

Article 6: Prior-Existing Nonconforming Uses

Section 121: Overview

Within the zoning districts established by these regulations or its subsequent amendment, there exist:

1. Lots;
2. Structures;
3. Uses of structures;
4. Uses of land;
5. Uses of land and structures in combination; and
6. Characteristics of use, which were lawful before these regulations were adopted or amended, but which would now be prohibited, regulated or restricted under the terms of these regulations or its subsequent amendment. Such instances shall hereafter be considered as prior-existing nonconformities.

Section 122: Purpose

- A. The purpose of these regulations is to recognize the legitimate interest of owners of prior-existing non-conformities by allowing these prior-existing nonconformities to continue, subject to the provisions contained herein. At the same time, it is recognized that prior-existing nonconformities may substantially and adversely affect the orderly development, maintenance, use and tax value of other property in the same zoning district, property that is itself subject to the regulations and terms of these regulations. To secure eventual compliance with the official Master Plan and with the standards of these regulations, it is necessary to regulate intensity and size of prior-existing nonconformities and to prohibit the expansion or re-establishment of nonconformities that have been discontinued.
- B. To avoid undue hardship, nothing in these regulations 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 adoption or amendment of these regulations and upon which actual building construction has been carried on diligently. "Actual building construction" is hereby defined to include the placement of construction materials in permanent position and fastened in a permanent manner and within the time requirements elsewhere in these regulations.

Section 123: Prior-Existing Nonconformities

- A. Lots.
 1. Any lot having insufficient area, width or depth for the zoning district in which it is located or insufficient frontage on an improved public or private street of a planned district, or any combination thereof, shall be considered a prior-existing nonconforming lot only if it was applied for (within the last year) or lawfully platted and recorded and on file in the office of the Recorder of Deeds prior to the effective date of these regulations.
 2. On any single prior-existing nonconforming lot, a structure may be constructed provided that the requirements of the zoning district within which the parcel is located are complied with and all appropriate permits are obtained prior to any construction activity.
 3. Further, no such lot or portion thereof shall be used in a manner that will increase its degree of nonconformity. 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. Structures.

Structures that were lawfully constructed prior to the adoption of these regulations, but which could not be constructed under the terms of these regulations by reason of restrictions, shall hereafter be considered prior-existing nonconforming structures. As such, they may continue to exist so long as they remain otherwise prior-existing, provided that no reconstruction, enlargement or alteration of these structures shall occur that will increase their non-conformity, except as provided for in Section 125 of these regulations. However, any prior-existing nonconforming structure or portion thereof may be altered to reduce its non-conformity.

C. Uses of land.

Any use of land that would not be permitted under the terms of these regulations, but lawfully existed at the time of the adoption of these regulations, shall hereafter be considered a prior-existing nonconforming use of land. As such, it may be continued so long as it remains otherwise lawful and provided that no enlargement, increase or extension of the prior-existing nonconforming use of land occurs so that a greater area of land is occupied than that which was occupied at the time of the adoption of these regulations and that no additional structures or additions to structures existing at the time of the adoption of these regulations shall be constructed on the same lot. Further, no such prior-existing nonconforming use of land shall be moved or relocated in whole or in part to any other portion of the zoning lot on which it is located, other than that portion occupied at the time of the adoption of these regulations. If any prior-existing nonconforming use of land ceases for any reason for a period of more than three hundred and sixty five (365) consecutive days (except when government action impedes access to the premises), any subsequent use of such land shall conform to the terms of these regulations, except when that use is discontinued as a result of delayed reconstruction as approved by the Planning Department.

D. Uses of structures

Any use of a structure requiring, or that would require, a building permit and would not be permitted under the terms of these regulations, but was lawfully existing at the time of the adoption of these regulations, shall hereafter be considered a prior-existing nonconforming use of that structure. As such, it may be continued so long as it remains otherwise lawful and provided that the structure in which the prior-existing nonconforming use is located shall not be enlarged, extended, constructed, reconstructed, moved, relocated or structurally altered except in changing the use to a permitted use in the applicable district or as otherwise provided for in these regulations. However, a prior-existing nonconforming use of a structure may be extended throughout any part of the structure in which it is located where the structure or parts thereof were manifestly arranged or designed for this use at the time of adoption of said regulations, but no prior-existing nonconforming use of a structure shall be extended to occupy any land outside such structure.

E. Burden of Proof

The burden shall be on the landowner or his/her authorized agent under contract to provide proof in the form information and records to the County and to establish the continuation of prior-existing nonconforming uses or completion of prior-existing nonconforming projects. The County will determine entitlement of continuation

Section 124: Changes to Nonconforming Uses

- A. A prior-existing nonconforming building or structure shall not be added to or enlarged in any manner unless said building or structure, including additions and enlargements, is made to conform to all of the regulations of the district in which it is located. No prior-existing nonconforming building or structure shall be moved in whole or in part to another location on the lot unless every portion of said building or structure is made to conform to all of the regulations of the district in which it is located.

- B. The volume, intensity or frequency of use of property where a prior-existing nonconforming use exists may be increased and the equipment or processes used at a location where a prior-existing nonconforming use 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 occur.
- C. Subject to Subsection B, a prior-existing 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 use. However, a prior-existing nonconforming use may not be extended to additional buildings or to land outside the original building.
- D. No mobile home (single) located in Suburban Development (SD) or Residential Development 1 (RD1) shall be expanded or shall be replaced with another mobile home (single). The timeline for uses of land shall not apply to mobile homes. Moving a mobile home off a prior-existing nonconforming use of land for any period of time shall result in forfeiture of the prior-existing nonconforming use of land.
- E. No mobile home (double) located in Residential Development 2 (RD2) shall be expanded or shall be replaced with another mobile home. The timeline for uses of land shall not apply to mobile homes. Moving a mobile home off a prior-existing nonconforming use of land for any period of time shall result in forfeiture of the prior-existing nonconforming use of land.
- F. Any structure conforming with the requirements of Article 7, other than use, and maintained as a prior-existing nonconforming residential use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create more non-conformities.
- G. The timeline for uses of land shall not apply to mobile homes. Moving a mobile home off a prior-existing nonconforming use of land for any period of time shall result in forfeiture of the prior-existing nonconforming use of land.

Section 125: Repair, Maintenance and Reconstruction

- A. Minor repairs to and routine maintenance of property where prior-existing nonconforming uses exist are permitted and encouraged. Major renovation (work estimated to cost more than 25 percent of the appraised value or the structure to be renovated) may be done only in accordance with a building permit reviewed by the Planning and Zoning Department and issued by the Building Department pursuant to this section.
- B. If a prior-existing nonconforming building or structure is damaged or partially destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, to the extent of not more than fifty percent (50%) of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced in accordance with a building permit reviewed by the Planning and Zoning Department and issued by the Building Department pursuant to this section.
- C. In the event such damage or destruction exceeds fifty percent (50%) of the appraised valuation, of such prior-existing nonconforming building or structure, no repairs or reconstruction shall be made unless every portion of such building or structure is made to conform to all existing regulations.
- D. For the purposes of this section:
 - 1. The “cost” of renovation, 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, 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, B, or C 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 professional recognized property appraiser.