

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. Uses of structures or land;

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. Uses of Structures or Land.
 1. A structure or the use of a structure or premises which was lawful before the passage or amendment of the chapter but which is not in conformity with the provisions of this chapter may be continued subject to the following conditions:
 - a. No such use or substantial improvement of that use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.
 - b. If such use is discontinued for twelve (12) consecutive months, any future use of the building or premise shall conform to the Unified Land Use Regulations.

C. 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. 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. All minor repairs 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 any non-conforming use or structure is destroyed by any means, it shall not be reconstructed if the cost is more than fifty percent (50%) of the current market value, as provided by the Franklin County Assessor, of the structure before the damage occurred unless it is reconstructed in conformity with the provisions of the Franklin County Unified Land Use Regulations.
- C. 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 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 professional recognized property appraiser.