

CHAPTER 1139. NONCONFORMING USES, BUILDINGS, STRUCTURES, AND LOTS

1139.01. Purpose.

- (a) The purpose of this Chapter is to recognize the existence of uses, buildings, lots, and structures that lawfully existed at the time of this Ordinance's enactment, or amendment thereto, but which now do not conform to one or more of the regulations contained in this Ordinance. Nonconforming status is considered to be incompatible with permitted uses in the zoning district in which it exists. Therefore, nonconforming uses, buildings, lots, and structures are subject to regulations limiting their use, restoration, reconstruction, extension, and substitution. Such nonconforming status shall be continued only in conformance with this Chapter.
- (b) A nonconforming lot, use, building, or structure does not include nonconformity with regulations pursuant to a legally granted variance from a zoning regulation.

1139.02. Nonconforming buildings or structures.

Where a lawful structure exists at the effective date of adoption or amendment of this Zoning Ordinance that could not now be built under the terms of this Ordinance by reason or 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) Enlargement/Alteration of Nonconforming Building or Structure. No nonconforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
 - (1) If the cause of the nonconformity of a principal structure or accessory structure on a permanent foundation is that it is located within a required setback, an addition to that principal structure or accessory structure may be constructed with a setback the same as or greater than the existing nonconforming principal structure but may not be located any closer to the corresponding lot line than the existing nonconforming principal structure.
 - (2) Whenever there are existing nonconforming principal structures that do not comply with the required front yard setback, the required front yard setback for additions, alterations, and new construction shall either be:
 - i. the average front yard setback of all existing principal structures in the block between intersecting streets where such homes exist; or
 - ii. the average front yard setback of the homes on either side of the subject property, whichever is less.
- (b) Reconstruction of Nonconforming Building or Structure. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means or razed to the extent of more than fifty percent (50%) of the fair replacement cost of the structure or portion thereof immediately prior to the damage, it shall not be reconstructed except in conformity with provisions of this Ordinance.
 - (1) Should such nonconforming structure or nonconforming portion of structure be destroyed by any means, other than a natural disaster, criminal behavior of someone other than the owner, or unintentional fire, to an extent where more than 50% of the structure is destroyed, it shall not be

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reconstructed except in conformity with the provisions of this Chapter. Existing nonconforming foundations, so long as they are deemed safe, may be reused for the purposes of reconstruction, but may not be moved, expanded, or altered in such a way that increases the nonconformity.

- (2) This section does not apply to any existing nonconforming foundations located within a special flood hazard area, which shall not be continued if more than 50% of the structure is destroyed.
- (c) Relocation of Nonconforming Building or Structure. 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 moved.
- (d) Repair and Maintenance of Nonconforming Building or Structure.
- (1) On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of walls, fixtures, wiring, heating, air conditioning, or plumbing, to an extent not exceeding ten percent (10%) of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.
 - (2) If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe, or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.
 - (3) Nothing in this section shall be interpreted to prevent the strengthening or restoring to a safe condition any building or part thereof declared to be unsafe provided that all requirements set forth in this chapter are met.

1139.03. Nonconforming use of buildings or land.

Where, at the time of adoption of this Zoning Ordinance, lawful uses of buildings or land exist that would not be permitted by the regulations imposed by this Ordinance, the uses may be continued so long as no division of any parcel is made which creates a lot with width or area below the requirements stated in this Ordinance.

- (a) Alteration/Reconstruction of a Building Occupied by a Nonconforming Use. No building or structure occupied by a nonconforming use shall be altered, improved or reconstructed except when the cumulative cost of the alteration, improvement or reconstruction does not exceed fifty percent (50%) of the building's replacement value.
- (1) Should such nonconforming structure or nonconforming portion of structure be destroyed by any means, other than a natural disaster, criminal behavior of someone other than the owner, or unintentional fire, to an extent where more than 50% of the structure is destroyed, it shall not be reconstructed except in conformity with the provisions of this Chapter. Existing nonconforming foundations, so long as they are deemed safe, may be reused for the purposes of reconstruction, but may not be moved, expanded, or altered in such a way that increases the nonconformity.
 - (2) This section does not apply to any existing nonconforming foundations located within a special flood hazard area, which shall not be continued if more than 50% of the structure is destroyed.
 - (3) Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

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- (b) Expansion/Relocation of Nonconforming Use of Land. A nonconforming use of land shall not be physically enlarged, increased, extended, or relocated to a part of the lot that was not occupied by the use at the time it became nonconforming. No additional structures shall be constructed in connection with such nonconforming use.
- (c) Expansion/Relocation of Nonconforming Use of Buildings. A nonconforming use of an existing building may be extended throughout any parts of the building that were manifestly arranged or designed for such use at the time of adoption or amendment to this Ordinance. However, no such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than occupied by such uses at the effective date of adoption or amendment of this Ordinance, and no such building shall be enlarged or expanded to increase the nonconforming use.
- (d) Discontinuance of Use.
 - (1) When a nonconforming use of a structure, or structure and premises is discontinued or abandoned for a one-year period, the structure or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
 - (2) If any such nonconforming use of land ceases for any reason for a period of more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this Zoning Ordinance for the district in which it is located.

