

## ARTICLE 19 NONCONFORMITIES

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### **Sec. 19.1. Development on Nonconforming Lots.**

- (a) Development. A nonconforming lot, as defined, may be used as a building site, or a lawful use may be established thereupon, provided that the access, height, buffer, setback, and other dimensional requirements of the zoning district in which the nonconforming lot is located are complied with or a variance is obtained, and, provided further, that the lot meets all the current standards and requirements of the Monroe County Health Department unless connected to sanitary sewer.
- (b) Example. For example, a lot that does not meet the minimum lot size or minimum lot width for the zoning district in which it is located can still be built upon but the minimum required zoning setbacks still apply. The variance process is a possible remedy, if this creates hardship.

### **Sec. 19.2. Expansion of Nonconforming Building or Structure.**

- (a) Expansion. A nonconforming building or structure, as defined, may be expanded, enlarged, or extended if such expansion, enlargement, or extension is for a use that conforms to the use requirements for the zoning district in which the building or structure is located. Any such expansion, enlargement, or extension of a nonconforming building or structure shall meet the minimum yard, setback, buffer, height, bulk, and other dimensional requirements for the zoning district in which said non-conforming building or structure is located, and all other requirements of this Zoning Ordinance.
- (b) Examples. To illustrate with examples, a building that has a front building setback of fifteen (15) feet, when a thirty (30) foot front building setback is required, is a nonconforming building. It may still be expanded, but the building addition must meet the required front building setback of thirty (30) feet. A building with a height of forty (40) feet may be expanded, but if the height limit for the zoning district in which it is located is thirty-five (35) feet, it is a nonconforming building, and any building addition must observe that regulatory height limit. A building that exceeds the permitted maximum building coverage for the zoning district in which it is located is a nonconforming building that cannot be expanded, since any addition would increase the nonconformity.
- (c) Replacement or Repair After Damage. Any portion of a building that meets the definition of a nonconforming building may be rebuilt, altered, or repaired after destruction or damage exceeding sixty (60) percent of its replacement cost at the time of damage as determined by the Zoning Administrator, but only in conformity

with the dimensional requirements for the zoning district in which it is located and all other applicable regulations of this Zoning Ordinance.

- (d) Signs. Regulations for nonconforming signs are provided in Article 24 of this Zoning Ordinance.

**Sec. 19.3. Nonconforming Uses.**

- (a) Owner Responsibilities. When questions arise as to whether a use constitutes a nonconforming use, it shall be the responsibility of the owner of a nonconforming use to prove to the Zoning Administrator that such use was lawfully established and existed on the effective date of adoption or amendment of this Zoning Ordinance.
- (b) Continuation. A nonconforming use may be continued except as otherwise provided in this Chapter. For example, a convenience store in an R-1 zoning district is a nonconforming use, because it is not listed as a permitted use in that zoning district, and may be continued subject to the limitations of this Section.
- (c) Discontinuance. A nonconforming use shall not be re-established after discontinuance, as defined, unless the property owner proves to the Zoning Administrator that a diligent effort has been made to sell, rent, or use the property for the nonconforming use. If the Zoning Administrator determines that such diligent effort has been made, the owner may re-establish said nonconforming use or seek to re-establish said nonconforming use until the expiration of twelve (12) months following initial discontinuance. If the nonconforming use is re-established under the provisions of this Section after discontinuance but prior to expiration of twelve (12) months following initial discontinuance, said re-established nonconforming use may be lawfully continued. For example, an auto body shop in a residential zoning district is a nonconforming use. It loses its privileges as a nonconforming use under the terms of this Section, if it is discontinued, but an applicant who can show he or she diligently tried to sell, rent, or use the property for the nonconforming use during that time period can petition the Zoning Administrator for relief (i.e., to retain privileges afforded said nonconforming use).
- (d) Abandonment. A nonconforming use shall not be re-established after abandonment, as defined. This means that, after a twelve (12) month period of no activity, the property owner loses the privileges to reestablish a nonconforming use.
- (e) Change of Use. A nonconforming use shall not be changed to another nonconforming use. A change in tenancy or ownership shall not be considered a change to another nonconforming use, provided that the use itself remains unchanged. For example, an auto body shop cannot be changed to an auto sales lot in an R-1 zoning district because that would be a change from one nonconforming use to another. The auto body shop could, however, be sold to another individual or company and retain privileges as a nonconforming use, so long as the use was the same (auto body shop) and not expanded or changed.
- (f) Expansion. A nonconforming use shall not be expanded, enlarged or extended, in land area or in floor space or volume of space in a building or structure. For instance, if an office building is located in an R-1 zoning district, it is a nonconforming use since it is not permitted outright in that zoning district. The building cannot be

expanded under the terms of this Section. As another example, a for-profit mini-storage building in an R-1 zoning district is a nonconforming use. The storage operation cannot be increased in volume beyond what lawfully existed when the storage building became a nonconforming use. No additional building or building addition can be used for such use.

