

## CHAPTER 1129 Nonconformities

1129.01	Purpose.	1129.06	Substitution of nonconforming uses.
1129.02	Certificates for nonconforming uses.	1129.07	Single nonconforming lots of record.
1129.03	Incompatibility of nonconformities.	1129.08	Nonconforming lots of record in combination.
1129.04	Avoidance of undue hardship.	1129.09	Termination of nonconforming uses.
1129.05	Uses under conditional use provisions not nonconforming uses.	1129.10	Repairs and maintenance.

---

### 1129.01 PURPOSE.

Within the districts established by this Ordinance, or by amendments thereto which may later be adopted, lots, uses of land, structures, and uses of structures and land in combination exist which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance. The legitimate interest of those who lawfully established these nonconformities are herein recognized by providing for their continuance, subject to regulations limiting their completion, restoration, reconstruction, extension, and substitution. Furthermore, nothing contained in this Ordinance shall be construed to require any change in the layout, plans, construction, size or use of any lot, structure, or structure and land in combination, for which a zoning certificate became effective prior to the effective date of this Ordinance, or any amendment thereto. Nevertheless, while it is the intent of this Ordinance that such nonconformities be allowed to continue until removed, they should not be encouraged to survive. Therefore, no nonconformity may be moved, extended, altered, expanded, or used as grounds for any other use(s) or structure(s) prohibited elsewhere in the district without the approval of the Planning Commission, except as otherwise specifically provided for in this Ordinance.



**1129.02 CERTIFICATES FOR NONCONFORMING USES.**

The Zoning Inspector may upon his own initiative, or shall upon the request of any owner, issue a certificate for any lot, structure, use of land, use of structure, or use of land and structure in combination, that certifies that the lot, structure or use is a valid nonconforming use. The certificate shall specify the reason why the use is a nonconforming use, including a description of the extent and kind of use made of the property in question, the portion of the structure or land used for the nonconforming use, and the extent that dimensional requirements are structures that are or become nonconforming. No fee shall be charged for such a certificate. One copy of the certificate shall be returned to the owner and one copy shall be retained by the Zoning Inspector, who shall maintain as a public record a file of all such certificates.

**1129.03 INCOMPATIBILITY OF NONCONFORMITIES.**

Nonconformities are declared by this Ordinance to be incompatible with permitted uses in the districts in which such uses are located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after the effective date of adoption or amendment of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

**1129.04 AVOIDANCE OF UNDUE HARDSHIP.**

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building for which a zoning certificate has been issued prior to the effective date of adoption or amendment of this Ordinance, provided that:

- (a) Construction is commenced within 90 days after the issuance of said zoning certificate.
- (b) Construction is carried on diligently and without interruption for a continuous period in excess of 30 days.
- (c) Construction is completed within 2 years from the issuance of said zoning certificate.

Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner, and the demolition or removal of an existing building.

**1129.05 USES UNDER CONDITIONAL USE PROVISIONS NOT NONCONFORMING USES.**

Any use which is permitted as a conditional use in a district under the terms of this Ordinance shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.

**1129.06 SUBSTITUTION OF NONCONFORMING USES.**

A nonconforming use may, upon appeal to and approval by the Planning Commission, be changed to another nonconforming use provided that the proposed nonconforming use is in less conflict with character and use of the district than the existing nonconforming use. In permitting such change, the Commission may require that additional conditions and safeguards be met, and failure to meet such conditions shall be considered a punishable violation of this Ordinance.



**1129.07 SINGLE NONCONFORMING LOTS OF RECORD.**

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. 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 district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

**1129.08 NONCONFORMING LOTS OF RECORD IN COMBINATION.**

If two (2) or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the effective date of adoption or amendment of this Ordinance, and if all or part of the lots with no structures do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance. No portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this Ordinance.

**1129.09 TERMINATION OF NONCONFORMING USES.**

(a) Termination of Use Through Discontinuance. When any nonconforming use is discontinued or abandoned for more than two (2) years, any new use shall not thereafter be used except in conformity with the regulations of the district in which it is located, and the nonconforming use shall not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.

(b) Termination of Use by Damage or Destruction. In the event that any nonconforming structure is destroyed by any means to the extent of more than 50 percent of the replacement cost of such structure, it shall not be rebuilt, restored, or reoccupied for any use unless it conforms to all regulations of this Ordinance. When such a nonconforming structure is damaged or destroyed to the extent of 50 percent or less of the replacement cost, no repairs or rebuilding shall be permitted except in conformity with all applicable regulations of this Ordinance and the following conditions:

- (1) A zoning certificate pertaining to such restoration shall be applied for and issued within one (1) year of such destruction, and rebuilding shall be diligently pursued to completion.
- (2) Such restoration shall not cause a new nonconformity, nor shall it increase the degree of nonconformance or noncompliance existing prior to such damage or destruction.



**1129.10 REPAIRS AND MAINTENANCE.**

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became nonconforming shall not be increased. Furthermore, nothing in this section shall prevent the strengthening or restoring to a safe condition of any portion of a structure declared unsafe by a proper authority, provided such work does not exceed in aggregate cost 50 percent of the replacement cost of the structure. Where appropriate, a building permit for such activities shall be required.