

## **CHAPTER 1260 NONCONFORMING LOTS, STRUCTURES AND USES**

- 1260.01 Intent of Ordinance Concerning Nonconformities
  - 1260.02 Avoidance of Undue Hardship
  - 1260.03 Single Nonconforming Lots of Record
  - 1260.04 Nonconforming Lots of Record in Combination
  - 1260.05 Nonconforming Uses of Land
  - 1260.06 Nonconforming Structures
  - 1260.07 Nonconforming Uses of Structures or of Structures and Land in Combination
  - 1260.08 Discontinuance; Reestablishment of Use or Structure
  - 1260.09 Repair of Damaged Structures or Uses
  - 1260.10 Expansion, Repair, and Maintenance
- 

### **1260.01 Intent of Ordinance Concerning Nonconformities**

- A. Within the districts established by this Ordinance or amendments that may later be adopted there exists lots, uses of land, structures, and uses of structures and land in combination, which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
- B. Nothing in this Zoning Code shall require any change in the plans, construction, size or designated use of a building or structure or part thereof for which a building permit has been granted or for which a complete application with necessary plans and specifications has been filed with the Zoning Inspector before the enactment or amendment of this Zoning Code and the construction of which building or structure, according to such permit or plans and specifications, has been started within ninety (90) days of the enactment of this Zoning Code or amendment. If any of the requirements set forth in this subsection has not been fulfilled within the time stated, or if any building operations are discontinued for ninety (90) days, any further construction shall be in conformity with the Zoning Code.

### **1260.02 Avoidance of Undue Hardship**

- A. Permits Issued and or Construction in Progress.
  - 1. 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 on which a valid building permit was issued, or actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or

removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently.

2. Any nonconforming structure that is ready for or under construction at the time of adoption or amendment of this Ordinance may be completed and occupied in accordance with the requirements of a valid building permit and zoning permit issued prior to such adoption or amendment data.
- B. Continuation of Existing Nonconformities. The lawful use of a building or land existing at the time of adoption of this Ordinance may be continued, even though such use does not conform to the regulations established by this Zoning Code for the use district in which it is maintained. An existing nonconforming use of a building may be continued so long as no structural alterations, except such as may be required by law or ordinance, are made therein. An existing nonconforming use of a building or premises may, by special permit, be changed to another nonconforming use of a higher classification, but no building or premises in which a nonconforming use has been so changed shall again be devoted to a less restricted use.

#### 1260.03 **Single Nonconforming Lots of Record**

- A. 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 existing 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 and/or width that are generally applicable in the district. Yard dimensions and requirements other than those applying to area and/or width shall conform to the regulations for the district in which such lot is located. Measurement of the lot area shall be made to the street right-of-way.
- B. Variances for district requirements, other than lot area or lot width, shall be obtained only through action of the Board of Zoning Appeals as provided in [Chapter 1242.03.B](#). (Powers and Jurisdiction).

#### 1260.04 **Nonconforming Lots of Record in Combination**

- A. If two or more nonconforming lots, or portions thereof, with continuous frontage are in single ownership, the BZA may, upon appeal of the Zoning Inspector's decision to deny a zoning permit for failure to meet the requirements of this Ordinance, determine that these lots are or are not to be an undivided parcel for the purpose of this Ordinance. If considered an undivided parcel, 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 said parcel be made which creates a lot with a width or area below the requirements stated in this Ordinance.
- B. If each said parcel is developed separately, a finding shall be made by the Board of Zoning Appeals that such development and density will not be a detriment to the surrounding area.

#### 1260.05 **Nonconforming Uses of Land**

Where, at the time of adoption of this Ordinance, lawful uses of land exist which would not be permitted by the regulations imposed by this Ordinance, the uses may be continued so long as they remain otherwise lawful, provided:

- A. No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- B. No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Ordinance;
- C. Additional structures which do not conform to the requirements of this Ordinance shall not be erected in connection with such nonconforming use of land.

#### 1260.06 **Nonconforming Structures**

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;
- B. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is move.

#### 1260.07 **Nonconforming Uses Of Structures Or of Structures And Land In Combination**

If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
- B. 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 this Ordinance, but no such use shall be extended to occupy any land outside such building;

- C. If no structural alterations are made, any nonconforming use of a structure or structure and land, may, upon appeal to the Board of Zoning Appeals, be changed to another nonconforming use provided that the Board shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. The appeal procedure (See [Chapter 1241.08](#)) requires that the request for substitution be made first to the Zoning Inspector, who must deny the zoning permit. The appeal is then taken to the Board for the final determination. In permitting such change, the Board may require appropriate conditions and safeguards in accord with other provisions of this Ordinance;
- D. 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, and the nonconforming use may not thereafter be resumed;
- E. Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

#### 1260.08 **Discontinuance Reestablishment of Use or Structure**

When a nonconforming use of a structure, and/or structure and land in combination is discontinued or abandoned for more than one (1) year (except when government action impedes access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. A nonconforming use shall be considered voluntarily discontinued or abandoned:

- A. When the intent of the owner to discontinue the use is apparent, or,
- B. When the characteristic equipment and the furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within the one (1) year period, or,
- C. When it has been replaced by a conforming use, or,
- D. When it has been changed to another nonconforming use by first obtaining a permit from the Board of Zoning Appeals.

#### 1260.09 **Repair Of Damaged Structures Or Uses**

Any nonconforming building or structure damaged by fire, explosion, flood or act of God may be reconstructed and used as before such calamity.

#### 1260.10 **Expansion, Repair, And Maintenance**

- A. 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 passage of this resolution 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.

- B. 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 nonbearing walls, fixtures, wiring, or plumbing, provided that the cubic content (floor area) existing when it became nonconforming shall not be increased. Nothing in this section 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 charged with protecting the public safety, upon order of such official.