

DIVISION 1400. NONCONFORMITIES

Chapter 1410. Nonconforming Uses, Buildings, Signs and Lots 14-1
Chapter 1420. Nonconforming Uses 14-2
Chapter 1430. Nonconforming Structures 14-4
Chapter 1440. Nonconforming Lots..... 14-4
Chapter 1450. Damage or Destruction 14-4
Chapter 1460. Nonconforming Signs 14-5
Chapter 1470. Nonconforming Site Aspects 14-5

Chapter 1410. Nonconforming Uses, Buildings, Signs and Lots

The regulations of this Division govern nonconformities, which are lots, uses, developments or signs that were lawfully established but—because of the adoption of new or amended regulations—no longer comply with one or more requirements of this development ordinance.

1410.010 Purpose

Sometimes uses, buildings, structures and other development features that were lawfully established (i.e., in compliance with all regulations in effect at the time of their establishment) have been made nonconforming by zoning map changes (rezonings) or amendments to the text of this development ordinance. The regulations of this Chapter are intended to clarify the effect of such nonconforming status and avoid confusion with illegal buildings and uses (those established in violation of zoning and development regulations). The regulations of this Chapter are also intended to:

- A.** recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established;
- B.** promote maintenance, reuse and rehabilitation of existing buildings; and
- C.** place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

1410.020 Authority to Continue

Any nonconformity that existed on the effective date of this ordinance or any situation that becomes nonconforming upon adoption of any amendment to this development ordinance may be continued in accordance with the regulations of this Chapter.

1410.030 Determination of Nonconforming Status

- A.** The burden of proving that nonconformity exists (as opposed to a violation of this development ordinance) rests with the subject landowner. The owner may satisfy this burden by submitting documentary evidence establishing the initial date of the nonconforming situation and its continued use thereafter to the present.
- B.** Documentary evidence may include property tax records, income tax records, insurance records or other records that normally may be kept in the operation of such a nonconforming situation.
- C.** Once such documentary evidence has been provided, the burden shifts to the Town to demonstrate that the nonconforming situation is not lawful.

1410.040 Repairs and Maintenance

- A.** Nonconformities must be maintained to be safe and in good repair.
- B.** Incidental repairs and normal maintenance necessary to keep nonconformity in sound condition are permitted unless otherwise expressly prohibited by this development ordinance.

1410.050 Change in Tenancy or Ownership

Nonconforming status runs with the land and is not affected by changes of tenancy, ownership, or management.

Chapter 1420. Nonconforming Uses

1420.010 Change of Use

- A. A nonconforming use may be changed to any other use that is allowed in the subject zoning district. Once changed to a conforming use, a nonconforming use may not be re-established.
- B. The Board of Adjustment is authorized to approve a use substitution allowing one nonconforming use to be changed to another nonconforming use through the special use permit process of Chapter 360. In order to approve a use substitution, the Board of Adjustment must determine that the substituted use will have fewer adverse impacts on the surrounding area than the previous use. In making such a determination, the Board of Adjustment must consider all of the following factors:
 - 1. hours of operation,
 - 2. vehicular traffic;
 - 3. the number of employees, customers and guests expected to be attracted to the use; and
 - 4. other factors (e.g. light, noise, pedestrian traffic) likely to affect the neighborhood in which it is located.
- C. A nonconforming use of open land (e.g. junk yard, storage or salvage yard, sales lot etc.) may not be changed to any other nonconforming use of open land.

1420.020 Expansion of Use

- A. A nonconforming use may not be enlarged or expanded unless such expansion eliminates or reduces the nonconforming aspects of the situation, or the expansion is into a part of a building or other structure that was lawfully and manifestly designed or arranged for such use.
- B. Expansion for the sole purpose of providing off-street parking will not be considered expansion of a nonconforming use. Any such parking lot expansion must meet all current Town standards for construction, landscaping, setbacks, parking for persons with disabilities, stormwater management and other applicable regulations.

1420.030 Loss of Nonconforming Status

A. Discontinuance

Once a nonconforming use is discontinued, its nonconforming status is lost and any subsequent use of the property must comply with the regulations of the zoning district in which it is located. When a nonconforming use of open land (e.g. junk yard, salvage yard, contractor's yard, material storage, sales lot) ceases for a period of 90 consecutive days or more, it will be considered discontinued. Other nonconforming uses will be considered discontinued when any of the following occurs:

- 1. the property is not maintained and appears abandoned and the use discontinued for a period of 180 days or more;
- 2. no use has been maintained in the structure for a period of 180 days or more;
- 3. all equipment and furnishings have been removed from the premises and have not been replaced by similar or other equipment and furnishings within 180 days;

B. Change to a Conforming Use

If a nonconforming use is changed to a conforming use, no matter how short the period of time, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.