1139.04. Nonconforming lots of record.

On or after the effective date of this Zoning Ordinance or any amendment thereto that causes a lot to become non-conforming, a lot of record that does not comply with the lot area, lot frontage, or lot width regulations of the district in which the lot is located shall be treated as if it were a conforming lot, if it conforms with the rest of the Planning and Zoning Code, and may be used as follows:

- (a) Existing Structure or Use on a Non-Conforming Lot. If the lot is occupied by a structure or use, such structure or use shall be maintained and may be repaired, modernized or altered, provided that the structure or use shall not be enlarged in area, height, or other extent, unless the enlarged section(s) complies with all regulations of this Zoning Ordinance, except the lot area, lot frontage, and lot width regulations of the district in which the lot is located. The number of dwelling units shall not be increased unless all regulations, including lot area, are complied with.
- (b) Existing Two-family Structure on a Non-Conforming Lot. If a two-family dwelling unit occupies a non-conforming lot and is to be split into 2 single-family dwellings on 2 single-family lots, the resulting single-family dwellings and lots shall comply with all regulations of this Zoning Ordinance, except the lot area, lot frontage, lot width, minimum side yard, and total side yard regulations of the district in which the lot is located.
- (c) Existing Two-family Structure on a Conforming Lot. If a two-family dwelling unit occupies a conforming lot and is to be split into 2 single-family dwellings on a 2 single-family lots, the resulting single-family dwellings and lots shall comply with all regulations of this Zoning Ordinance, except that the Director of Planning and Community Development may approve any lot area, lot frontage, lot width, minimum side yard, and total side yard requirement that cannot be met for the district in which the lot is located.
- (d) Vacant Lots in Combination. If a vacant non-conforming lot adjoins one or more lots in common ownership on the effective date of this Ordinance or applicable amendment thereto, such lots shall be combined to create conforming lots as a prerequisite for development. No portion of such parcel shall be used or sold or otherwise transferred in a manner that diminishes compliance with lot width and area requirements established by this Ordinance.

- (e) Setbacks. Setbacks that are shown on a preliminary or final plat shall control for the principal use. The current Zoning Code shall apply for any other principal use setbacks not so shown, except as otherwise provided in this Chapter. The then current Zoning Code shall apply for any accessory use setbacks.

1139.05. Nonconforming site conditions.

Existing Non-conforming Site Condition on a Lot with a Non-residential Use. If any non-conforming site condition(s) exists when a site is redeveloped pursuant to Chapter 1105, then such site condition(s) must be brought into compliance with district regulations, unless the reviewing body determines that such conformance cannot be reasonably achieved because of existing site conditions. In such case, the reviewing body shall approve a development plan that reduces the existing non-conforming site condition(s) to the maximum extent practicable.

1139.06. Nonconforming parking facilities.

A building or use existing lawfully at the time this Zoning Ordinance or an amendment thereto became or becomes effective that does not comply with the off-street parking regulations for the use may continue without such parking facilities. In the event an existing building is altered, or a use is changed or substituted in accordance with these regulations, then additional off-street parking spaces and landscaping, pursuant to Chapters 1121 and 1123 shall be provided so that the nonconforming parking condition is not increased.

1139.07. Nonconforming signs.

A sign, lawfully existing at the time this Zoning Ordinance, or any amendment thereto, became or becomes effective, but which fails to conform to the sign regulations of the district in which it is located is a nonconforming sign. Nonconforming signs shall comply with the regulations set forth in Section **1125.14**.

1139.08. Nonconforming use due to reclassification.

The provisions of this chapter shall also apply to any building, structure, land or other use hereafter becoming nonconforming as a result of amendments made to this Zoning Ordinance or Zoning Map.

1139.09. Change from nonconforming use.

A nonconforming building or use shall cease to be considered as such whenever it first comes into compliance with the regulations of the district in which it is located. Upon such compliance, no nonconforming use shall be made, resumed or reinstated.

1139.10. Determination of nonconforming status.

At the time of application for a certificate of building and zoning compliance or request for variance, or upon the request of Director of Planning and Community Development regarding a nonconforming lot, building, structure or use, the property owner shall submit sufficient evidence to verify that such lot, building, structure, or use was lawfully created or established in accordance with the zoning regulations in existence at that time. If the evidence submitted indicates the lot, building, structure or use was legally established and has since become nonconforming because of the establishment of or amendment to this Ordinance, the Director of Planning and Community Development shall process the application subject to the requirements of this chapter and any other applicable zoning regulations.

1139.11. Existing use deemed conditional use; permit required for change.

Any lawfully existing use that, at the time of its establishment, was not classified as a conditional use, but which now, because of the passage of this Zoning Ordinance or amendment thereto, is listed as a conditional use in the district in which it is located, shall be deemed without further action to be a conforming conditional use. Any change, modification, enlargement or alteration of such use or site development conditions shall only be permitted upon review and approval by the Planning Commission according to the procedures for conditional uses set forth in Chapter 1105.

1139.12. Completion of construction with zoning certificate.

Nothing in this Zoning Ordinance shall prohibit the completion of the construction and use of buildings for which a certificate of building and zoning compliance has been issued prior to the effective date of this Zoning Ordinance, or amendments thereto, provided that construction is commenced within ninety (90) days after the issuance of such certificate, that construction is carried on diligently and without interruption, and the entire building is completed within two (2) years after the issuance of the zoning certificate. 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 begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction.