

ARTICLE 20 NONCONFORMING USES

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20-101 Nonconforming Lots of Record:

1. In Certain Residential Districts:
 - A. In the "R-1" Single Family Residential district, notwithstanding the regulations imposed by any other provision of these Regulations, a single family detached dwelling which complies with the restrictions in Section 20-101-1.b., below, may be erected or expanded on a lot that is not less than 25 feet in width and that consists entirely of a tract of land that:
 - 1) Has less than the prescribed minimum lot area, width or depth, or all three, and,
 - 2) Is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations, and,
 - 3) Has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable zoning regulation or regulations.
 - B. Construction permitted by Section 20 101-1.a., above, shall comply with all of the regulations (except lot area, width and depth) applicable to single family dwellings in the zoning district in which the lot in question is located; provided, however, that the following front and side yard requirements shall apply in place of the front and side yard requirements otherwise applicable:
 - 1) The dwelling shall provide a yard on each side of the dwelling.
 - 2) The dwelling shall provide a front yard equal to either the required front yard or the established front yard as provided by these Regulations. In no case shall an expansion be allowed to encroach into the required front yard greater than what exists for the existing structure.
 - 3) The sum of the widths of the two side yards on each lot shall be not less than the smaller of:
 - a) Twenty five percent of the width of the lot, or

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- b) The minimum total for both side yards prescribed by the bulk regulations for said zoning district, and,
- c) No side yard shall be less than 10 percent of the width of the lot, and in no case less than 3 feet.

20-102 Nonconforming Use of Land:

Where open land is being used as a nonconforming use at the time of the enactment of these Regulations, and such use is the principal use and not accessory to the main use conducted in a structure, such use may be continued; provided, such nonconforming use shall not be extended or enlarged, either on the same or adjoining property. The protection afforded to nonconforming use of land by this section applies only to such land held under ownership or lease agreement for said activity on or before the effective date of these Regulations, but shall not apply to new lands purchased or leased after said date. In addition, said protection shall not apply to any activities not legal under the terms of the regulations which these Regulations replace.

20-103 Nonconforming Use of Structures:

Except as otherwise provided herein, the lawful use of a structure existing on the effective date of these Regulations may be continued although such use does not conform to the provisions hereof. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use. The nonconforming use of a structure may be hereafter extended throughout those parts of a structure which were lawfully and manifestly arranged or designed for such use at the time of the enactment of these Regulations.

20-104 Discontinuance of Nonconforming Uses:

No land or structure or portion thereof used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of six (6) months, whether or not the equipment, fixtures, improvements or facilities are removed, shall again be used except in conformity with the regulations of the district in which such land or structure is located.

20-105 Destruction of a Nonconforming Use:

No structure which has been damaged by any cause whatsoever to the extent of more than 50 percent of the fair market value of the structure, immediately prior to damage, shall be restored except in conformity with the provisions of these Regulations, and all rights as a nonconforming use are terminated. If a structure is damaged by less than 50 percent of the fair market value, it may be repaired or reconstructed and used as before the time of damage, provided, that such repairs or reconstruction be substantially completed within twelve (12) months of the date of such damage.

20-106 Intermittent Use:

The casual, intermittent, temporary or illegal use of land or structures shall not be sufficient to establish the existence of a nonconforming use. The existence of a nonconforming use on the part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

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20-107 Existence of a Nonconforming Use:

Whether a nonconforming use exists shall be a question of fact and shall be decided by the Zoning Administrator, subject to appeal to the Board of Zoning Appeals after public notice and hearing and in accordance with the rules of the Board and of these Regulations.

20-108 Nonconforming Structures - Enlargement, Repairs, Alterations:

Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful. Any such structure may be enlarged, maintained, repaired or remodeled; provided however, that no such enlargement, maintenance, repair or remodeling shall either create any additional non-conformity or increase the degree of existing non-conformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be determined by Section 16-101 herein. In the event that any such structure is damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of its fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in Section 16-101 herein. No structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

20-109 Amortization of Nonconforming Uses:

1. Purpose and Intent. The purpose and intent of this section is to provide for the continuation and, within a suitable period of time, elimination of existing uses of property that do not conform to the requirements of these Regulations or that may not conform to future amendments thereto. The provisions herein are designed to accomplish this intent in a way that:
 - A. Minimizes the nuisance, reduction in neighboring property values, and other adverse effects of properties that do not conform to their environs.
 - B. Allows the property owner or lessee to recover all or a substantial part of his investment in the nonconformity, while also minimizing the time period during which, by virtue of the nonconformity, he or she enjoys a special right not available to other property owners in the same zoning district.
2. Application. A nonconformity is any characteristic of a building, structure, or lot or parcel of land, or of the use thereof, which was lawful prior to the date of enactment of these Regulations, or amendment thereto, and that does not conform to the requirements applicable to the zoning district in which it is located. The lawful issuance of a Building Permit prior to the dates specified above shall be considered to establish the lawfulness of any building or structure. There are two categories of nonconformity:
 - A. Use Nonconformities: A Use Nonconformity may apply to either a principal use or an accessory use. There are two categories of use nonconformity:

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- 1) Activities Nonconformities: Any activities or functions carried on at a premises that are not allowed by the permitted and conditional uses of the zoning district in which the premises is situated, irrespective of the use for which the premises was designed. (EXAMPLE: The use of a dwelling now located in a Residence District as the site of a previously legal business is an example of an Activity Nonconformity.)
- 2) Design Nonconformities: The design or intended use of all or substantially all of a premise for any use not allowed by the permitted and conditional uses of the zoning district in which it is located, irrespective of the nature of the activities currently carried on at that premises. (EXAMPLE: A previously legal premises now located in a Residence District that was designed and intended as an automobile service station or an open sales lot would be an example of a Design Nonconformity, even if no service station or sales business were currently operated on the premises.)
- B. Standards Nonconformities: All other nonconformities with the requirements of these Regulations are nonconformities of the standards, including nonconformities involving:
 - 1) Yards
 - 2) Building height
 - 3) Lot area or lot area per dwelling unit
 - 4) Lot width
 - 5) Floor area ratio
 - 6) Size of business
 - 7) Off-street parking and loading
 - 8) Signs
 - 9) Buffer planting strips
 - 10) Screening(EXAMPLES: An undeveloped lot not meeting the minimum width required by its zoning district, or an otherwise conforming business with a sign that does not meet a requirement of the sign regulations, would be examples of Standards Nonconformities.)
3. Restoration of Damaged Structures. See Article 04-105 herein.
4. Additions, Enlargements, and Alterations to Structures.
 - A. Activity or Design Nonconformity. No addition, enlargement, or structural alteration as defined herein shall be made to any structure having a Design or Activity Nonconformity without the elimination of all such nonconformity.
 - B. Standards Nonconformity. No addition, enlargement, or structural alteration as defined herein shall be made to any structure having a Standards Nonconformity without both:

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- 1) The conformance of any new addition or enlargement portion of the structure to all requirements of the zoning district
- 2) The elimination in whole or in part, to the extent the Zoning Administrator determines physically and economically feasible, of Standards Nonconformities existing on the property before the addition or enlargement, particularly where such nonconformities can be reduced or eliminated without relocation of structures, acquisition of additional land, or expenditures disproportionate to the cost of the enlargement.

5. Expansion.

A. Within Structures

- 1) Activity or Design Nonconformity. Expansion of activities within a structure having an Activity or Design Nonconformity, or both, is permitted only under one of the following conditions:
 - a) The structure has a design nonconformity and the expansion involves no structural alteration as defined herein
 - b) The property is made conforming to all applicable provisions of these Regulations.
- 2) Standards Nonconformity. Expansion within a structure having a standards nonconformity is permitted conditioned upon the elimination in whole or in part, to the extent the Zoning Administrator determines physically and economically feasible, of standards nonconformities existing on the property before expansion, particularly where such nonconformities can be reduced or eliminated without relocation of structures, acquisition of additional land, or expenditures disproportionate to the cost of expansion.

- B. Expansion of Land Use. Expansion of the use of land having any nonconformity, whether involving a principal or accessory use, is permitted beyond the land area presently occupied only provided that the property is made conforming to all applicable provisions of these Regulations.

6. Moving of Structures. No structure with any nonconformity shall be moved in whole or in part to any other location on the same or any other lot unless in the new location it will conform to all regulations of the applicable zoning district.