C. Accessory Uses and Structures

No use or structure that is accessory to a principal nonconforming use or structure may remain after the principal use has been discontinued, unless the accessory use or structure it complies with all applicable regulations of this development ordinance.

D. Rehabilitation of Structure Containing Nonconforming Residential Use

Any structure that is occupied by a nonconforming residential use may be remodeled or renovated, subject to compliance with all other provisions of this section. After such remodeling or renovation, such structure may not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated before such work.

1420.040 Screening of Certain Nonconforming Uses

All nonconforming open storage yards, junk or salvage yards or other outdoor display or storage of merchandise in connection with an auction establishment, or a business specializing in secondhand merchandise, or any other open use of land that was lawfully operating in any R district as of December 31, 2008 may be continued. However, by December 31, 2009, such uses must comply with the following regulations:

- A. All such uses are required to provide screening in the form of a uniform solid, opaque fence, wall, or landscape screening or combination thereof meeting the following requirements:
 - 1. be at least one foot taller than the highest elevation of the material stored up to a maximum of 10 feet;
 - 2. be maintained in good condition at all times.
- B. No storage areas are permitted in the required front or side yards. No merchandise may be stored or stacked higher than the screening fence or wall.

1420.050 Nonconforming Use Certification

- A. The Director of Planning and Development is authorized to grant a Nonconforming Use Certificate when it has been determined, upon review of all competent evidence, that a use was lawfully established.
- B. The subject property owner may seek a Nonconforming Use Certificate in a manner consistent with this section. In granting such a Nonconforming Use Certificate, the Director of the Planning and Development is authorized to impose such conditions as deemed necessary to protect the health, safety and welfare of the surrounding area.
- C. Every right or privilege authorized by a Nonconforming Use Certificate may continue so long as the conditions set forth in the permit and this development ordinance is met, provided that the certificate was not obtained by fraud or misrepresentation.
- D. The Director of Planning and Development has continuing jurisdiction over all Nonconforming Use Certificates and may revoke, modify, or suspend the approved permit after a public hearing and notice given in the same manner as required for special use permits (see Chapter 360), under the following conditions:

1. the certificate was obtained by fraud or misrepresentation; or
2. the certificate has been exercised contrary to this section, or to other conditions of its approval.

Chapter 1430. Nonconforming Structures

1430.010 Use

A nonconforming structure may be used for any use allowed in the underlying zoning district.

1430.020 Enlargement or Expansion

A nonconforming structure may be enlarged or expanded if the expansion does not increase the extent of the nonconformity. In case of an enlargement or expansion, the standards of this development ordinance apply only to the enlargement or expansion, and not to the entire structure.

1430.030 Loss of Nonconforming Status

A. Intentional Acts

When a nonconforming structure is intentionally destroyed or damaged by causes within the control of the property owner or tenant, all nonconforming structure rights are lost and reconstruction of the nonconforming structure is prohibited.

B. Accidental Acts

1. When more than 50% of a nonconforming structure is accidentally destroyed or damaged by causes that are not within the control of the owner or tenant, the structure may not be restored except in conformity with the regulations of the zoning district in which it is located.
2. When 50% or less of a nonconforming structure is accidentally destroyed or damaged by causes that are not within the control of the property owner or tenant, the structure may be restored or repaired provided that no new nonconformities are created and the existing degree of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within 6 months of the date of occurrence of such damage, and once issued, construction must be diligently pursued or the nonconformity will be considered to be discontinued.

Chapter 1440. Nonconforming Lots

This section applies only to undeveloped, vacant nonconforming lots.

1440.010 When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum lot area applicable to that zoning district, then the lot may be used as proposed just as it were conforming.

1440.020 When a use proposed for a nonconforming lot is one that is conforming in all respects, except the applicable setback standards cannot be met then property owners may seek approval of a zoning variance in accordance with Chapter 380.

