

CHAPTER 1113

NONCONFORMING USES

1113.01 PURPOSE

Within the districts established by this Zoning Code, or amendments thereto which may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Zoning Code was enacted or amended, but which would be prohibited, regulated, or restricted under the terms of this Zoning Code or of future amendments. It is the intent of this Zoning Code to permit these nonconformities to continue until they are removed. It is further the intent of this Zoning Code that nonconformities shall not be encouraged to expand without restriction, nor be used as ground for adding other structures or uses prohibited elsewhere in the same district.

1113.02 INCOMPATIBILITY OF NONCONFORMING USES

Nonconforming uses are declared by this Zoning Code to be incompatible with permitted uses in the districts in which such uses are located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged in any way, including attachment to a building or premises of signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located, except as hereafter provided in this chapter.

1113.03 AVOIDANCE OF UNDUE HARDSHIP

- A. To avoid undue hardship, nothing in this Zoning Code shall be deemed to require a change in the plans, construction, or designated use of any structure, including a sign, for which a building permit was lawfully applied for prior to the effective date of adoption or amendment of this Zoning Code and upon which actual construction has been carried on and completed within two years of said effective date.
- B. To avoid undue hardship, nothing in this Zoning Code shall prevent the restoration of a structure wholly or partly destroyed by fire, explosion, act of God, or act of the public enemy subsequent to the effective date or amendment of this Zoning Code, or prevent the continuance of the use of such building or part thereof as such use existed at the time of such destruction or prevent a change or expansion of such existing use as provided in this chapter.
- C. 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 walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe

condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

1113.04 STRUCTURES AND USES NONCONFORMING BY USE DISTRICT

Where, at the time of adoption or amendment of this Zoning Code, lawful uses of buildings, structures, land, and premises exist which would not be permitted under the subdivision of uses imposed by this Zoning Code, the uses may be continued so long as they remain 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 Zoning Code.
- B. No such nonconforming use structure shall be enlarged or altered in a way which increases or maintains its nonconformity except as provided in Section 1119.07 of this Zoning Code, but any structure or portion thereof may be altered to decrease or eliminate its nonconformity; no additional structure not conforming to the requirements of this Zoning Code or amendment thereto shall be erected in connection with a nonconforming use of land, except as provided in Section 1119.07 of this Zoning Code.
- C. A nonconforming building, structure, or premises, if changed to a use included in the subdivision of uses for the district in which it is located, shall not thereafter be used except in conformity with the said subdivision of uses; a nonconforming building, structure, or premises may be changed to another use only if such use is included in the district in which the nonconforming use is a part.
- D. When a nonconforming use of a structure or premises is voluntarily discontinued or abandoned for more than six months, the structure, building, or use shall not thereafter be used except in conformity with the subdivision of uses for the use district in which it is located.

1113.05 STRUCTURES AND USES NONCONFORMING BECAUSE OF DEVELOPMENT REGULATIONS

Where, at the time of adoption or amendment of this code, lawful uses of buildings, structures, land, and premises exist which are included in the subdivision of uses for the district in which they are located but do not meet coverage, height, yards, parking, location on the lot, or other development requirements, such uses may be continued so long as they remain otherwise lawful, provided that:

- A. The lot on which such nonconforming development is located shall not be enlarged unless the additional development upon such land shall conform to the regulations for the district in which it is located.
- B. No nonconforming portion of a building or structure shall be reconstructed or structurally altered during any ten-year period to an extent exceeding in cost fifty percent (50%) of the value at which the building or structure stands on the tax

duplicate, or in any one-year period to an extent exceeding thirty percent (30%) of such value, unless such reconstruction or alteration reduces the extent of the nonconforming development.

These cost limitations may be appealed to the Board of Zoning Appeals under Section 1119.07.

1113.06 NONCONFORMING USES IN ALL DISTRICTS

The following provisions apply to a nonconforming use in all districts, and supersede any contrary provisions in this Zoning Code.

- A. No extension or expansion of a nonconforming use shall be permitted.
- B. No reconstruction or alteration of a building or structure incidental to a nonconforming use shall be permitted, except to reduce its nonconformity.
- C. No building or premises where a nonconforming use is voluntarily discontinued for a period of six months or more shall again be devoted to any nonconforming use.
- D. Sections 1113.05(A) and 1113.05(B) of this code shall in no way be construed to vary the provisions of this chapter.

1113.07 NONCONFORMING LOTS OF RECORD

In any district in which one family dwellings are permitted, a one family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment 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 those applying to area or width, or both, of the lot shall conform to the regulations for the district in which the lot is located provided it meets Health Department standards. Variances of yard requirements shall be obtained only through action of the Board of Zoning Appeals.

1113.08 CERTIFICATE OF NONCONFORMING USE

- A. Within one year of the effective date of this Zoning Code, the Director of Public Safety and Service shall issue a certificate of nonconforming use to all known owners of legal nonconforming use property, the use of which does not conform to the provisions of the use zone in which the property is located.
 - 1. In accordance with the provisions of this chapter, no use of land, buildings or structures shall be made other than that specified on the certificate of nonconforming use unless such use shall be in conformity with the provisions of the use zone in which the property is located.

2. A copy of each certificate of nonconforming use shall be filed in the office of the Board of Zoning Appeals.

B. District Changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein.

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