

Part 23

Non-conforming Uses, Structures, Signs and Lots

§27-2301. Applicability.

All uses, structures, lots and signs that do not conform to the regulations of the district in which they are located, but were in lawful existence prior to the effective date of this Chapter shall be known and regarded a lawful nonconforming and the following regulations shall apply to them.

§27-2302. Continuation.

Lawful uses, buildings, land or signs existing at the time of adoption of this Chapter, or authorized by a building permit issued prior thereto may be continued in the form evident at the time of adoption of this Chapter although such use does not conform to the provisions of this Chapter.

§27-2303. Enlargements and Changes of Lawful Nonconforming Uses.

1. A nonconforming use housed within an existing building may be expanded to accommodate the natural growth of the use by not more than 25 percent of the floor area coverage that was dedicated to the nonconforming use on the date such use first became nonconforming; provided, however, if other conforming uses are displaced by the expansion of the nonconforming use and the structures to be expanded to house the displaced conforming use, this expansion shall be deemed to house the nonconforming use for purposes of determining the percentage of additional floor area coverage dedicated to the nonconforming use.

A. A nonconforming use may be expanded to accommodate the natural growth of the use by not more than 25 percent of the floor area coverage that was dedicated to the nonconforming use on the date such use first became nonconforming.

B. A nonconforming use, to the extent and only to the extent that it is completely housed within an existing building or structure,

may be changed to another nonconforming use of the same or of a more restricted nature and classification.

C. A nonconforming use, to the extent conducted on unenclosed premises, shall not be expanded by more than 25 percent of the area dedicated to said nonconforming use at the time such use first became nonconforming. Any such expansion shall conform to all common regulations and performance standards in addition to locational, dimensional, and area limitations, applicable to the use in the district in which the nonconforming use is located.

2. All enlargements or changes in nonconforming uses specified in subsections 1.A, 1.B and 1.C above shall require the grant of a special exception by the Zoning Hearing Board, which said special exception shall be granted only upon determination by the Zoning Hearing Board, after public hearing, that:

A. The proposed expansion or change in use will be no more detrimental to its neighborhood and surroundings than the existing use it is to replace or expand.

B. The proposed expansion or change in use will comply with all of the design standards, general and common regulations applicable to the district in which the proposed expansion or change in use is to be located.

C. The proposed expansion or change in use complies with all of the criteria set forth in this Section of this Chapter.

3. In determining relative detriment, the Zoning Hearing Board shall take into consideration, among other things, traffic generated; nuisance characteristics such as emission of noise, dust, smoke; fire hazard; and hours and manner of operation. The applicant shall also demonstrate compliance with all common regulations and performance standards that would be applicable to such proposed expansion or change in use if the same were located in an area where such use was permitted as of right or by special exception or conditional use. Further, upon a change of nonconforming use within an existing building or structure, all provisions of this Chapter governing location, dimension and standard shall apply. In granting any special exception, the Zoning Hearing Board may attach such conditions and

safeguards as it shall deem necessary to minimize the adverse effects that the expansion or change in use may have upon the neighborhood.

4. In the case where the expansion or change in nonconforming use is determined to pose hazards to the health, safety and welfare of the public or is recognized as a use that emits smoke or noxious fumes or is a nuisance, the proposed expansion or change in use will not be permitted unless, in the opinion of the Zoning Hearing Board, the conditions attached to the special exception permitting such expansion or change in use will result in no additional hazard to the general public when compared to the existing nonconforming use.

§27-2304. Nonconforming Structures.

1. A structure nonconforming by reason of encroachment into the applicable setback distance for the district in which the structure is located shall be permitted to be expanded into those areas of the lot that are not within the setback areas, provided, however, that all applicable provisions in this Chapter as to area, dimension, standard and bulk must be met.

2. In the case of residential structures nonconforming by reason of encroachment into the setback area, additions, alterations and extensions (including accessory uses) permitted under this Chapter for residential structures shall be required to conform to the yard requirements specified in this Chapter for the district in which the residence is located, unless, permitted by the Zoning Hearing Board as a special exception, upon findings that:

- A. No reasonable alternative exists.
- B. The public health, safety and welfare are not adversely affected.

