

## ARTICLE 21

## NONCONFORMING SITUATIONS AND VESTED RIGHTS

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## SECTION 21-1 INTENT

**21-101.** The intent of this Article is to provide for the regulation of nonconforming buildings, structures, lots and uses, and to specify those circumstances and conditions under which those nonconforming buildings, structures, lots and uses shall be permitted to lawfully continue notwithstanding their nonconformance to these regulations. It is in the best interest of the entire community that those nonconforming buildings, structures, lots and uses, which adversely affect the orderly development and value of other property not be permitted to continue unless restricted.

## SECTION 21-2 DEFINITIONS

**21-201.** Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Article:

- a. **Cost.** The total cost of alteration or repair shall mean the fair market value of the materials, services and labor necessary to accomplish such renovation, repair or restoration.
- b. **Dimensional nonconformity.** A nonconforming situation that occurs when the height, size or minimum floor area of a structure, or the relationship between an existing building or buildings and the other buildings or lot lines, does not conform to the regulations applicable to the zoning district in which the property is located.
- c. **Effective date.** Whenever this Article refers to effective date, the reference shall be deemed to include the effective date of any amendments to these regulations if the amendment, rather than these regulations (as originally adopted), creates a nonconforming situation.
- d. **Nonconforming lot.** A lawfully platted lot existing on the effective date of these regulations that does not meet one or more of the minimum width, depth or area requirements of the zoning district in which the lot is located.

- e. **Nonconforming project.** Any structure, development or undertaking that is incomplete on the effective date of these regulations, and would be inconsistent with one or more of the regulations applicable to the zoning district in which it is located if completed as proposed or planned.
- f. **Nonconforming sign.** A sign that, on the effective date of these regulations, does not conform to one or more of the regulations set forth in Article 27.
- g. **Nonconforming site improvement.** A situation that occurs when, on the effective date of these regulations, an existing site improvement on a lot, including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping, no longer conforms to one or more of these regulations applicable to the property.
- h. **Nonconforming situation.** A situation that occurs when, on the effective date of these regulations, an existing lot, structure or improvement, or the use of an existing lot, structure or improvement no longer conforms to one or more of the regulations applicable to the zoning district in which the lot, structure or improvement is located.
- i. **Nonconforming use.** A situation that occurs when property is used legally for a purpose and then is prohibited or made unlawful by the use regulations applicable to the zoning district in which the property is located. The term also refers to the activity that constitutes the use made of the property.
- j. **Structural value.** The present-day cost of replacing the structure or improvement.

### SECTION 21-3 CONTINUATION OF NONCONFORMING SITUATIONS AND COMPLETION OF NONCONFORMING PROJECTS

#### 21-301.

- a. Unless otherwise specifically provided in this Article and subject to the restrictions and qualifications set forth in Sections 21-3:12, nonconforming situations that were otherwise lawful on the effective date of these regulations may be continued.
- b. Nonconforming projects may be completed only in accordance with the provisions of Section 21-12.
- c. The burden shall be on the landowner or developer to establish entitlement to continuation of nonconforming situations or completion of nonconforming projects.

### SECTION 21-4 NONCONFORMING LOTS

#### 21-401.

- a. This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. A substantial structure shall include any structure in excess of eight hundred (800) square feet in floor area which was constructed for a principal use permitted in the zoning district at the time of construction. A change in use of a developed nonconforming lot may occur only in accordance with Section 21-7.

- b. Where a nonconforming lot does not conform to the lot area or dimensions applicable to that zoning district, the lot may be used for any permitted use in that zoning district provided all other requirements and regulations are met.
- c. When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements cannot be complied with, then the Board of Zoning Appeals may allow variances from the applicable setback requirements if it finds that:
  - 1. Development of the property is not reasonably possible for the use proposed without such variance;
  - 2. The variance is necessitated by the size or shape of the nonconforming lot; and
  - 3. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
- d. For purposes of subsection c, development in compliance with the applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.
- e. If, on the effective date of these regulations, an undeveloped nonconforming lot adjoins and has continuous frontage with one (1) or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his or her successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within five hundred (500) feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots, but not to require such combination when that would be out of character with existing patterns of development.
- f. The subdivision of any land, lot or parcel which creates a lot area or dimension which does not meet the minimum standards of these regulations is prohibited.

## **SECTION 21-5 EXTENSION OR ENLARGEMENT OF NONCONFORMING SITUATIONS**

### **21-501.**

- a. No person may increase the extent of nonconformity of a nonconforming situation. Physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:
  - 1. An increase in the total amount of space of building area devoted to a nonconforming use; or
  - 2. Greater nonconformity with respect to dimensional restrictions such as building setback requirements, height limitations or density requirements, or other requirements such as parking requirements.

