

# Chapter 7

## Nonconformities

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## CHAPTER 7 – NONCONFORMITIES

### **SECTION 7.01 PURPOSE**

- A. The provisions of this chapter shall apply to buildings, structures, lands, and uses which became nonconforming as a result of the application of these regulations to them or the classification or reclassification of property under these regulations, or any subsequent amendments thereto. A use originally authorized by a variance, conditional use, special exception, or other valid use permit issued prior to the effective date of these regulations, located within a district in which such use is not permitted by the terms of these regulations, is nonconforming.
- B. To avoid undue hardship, nothing in these regulations shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of these regulations and upon which actual construction had been carried on diligently. "Actual Construction" is defined to include the placing of construction materials in a permanent position and fastened in a permanent manner. If excavation or demolition or removal of an existing building has substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work has been carried on diligently.

### **SECTION 7.02 NONCONFORMING LOTS OF RECORD**

- A. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of these regulations, a single-family dwelling and customary accessory buildings may be erected on any single lot on record at the County Clerk and Recorder the effective date of adoption or amendment of these regulations. The lot must be in separate ownership and not of contiguous frontage with other lots in the same ownership. This section shall apply although the lot fails to meet the requirements for area or width, or both, generally applicable in the district, except that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district.
- B. If two (2) or more vacant lots or combinations of lots and portion of lots with contiguous frontage are in single ownership of record at the time of passage or amendment of these regulations, and if all or part of the lots do not meet the requirements for lot widths and areas as established by these regulations, the lots shall be deemed to be an undivided parcel for the purpose of these regulations, and no lot or portion of said parcel which does not meet lot width and area requirements established by these regulations shall be used or sold as a building site. No division of the lots shall be made which leaves remaining any lot with width or area smaller than the density or minimum lot size requirements in this these regulations.

### **SECTION 7.03 NONCONFORMING USES OF LAND**

- A. A lawful use of land existing on the effective date of adoption or amendment of these regulations, made no longer permissible by these regulations as enacted or amended, may be continued so long as it remains otherwise lawful, subject to the following conditions:
  - 1. No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of these regulations.
  - 2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of these regulations.

3. If any such nonconforming use of land ceases for any reason for a period of one hundred eighty (180) days, any subsequent use of land shall conform to the regulations specified by these regulations for the zone in which such land is located.
4. Any nonconforming use of land may be changed to or replaced by, another nonconforming use provided the Board of Adjustment, by making findings in the specific case, shall determine that the proposed use is equally appropriate or more appropriate than the previous use for the zoning district. In permitting such change, the Board of Adjustment shall impose those standards which are appropriate for the proposed change and which contribute to the protection of conforming uses within the zoning district. A public hearing is required.
5. A mobile home site, and subsequent placement of a mobile home, in a district which prohibits mobile homes, shall be a legal nonconforming use provided the following conditions were met prior to the adoption of the district:
  - a. The site was lawfully constructed;
  - b. The site has all utilities, plumbing and sewage disposal systems installed; and,
  - c. The site is ready for placement of a mobile home.

#### **SECTION 7.04 NONCONFORMING STRUCTURES**

- A. A lawful structure existing on the effective date of adoption or amendment of these regulations which could not be built under by reason of restriction on area, lot coverage, height, setbacks, or other characteristics of the structure or its location on the lot, may be continued so long as it remains lawful, subject to the following conditions:
  1. No such structure may be enlarged or altered in a way which increases its nonconformity unless an enlargement or structural alteration is required by law.
  2. Any such structure destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction shall not be reconstructed or replaced except in conformity with the provisions of these regulations. See exceptions specified in Section 7.03 4. and 7.05 3. of these regulations.
  3. Any such structure moved for any reason for any distance whatever shall thereafter conform to the regulations for the district in which it is located after it is moved.
  4. Any structure may be altered if necessary to adapt a nonconforming building to new technologies or equipment pertaining to uses housed in such building, but any enlargement necessary to adapt to new technologies shall be authorized only by a variance.

#### **SECTION 7.05 NONCONFORMING USES OF STRUCTURES**

- A. A lawful use of a structure, or of structures and land in combination existing on the effective date of adoption or amendment of these regulations which would not be allowed in the district under the terms of these regulations may be continued so long as it remains otherwise lawful, subject to the following conditions:
  1. No existing structure devoted to a use not permitted by these regulations in the zone in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except to change the use of the structure to a use permitted in that zone.
  2. 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 these regulations, but no such use shall be extended to occupy any land outside of such building.
  3. Notwithstanding the requirements of Section 7.05 6. of these regulations, any nonconforming use may be changed to, or replaced by, the same or another nonconforming

use provided the Board of Adjustment, by findings in the specific case, shall determine that the proposed change or replacement is equally appropriate or more appropriate than the previous use for the zoning district. In permitting such change, the Board of Adjustment shall impose those standards from these regulations which are appropriate for the proposed change or replacement and which contribute to the protection of conforming uses within the zoning district. A public hearing is required.

4. 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 in which such structure is located, and the nonconforming use may not be thereafter resumed.
5. If a nonconforming use of a structure, or structures and premises in combination, is discontinued or abandoned for one hundred eighty (180) days, the structure or structures and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located.
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. This subsection does not apply to mobile home parks which are legal nonconforming uses.
7. Any structure occupied by a nonconforming use destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost, exclusive of foundation, at the time of destruction, shall not thereafter be used except in conformance with the regulations of that district.

#### **SECTION 7.06 REPAIR AND MAINTENANCE**

- A. A nonconforming use may be repaired and maintained. Maintenance shall include only building code repairs, incidental alterations and cosmetic improvements which shall not extend the degree of nonconformity of such building or structure.
- B. Nothing in these regulations 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 change with protecting the public safety, upon order of such official.

#### **SECTION 7.07 RECORD OF NONCONFORMITIES**

The Zoning Officer shall ascertain the date upon which any nonconforming use was established or acquired and shall prepare a map showing the exact location of the nonconforming uses of structure or structure and land in combination and shall prepare for each nonconforming use a file containing a Zoning Compliance Permit establishing a lawful use, the name and address of the owner and other information deemed appropriate by the Zoning Officer.