- (g) Damage and Repair or Reestablishment. A nonconforming use shall not be re-established or repaired if the activity is destroyed or sustains damage exceeding sixty (60) percent of its assessed value as determined by the Zoning Administrator. A building containing a nonconforming use shall not be rebuilt, altered, or repaired after destruction or damage exceeding sixty (60) percent of its replacement cost at the time of damage as determined by the Zoning Administrator, except for a use which conforms with the zoning district in which said use is located, and provided such rebuilding, alteration or repair is completed within one (1) year of such destruction or damage.

#### **Sec. 19.4. Determination and Correction of Nonconforming Situations.**

- (a) Intent. It is the intent of this Section to require the complete correction of nonconforming situations at the time of any building addition or significant modification of a use or development on a given parcel of land, if such nonconforming situation can physically be made to comply with the requirements of this Zoning Ordinance. It is the intent of this Section to require the reduction in the extent of nonconforming situations at the time of any building addition or significant modification of a use or development on a given parcel of land, if such nonconforming situation cannot be physically be made to comply entirely with the requirements of this Zoning Ordinance. It is the intent of this Section to provide authority to the Zoning Administrator to administer the provisions of this Section in a manner that meets these intentions, and that the Zoning Administrator shall exercise that authority, subject to more specific guidance as provided in this Section.
- (b) Definition. For purposes of this Section, “nonconforming situation” shall mean any development, land improvement, or activity, not otherwise included within the definition of nonconforming lot, nonconforming building or structure, or nonconforming use, which does not meet the provisions of this Zoning Ordinance at the time of its adoption or amendment. Examples of nonconforming situations include but are not limited to, noncompliance with off-street parking regulations, access requirements, failure to adhere to landscape strip requirements, tree protection, signs not meeting height or area restrictions, and insufficient landscaping requirements.
- (c) Determination of Nonconforming Situations. For any proposed building or development, or modification of a building or development, it shall be the duty of the Zoning Administrator to identify the extent to which the improvements on land on which the building or development is proposed constitutes a nonconforming situation, as defined in this Section. The Zoning Administrator shall conduct a review and identify such nonconforming situation(s) at the time plans for such proposed building or development are submitted for review, and at any earlier opportunity, if presented. In the event that one or more nonconforming situations are found to exist by the Zoning Administrator, they shall be documented and notice of the need to correct or

reduce said nonconforming situations shall be provided by the Zoning Administrator to the building or development applicant.

**Sec. 19.5. Correction of Nonconforming Situations.**

In determining the need to completely correct or reduce the noncompliance of nonconforming situations, the Zoning Administrator shall be guided by the following standards:

- (a) Strict Compliance. A standard of “strict compliance” (complete correction of all nonconforming situations) shall be applied by the Zoning Administrator where physical standards can clearly be made in the subject development proposal without significant alteration of the development as proposed.
- (b) Reasonable Progress Toward Compliance. In lieu of strict compliance, a standard of “reasonable progress toward compliance” shall be applied by the Zoning Administrator in cases where complete correction or compliance with the nonconforming situation would require undue hardship, practical difficulty, or might unreasonably reduce the size, scale, or other significant aspect of the development proposal to a point where strict compliance would jeopardize the building or development proposal. In applying a standard of reasonable progress toward compliance, the Zoning Administrator shall have authority to approve the building, development, or improvement even though it does not meet a standard of strict compliance, if the relief granted is the minimum necessary to effectuate the building, development, or improvement.
- (c) Proportionality. Whenever something less than strict compliance is authorized by the Zoning Administrator, in determining the amount or extent of compliance required, he shall apply a standard of “proportionality,” meaning that the scope, scale, extent and cost of requirements to correct nonconforming situations are more or less the same as the scope, scale, extent and cost of the improvement or development proposed.