- b. Subject to subsection d, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by these regulations, was designed or arranged to accommodate that non-conforming use. Except as otherwise provided in Section 21-12, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- c. Except as otherwise provided in Section 21-12, a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming. However, a use that involves the removal of natural materials from the land may be expanded to other portions of the lot where the use was established at the time it became nonconforming if seventy-five percent (75%) or more of the natural products had already been removed on the effective date of these regulations, and where the development and performance standards otherwise applicable to such a use were complied with.
- d. The volume, intensity or frequency of use of property where a nonconforming situation exists may be one-time increased up to ten percent (10%) and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other provisions of this section occur.
- e. Notwithstanding subsection 21-501.a., any structure used as a single-family dwelling and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not:
  - 1. create new nonconformities,
  - 2. increase the extent of the existing nonconformities with respect to such matters as setback and parking requirements, and
  - 3. violate the limitations of Section 21-7.

## **SECTION 21-6 REPAIR, MAINTENANCE AND ALTERATIONS**

### **21-601.**

- a. Repairs, alterations and maintenance of structures and property where nonconforming situations exist may be made provided those repairs, alterations and maintenance conform to the regulations of the district in which the building or structure is located.
- b. If a structure located on a lot where a nonconforming situation exists is damaged by fire, explosion, act of God, or the public enemy to an extent that the costs of repair or restoration would not exceed fifty percent (50%) of its structural value, then the damaged structure may be repaired or restored only in accordance with a nonconforming situation permit issued by the Zoning Administrator.

## **SECTION 21-7 CHANGE OF NONCONFORMING USE**

### **21-701.**

- a. A change in use of property where a nonconforming situation exists may not be made except in accordance with this section.

- b. If the change in use is to a permitted use in the district where the property is located, and all of the other requirements of these regulations are complied with, no permission from the City to make the change need be obtained. Once conformity with these regulations is achieved, the property may not revert to nonconforming status.
- c. If the change in use is to a permitted use in the district where the property is located, however the site or development requirements cannot reasonably be complied with, then the change in use is permissible only if the Zoning Administrator issues a nonconforming situation permit. This permit may be issued if the Zoning Administrator finds, in addition to any other findings that may be required by these regulations, that the intended change will not result in a violation of Section 21-8 and that all of the applicable requirements of this Article will be complied with that are reasonably possible.
- d. A nonconforming use may be changed to another nonconforming use if the Planning Commission finds that the proposed use is equally appropriate or more appropriate to the district than is the existing nonconforming use.

## **SECTION 21-8 NONCONFORMING SITE IMPROVEMENTS**

### **21-801.**

- a. On lots with nonconforming site improvements, no additions to, or repairs or alterations of any structure or site improvement may be made without first either bringing the nonconforming site improvements into conformity with the regulations applicable to the zoning district or obtaining a nonconforming situation permit. This section shall not apply to minor repairs and renovations (less than ten percent (10%) of the structural value of a structure or site improvements), or repairs or alterations to a structure pursuant to Section 21-6.
- b. When an addition to, or repairs or alterations to, any structure or site improvement is proposed on a lot with a nonconforming site improvement, the Zoning Administrator may approve a nonconforming situation permit allowing such addition or repairs or renovation upon finding that all of the following criteria are met:
  - 1. The nonconforming site improvement(s) is the only nonconforming situation pertaining to the property.
  - 2. Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible.
  - 3. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
- c. For the purposes of subsection b, mere financial hardship does not constitute grounds for finding that compliance with the site improvement requirements is not reasonably possible.

**SECTION 21-9 ABANDONMENT AND DISCONTINUANCE OF NONCONFORMING SITUATIONS**

**21-901.**

- a. When a nonconforming use is discontinued for a period of 360 consecutive days, or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter be used only in conformity with all of the regulations for the zoning district in which it is located.
- b. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a period of 360 consecutive days, or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter be used only in conformity with all of the regulations for the zoning district in which it is located unless the Zoning Administrator issues a permit to allow the property to be used for this purpose without correcting nonconforming situations. Such permit may be issued if the Zoning Administrator finds that eliminating a particular nonconformity is not reasonably possible.
- c. When a structure or operation made nonconforming by these regulations is vacant or discontinued on the effective date of these regulations, the 360 day period for purposes of this section begins to run on the effective date of these regulations.

