

CHAPTER 25: NON-CONFORMING USES

25.01 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 may 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 permit 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 shall ~~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 Board of Zoning Appeals, except as otherwise specifically provided for in this Ordinance.

25.02 Uses Under Conditional Use Provisions Not Non-Conforming Uses

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

~~25.03 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 passage 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.~~

25.034 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 on which 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.

25.04~~5~~ Certificates for Nonconforming Uses

The Zoning Inspector may upon their 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 nonconforming.~~ The purpose of this section is to protect the owners of lands or structures that are or become nonconforming. No fee shall be charged for such a certificate. One (1) copy of the certificate shall be returned to the owner and one (1) copy shall be retained by the Zoning Inspector, who shall maintain as a public record a file of all such certificates.

~~25.06 Substitution of Nonconforming Uses~~

~~So long as no structural alterations are made, except as required by enforcement of other codes or this Ordinance, any nonconforming use may, upon appeal to and approval by the Board of Zoning Appeals, be changed to another nonconforming use if the Board finds that the use proposed for substitution is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board may require that additional conditions and safeguards be met, which requirements shall pertain as stipulated conditions to the approval of such change, and failure to meet such conditions shall be considered a punishable violation of this Ordinance. Whenever a nonconforming use has been changed to a less intensive use or becomes a conforming use, such use shall not thereafter be changed to a more intensive use.~~

~~25.07 Reserved for future use~~

25.05~~8~~ Non-Conforming Lots of Record ~~in Combination~~

~~If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots with no buildings 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, and 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.~~

(A) Legal Nonconforming Lots: A legal (grandfathered) nonconforming lot of record is one which does not conform to one (1) or more of the dimensional requirements of this Zoning Ordinance, but was recorded prior to the date when the lot became nonconforming.

(B) Approved Preliminary Plan Lots: Lots which do not conform with the regulations of this Ordinance but are shown on preliminary plans approved by the Planning Commission prior to the date when such lots became nonconforming, where such approval has not expired by reason of inactivity as provided in the Village of Maineville Subdivision Regulations, shall be allowed to be recorded as shown on the preliminary plan. Once such lots are recorded on a final plat, the lots shall then be considered legally non-conforming.

(C) Construction on a Nonconforming Lot: In any zoning district, an allowable structure may be permitted on a single nonconforming lot of record provided that the lot has at least forty (40) feet of road frontage. If placement of the structure cannot conform to the required setbacks of this Ordinance, the following rules shall apply:

- (1) The sum of the side yard setbacks of any sub-standard sized lot shall be thirty (30) percent of the width of the lot and at least ten (10) percent of the lot width for any one (1) side yard.
- (2) The depth of the rear yard setback of any sub-standard sized lot need not exceed twenty (20) percent of the depth of the lot, but in no case less than ten (10) percent.
- (3) The front yard setback shall follow the district standard, unless so modified in accordance with Sec. 19.05(F) (Front Yard Variance).

(D) Recombination of Nonconforming Lots: If two (2) or more adjacent lots of sub-standard width for the zone in which they are located belong to one (1) owner, they shall be combined into new lot sizes as follows:

- (1) If the total combined width is less than the required minimum width for one (1) lot for the zone in which they are located, they shall be combined to form one (1) lot.
- (2) If the total combined width is greater than the minimum required width for one (1) lot for the zone in which it is located, but not a multiple of said width, the lots shall be divided into equal width lots, so as to result in one (1) more lot than the number of lots of the minimum width required in the zone in which they are located.
- (3) Recombination of lots is not required, if:
 - (1) Two (2) or more of the lots are developed with principal buildings, and the recombination of lots would create non-conforming structures;
 - (2) The combination of lots would materially disrupt the character of the area, as determined by the Zoning Inspector; or
 - (3) Each lot is capable of individually supporting sanitary service.

25.069 Non-Conforming 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 **legally established** nonconforming use of record which would not be allowable by the most recent regulations shall be grandfathered, recognized to legally continue so long as the use remains otherwise lawful in accordance with the following:

- (A) No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on the date when the use became nonconforming.~~at the effective date of adoption or amendment of this Ordinance;~~

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- (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;~~No such nonconforming use shall be moved, in whole or in part, to any other portion or location of the lot or parcel than which was occupied by the use on the effective date of the regulation which made the use nonconforming, unless such would improve conformity with the current regulations.
- (C) If any such nonconforming uses of land are discontinued or abandoned for more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located. Where government actions impede access to the premises, the one (1) year time period shall begin upon conclusion of the government action.
- (D) No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.
- (E) The nonconforming use may be extended throughout any part of the building(s) in which it existed on the date when the use became nonconforming, provided no structural alterations are made therein, except required by law. The use shall not be extended to occupy any more land outside of any such building(s) on the lot where located.
- (F) No existing structure devoted to a use not allowed 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.
- (G) Once a nonconforming use is superseded by a permitted use conforming to the regulations for the district, the nonconforming use may not thereafter be resumed.

