

# CHAPTER 7. NONCONFORMITIES

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# Chapter 7 – Nonconformities

## 7.1 GENERAL APPLICABILITY

### A. NONCONFORMITIES GENERALLY

Uses of land which do not conform to the requirements of this Ordinance may not be enlarged, expanded, nor altered, except in conformance with this Ordinance.

Nonconformities shall not be used as grounds for adding other prohibited uses or structures, nor for the enlarging by means of extension or expansion, except as specifically provided by this Ordinance.

### B. COMPLETION OF NONCONFORMING PROJECTS

1. For purposes of this section, a nonconforming project shall include any structure, development, or undertaking that is incomplete at the effective date of this Ordinance, or amendment thereto, and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.
2. A nonconforming project for which a completed application has been submitted to and accepted by the Planning Director prior to the effective date of this Ordinance shall be reviewed in accordance with the standards applicable on the date the complete application was accepted.
3. Any nonconforming project for which a permit was issued under the previous Zoning Ordinance may be completed in accordance with the terms of such permit, so long as it remains unexpired and unrevoked.
4. If a permit has been issued for a nonconforming project and such permit remains unexpired and unrevoked, an applicant may seek modification of such permit from the permit issuing authority that granted the original permit, and such permit issuing authority may approve the requested modification if it determines that the proposed changes will result in a project that is not more nonconforming in terms of the present Ordinance than the project approved under the previous Ordinance.

### C. CLASSIFICATION OF NONCONFORMITIES

Nonconformities are classified as:

1. Uses of major structures and premises (*Section 7.2*),
2. Characteristics of uses (*Section 7.3*) which were lawful but would be prohibited, regulated, or restricted by the enactment of this Ordinance or a subsequent amendment thereto,
3. Structures (*Section 7.4*) and/or
4. Lots (*Section 7.5*).

## 7.2 NONCONFORMING USES

### A. INTENT CONCERNING NONCONFORMING USES: SPECIFICALLY DECLARED TO BE INCOMPATIBLE WITH PERMITTED USES

It is the intent of this Ordinance that nonconforming uses of land shall be considered to be incompatible with the permitted uses within the district(s) in which they are located. Such nonconforming uses shall not be enlarged or extended in any respect.

Once a nonconforming use has ceased to operate or has been discontinued for a period of 120 consecutive days, it may not be resumed and shall only be replaced with a conforming use.

### B. CHANGE OF USE

#### 1. GENERAL

A nonconforming use shall not be changed to any other nonconforming use, except as provided in *Section 7.2(B)(2)*, *EXCEPTIONS*.

2. EXCEPTIONS

Nonconforming residential, office, or personal services uses within a industrial or commercial base zoning district may be continued or replaced by another nonconforming residential, office, or personal service use, upon the issuance of a Zoning Compliance Permit based on the standards in *Section 7.2(B)(3)*.

Nonconforming non-residential uses within a residential zoning district may be replaced by another nonconforming non-residential use, upon the issuance of a Zoning Compliance Permit based on the standards in *Section 7.2(B)(3)*.

3. The Planning Director may issue a Zoning Compliance Permit for a replacement use described in *Section 7.2(B)(2)*, *EXCEPTIONS*, if the applicant substantiates that:

- (a) The proposed use is a permitted use in some zoning district with either Zoning Compliance Permit or site plan approval;
- (b) All the applicable requirements of this Ordinance must be met to the extent reasonably possible. 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 or increased landscaping 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 be created; and,
- (c) The proposed replacement use will have the same or less adverse impact on those most affected by it than the existing or previous nonconforming use, and will be equal or more compatible with the surrounding neighborhood than the existing or previous nonconforming use applied for. The applicant shall provide the following information for both the existing and proposed use to demonstrate to the Planning Director the existence of an equal or less adverse impact on the surrounding areas:
  - i. Hours of operation;
  - ii. Traffic generation by vehicle type;
  - iii. Number of employees;
  - iv. External changes to structure;
  - v. Noxious exposure;
  - vi. Customer traffic, including time of day and number of trips; and
  - vii. Nature of use type.
- (d) The cost of any reconstruction or renovation associated with the use change does not exceed one-third (1/3) of the existing structure's replacement cost (new) prior to the reconstruction or renovation. In cases where the reconstruction or renovation cost exceeds one-third (1/3) of the structure's replacement cost (new), then the use and structure must conform to the requirements of the district where located.
- (e) In the case of a non-residential use in a residential zoning district, the structure is not reasonably suitable for a use allowed by right in the zoning district due to unique or unusual construction or characteristics.