7. Amortization.

- A. All nonconformities shall be removed or the uses altered to eliminate, as applicable, the nonconformity within the amortization periods specified herein.
- B. The amortization periods therein were determined based on:
 - 1) The degree of nuisance or other adverse effects each type of nonconformity creates;
 - 2) The size of the investment in the feature that creates the nonconformity and the relative ease and expense with which the nonconformity may be eliminated;

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C. The following types of nonconformities shall not be subject to the amortization provisions herein:

- 1) Standards nonconformities as specified herein;
- 2) Design nonconformities of dwelling units.

8. Administration.

- A. A Certificate of Non-Conformance and Amortization Schedule shall be required for the continuation of all nonconformities created by these Regulations or amendment thereto.
- B. When the Zoning Administrator determines that a property has any nonconformity, he or she shall notify the owner or lessee thereof, in writing, of such nonconformity and of the regulations applicable thereto.
- C. Following receipt of the notice, the owner or lessee shall file with the Zoning Administrator, within three months of the date thereof, either evidence that the property is not nonconforming or a completed application for a Certificate of Non-Conformance and Amortization Schedule.
- D. The application shall require the applicant to submit information as required by the Zoning Administrator to determine the applicable amortization period for the nonconformity. Upon timely receipt of a complete and accurate application therefore, the Zoning Administrator shall, within five (5) working days, issue a Certificate of Non-Conformance and Amortization Schedule for the nonconforming property.
- E. Failure to apply for a Certificate of Non-Conformance and Amortization Schedule within three (3) months of the notice provided for in this Section will require the amortization of the non-conformance within six (6) months of the notice provided for herein.
- F. Non-conforming uses that have obtained a Certificate of Non-Conformance and Amortization Schedule from the Zoning Administrator shall be discontinued within the amortization period specified herein for said use.

9. Extended Amortization Periods.

- A. An owner or lessee of non-conforming land, a structure, a building or an adult regulated use may, within three (3) months of the notice provided for herein, apply for an Extended Amortization Schedule of up to two (2) additional years. The owner or lessee shall state on the application that it is for an Extended Amortization Period and shall set forth the reasons for pursuing the extended period.
- B. Upon receipt of a complete and accurate application for an Extended Amortization Schedule, the Board of Zoning Appeals shall schedule and hold a public hearing thereon not less than twenty (20) days nor more than forty-five (45) days thereafter. At least twenty (20) days in advance of the hearing, notice of the time and place of such hearing shall be published at the applicant's expense in the official newspaper of Marion County. In addition, notice of the hearing shall be mailed to affected property owners in the manner, and to the extent required for rezoning hearings as specified these Regulations.

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10. Standards for Extended Amortization Schedule. Approval and/or establishment of extended amortization periods and instructions for issuance of Extended Amortization Schedules based on applications therefore shall be granted by the Board of Zoning Appeals only in accordance with the standards herein. No Extended Amortization Schedule shall be approved or established unless the Zoning Board of Appeals shall find:

- A. The conditions upon which the application for the Extended Amortization Schedule are based are unique to the property for which the Extended Amortization Schedule is sought and are not applicable, generally, to other property within the same zoning classification.
- B. That the period of amortization of the non-conformance will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
- C. That the non-conformance during the period of amortization will be not injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the adjacent neighborhood.
- D. That the non-conformance during the period of amortization will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
- E. That adequate utilities, access roads, drainage, and/or other necessary facilities have been or are being provided.
- F. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- G. That the non-conformance will conform to all other applicable regulations of the district in which it is located except those specific requirements directly relating to the non-conformance status of the property.

11. Amortization Periods for Nonconformities.

Use with Nonconformity	Value	<u>Amortization Period in Years</u>	
		In Residential Districts	In Other Districts
A. STRUCTURES & BUILDINGS			
As Principal Use:			
With Conforming Design & Nonconforming Activity	-0-	2.5	5
With Nonconforming Design & Conforming or Nonconforming Activity	-0-	7.5	1
As Accessory Use:	-0-	Same for Principal Use	

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B.	LAND			
	As Principal Use:			
	With No Structures	-0-	1	2
	With Only Accessory Structures:			
		\$6,000 or less*	1.5	3
		Over \$6,000*	2.5	5
	As Accessory Use:	-0-	Same for Principal Use	

*Value refers to value of improvements only.

Value is unequalized appraised valuation for property tax purposes on the date of passage of these Regulations, or the amendment that created the nonconformity, divided by the assessment ratio (expressed as a decimal).

All amortization periods start from the date of the notice from the Zoning Administrator to the property owner or lessee that a nonconformity exists.