

CHAPTER 1151 – Updated 02.24.2022

Nonconforming Uses

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CROSS REFERENCES

- Nonconforming uses - see Ohio R.C. 713.15
- Nonconforming use defined - see P. & Z. 1123.54
- Certificate of Compliance - see P. & Z. 1125.02
- Certificate of Nonconformance - see P. & Z. 1125.03
- Restoration or substitution of nonconforming uses by Board - see P. & Z. 1129.05(b)

1151.01 CONTINUATION, EXPANSION, ELIMINATION AND RECONSTRUCTION.

(a) Intent. Within the districts established by this Zoning Ordinance (Ordinance 51-71, passed December 13, 1971) or amendments that may later be adopted, there exist:

- (1) Lots;
- (2) Structures;
- (3) Uses of land and structures;
- (4) Characteristics of use; and
- (5) Signs

which were lawful before this Zoning Ordinance was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Ordinance or future amendment. It is the intent of this section to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this section that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district except as otherwise provided in this Chapter and Section 1129.05(e) of this Zoning Ordinance.

(b) Incompatibility; Signs. Nonconforming uses are declared to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this section 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 prohibited generally in the district involved.

(c) Prior Building Permits. To avoid undue hardship, nothing in this section shall be deemed to require a change in the plans, construction or designated use of any building for which a building permit has been issued prior to the effective date of adoption or amendment of this Zoning Ordinance.

(Ord. XX-2022. Passed XX-XX-2022.)

1151.02 CERTIFICATES OF NONCONFORMANCE REQUIRED.

A Certificate of Nonconformance shall be required for all lawful nonconforming uses of land and buildings structures created by adoption of this Zoning Ordinance in accordance with the provisions of Section 1125.03.

(Ord. 51-71. Passed 12-13-71.)

1151.03 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 at the effective date of adoption of this Zoning Ordinance (Ordinance 51-71, passed December 13, 1971) or amendment thereto, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails 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 these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Zoning Appeals.

If three or more lots or combinations 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 (Ordinance 51-71, passed December 13, 1971) and if all or part of the lots 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 Zoning Ordinance, and no portion of such parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Zoning 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.

(Ord. 51-71. Passed 12-13-71.)

1151.04 NONCONFORMING USES OF LAND (OR LAND WITH MINOR STRUCTURES ONLY).

Where at the time of passage of this Zoning Ordinance (Ordinance 51-71, passed December 13, 1971) lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structures with a replacement cost exceeding one thousand dollars (\$1,000), the use may be continued so long as it remains otherwise lawful, provided:

- (a) No such nonconforming use 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;
- (b) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
- (c) If any such nonconforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located; and

(d) No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

(Ord. 51-71. Passed 12-13-71.)

1151.05 NONCONFORMING STRUCTURES.

Where a lawful structure exists at the effective date of adoption of this Zoning Ordinance or amendment thereto, that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) 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.
- (b) Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
- (c) 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.
- (d) Should the graphics portion of a nonconforming sign be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at the time of destruction, the graphics portion shall not be reconstructed except in conformity with the provisions of this Ordinance.

(Ord. 22-87. Passed 5-11-87.)

1151.06 NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION.

- (a) If lawful use involving individual structures with a replacement cost of one thousand dollars (\$1,000) or more, or of structures and premises in combination, exists at the effective date of adoption of this Zoning Ordinance (Ordinance 51-71, passed December 13, 1971), or amendment thereto, that would not 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:
 - (1) 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;
 - (2) Any 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;
 - (3) If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use provided that the Board of Zoning Appeals either by general rule or by making findings in the specific case, finds that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board

of Zoning Appeals may require appropriate conditions and safeguards in accord with the provisions of this Ordinance;

- (4) 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;
- (5) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three-year period, except when government action impedes access to the premises, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and
- (6) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty percent (50%) of the replacement cost at time of destruction.

(b) A lawful nonconforming single-family residential structure being used for residential uses or a lawful nonconforming residential use may be enlarged, extended, reconstructed, or structurally altered without Board approval under Section 1129.05(e) as follows:

- (1) The enclosure of an existing covered porch or screened porch with windows or glass panels provided that both the existing roof structure and the footprint remain the same;
- (2) The addition of attached garages, covered porches, decks, or similar non-habitable additions that are external to dwelling units provided that it complies with the applicable development standards applicable to the R-10 District;
- (3) The addition of an accessory building associated with a nonconforming single-family residential structure or nonconforming residential use provided it is constructed in accordance with Section 1149.08 of this Zoning Ordinance; and
- (4) The replacement or reconstruction of a nonconforming single-family residential structure that has been destroyed or damaged provided that:

- A. The prior nonconforming condition(s) is not increased;
- B. All building materials and architectural details shall conform to the applicable requirements of this code;
- C. The new structure shall not extend beyond the limits of the original foundation;
- D. The application to reconstruct the nonconforming structure shall be filed with the Planning & Building Department within twelve (12) months of the structure being damaged or destroyed; and
- E. The reconstruction of the structure shall not be detrimental to adjacent property and the surrounding neighborhood.

(Ord. XX-2022. Passed XX-XX-2022.)

1151.07 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 nonbearing walls, fixtures, wiring, heating, air conditioning or plumbing, to an extent not exceeding ~~ten percent (10%)~~ thirty-five (35%) of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the

case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be 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.

Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any **building structure** or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
(Ord. XX-2022. Passed XX-XX-2022.)

