condition of approval, the height limits, yard spaces, lot area, and sign requirements shall be the same as for other uses in the district in which the conditional use is located.

The site plan process as stated in Article VI Site Plan Applications must be followed for the following developments: cluster, townhouse, and apartment (any multi-family or condominium). Appendix L depicts several examples of Open Space/Recreation Area options.

1.1 Specific Conditional Use Requirements

1. Cluster Development

A site plan must be submitted to the Town Council for its consideration and shall comply with the following minimum requirements:

- A. Development must contain a minimum of five acres.
- B. A minimum of 25% of the entire land area of the development must be retained in open space and deeded for the common use of the residents of the development. Drainage ditches and other easements shall not constitute more than 5% of the required open space. Wetlands shall not be included in open space calculations.
- C. Open Space for Passive and Active Recreation requirements shall be residential units of ten (10) or more shall provide at least three choices from each category listed below. Residential units of ten (10) or less shall provide at least two choices from each category listed below:

- Passive Options:
- 1) Greens
 - 2) Sitting Areas
 - 3) Picnic Areas
 - 4) Open lawn with Trees
 - 5) Habitat/Conservation Areas
 - 6) Water Features
 - 7) Historic Structure or Building(s)
 - 8) Community Gardens/special landscape
 - 9) Rain garden storm water treatment area
 - 10) Gazebo, pergola or pavilion
 - 11) Outdoor site furnishings
 - 12) Other appropriate recreational facilities as approved by the Town Council.

- Active Options:
- 1) Tot-lot or age appropriate playground
 - 2) Play fields
 - 3) Sports Courts such as tennis, basketball, volleyball, etc.
 - 4) Bicycle paths and facilities
 - 5) Trails
 - 6) Swimming Pool
 - 7) Club house or community center
 - 8) Indoor recreational facility
 - 9) Other appropriate recreational facilities as approved by the Town Council.

D. Central sewerage and water must be available to the development either from an approved private system or from a public system.

E. Evidence of proposed covenants, restrictions, and details of maintenance responsibility of common area and open space, to show that liability of maintenance of such areas shall be the owners within the development, and that the same may be enforced by liens against the property owners in favor of the Town of Houston or its assignee.

F. Other requirements are stated in the below listed Articles:

1. Article III Miscellaneous Provisions
2. Article V Administration and Enforcement
3. Article VI Site Plan Applications
4. Article VII Subdivision Applications
5. Appendix H Area Regulations

2. **Townhouse Development**

A site plan must be submitted to the Town Council for its consideration and shall comply with the following minimum requirements:

A. Townhouse development must contain a minimum of three acres, 25% of which must be common open space. Drainage ditches and other easements shall not constitute more than 5% of the required open

space. Wetlands shall not be included in open space calculations.

- B. Evidence of proposed covenants, restrictions and details of maintenance responsibility of common area open space, to show the liability for maintenance of such areas shall be the property owners within the development, and that the same may be enforced by liens against the property owners in favor of the Town of Houston or its assignee.
- C. Central sewerage and water must be available either from an approved private system or from a public system.
- D. No Townhouse shall be built on a lot less than 2,000 square feet in area.
- E. Lot width shall not be less than eighteen feet.
- F. No detached garage, carport or other detached accessory building shall be permitted on a lot occupied by a townhouse.
- G. Not more than six dwelling units shall be included in any one Townhouse building group.
- H. The facades of dwelling units in each group shall be varied in architectural treatment, roll lines, and no more than two continuous attached houses shall have the same setback. Variation in setbacks must be at least two feet.
- I. Other requirements are stated in the below listed Articles:
 - 1. Article III Miscellaneous Provisions
 - 2. Article V Administration and Enforcement
 - 3. Article VI Site Plan Applications
 - 4. Article VII Subdivision Applications
 - 5. Appendix H Area Regulations
- J. A minimum of 25% of the entire land area of the development must be retained in open space and deeded for the common use of the residents of the development.
- K. Open Space for Passive and Active Recreation requirements shall be residential units of ten (10) or more shall provide at least three choices from each category listed below. Residential units of ten (10) or less shall provide at least two choices from each category listed below:

- Passive Options:
- 1) Greens
 - 2) Sitting Areas
 - 3) Picnic Areas
 - 4) Open lawn with Trees
 - 5) Habitat/Conservation Areas
 - 6) Water Features

- 7) Historic Structure or Building(s)
- 8) Community Gardens/special landscape
- 9) Rain garden storm water treatment area
- 10) Gazebo, pergola or pavilion
- 11) Outdoor site furnishings
- 12) Other appropriate recreational facilities as approved by the Town Council.

- Active Options:
- 1) Tot-lot or age appropriate playground
 - 2) Play fields
 - 3) Sports Courts such as tennis, basketball, volleyball, etc.
 - 4) Bicycle paths and facilities
 - 5) Trails
 - 6) Swimming Pool
 - 7) Club house or community center
 - 8) Indoor recreational facility
 - 9) Other appropriate recreational facilities as approved by the Town Council.

3. **Two Family and Multi-Family Dwellings**

These have been considered conditional uses in order for the town to have some control over conversions of one-family dwellings to two-family and multi-family dwellings, thus preventing over-crowded conditions and increased congestion of streets.