Chapter 1450. Damage or Destruction

If a nonconforming use, a structure containing a nonconforming use, or a nonconforming structure is destroyed by any means, including, but not limited to neglect, to the extent of more than 50% of its market value, as determined by the Union County Assessment Department, immediately prior to damage,

the nonconforming use, structure containing a nonconforming use, or nonconforming structure may not be restored unless it is in full compliance with the provisions of this development ordinance. If a nonconforming use, structure containing a nonconforming use, or a nonconforming structure is destroyed by any means, including, but not limited to neglect, to the extent of less than 50% of its market value, as determined by the Union County Assessment Department, immediately prior to damage, the nonconforming use, structure containing a nonconforming use, or nonconforming structure may be re-established to the extent that existed before the time of damage, provided that such repairs, restoration or reconstruction is completed within 12 months of the date of such damage. Any litigation period will not be counted as part of the 12-month period allowed for restoration.

Chapter 1460. Nonconforming Signs

1460.010 Continuation of Nonconforming Signs

Nonconforming signs may remain in use, subject to the applicable regulations of this Chapter. Nonconforming signs must be maintained in good repair, and must comply with all other requirements of this development ordinance.

1460.020 Alterations

Change of copy or the substitution of panels or faces on nonconforming signs is permitted without affecting the legal status of a sign as a nonconforming sign (subject to requirements for building and electrical permits). No other alterations are allowed, except for routine maintenance and repair.

1460.030 Abandoned Nonconforming Signs

- A. Any nonconforming on-premise sign that is located on property that has failed to maintain a valid business license or that becomes vacant and unoccupied for a period of 12 months or more, or any nonconforming on-premise sign that pertains to a time, event or purpose that is no longer imminent or pending will be deemed to have been abandoned.
- B. Any nonconforming off-premise sign that is not used or for which a valid permit or license does not exist for a continuous period of 12 months or more will be deemed to have been abandoned.
- C. Abandoned nonconforming signs, including all elements of the sign and supporting structure, are prohibited and must be removed by the owner of the sign or the owner of the property upon which the sign is located.
- D. No permits or development approvals may be issued for property occupied by nonconforming abandoned signs until such signs are removed.
- E. No business license may be issued for businesses with nonconforming abandoned signs after the date that such nonconforming signs are required to be removed or altered.

Chapter 1470. Nonconforming Site Aspects

1470.010 Purpose

The purpose of this section is to provide a means by which the city may require certain nonconforming site features to come into compliance with the standards of this Ordinance as part of remodeling, expansion of a building or structure, or the establishment of an allowed use into a site which had previously been used for a nonconforming uses. It is not the intent of this section to allow multiple incremental improvements to a nonconforming site without addressing the nonconformities as required in this section.

1470.020 Applicability

- A.** For purposes of this section, the term “nonconforming site features” includes the following:
 - 1.** Nonconforming off-street parking;
 - 2.** Nonconforming landscaping;
 - 3.** Nonconforming screening of mechanical equipment; and
 - 4.** Nonconforming screening and buffering.

- B.** In all cases, sites will be responsible for the full implementation of the requirements of:
 - a.** Chapter 1360 Flood Damage Reduction Ordinance, Chapter 1370 Storm Water Management Permits, Chapter 1380 Post Construction and Chapter 1390 Sedimentation Pollution Control of This Ordinance; and
 - b.** Americans with Disabilities Act (ADA) regulations of this and any other applicable ordinances

- C.** For the purposes of record keeping, the tracking of improvements to nonconforming structures or sites, will begin on the date of the adoption of this ordinance, November 9th, 2010.

- D.** If an application is filed for a zoning permit for the remodeling or expansion of a building or site that has one or more nonconforming site features identified in 1470.020 (A), Applicability, and the value of the proposed improvements over a five-year period exceeds at least 25 percent of the assessed value of the existing site over a five-year period, the applicant shall be required to address the nonconforming site features as provided in this section.

- E.** The Planning Director may develop administrative guidelines to assist in the implementation of this subsection, including guidelines for the resolution of conflicts when it may not be possible for one or more types of nonconforming site features to be brought into conformance with the requirements of this Ordinance because of particular site constraints or impacts upon adjacent properties.

1470.030 Exemptions

These standards shall not apply to the reconstruction of a nonconformity damaged by an act of God or other natural disaster.

1470.040 Structural Alteration

A. Determining Applicability

Structural alterations only include activities that do not result in the expansion of a building. For the purpose of determining when site features must be brought into partial or full compliance with the standards of this Ordinance, the costs that constitute the assessed value of the structural alteration of a building or structure shall be as shown on the zoning permit application, and shall include the cost of materials and labor.

B. General

- a. 25 Percent or Less of Structure Value**

Structural alteration of a building or structure during a five-year period whose assessed value is 25 percent or less of the current assessed value of the building or structure shall not require any correction to nonconforming site features.

b. More Than 25 Percent but Less Than 75 Percent of Structure Value

Structural alteration of a building or structure whose assessed value exceeds more than 25 percent but less than 75 percent of the current assessed value of the structure during a five-year period shall require that a corresponding percentage of the site features identified in, 1470.020 (A), Applicability, be brought into compliance incrementally, until the site achieves 100 percent compliance.

