

## ARTICLE VIII NONCONFORMING SITUATIONS

### Section 1. Intent

This Ordinance establishes separate districts, each of which is an appropriate area for the location of the uses that are permitted in that district. It is necessary and consistent with the establishment of these districts, that nonconforming buildings, structures, and uses, substantially and adversely affecting the orderly development and taxable value of other property in the district be permitted to continue only with restrictions as herein contained. The purpose of this Article is to provide for the restrictions of nonconforming buildings, structures, and uses, and to specify those circumstances and conditions under which those nonconforming buildings, structures, and uses shall be permitted to continue.

### Section 2. Definitions

Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

*Dimensional Nonconformity.* A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

*Effective Date of This Ordinance.* Whenever this article refers to the effective date of this ordinance, the reference shall be deemed to include the effective date of any amendments to this ordinance if the amendment, rather than this ordinance as originally adopted, creates a nonconforming situation.

*Nonconforming Lot.* A lot existing at the effective date of this ordinance (and not created for the purposes of evading the restrictions of this ordinance) that does not meet the minimum area requirement of the district in which the lot is located.

*Nonconforming Project.* Any structure, development, or undertaking that is incomplete at the effective date of this ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

*Nonconforming Sign.* A sign (see Article XVI, Section 1 for definition) that, on the effective date of this ordinance does not conform to one or more of the regulations set forth in this ordinance, particularly Article XVI.

*Nonconforming Situation.* A situation that occurs when, on the effective date of this ordinance, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this ordinance, or because land or buildings are used for purposes made unlawful by this ordinance. Nonconforming signs shall not be regarded as nonconforming situations for purposes of this article but shall be governed by the provisions of Article XVI, Section 17.

*Nonconforming Use.* A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use.)

**Section 3      Continuation of Nonconforming Situations and Completion of Nonconforming Projects**

1. Unless otherwise specifically provided in this ordinance and subject to the restrictions and qualifications set forth in Sections 4 through 9 of this Article, nonconforming situations that were otherwise lawful on the effective date of this ordinance may be continued.
2. Nonconforming projects may be completed only in accordance with the provisions of Section 9 of this Article.

**Section 4.      Nonconforming Lots**

1. In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this chapter. 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 zone, provided that yard dimensions shall conform to the regulations for the zone in which such lot is located.
2. If, on the date this section becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed.

**Section 5.      Extension or Enlargement of Nonconforming Situations**

1. Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:
  - a. An increase in the total amount of space devoted to a nonconforming use, or
  - b. Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, or density requirements or other requirements such as parking requirements.
2. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this ordinance, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.
3. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

4. Notwithstanding Subsection 1. any single family or duplex structure use for residential purposes and maintained as a nonconforming residential use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to setback and parking requirements. This paragraph is subject to the limitations stated in Section 8 of this Article. (Amended September 26, 2017 Ordinance 08-2017)
5. A nonconforming structure may be altered to decrease its nonconformity.
6. Notwithstanding Subsection 1., whenever: (1) there exists a lot with one or more structures on it, and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (3) the parking or loading requirements of Article XVII that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking in accordance with Article XVII, Part 1, Section 9, if: (1) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (2) such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning or special- or conditional-use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

#### **Section 6. Repair, Maintenance, Reconstruction**

1. Minor repairs to, improvements that do not increase nonconformity, and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 25% of the appraised valuation of the structure to be renovated may be done only in accordance with a zoning permit issued pursuant to this section.
2. If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed 25% of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a zoning permit issued pursuant to this section. This subsection does not apply to structures used for single-family residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced as provided in Section 5.4. of this Article.
3. For purposes of Subsections 1. and 2:
  - a. The "cost" of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.
  - b. The "cost" of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of Subsections 1. or 2. by doing such work incrementally.
  - c. The "appraised valuation" shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of increase in the consumer price index since the last date of valuation, or the valuation determined by a professionally recognized property appraiser.