- A. Any two family or multi-family dwelling must have separate direct access to the outside from each unit and no interior connection between units. Each unit must also have its own kitchen and bathroom facilities.
- B. Each dwelling unit shall contain a minimum of 800 square feet of floor area. If a one-family dwelling is converted to two-family or multi-family use, off-street parking shall be provided for the additional dwelling units.
- C. Other requirements are stated in the below listed Articles:
 - 1. Article III Miscellaneous Provisions
 - 2. Article V Administration and Enforcement
 - 3. Article VI Site Plan Applications
 - 4. Article VII Subdivision Applications
 - 5. Appendix H Area Regulations

4. **Apartment (Any Multi-Family or Condominium Development)**

A site plan must be submitted to the Town Council for its consideration and shall comply with the following, minimum requirements:

- A. Development must contain a minimum of three acres, 25% of which must be common open space maintained by development owners. Drainage ditches and other easements shall not constitute more than

5% of the required open space. Wetlands shall not be included in open space calculations.

- B. Open Space for Passive and Active Recreation requirements shall be residential units of ten (10) or more shall provide at least three choices from each category listed below. Residential units of ten (10) or less shall provide at least two choices from each category listed below:

- Passive Options:
- 1) Greens
 - 2) Sitting Areas
 - 3) Picnic Areas
 - 4) Open lawn with Trees
 - 5) Habitat/Conservation Areas
 - 6) Water Features
 - 7) Historic Structure or Building(s)
 - 8) Community Gardens/special landscape
 - 9) Rain garden storm water treatment area
 - 10) Gazebo, pergola or pavilion
 - 11) Outdoor site furnishings
 - 12) Other appropriate recreational facilities as approved by the Town Council.

- Active Options:
- 1) Tot-lot or age appropriate playground
 - 2) Play fields
 - 3) Sports Courts such as tennis, basketball, volleyball, etc.
 - 4) Bicycle paths and facilities
 - 5) Trails
 - 6) Swimming Pool
 - 7) Club house or community center
 - 8) Indoor recreational facility
 - 9) Other appropriate recreational facilities as approved by the Town Council.

- C. Central sewage and water must be available either from an approved private system or from a public system.

- D. Not more than six dwelling units shall be included in any one building.

- E. All dwelling units must have direct access to outside from each unit and no interior connection between units. Each unit must have its own kitchen and bathroom facilities.

- F. Each dwelling unit shall contain a minimum of 400 square feet of floor area.

- G. Other requirements are stated in the below listed Articles:

1. Article III Miscellaneous Provisions
2. Article V Administration and Enforcement
3. Article VI Site Plan Applications

4. Article VII Subdivision Applications
5. Appendix H Area Regulations

SECTION 2. Nonconforming Uses and Structures

Except as otherwise provided herein, the lawful use of a building or structure or the lawful use of any land existing and lawful at the effective date of this Ordinance, or in the case of a change of regulations, then at the time of such change, may be continued although such use does not conform to the provisions hereof. Except as provided in this Section, such nonconforming use may not be enlarged, extended, reconstructed or structurally altered except in compliance with the provisions in this Ordinance.

2.1 Buildings Nonconforming in Height, Area, or Bulk

A building nonconforming only as to height, lot area or yard requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect.

2.2 Discontinuance of Nonconforming Use

No building or portion thereof used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of one year, whether or not the equipment or fixtures are removed, shall again be used except in conformity with the regulations of the district in which such building or land is located.

2.3 Destruction of a Nonconforming Use

Except for residential uses which are continued under Section 6.9 of this Article, no building which has been damaged by any cause whatsoever to the extent of more than 50 percent of the fair market value of the building, immediately prior to damage, shall be restored except in conformity with the regulations of this Ordinance and all rights as a nonconforming use are terminated. If a building is damaged by less than 50 percent of the fair market value, it may be repaired or reconstructed and used as before the time of damage, provided that such repairs or reconstruction be substantially completed within twelve months of the date of such damage; however, a nonconforming dwelling may be rebuilt within any zoning district.

2.4 Existence of Nonconforming Use

When evidence available to the Town Council is deemed by them to be inconclusive as to whether a nonconforming use exists, this question shall be decided by the Board of Adjustment after public notice and hearing in accordance with the rules of the Board. The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a non-conforming use on the entire lot or tract.

2.5 Nonconforming Lots

The owner of a lot, parcel or tract of land may erect a dwelling or make other improvements on the lot even though the lot does not conform to the requirements of this Ordinance as to area and dimension of lots, provided the lot, parcel or tract of land was lawfully on record prior to the effective date of this Ordinance, and provided the improvements conform in all other respects to all other applicable regulations and restrictions.

2.6 Nonconforming Signs in a Residential District

In a residential district where any sign does not comply with provisions of this Ordinance, such sign and any supporting structures may be maintained but shall not be replaced, reconstructed, moved, structurally altered, or relighted except in compliance with the provisions of this Ordinance and may continue in use unless subject to removal under other provisions of this Ordinance. Removal, replacement, reconstruction, moving or structural alteration for any cause whatsoever shall be considered as a loss of nonconforming status. Supporting structures for nonconforming signs may continue in use for a conforming sign if said support structures comply in all respects to the applicable requirements of these regulations and other codes and ordinances. No permits for additional signs shall be issued for any premises on which there are any nonconforming signs.

2.7 Nonconforming Dwellings in Business and Industrial Districts

A dwelling nonconforming as to use in a business or industrial district shall be considered as a conforming use in the application of height, area, and bulk requirements of this Ordinance.

2.8 Nonconforming Uses Not Validated

A nonconforming use in violation of a provision of an ordinance which this ordinance amends or replaces shall not be validated by adoption of this ordinance unless such use complies with the terms of this Ordinance.

2.9 Nonconforming Residential Use May be Continued

A nonconforming dwelling may be replaced or rebuilt in any zoning district.

2.10 Change of Nonconforming Use

If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification. Whenever a nonconforming use of land or building has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restrictive use.