

## CHAPTER 166

# ZONING REGULATIONS – NONCONFORMITIES

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**166.01 INTENT.** Within the districts established by these zoning regulations there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the zoning ordinance codified herein was passed or amended, but which are prohibited, regulated, or restricted under the terms of these regulations or future amendments. It is the intent of these regulations to permit these nonconformities to continue until they are removed, but not to encourage their survival. Nonconformities shall not be enlarged upon, expanded or extended, or used as grounds for adding other structures or uses prohibited elsewhere in the same district. To avoid undue hardship, nothing in these regulations shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of these regulations and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

**166.02 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 or amendment of the zoning ordinance, notwithstanding limitations imposed by other provisions of these regulations. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, if 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 the action of the Board of Adjustment.

**166.03 NONCONFORMING USES OF LAND (OR LAND WITH MINOR STRUCTURES ONLY).** Where at the time of passage of the zoning ordinance lawful use of land exists which would not be permitted by these regulations, and where such use involves no individual structure with a replacement cost exceeding \$1,000.00, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, or extended to occupy a greater area of land than was occupied at the effective date of such adoption or amendment.
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of such adoption or amendment.
3. If any such nonconforming use of land ceases for any reason for a period of 12 months, then any subsequent use of such land shall conform to the regulations for the district in which such land is located.
4. No additional structure not conforming to the requirements of these regulations shall be erected in connection with such nonconforming use of land.

**166.04 NONCONFORMING STRUCTURES.** Where a lawful structure exists at the effective date of adoption or amendment of the zoning ordinance that could not be built under the terms of these regulations 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:

1. No such nonconforming structure may be enlarged or altered in such a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of these regulations.
3. 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.

**166.05 NONCONFORMING USES OF STRUCTURES OR STRUCTURES AND PREMISES IN COMBINATION.** If lawful use involving individual structures with a replacement cost of \$1,000.00 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of the zoning ordinance, that would not be allowed in the district under these regulations, 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 these regulations in the district in which it is located shall be enlarged, extended, constructed, reconstructed, 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 the zoning 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 Adjustment, either by general rule or by making findings in the specific case, shall find 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 Adjustment may require appropriate conditions and safeguards in accordance with these regulations.
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 12 consecutive months or for 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.
6. When 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 the subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction. Replacement shall begin within six months of the time of destruction or the nonconforming status shall expire. Said construction shall also be completed within 18 months of the time of destruction or the nonconforming status shall expire.

**166.06 REPAIRS AND MAINTENANCE.** On any building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, provided that the cubic content of the building as it existed at the time of passage or amendment of the zoning ordinance shall not be increased.

**166.07 USES UNDER SPECIAL EXCEPTION PROVISIONS.** Any use which is permitted as a special exception in a district under the terms of these regulations (other than a change through Board of Adjustment action from a nonconforming use to another use not generally permitted in the district) shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.