4. The Zoning Administrator shall issue a permit authorized by this section if he/she finds that, in completing the renovation, repair or replacement work:
  - a. No violation of Section 5 of this Article will occur, and
  - b. The permittee will comply to the extent reasonably possible with all provisions of this ordinance applicable to the existing use (except that the permittee shall not lose his right to continue a nonconforming use).
  - c. Compliance with a requirement of this ordinance is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

**Section 7. Change in Use of Property Where a Nonconforming Situation Exists**

1. A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning or special-use permit in accordance with Article IV, Part 1, Section 1., may not be made except in accordance with Subsections 2. through 4. However, this requirement shall not apply if only a sign permit is needed.
2. If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this ordinance applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this ordinance is achieved, the property may not revert to its nonconforming status.
3. If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this ordinance applicable to that use cannot reasonably be complied with, then the change is permissible if the Zoning Administrator issues a permit authorizing the change. This permit may be issued if the zoning administrator finds, in addition to any other findings that may be required by this ordinance, that:
  - a. The intended change will not result in a violation of Section 5 of this Article, and
  - b. All of the applicable requirements of this ordinance that can reasonably be complied with will be complied with. Compliance with a requirement of this ordinance is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby created.
4. If the intended change in use is to another principal use that is also nonconforming, then the change is permissible if the Zoning Administrator, upon recommendation of the Planning

Commission, issues a permit authorizing the change. The Zoning Administrator may issue the permit if it is found, in addition to other findings that may be required by this ordinance, that:

- a. The use requested is one that is permissible in some zoning district with a zoning or special-use permit, and
- b. All of the conditions applicable to the permit authorized in Subsection 3. of this section are satisfied, and
- c. The proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.

### **Section 8. Abandonment and Discontinuance of Nonconforming Situation**

1. When a nonconforming use is discontinued for a consecutive period of 180 days , the property involved shall thereafter be used only for conforming purposes, with the exception of any existinf structure originally constructed as a single family, detached residential house. Such residential structure may continue to be used as a single-family home until it is removed or replaced with a conforming structure. (Amendment 8-2015, effective 1/26/16)
2. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of one year, then that property shall thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the zoning administrator issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. This permit may be issued if the Zoning Administrator finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The approval of said permit shall not have the effect of increasing the nonconformity nor shall it have the effect of increasing the intensity of the nonconformity. The permit shall specify which nonconformities need not be corrected
3. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for one year shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.
4. When a structure or operation made nonconforming by this ordinance is vacant or discontinued at the effective date of this ordinance, the one-year period for purposes of this section begins to run on the effective date of this ordinance.

### **Section 9. Completion of Nonconforming Projects**

1. Construction may be begun and/or completed under the terms of a building permit issued prior to the effective date of this section, if such permit was in force and fully valid on that date. Such construction is subject to:

- a. All terms of the permit;
  - b. The ordinance under which it was issued; and
  - c. If applicable, the provisions of subsection 4.
2. Any of the following pending matters filed prior to the effective date of this section shall be processed and/or decided in accordance with the ordinance in effect on the date on which the particular matter was filed:
- a. Applications for building permit;
  - b. Applications for approval of a subdivision or site plan approval, if such application received preliminary approval by the Planning Commission prior to the effective date of this section; and
  - c. Any matters pending before the Board of Appeals on appeal or by way of application for a special exception.
3. A project may be begun and/or completed in accordance with final site plan or final subdivision plat approval given prior to the effective date of this section and in accordance with a final approval given to a preliminary site plan or a preliminary subdivision plat in accordance with subsection 2.b, under the terms of the ordinance governing such approval. However, any such final approval shall expire at the later of:
- a. One (1) year from the effective date of this section, or
  - b. One (1) year from the date of final approval.
4. With respect to any building permit or pending matters referred to in subsection 1, 2, and 3, nothing in this section shall be construed:
- a. To affect the status of any use or structure involved in any such permit, application, approval or pending matter as a nonconforming use or structure under this Ordinance;
  - b. To extend, enlarge or otherwise affect the provisions of any prior ordinance relating to the duration, expiration or termination of any such permit, application, approval or pending matter; or
  - c. To revive or give any other effect to any permit, application, approval or pending matter which has been, or is hereafter deemed to be, abandoned or terminated under the provisions of this Ordinance or any prior ordinance which is applicable.
5. Extensions.
- a. On written application of the owner prior to the expiration of any permit, approval or other authorization, the Planning Commission may grant a single one-year extension of time to complete the undertaking or project authorized by any permit, approval, or other authorization it has granted.

- b. The Planning Commission may grant an extension for any permit, approval or other authorization if it determines that the owner has diligently proceeded with development of the undertaking or project.

**Section 10. Setback Variance**

Owner(s) of a residential dwelling located on a lot recorded prior to 1970, which, by adoption of a subsequent Zoning Ordinance, was made nonconforming with regard to setbacks, may request a variance as to setbacks required for improvements to the residence so long as the improvement complies with all other requirements of the Zoning Ordinance. (amended Ordinance 03-2018, effective March 27, 2018)

**Section 11. Reserved**

**Section 12. Reserved**