CHAPTER 1129

Board of Zoning Appeals

1129.05 POWERS AND DUTIES.

(a) Generally. The Board of Zoning Appeals shall have the following powers, and it shall be its duty to: hear and decide appeals where it is alleged there is an error of interpretation made by the Building Inspector in the enforcement of this Zoning Ordinance, the Building Code, or the Property Maintenance Code, or any amendment thereto.

(b) Exceptions. In hearing and deciding appeals, the Board shall have the power to grant an exception in the following instances:

(1) Interpretation of Zoning Ordinance and Zoning Maps. Where the street layout actually on the ground varies from the street layout as shown on the Zoning District Map, the Board may interpret provisions of this Zoning Ordinance.

(2) Reconstruction on nonconforming structure or use. Where a nonconforming structure or a structure occupied by a nonconforming use has been damaged to an extent of more than fifty percent (50%) of ~~its fair market value~~ **the current replacement cost**, the Board may permit reconstruction where it finds an owner would incur undue hardship requiring a continuance of the nonconforming structure or use.

(3) Performance Requirements. Where a decision is needed as to whether an industry should be permitted within the "I-1" or "I-2" Industrial District because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts. (Pertains to performance requirements only.)

A. The Board shall have the power to authorize issuance of a Certificate of Compliance for uses that are subject to performance requirements as set forth in this Zoning Ordinance in Section [1175.03](#) provided they are accompanied by: a plan of proposed construction of development; a description of the proposed machinery, processes and products; and specifications for the mechanisms and techniques to be used in meeting the performance requirements.

B. The Board may require the applicant to furnish the expert opinion of consultants qualified to advise as to whether a proposed use will conform to the performance requirements. A copy of such reports shall be furnished to the Board.

(4) Changes in nonconforming uses. The Board may authorize substituting a nonconforming use for another nonconforming use provided no structural alterations except those required by law or ordinance are made. However, in an "R", ~~or~~ "AR" or WBC-1 District, no change shall be authorized by the Board to any use which is not a permitted or conditional use in any "R", ~~or~~ "AR" or WBC-1 District, and in a "C" District or "WBC" District no changes shall be authorized to any use which is not a permitted or conditional use in any "C" District or "WBC" District.

(5) Temporary use permits. A temporary use permit may be granted where the temporary use of a structure or premises in any district where such temporary use shall be for a period of more than ninety days is proposed for a purpose or use that does not conform to the regulations prescribed elsewhere in this Zoning Ordinance for the district in which it is located, provided that such use be of a temporary nature and does not involve the erection of a substantial structure. A temporary use permit for such use shall be granted in the form of a temporary and revocable permit, for not more than a six-month period, subject to a six months' renewal and such conditions as will safeguard the public health, safety, convenience and general welfare.

(6) Extension and construction completion periods. The Board may authorize, for good cause shown, extension of the time period provided for the completion of structures in the Building Code. However, the Board may not authorize extension of the period for greater than a one-year extension of time subject to one-year renewals and such conditions as well safeguard the public health, safety, convenience and general welfare.

(c) Area Variances. The Board shall have the power to hear and decide appeals and authorize variances from the provisions or requirements of this Zoning Ordinance. In authorizing a variance, the Board may attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objective of this Zoning Ordinance. The Board may grant a variance in the application of the provisions of the Zoning Ordinance when it is determined that practical difficulty exists based on the following factors:

(1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

(2) Whether the variance is substantial;

(3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

(4) Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer, garbage).

(5) Whether the property owner purchased the property with knowledge of the zoning restriction;

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and,

(7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

(d) Interpretation of District Map. In case of any questions as to the location of any boundary line between zoning districts, a request for interpretation of the Zoning District Map may be made to the Board which shall interpret the Map in such a way as to carry out the intent and purpose of this Zoning Ordinance.

(e) Extension of Nonconforming Use. The Board shall have the authority to grant an extension of a building structure or the expansion of the use of a lot devoted to a nonconforming use upon a lot occupied by such building structure or use, or on a lot adjoining, provided that

such lot was under the same ownership as the lot in question on the date such building structure or use became nonconforming, and where such extension is necessary and incidental to the existing use of such building structure or lot. However, the floor areas or lot areas of such extensions shall not exceed, in all, 100 percent (100%) of the area of the existing building structure or lot devoted to a nonconforming use.

(f) Variances to the Building Code. The Board shall have the power to hear and decide appeals and authorize such variances from the provisions or requirements of the Building Code, Chapter [1305](#) of the Codified Ordinances for one, two and three family dwellings, and Section [1301.07](#) Demolition or Moving Buildings, as will not be contrary to the public interest. In authorizing a variance, the Board may attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objective of the Building Code. The Board may grant a variance in the application of the provisions of the Building Code for one, two and three family dwellings after hearing expert independent testimony on the application only if all of the following findings are made:

(1) There are unique circumstances or conditions present by which strict conformity to the provisions of the Building Code would create significant hardship for the property owner or contractor performing services for the property owner;

(2) The unique circumstances or conditions were not created by the property owner or contractor performing services for the property owner; and,

(3) The variance, if authorized, shall not, in any way endanger the health, safety or welfare of the building occupants or the general public. Such determination shall be based on independent expert testimony.

(g) Variances to the Property Maintenance Code. The Board shall have the power to hear and decide appeals and authorize such variances from the provisions or requirements of the Property Maintenance Code, Chapter [1311](#) of the Codified Ordinances. Variances may be granted only when the Board determines that strict scrutiny to the provisions of the Property Maintenance Code would create significant hardship for the property owner, and the variance, if authorized, would not endanger the health, safety or welfare of the general public. Variances to the Property Maintenance Code, if authorized, are applicant specific and do not pass to future property owners or occupants.

(Ord. XX-2022. Passed XX-XX-2022.)