3. A structure nonconforming by reason of design to house a nonconforming use shall not be extended or enlarged except insofar as required by law to assure the structural safety of the building, except by special exception granted by the Zoning Hearing Board. The Zoning Hearing Board may grant such special exception provided that and only that:

- A. It is clear that such extension is not materially detrimental to the character of the surrounding neighborhood.

B. The expansion of the nonconforming building shall not exceed 25 percent of the floor area of the building at the time it first became nonconforming.

C. Any extension of the building shall conform to all standards of this Chapter or amendment thereto with reference to area, height, location, dimension setback, coverage and building code standards.

D. Any expansion if a structure housing nonconforming uses shall conform to the standards set forth in applicable sections found elsewhere in this Part.

4. Where a nonconforming use is conducted entirely on an unenclosed premises, no structure to house or enclose such use, whether or not such structure would otherwise conform to the provisions of this Chapter or any amendment thereto, shall be permitted to be erected on the premises, if such building or structure would thereby become a nonconforming building or structure in that the same could not be used for a permitted purpose if the nonconforming use were discontinued.

§27-2305. Damage or Destruction.

1. A nonconforming building or structure which has been destroyed or damaged by fire or other casualty to an extent that the cost of repairs would not exceed the replacement value of the building or structure, or if the structure is over 100 years old at the time of destruction, or has been designated as an historic structure, such structure may be reconstructed in its former location and to its former dimensions and used for the purpose for which it was used immediately before its damage or destruction, provided that such reconstruction shall be commenced within one year from the date of damage or destruction and shall be completed within 24 months thereafter.

2. A nonconforming building or structure which has been destroyed or damaged by fire or other casualty, to an extent whereby the cost of repair would exceed its replacement value, shall not be reconstructed or replaced except by a conforming building or structure, unless a special exception is granted by the Zoning Hearing Board. In granting a special exception, the Board shall find that:

A. The rebuilding shall attempt to conform to the applicable area, setback, coverage, and height requirements of the district where possible.

B. The proposed rebuilding will be no more detrimental to its neighborhood and surroundings than a conforming building of a similar area.

C. The proposed rebuilding will comply with all of the general and common regulations applicable to the district in which the proposed rebuilding is to be located.

D. If an existing nonconforming structure is intentionally razed by the owner of record, such a structure shall only be replaced by a conforming structure.

§27-2306. Nonconforming Signs

1. No nonconforming sign shall be moved to another location on the building or lot on which it is located after the effective date of this Chapter unless permitted by the granting of a special exception by the Zoning Hearing Board.

2. The total area of all nonconforming signs relating to a single use as of the date of this Chapter shall not be increased unless permitted by special exception.

3. Nonconforming signs shall not be physically altered or replaced unless authorized as a special exception. Once removed, nonconforming signs shall only be replaced by conforming signs unless permitted by special exception.

4. Whenever any nonconforming use ceases as prescribed elsewhere in this Part, all signs accessory to such use shall be deemed to be nonconforming and shall be removed.

§27-2307. Nonconforming Lots.

A nonconforming lot may be used and a building may be constructed upon a nonconforming lot, notwithstanding its deficiency in area or dimension, provided that any building, structure or use thereon shall comply with all applicable regulations as to use, location, setback, coverage, dimension and condition, as well as to all performance standards and common regulations, except to the extent that the Zoning Hearing Board, on application made for special exception, finds that conformity to such location or dimension or common regulation would deprive the applicant of all reasonable use of the lot. It shall be incumbent upon the applicant to conform as nearly as possible to each, all and every locational and dimensional standard and each and every common regulation and performance standard, notwithstanding the status as nonconforming lot of record, except to the extent that the requirement would deprive the applicant of all reasonable use of the lot.

§27-2308. Abandonment or Termination of a Lawful Nonconformity.

1. If a nonconforming use of land or of a building or structure ceases or is discontinued for a continuous period of one (1) year, or more, subsequent use of such building, structure, or land shall be in conformity with the provisions of this Ordinance.

2. Whenever a nonconforming sign or a portion of a building constituting nonconformity as to location or dimension is removed, the same shall not thereafter be replaced or restored in the area of encroachment or to the extent such replacement would constitute a dimensional nonconformity.