**SECTION 21-10 NONCONFORMING SIGNS**

**21-1001.**

- a. Subject to the remaining restrictions of this section, nonconforming signs that were otherwise lawful on the effective date of these regulations may be continued.
- b. No nonconforming sign may be altered in such a manner as to aggravate the nonconforming condition, nor may illumination be added to any nonconforming sign.
- c. A nonconforming sign may be altered to bring the sign into complete conformity with these regulations.
- d. Subject to the other provisions of this section, nonconforming signs may be maintained.
- e. If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed within thirty (30) days after such abandonment by the sign owner, owner of the property where the sign is located, or other person having control over such sign.
- f. If a nonconforming billboard remains blank for one hundred eighty (180) consecutive days, that billboard shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this Article or be removed by the sign owner or owner of the property where the sign is located, or other person having control over such sign. For purposes of this section, a sign is “blank” if:
  1. It advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted; or

2. The advertising copy paid for by a person other than the sign owner or promoting an interest other than the rental of the sign has been removed.

## **SECTION 21-11 NONCONFORMING MANUFACTURED HOMES**

**21-1101.** The removal and relocation of manufactured homes in the R-1, R-2, R-3, or TN districts, other than residential-design manufactured homes, shall be governed by the following regulations.

- a. Upon removal of a nonconforming manufactured home, unless another manufactured home is moved onto the same lot within thirty (30) days from the date that the previous manufactured home was moved off the lot, such use is forfeited and shall not thereafter be reestablished.
- b. Any manufactured home moved in accordance with a. above shall be placed on a permanent, enclosed perimeter foundation within thirty (30) days from the date it is moved onto the lot.
- c. No manufactured home shall be moved onto the lot if such will result in an increase in nonconformity with respect to lot size, yard or bulk requirements.
- d. No manufactured home shall be moved on to the lot if its location shall place it within twenty feet (20') of a principal building or ten feet (10') of an accessory building.
- e. Upon proper application the Board of Zoning Appeals may grant an exception to the time requirements of subsections a. and b. above upon a finding by the Board of hardship for the party who would reside in the manufactured home upon its relocation.

## **SECTION 21-12 COMPLETION OF NONCONFORMING PROJECTS AND VESTED RIGHTS**

**21-1201.**

- a. All nonconforming projects, except as provided in paragraphs a., e., f. and g. of this section on which construction has begun, based upon the issuance of a building permit before the effective date of these regulations, and at least ten percent (10%) completed in terms of the total expected cost of the project on the effective date of these regulations, may be completed in accordance with the terms of their permits provided a vested rights permit is obtained from the Zoning Administrator.
- b. Except as provided in subsections a., e. and g., all work on any nonconforming projects shall cease on the effective date of these regulations and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a vested rights permit issued in accordance with this section by the Zoning Administrator. The Zoning Administrator shall approve such a permit upon finding that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changes his or her position in some substantial way in reasonable reliance on the regulations as they existed before the effective date of these regulations and thereby would be unreasonably prejudiced if not allowed to complete its project as proposed. In considering whether these findings may be made, the Zoning Administrator shall be guided by the following, as well as other relevant considerations.

1. All expenditures made to obtain a validly issued and unrevoked building, land use or sign permit shall be considered as evidence of reasonable reliance on the regulations that existed before the effective date of these regulations.
  2. To the extent that expenditures are recoverable with a reasonable effort, a person shall not be considered prejudiced by having made those expenditures. For example, a person shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.
  3. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a nonconforming project, a person shall not be considered prejudiced by having made such expenditures.
  4. An expenditure shall be considered substantial if it is significant in dollar amount in terms of the total estimated cost of the proposed project and the ordinary business practices of the developer.
- c. When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection b. Subject to the guidelines in subsection b, 1:4, the Zoning Administrator shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:
1. Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural or engineering work.
  2. Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.
  3. Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or to such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if approved but uncompleted phases are constructed in conformity with existing regulations.
- d. The Zoning Administrator shall not consider any application for a vested rights permit authorized by subsection b. that is submitted more than 180 days after the effective date of these regulations.
- e. Completion of Single-Family Residential Development: Nothing in this Article shall prevent development of a single-family residential development in accordance with a final plat recorded in the office of the Register of Deeds of Franklin County. However, if construction is not commenced on any such land within five (5) years of the recording of the plat, the development rights shall expire.

- f. All PUDs that were approved and are still current as of the effective date of these regulations may continue to be developed in accordance with the stipulations, waivers, special conditions, uses, etc., provided that they are in compliance with time and other requirements.
- g. All nonconforming projects which have received site plan approval in accordance with Article 28 prior to the effective date of these regulations may continue to be developed in accordance with such approved site plan.