

## **ARTICLE 8. NONCONFORMING SITUATIONS**

### **Section 8-1: Continuation of Nonconforming Situations and Completion of Nonconforming Projects**

Nonconforming situations that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in Sections 8-2 through 8-6 of this section.

Nonconforming projects may be completed only in accordance with the provisions of Section 8-6 of this section.

### **Section 8-2: Nonconforming Lots**

- (A) When a nonconforming lot can be used in conformity with all of the regulations (other than the area or width requirements) applicable to the district in which the lot is located, such a use may be made a use by right. Otherwise, the nonconforming lot may be used only in accordance with a permit issued by the Board of Adjustment. The Board shall issue such a permit if it finds that (a) the proposed use is one permitted by the regulations applicable to the district in which the property is located, and (b) the property can be developed as proposed without any significant negative impact on the surrounding property or the public health, safety, or welfare. In issuing the permit authorized by this paragraph, the Board may allow deviations from applicable dimensional requirements (such as setback lines and yard size minimums) if it finds that no reasonable use of the property can be made without such deviations.
- (B) Whenever this Ordinance creates a nonconforming lot and the owner of the nonconforming lot also owns land adjacent to it, and a portion of this other land can be combined with the nonconforming lot to create a conforming lot (without hereby creating other nonconformities), the owner of the nonconforming lot, or his successor in interest, may not take advantage of the provisions of the paragraph (1) of this section.

### **Section 8-3: Extension or Enlargement of Nonconforming Situations**

- (A) Except as specifically provided in this subsection, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.
- (B) Subject to paragraph (D) of this subsection, 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. However, subject to Section 8-6 of this Ordinance (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use may not be extended to additional buildings or to land outside the original building.

- (C) Subject to Section 8-6 of this Ordinance (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming, if 10 percent or more of the earth products had already been removed at the effective date of this Ordinance.
- (D) The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.
- (E) Physical alternation of structures or the placement of new structures on open land are unlawful if they result in:
- (1) An increase in the total amount of space devoted to a nonconforming use;
  - (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements; or
  - (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- (F) Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation -- i.e., work estimated to cost more than 60 percent of the appraised value of the structure to be renovated (and not required by the partial or total destruction of a structure [see paragraph H]) -- may be done pursuant to a permit issued by the Board of Adjustment. The Board of Adjustment shall issue such a permit if it finds that the work will not result in a violation of any other paragraphs of this section (particularly paragraph E) or make the property more incompatible with the surrounding neighborhood.
- (G) Notwithstanding paragraph (E), any structure used for single-family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of a larger size, so long as the replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to yard size and setback requirements. In particular, a manufactured home may be replaced with a larger manufactured home, and a "single-wide" manufactured home may be replaced with a "double-wide." This paragraph is subject to the limitations stated in Section 8-5 on abandonment and discontinuance of nonconforming situations.

- (H) A structure that is nonconforming in any respect or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed, subject to the following restrictions:
- (1) 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 and a larger manufactured home intended for residential use may replace a smaller one;
  - (2) The reconstructed building 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 building;
  - (3) The reconstructed building may not enclose areas that were previously unenclosed, even though those areas were used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent or more of the perimeter of the area is marked by a permanently constructed wall or fence.
- (I) Except for single-family residential structures (including manufactured homes), if the estimated cost of the reconstruction work exceeds 10 percent of the appraised value of the structure, the work may be done only after issuance of a permit by the Board of Adjustment. The Board shall issue the use permit if it finds that the work will be done in accordance with this paragraph and that the reconstructed building will not make the property more incompatible with the surrounding property than it was before the destruction occurred.

**Section 8-4: Change in Kind of Nonconforming Use**

- (A) A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use.
- (B) A nonconforming use may be changed to another nonconforming use only in accordance with a use permit issued by the Board of Adjustment. The Board shall issue such a permit if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the application is made for the permit.

**Section 8-5: Abandonment or Discontinuance of Nonconforming Situations**

- (A) When a nonconforming use is (1) discontinued for a consecutive period of 180 days, or (2) discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes, except as provided in paragraph (B) of this subsection.
- (B) The Board of Adjustment may issue a use permit to allow a nonconforming use that has been discontinued for more than 180 consecutive days to be reinstated if it finds that (1) the

nonconforming use has been discontinued for less than two years, and (2) the discontinuance resulted from factors that, for all practical purposes, were beyond the control of the person maintaining the nonconforming use.