### 7.3 NONCONFORMING CHARACTERISTICS OF USE

- A. Conforming uses with nonconforming characteristics may continue to operate but shall not be expanded, altered, changed, or relocated in such a manner as to increase the degree of nonconformity.
- B. Nonconforming characteristics which can reasonably be corrected shall be addressed during the review of a new site plan or special use permit. For example, compliance may not be reasonably possible when compliance cannot be achieved without adding additional land to the lot, moving a substantial structure that is on a permanent foundation, or other significant site work. The permit-issuing authority may consider the cost of eliminating nonconforming characteristics in relation to the total project cost and the benefit to the community when determining what improvements are reasonable.

#### C. MULTIPLE DETACHED DWELLINGS ON A SINGLE PARCEL

The Town recognizes that some historic development patterns are inconsistent with modern requirements, and that some of the existing development patterns are part of the historic character of the Town. The Town finds that when such historic patterns persist into the present in a way that is consistent with the nearby surrounding development, it may advance the Town's interest in preserving its historic character to allow the inconsistent pattern to remain, but to regulate the inconsistent land use in a manner as consistent with the modern requirements as possible to prevent unintended consequences.

Therefore, where two (2) or more detached single family residential structures exist on a single lot in the R-6, R-6MH, R-8, or R-10 District as of the original adoption date of this ordinance, the Planning Director may approve a plat to place each residential structure on an independent lot provided the plat shows:

- 1. That all lots have 30 feet of road frontage and access to a public road;
- 2. That all lots have no more than one single family residential structure on the lot;
- 3. That all lots provide for minimum side yard setbacks of at least 2 feet and a rear yard setback of at least 2 feet;
- 4. The plat shall evenly divide the space between the existing structures; and
- 5. No more than 10 lots may be created from a single parcel pursuant to this section.

### 7.4 NONCONFORMING STRUCTURES

#### A. NONCONFORMING STRUCTURE, OTHER THAN SIGNS

A structure (other than a sign) which is nonconforming, due to non-compliance with one or more requirements in *Section 6.3, DIMENSIONAL REQUIREMENTS*, of this Ordinance and which is used for a use permitted in the district in which located, may remain, provided:

- 1. That any structural change to the structure shall not increase the degree of nonconformity. Structural changes which decrease or do not affect the degree of nonconformity shall be permitted.
- 2. That a nonconforming commercial or industrial structure or portion thereof which is damaged by causes other than the intentional or reckless acts of the property owner or authorized agent to such an extent that the cost to repair does not exceed fifty (50) percent of the structure's taxable value, may be reconstructed. If such a structure is damaged by the intentional or reckless act of the property owner or authorized agent, or is otherwise damaged to such an extent that the cost to repair exceeds fifty (50%) percent of the structure's current tax value, or is destroyed, then the structure may not be reconstructed except in accordance with all requirements established by this Ordinance for the zoning district in which it is situated.
- 3. That a nonconforming residential structure, or a portion thereof which is partially or totally destroyed, may be reconstructed or replaced. The total amount of space devoted to a nonconforming use may not be increased, except that a larger, single-family residential structure may be constructed in place of a smaller

one, a larger mobile home intended for residential use may replace a smaller one, and a mobile home may be replaced by a framed structure. The reconstructed residential structure may not be more nonconforming with respect to dimensional restrictions such as, yard requirements, height limitations, or density requirements, and such dimensional nonconformities must be eliminated if that can reasonably be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such structure. A building permit must be obtained within one (1) year from the time of damage or destruction.

