

Chapter 1224: Nonconformities

1224.01 PURPOSE

Within the districts established by this code, some lots, uses of lands or structures, or combinations thereof may exist which were lawful prior to the effective date or amendment of this code, but that are prohibited, regulated, or restricted under the terms of this code. The legitimate interests of those who lawfully established these nonconformities are herein recognized by providing for the continuance of such uses, subject to regulations limiting their completion, restoration, reconstruction, extension, and/or substitution. Nevertheless, while it is the intent of this code that such nonconformities be allowed to continue until removed, they should not be encouraged to survive, unless otherwise allowed in this chapter or specifically addressed in this code.

1224.02 GENERAL PROVISIONS

- (a) Any use, building, structure, land, or premises that existed at the time of the effective date of this code, which was legally established under a previous code amendment or versions, may be continued even if such use, building, structure, land, or premises does not conform to the provisions of this code.
- (b) Passage of this code in no way legalizes any illegal uses existing at the time of its adoption and such illegal uses shall not be considered a legal nonconforming use subject to the provisions of this chapter.
- (c) An applicant for any development review procedure that deals with a nonconformity shall bear the burden of proof in demonstrating that the use was a legal nonconformity on the effective date of this code.

1224.03 DETERMINATION OF LEGAL NONCONFORMITY STATUS

- (a) At the time of application for a building permit, certificate of zoning compliance, request for variance, or any other development review regarding a nonconforming lot, building, structure or use, the property owner shall submit sufficient evidence for the applicable staff or review board to determine that such lot, building, structure, or use was lawfully created or established in accordance with the code regulations in existence at that time.
- (b) If the evidence submitted indicates the lot, building, structure or use was legally established and has since become nonconforming because of the establishment of, or amendment to, this code, the Development Code Administrator shall issue a certificate of zoning compliance identifying it as a legal nonconformity. A copy of such certificate shall be kept on file in the offices of the Development Code Administrator.

1224.04 NONCONFORMING USES AND VARIANCES OR CONDITIONAL USES

- (a) Whenever a nonconforming use has been changed to a conforming use, such use shall no longer be defined as a nonconforming use, nor shall the property be returned to the former nonconforming use.

- (b) When a property owner or authorized agent is granted a variance for a nonconformity that addresses the nonconformity, the use, structure, or lot shall no longer be considered nonconforming. In no case shall the resolved nonconformity be expanded or altered to create further nonconformities.
- (c) If a property owner or authorized agent is granted a variance for a nonconformity that addresses some nonconformities but additional nonconformities continue, the use, structure, or land shall still be subject to the provisions of this chapter.
- (d) Any use for which a conditional use is granted as provided in this code shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

1224.05 NONCONFORMING USES

Where, at the time of adoption of this code, lawful uses of land or structures exist that would not be permitted by the regulations of this code, the uses may be continued so long as they remain otherwise lawful and provided:

- (a) 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 code unless it complies with the provisions of Section [1224.05\(e\)](#).
- (b) No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or lot other than that occupied by such uses at the effective date of adoption or amendment of this code.
- (c) No additional structures shall be constructed on a lot with a nonconforming use unless such new structure complies with the requirements of this code and the applicable zoning district.
- (d) **Change or Substitution of Nonconforming Use**
 - (1) The lawful use of an existing building or structure can be continued even if such use is not permitted in the applicable district. If no structural alterations are made that increase the nonconformity, a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted use, as determined by the BZA. Such determination shall be made at a public hearing held in the same manner as a variance (See Section [1226.10.](#)), including notice, but the variance review criteria of Section [1226.10\(c\)](#) shall not apply. At the hearing, the BZA shall make a determination if the proposed use is similar in nature and intensity, or is a more restricted use, allowable as a change or substitution under this section.
 - (2) Whenever a nonconforming use is changed to a less intensive nonconforming use, such use shall not thereafter be changed to a more intensive nonconforming use.
 - (3) 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 applicable zoning district in which such structure is located, and the nonconforming use may not thereafter be resumed.

- (4) In permitting such change, the BZA may impose appropriate conditions and safeguards to protect adjacent properties.

(e) Expansion of a Nonconforming Use

- (1) Notwithstanding the foregoing provisions to the contrary, a structure containing a nonconforming residential use (not including mixed use buildings or live/work units) may be increased or improved, regardless of the applicable zoning district, provided the structure continues to be used for residential purposes only and meets all required setbacks.
- (2) Any nonconforming, nonresidential use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of this code, but no such use shall be extended to occupy any land outside such building.
- (3) Variances to expand a nonconforming use into a required setback or to otherwise vary a regulation that applies to the subject site shall be prohibited.

(f) Existing Use Reclassified as a Conditional Use (New)

In the event an existing use that was permitted by right at the time the use was established is thereafter reclassified as a conditional use in the applicable district due to a zoning text amendment, such use shall be considered to be an approved conditional use without any further action. However, any subsequent change to such use shall require review and approval by the Planning Commission in accordance with this chapter and Section 1226.05. Such use, provided it is conditionally permitted in the applicable district, shall not be considered a nonconforming use.