Example: a nonresidential site with nonconforming off-street parking (site feature) with an assessed value of \$100,000 is undergoing remodeling equaling \$40,000 (40 percent of the assessed value), the developer must add a corresponding number of additional required parking spaces until the site fully complies. The site at the time of remodel has 10 parking spaces, but the ordinance requires a minimum of 20 for the use that is proposed (10 more spaces are required for the site to be conforming), the applicant would be required to provide 40 percent of the 20 spaces - or 8 more parking spaces, bringing the total number of spaces on the site to 18 spaces.

c. 75 Percent or More of Structure Value

Structural alteration of a building or structure during a five-year period whose alteration is estimated to cost 75 percent or more of the current assessed value of the building or structure shall require 100 percent compliance with the site features identified in Section 1470.020 (A), Applicability.

d. Two or Fewer Additional Parking Spaces

When two or fewer additional off-street parking spaces are required under this subsection as a result of a redevelopment, such additional off-street parking is not required to be installed.

C. Physically Constrained Properties- Comply to Maximum Extent Practicable

Lands that are physically constrained (due to limited size, topography, or other environmental considerations) from complying with these provisions shall comply to the maximum extent practicable, as determined by the Planning Director.

1470.050 Expansions

Expansions to buildings or structures or use areas on sites with nonconforming site features identified in 1470.020 (A), Applicability, shall require compliance until the site achieves 100 percent compliance for site features in accordance with this section.

A. General

a. Expansions of 15 Percent or Less

Additions or expansions that increase a building or structure or use area's size by 15 percent or less over a five-year period shall not require any correction to nonconforming site features.

b. Expansion between 15 and 50 Percent of Gross Square Footage Over 5 Years

Expansion in any continuous five-year period, which results in an increase in the gross square footage of the existing building or structure or use area (measured at the

1470.060. Establishment of Allowed Use on site with Nonconforming Site Aspects

beginning of the five-year period) greater than 15 percent, but less than 50 percent, requires a corresponding percentage of the nonconforming site features identified in 1470.020 (A), Applicability, to be brought into compliance, incrementally until the site achieves 100 percent compliance.

Example: A 25 percent increase in square footage will necessitate a 25 percent increase in the total number of parking spaces provided (up to the minimum requirement). Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping.

c. Expansion of Greater Than 50 Percent of Gross Square Footage Over 5 Years

Expansions over any continuous five-year period, which results in a greater than 50 percent increase of the gross square footage of the existing building or structure or use area (measured at the beginning of the five-year period) that has a nonconforming site feature identified in 1470.020 (A), Applicability, shall require the building or site or use area to comply with all standards of this Ordinance for the new site features. Examples of these requirements include parking, landscaping, screening, installation of trash enclosures, lighting, etc.

B. Physically Constrained Properties- Comply to Maximum Extent Practicable

Lands that are physically constrained (due to limited size, topography, or other environmental considerations) from complying with these provisions shall comply to the maximum extent practicable as determined by the Planning Director.

C. Addition of Outdoor Storage Area Only

When only outdoor storage areas are being added or increased on a site, the percentage increase in outdoor operations area shall require a corresponding percentage increase in perimeter buffers and screening. Perimeter buffer and screening augmentation shall be located so as to achieve the performance objectives in Section 810.100, Screening of Open Storage.

1470.060 Establishment of Allowed Use on site with Nonconforming Site Aspects

A. Applicability

The purpose of this section is to establish regulations for when an allowed use obtains a zoning permit to operate on a site with nonconforming site aspects and where the previous use was nonconforming. The amount of improvements required will be related to the amount of investment placed into the property

B. General

a. 75 Percent or Less of Structure or Site Value

Items listed in 1470.020 (A)(1,3,4), Applicability, will be required to comply with the standards of this Ordinance. This will require that parking, and screening and buffering will be installed.

b. More than 75 Percent of Structure or Site Value

When more than 75 percent of the structure of a structure or site value is invested into a site, then the site will need to be brought into full compliance with the ordinance, including both on-site and off-site improvements.

C. Physically Constrained Properties- Comply to Maximum Extent Practicable

Lands that are physically constrained (due to limited size, topography, or other environmental considerations) from complying with these provisions shall comply to the maximum extent practicable as determined by the Planning Director.