- (C) If the principal activity on property where a nonconforming situation other than a nonconforming use exists is (1) discontinued for a consecutive period of 180 days, or (2) discontinued for any period of time without a present intention of resuming that activity, then that property may thereafter be used only in conformity with all of the regulations applicable to the district in which the property is located, unless the Board of Adjustment issues a use permit to allow the property to be used (for a conforming purpose) without correcting the nonconforming situation. The Board shall issue such a use permit if it finds that (1) the nonconforming situation cannot be corrected without undue hardship or expense, and (2) the nonconforming situation is of a minor nature that does not adversely affect the surrounding property or the general public to any significant extent.
- (D) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this subsection, 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 or one space in a nonconforming manufactured home park for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured home park 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. And so, if a manufactured home is used as a nonconforming use on a residential lot where a conforming residential structure also is located, removal of that manufactured home for 180 days terminates the right to replace it.
- (E) When a structure or operation made nonconforming by this Ordinance is vacant or discontinued at the effective date of this Ordinance, the 180-day period for purposes of this subsection begins to run at the effective date of this Ordinance.

**Section 8-6: Completion of Nonconforming Projects**

- (A) All work on any nonconforming project shall cease on the effective date of this Ordinance, and all permits previously issued for work on nonconforming projects shall be revoked as of that date. Thereafter, work on nonconforming projects may begin, or may be continued, only pursuant to a use permit issued by the Board of Adjustment (except as provided in paragraph (B) of this section). The Board shall issue such a use permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his position in some substantial way in reasonable reliance on the land use law as it existed before the effective date of this Ordinance and thereby would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the Board shall be guided by the following:
  - (1) All expenditures made pursuant to a validly issued and unrevoked building or development permit shall be considered as evidence of reasonable reliance on the

land use law that existed before this Ordinance became effective. *(Amended 8/2/2021)*

- (2) Except as provided in subparagraph (1) of this paragraph, no expenditures made more than 180 days before the effective date of this Ordinance shall be considered as evidence of reasonable reliance on the land use law that existed before this Ordinance became effective. An expenditure is made at the time a party incurs a binding obligation to make that expenditure.
  - (3) To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made expenditure to acquire a potential development site if the property obtained is just as valuable under the new classification as it was under the old, or the expenditure can be recovered by resale of the property.
  - (4) An expenditure shall be considered substantial if it is significant both in dollar amount and in terms of (a) the total estimated cost of the proposed project, and (b) the ordinary business practices of the developer.
  - (5) A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the land use law affecting the proposed development site could not be attributed to him.
  - (6) Even though a person had actual knowledge of a proposed change in the land use law affecting a development site, the Board may still find that he acted in good faith if he did not proceed with his plans in a deliberate attempt to circumvent the effects of the proposed ordinance. The Board may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that (a) at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development; and (b) the developer had legitimate business reasons for making expenditures.
- (B) The requirements of paragraph (A) of this section shall not apply to a nonconforming project if the Building Inspector has issued a building permit, special use permit, development permit, variance permit, or a preliminary or final subdivision plat has been approved prior to the effective date of this Ordinance. *(Amended 8/2/2021)*
- (C) The Board of Adjustment shall not consider any application for a use permit authorized by paragraph (A) of this subsection that is submitted more than 60 days after the effective date of this Ordinance, unless it waives this requirement for good cause shown.
- (D) If the Board of Adjustment issues a use permit pursuant to paragraph (A) of this section, it may attach such reasonable conditions to the use permit as it finds necessary to reduce the

extent to which the nonconforming project is incompatible with the surrounding neighborhood. In particular, the Board may require that work on the nonconforming project be continuously maintained, if possible, and that the project be completed as expeditiously as possible.

- (E) The Building Inspector shall send copies of this subsection to the owners (and developers, if different from the owners) of all properties in regard to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be under construction. This notice shall be sent by certified mail not less than fifteen days before the effective date of this Ordinance.
- (F) The Board of Adjustment shall establish expedited procedures for hearing applications for special use permits under this subsection. These applications shall be heard, whenever possible, before the effective date of this Ordinance, so that construction work is not needlessly interrupted. *(Amended 8/2/2021)*
- (G) When it appears from the developer's plans or otherwise that the nonconforming project was intended to be or reasonably could be completed in stages, segments or other discreet units, the Board of Adjustment shall not allow the nonconforming project to be constructed or completed in a fashion that is larger or more extensive than is necessary to allow the developer to recoup and obtain a reasonable rate of return on the expenditures he has made in connection with that nonconforming project.