



Generated at 3/13/2019 04:09

## CH14 4 .3 - Nonconforming Uses and Structures

### A). Intent

Within the districts established by this ordinance or by amendments that may later be adopted, there may exist:

- i. Nonconforming lots;
- ii. Nonconforming structures;
- iii. Nonconforming uses of land;
- iv. Nonconforming uses of land and structures in combination; and
- v. Nonconforming characteristics of use.

These were lawful before this ordinance was passed or amended, but they

are prohibited, regulated or restricted under the terms of this ordinance or may be under future amendments hereto. It is the intent of this ordinance to permit these nonconforming uses to continue until they are removed but not to encourage their survival. It is further the intent of this ordinance that nonconforming uses shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district. [Note: Illegal uses existing at the time this ordinance is enacted shall not be validated by virtue of its enactment.]

### B). Incompatibility of Nonconforming Uses

Nonconforming uses are declared by this ordinance to be incompatible with

permitted uses in the districts in which such use is 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.

### **C). 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 or development 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. 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 on diligently. Actual construction is hereby defined as work done which is beyond the preparation stage and into that stage where the changes or additions are made permanent.

### **D). Single Nonconforming Lots of Record.**

In any district in which single-family dwellings are permitted, a single-

family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership or included in a subdivision of record in the office of the Madison County Recorder at the time of passage of this ordinance. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width or both, of the lots shall conform to the regulations for the district in which such lots are located. (Also see Section 5.3 (c)).

Variances of requirements listed in Section 5 of this ordinance, other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Sections 8.4. [Note: This section shall apply only to single family residences.]

### **E). Nonconforming 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 the lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

### **F). Nonconforming 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:

- i. No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
- ii. 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.
- iii. If any such nonconforming uses of land are discontinued or abandoned for more than one year except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulation specified by this ordinance for the district in which such land is located.
- iv. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

#### **G). Nonconforming Structures.**

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not now 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 of the following provisions.

- i. 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 nonconformity.
- ii. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of the fair market value of the building immediately prior to the damage, it shall not be reconstructed except in conformity with the provisions of this ordinance.
- iii. 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.

#### **H). Nonconforming Uses of Structures or Structures and Land in Combination.**

If a lawful use involving individual structures, or if a structure and land in

combination, exists at the effective date of adoption or amendment of this ordinance that would not now 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:

- i. 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.
- ii. A 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.

- iii. 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.
- iv. When a nonconforming use of a structure, or structure and land in combination is discontinued or abandoned for more than one year (except when government action impedes access to the premises), 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.
- v. 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.

#### **l). Repairs and Maintenance.**

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement cost of the nonconforming structure and market value of real estate, or nonconforming portion of the structure, whichever the case may be, 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 order of such official. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically 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.