25.0710

Non-Conforming 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~~ its nonconformity.;
- (B) ~~Should such nonconforming structure or nonconforming portion of a structure be destroyed by any means, it shall not be reconstructed except in conformity with the provisions of this Ordinance;~~If the structure becomes damaged or destroyed beyond fifty (50) percent of the replacement cost, reconstruction shall comply with the current zoning requirements.
- (C) Should such structure be moved for any reason and across ~~for~~ any distance ~~whatever~~, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(D) 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.

(E) 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. Where appropriate, a building permit for such activities shall be required.

25.0811

Procedure for Becoming Conforming~~Non-Conforming Uses of Structures or Structures and Land in Combination~~

In many instances, nonconforming uses or buildings/structures are integral parts of the community's fabric. In these instances, the classification "nonconformity" and resulting restriction on investment may not be what the community desires. As such, the use may be made conforming pursuant to this Section. Nonconformities may become conforming as follows:

(A) Types of Situations: The following are three types of situations whereby a nonconforming use, building, or structure can become conforming:

(1) Correct the nonconforming situation. Where a nonconforming use is proposed to be changed to another use which requires a conditional use permit, those procedures must be followed.

(2) Apply for a conditional use permit to change the existing nonconforming use to another nonconforming use; in such cases, the BZA must find that the use proposed for substitution is equally appropriate or more appropriate to the district than the existing nonconforming use. Whenever the BZA allows a nonconforming use to be changed to another non-conforming use per this section, it shall not thereafter be allowed to come back before the BZA for a change to another nonconforming use.

(3) Apply for conditional use permit as conforming. Under this process, where there is no change of use, the nonconforming situation may be mitigated and made conforming through application for, and approval by, the BZA for a conditional use permit.

(B) Procedure

Owners of nonconforming uses, buildings or structures may apply for a conditional use permit to become conforming without changing the use or necessarily modifying the entire physical nature of the nonconformity. The conditional use permitting application shall be reviewed by the Zoning Inspector, and he or she shall provide a recommendation to the BZA for a final decision. The BZA, at their discretion, may require an operation plan or additional studies and reports from the property owner as part of their consideration.

(C) Review Criteria

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(1) In addition to the standards and criteria for Conditional Use review, the applicant shall demonstrate that the nonconformity, as conducted and managed, has minimal incompatibilities that have been integrated into the community's function. Factors to evaluate this criterion include the following:

- (a) The area residents patronize or are employed at the use;
- (b) Current management practices that eliminate problems such as noise, waste materials, competition for on-street parking, or similar conflicts;
- (c) The nonconformity's history of complaints against it; and,
- (d) The nonconformity has been maintained in good condition or that the nonconformity represents a disincentive for such maintenance.

(2) The BZA shall determine that the nonconformity is generally integrated into the community and has minimal adverse impacts. The BZA may require appropriate conditions and safeguards to assure that the nonconformity does not adversely affect orderly development and the value of nearby property, including, but not limited to:

- (a) Required improvement of, or modifications to existing improvements on the property;
- (b) Limitations on hours of operations;
- (c) Limitations on the nature of operations.

(D) Effect: The granting of a conditional use approval eliminates the nonconformity.

~~If a lawful use involving 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 of structure and land in combination, may, upon appeal to the Board of Zoning Appeals, be changed to another nonconforming use provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals 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) — When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for more than one (1) year, 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. Where government actions impede access to the premises, the one year time period shall begin upon conclusion of the government action.~~

~~(F) — 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.~~

~~25.12 — Termination of Non-Conforming Uses~~

~~When any nonconforming use is discontinued or abandoned for more than one (1) year, any new use shall be in conformity with the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.~~

~~25.13 — Termination of Nonconformity by Damage or Destruction~~

~~In the event that any nonconforming building or structure is involuntarily destroyed;~~

~~(A) — 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.~~

~~(B) — 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.~~

~~25.14 — 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. 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. Where appropriate, a building permit for such activities shall be required.~~