4. Nonconforming provisions related to signs are provided in *Section 6.19, SIGNAGE*.

#### **B. ADDITIONS TO NONCONFORMING STRUCTURES**

The Planning Director may issue a Zoning Compliance Permit to authorize an existing nonconforming structure to encroach upon a setback required in *Section 6.3, DIMENSIONAL REQUIREMENTS*, provided:

1. The proposed encroachment results from an addition to or extension of an existing structure that already is nonconforming with respect to the requirements of *Section 6.3, DIMENSIONAL REQUIREMENTS*; and
2. The proposed addition or extension will not encroach upon any required front, rear, or side yard to a greater extent than the existing structure on that lot.

#### **C. NONCONFORMING USES OF MAJOR STRUCTURES AND PREMISES IN COMBINATION**

Nonconforming use of structures may be continued provided:

1. Such uses may not be enlarged, extended, altered, or replaced, except for to change to a use permitted in the district in which located, except as provided in *Section 7.4(C)(2)* below.
2. A nonconforming use may be extended through portions of a building manifestly arranged or intended for such use, but not otherwise, and shall not extend to occupy land outside such building or any additional building not used for such nonconforming use at the time that nonconforming status was established.
3. If a nonconforming use ceases for more than one hundred eighty (180) consecutive days, subsequent use shall conform to the regulations of the district in which it is located.

#### **D. NONCONFORMING STRUCTURES UNSAFE FOR REASONS OTHER THAN LACK OF MAINTENANCE**

Nonconforming structures or portions thereof, which the Planning Director has declared unsafe, but not because of lack of maintenance, may be repaired and restored to the extent required to make them safe unless this would violate those provisions of *Section 7.4(A), NONCONFORMING STRUCTURE OTHER THAN SIGNS*.

## **7.5 NONCONFORMING LOTS OF RECORD**

#### **A. USE OF SINGLE NONCONFORMING LOTS FOR ONE-FAMILY DETACHED DWELLINGS**

A one-family detached dwelling and customary accessory structure may be erected, occupied, and used on a single nonconforming lot of record, subject to *Section 7.5(B), COMBINATION OF CONTIGUOUS NONCONFORMING LOTS IN SINGLE OWNERSHIP AND WITH CONTINUOUS FRONTAGE, EXCEPTION*, and in accord with requirements applying in the district.

#### **B. COMBINATION OF CONTIGUOUS NONCONFORMING LOTS IN SINGLE OWNERSHIP AND WITH CONTINUOUS FRONTAGE; EXCEPTION**

It is the intent of this subsection to require undeveloped nonconforming lots (those having separate, individual deeds) held in single ownership to be combined with other nonconforming lots to create less nonconforming lots under the circumstances below, but not to require such combination when it would be out of character with the way the neighborhood has previously been developed.

1. Where two (2) or more undeveloped nonconforming lots in single ownership adjoin and have continuous road frontage, such lots shall be combined to create less nonconforming lots with respect to minimum lot size, road frontage, and setback requirements.
2. Combination of nonconforming, continuous frontage lots in single ownership shall not be required when all of the following conditions exist:
  - (a) One (1) or more of the lots contains a principal structure built before the original adoption date of this ordinance,
  - (b) The existing structure does not cross the property line between two nonconforming lots,
  - (c) Any vacant lot(s) are not less than fifty (50) feet wide,
  - (d) The lots will be used for one family detached dwellings and customary accessory structures,
  - (e) A majority of the developed residential lots within five hundred feet (500) feet of such lots are also nonconforming with regard to minimum lot size or frontage, and
  - (f) Adequate water and sewer facilities exist or will be install to accommodate the small lot size.
3. Combination is also not required when the nonconforming lot was created by public taking action or as a result of a court order.

**C. LOTS NOT MEETING MINIMUM LOT SIZE REQUIREMENTS**

In any district in which single family dwellings are permitted, any lot of record existing at the time of the adoption of these regulations which has dimensions which are less than require by these regulations may be used as building site for a single family dwelling providing the lot area and width are not less than eighty (80) percent of the requirements in the district. If the lot is smaller or narrower, a variance may be requested from the Board of Adjustment.

**D. YARD REQUIREMENTS MODIFIED**

Lots created prior to the adoption of this ordinance, where a lot width or depth is less than that required in the zoning district to which it is located, a structure will be allowed to be built or placed upon the lot as long as it can meet the current required setbacks. Otherwise, a yard modification may be permitted with a variance granted by the Board of Adjustment.