

Article 6: Nonconforming Situations

Section 121: Definitions

Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

(1) *Dimensional Nonconformity.* A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

(2) *Effective Date of These Regulations.* Whenever this article refers to the effective date of these regulations, the reference shall be deemed to include the effective date of any amendments to these regulations if the amendment, rather than these regulations as originally adopted, creates a nonconforming situation.

(3) *Expenditure.* A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures, as well as any other substantial changes in position.

(4) *Nonconforming Lot.* A lot existing at the effective date of these regulations (and not created for the purposes of evading the restrictions of these regulations) that does not meet the minimum area requirement of the district in which the lot is located.

(5) *Nonconforming Project:* Any structure, development, or undertaking that is incomplete at the effective date of these regulations and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

(6) *Nonconforming Use:* A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use).

(7) *Nonconforming Situation:* A situation that occurs when, on the effective date of these regulations, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum height limitations, because relationship between existing buildings and the land (in such matters as density and setback requirements) is not used for purposes made unlawful by these regulations.

Section 122: Continuation of Nonconforming Situations and Completion of Nonconforming Projects

(a) Unless otherwise specifically provided in these regulations and subject to the restrictions and

qualifications set forth in this Article, nonconforming situations that were otherwise lawful on the effective date of these regulations may be continued.

(b) Nonconforming projects may be completed only in accordance with the provisions of Section 128.

Section 123: Nonconforming Lots

(a) When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimums set forth in Section 181, then the lot may be used as proposed just as if it were conforming. However, no use (e.g., a two-family residence) that requires a greater lot size than the established minimum lot size for a particular zone is permissible on a nonconforming lot.

(b) When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements cannot reasonably be complied with, then the entity authorized by these regulations to issue a permit for the proposed use (the Administrator, Board of Zoning Adjustment, or Planning and Zoning Commission) may allow deviations from the applicable setback requirements if it finds that:

(1) The property cannot reasonably be developed for the use proposed without such deviations, and

(2) These deviations are necessitated by the size or shape of the nonconforming lot, and

(3) The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

(c) For purposes of Subsection (b), compliance with applicable building setback requirements is not reasonably possible if a building that serve the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

(d) This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with Section 126.

(e) Subject to the following sentence, if, on the date this section becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed.

Section 124: Extension or Enlargement of Nonconforming Situations

(a) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

(1) An increase in the total amount of space devoted to a nonconforming use, or

(2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, or density requirements or other requirements such as parking requirements.

(b) Subject to Subsection (d), a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by these regulations, was manifestly designed or arranged to accommodate such use. However, subject to Section 128 (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 128 (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 (i.e., a sand pit, quarry, etc.) 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 on the effective date of these regulations.

(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) Notwithstanding Subsection (a), any structure used for single family residential purposes and maintained as a nonconforming use may be enlarged, so long as the enlargement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements. This paragraph is subject to the limitations stated in Section 127 (abandonment and discontinuance of nonconforming situations).

(f) Notwithstanding Subsection (a), whenever: (i) there exists a lot with one or more structures on it, and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the parking or loading requirements or Article 18 that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking if: (i) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (ii) such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning permit or conditional use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. The requirement shall be a continuing condition of the permit.

Section 125: Repair, Maintenance, and Reconstruction

(a) 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 25 percent of the appraised value of the structure to be renovated may be done only in accordance with a zoning permit issued pursuant to this section.

(b) If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement exceed 50% of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a zoning permit issued pursuant to this section. This subsection does not apply to structures used for single family residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced as provided in Subsection 124(e).

(c) For the purposes of Subsections (a) and (b):

(1) The ■cost• of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.

(2) The ■cost• of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of Subsections (a) or (b) by doing such work incrementally.

(3) The ■appraised valuation• shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.

(d) The Administrator shall issue a permit authorized by this section if he finds that, in completing the renovation, repair, or replacement work:

(1) No violation of Section 124 will occur, and

(2) The permittee will comply to the extent reasonably possible with all provisions of these regulations applicable to the existing use (except that the permittee shall not lose his right to continue a nonconforming use).

(e) Compliance with a requirement of these regulations is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

Section 126: Change in Use of Property Where a Nonconforming Situation Exists

(a) A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning or conditional use permit in accordance with Section 46 may not be made except in

accordance with Subsections (b) through (e).