(g) Termination of Nonconforming Uses

(1) Termination of Use through Discontinuance

- A.** When any nonconforming use is discontinued or abandoned for more than 12 consecutive months, any new use shall conform to the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.
- B.** There may be cases when a structure, or structure and premises in combination, may not be converted to a conforming use because of the original floor plan and design (e.g. townhouses into a single-family residentially zoned area). In these cases, the BZA may determine that the nonconforming use may continue if the nonconforming use is the original use of the structure and/or premises. Appropriate safeguards, conditions and design standards may be required by the BZA so as to minimize the impact of such continuance on the area. Such review and determination shall be made at a public hearing held in the same manner as a variance (See Section 1226.10.), including notice, but the variance review criteria of Section 1226.10(c) shall not apply.

(2) Termination of Use by Damage or Destruction

- A.** If a nonconforming residential dwelling in any district is damaged or destroyed to any extent, such structure and use may be reestablished on the same lot provided it meets the same size in height and footprint, as well as complying with the same setbacks as previously existed.
- B.** If a nonconforming, nonresidential use in a residential district is damaged, but not to an extent greater than 50 percent of the principal structure's market value according to the applicable county auditor, such structure and use may be reestablished on the same lot to the same size and intensity of use as was previously existing immediately prior to the damage or destruction. Such reestablishment of the use shall require the issuance of a certificate of zoning compliance.
- C.** If a nonconforming, nonresidential use in a residential district is damaged beyond 50 percent of the principal structure's market value according to the applicable county auditor, such structure and use may only be reestablished with approval by the BZA after consideration of surrounding uses and the impact of the nonconforming use. Such review and determination shall be made at a public hearing held in the same manner as a variance (See Section [1226.10.](#)), including notice, but the variance review criteria of Section [1226.10\(c\)](#) shall not apply.

1224.06 NONCONFORMING STRUCTURES

A nonconforming building or structure may continue to be used or occupied by a use permitted in the applicable zoning district so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions:

- (a)** Any nonconforming structure or site may be enlarged, maintained, repaired, or altered provided, however, no such enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure or site, unless otherwise specified in this code.
- (b)** A nonconforming structure shall not be relocated in whole or in part to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the applicable zoning district after being relocated.
- (c)** The principal use of a nonconforming building may be changed to any other use permitted in the applicable zoning district as long as the new use complies with all regulations of this code specified for such use, except the regulations to which the building did not conform prior to the change in use.
- (d)** The governmental acquisition of a portion of a lot for a public purpose that results in reduction in a required yard or setback below that required in the applicable zoning district shall not render a structure nonconforming.

(e) Damage or Destruction of a Nonconforming Structure Containing a Conforming Use

- (1) If a nonconforming structure is damaged, but not to an extent greater than 50 percent of the structure's market value, as determined by the applicable county's auditor, such structure and use may be reestablished on the same lot to the same size and intensity of use as was previously existing immediately prior to the damage or destruction. Such reestablishment of the use shall require the issuance of a certificate of zoning compliance. If an owner rebuilds a legally nonconforming structure under this provision, they may expand the structure provided, as stated in Paragraph [1224.06\(a\)](#), any expansion or change does not increase the nonconformity that existed prior to the damage.
- (2) If a nonconforming structure is damaged beyond 50 percent of the structure's market value, such structure shall only be rebuilt in compliance with the requirements of this code.
- (3) If the owner voluntarily removes the structure or reduces the nonconformity, that has not been damaged or destroyed, that owner shall not be permitted to rebuild the structure to the original height, size, or setback.

1224.07 NONCONFORMING LOTS OF RECORD (REVISED 1276.01)

A nonconforming lot of record may be used in accordance with this section.

- (a) If an existing nonconforming lot of record is occupied by a building with a use that complies with the code, such building shall be maintained and may be repaired, modernized or altered, provided that:
 - (1) The building shall not be enlarged in floor area unless the enlarged section complies with all regulations of this code, with the exception of the lot area and the lot width regulations.
 - (2) The number of dwelling units, if applicable, shall not be increased unless in conformance with this code.
- (b) In any residential district, a single-family dwelling and its customary accessory uses, may be erected on a vacant single lot of record after the effective of this code provided the buildings comply with the minimum setbacks to the maximum extent practical.
- (c) In any nonresidential district, a use that is permitted in the applicable district, and its customary accessory uses, may be erected on a vacant single lot of record after the effective of this code provided the buildings comply with the minimum setbacks to the maximum extent practical.

1224.08 NONCONFORMING SIGNS

See Section [1220.10](#) for the regulation of nonconforming signs.

1224.09 REPAIR AND MAINTENANCE

- (a)** On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that the footprint and height of the structure as it existed, when it became nonconforming, shall not be increased unless in accordance with this chapter.
- (b)** Nothing in this section shall be deemed to prevent the strengthening or restoring to safe condition of any building, or part thereof, declared to be unsafe by any official charged with protecting the public safety, including, but not limited to the City Manager, Development Code Administrator, or Chief Building Official, upon order of such official. Where appropriate, a building permit for such activities shall be required.