(b) If the intended change in use is to a principal use that is permitted in the district where the property is located, and all of the other requirements of these regulations to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with these regulations is achieved, the property shall not revert to its nonconforming status.

(c) If the intended change in use is to a principal use that is permitted in the district where the property is located, but all of the requirements of these regulations applicable to that use cannot reasonably be complied with, then the permit may be issued only if the permit issuing authority finds, in addition to any other findings that may be required by these regulations, that:

(1) The intended change will not result in a violation of Section 124, and

(2) All of the applicable requirements of these regulations that can reasonably be complied with will be complied with. Compliance with a requirement of these regulations is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements such as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.

(d) If the intended change in use is to another principal use that is also nonconforming, then the change is permissible only if the entity authorized by these regulations to issue a permit for that particular use (Administrator, Board of Zoning Adjustment, or Planning and Zoning Commission) issues a permit authorizing the change. The permit issuing authority may issue the permit if it finds, in addition to other findings that may be required by these regulations, that:

(1) The use requested is one that is permissible in some zoning district with either a zoning or conditional use permit, and

(2) All of the conditions applicable to the permit authorized in Subsection (c) of this section are satisfied, and

(3) The proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the nonconforming use in operation at the time the permit is applied for.

Section 127: Abandonment and Discontinuance of Nonconforming Situations

(a) When a nonconforming use is discontinued for a consecutive period of one year, the property involved may thereafter be used only for conforming purposes.

(b) If the principal activity on property where a nonconformity other than a nonconforming use exists is (i) discontinued for a consecutive period of one year, or (ii) 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 preexisting use unless the entity with the authority to issue a permit for the intended use issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. This permit may be issued if the permit issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

(c) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, 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 for one year shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building 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 thereafter.

(d) When a structure or operation made nonconforming by these regulations is vacant or discontinued at the effective date of these regulations, the one year period for purposes of this section begins to run on the effective date of these regulations.

Section 128: Completion of Nonconforming Projects

(a) All nonconforming projects on which construction was begun at least 180 days before the effective date of these regulations as well as all nonconforming projects that are at least 10 percent completed in terms of the total expected cost of the project on the effective date of these regulations may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.

(b) Except as provided in Subsection (a), all work on any nonconforming project shall cease on the effective date of these regulations, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a zoning, conditional use, or sign permit issued in accordance with this section by the individual or board authorized by these regulations to issue permits for the type of development proposed. The permit issuing authority shall issue such a 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 these regulations and thereby would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the permit issuing authority shall be guided by the following, as well as other relevant considerations:

(1) All expenditures made to obtain or pursuant to a validly issued and unrevoked building, zoning, sign, or conditional use permit shall be considered as evidence of reasonable reliance on the land use law that existed before these regulations became effective.

(2) Except as provided in Subdivision (b)(1), no expenditures made more than 180 days before the

effective date of these regulations may be considered as evidence of reasonable reliance on the land use law that existed before these regulations 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 some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.

(4) To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.

(5) An expenditure shall be considered substantial if it is significant both in dollar amount and in terms of (i) the total estimated cost of the proposed project, and (ii) the ordinary business practices of the developer.

(6) 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.

(7) Even though a person had actual knowledge of a proposed change in the land use law affecting a development site, the permit issuing authority 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 permit issuing authority may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that (i) 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 prohibit the intended development, and (ii) the developer had legitimate business reasons for making expenditures.

(c) When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under Subsection (b). In addition to the matters and subject to the guidelines set forth in Subdivisions (1) through (6) of Subsection (b), the permit issuing authority shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:

(1) Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural, or engineering work.

(2) Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.

(3) Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if such approved but uncompleted phases are constructed in conformity with existing

regulations.

(d) The permit issuing authority shall not consider any application for the permit authorized by Subsection (b) that is submitted more than 60 days after the effective date of these regulations. The permit issuing authority may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.

(e) The Administrator shall send copies of this section to the persons listed as owners for tax purposes (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 in some stage of development. This notice shall be sent by certified mail not less than 15 days before the effective date of these regulations.

(f) The permit issuing authority shall establish expedited procedures for hearing applications for permits under this section. These applications shall be heard, whenever possible, before the effective date of these regulations, so that construction work is not needlessly interrupted.

Sections 129 through 134: reserved