

Chapter 1131: Nonconformities

1131.01 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.

1131.02 General Provisions

- (a) Any use, building, structure, land or premises that existed at the time of the effective date of this code that was legally established under a previous code amendment or versions may be continued even if such use, building, structure, or use of land 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.
- (c) An applicant for any development review procedure that deals with nonconformity shall bear the burden of proof in demonstrating that the use was a legal nonconformity on the effective date of this code.
- (d) Violation of any conditions and/or safeguards prescribed in this chapter shall be deemed a violation of this code and shall be punishable under [Chapter 1133: Enforcement and Penalties](#).

1131.03 Determination of Legal Nonconformity Status

- (a) At the time of application for a zoning certificate, or request for variance regarding a nonconforming lot, building, structure or use, the property owner shall submit sufficient evidence for the Zoning Administrator or BZA, as applicable, 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 Zoning Administrator shall issue a zoning certificate identifying it as a legal nonconformity. A copy of such certificate shall be kept on file in the offices of the Zoning Administrator.

1131.04 Nonconforming Uses and Variances or Administrative Waivers

- (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 approval of a variance or administrative waiver 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 approval of a variance or administrative waiver for a nonconformity that addresses some nonconformities but additional nonconformities continue, the use shall still be subject to the provisions of this chapter.

1131.05 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 [1131.05\(e\)](#).
- (b) No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or parcel 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 to Another Nonconforming Use

- (1) The lawful nonconforming use of an existing building, structure, or lot can be continued even if such use is not permitted in the applicable district.
- (2) If no structural alterations are made that increase the nonconformity, a nonconforming use of a building or structure, or a nonconforming use of a lot, 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 [1105.11](#).), including notice, but the variance review criteria of Section [1105.11\(c\)](#) shall not apply. At the hearing, the BZA shall make a decision based on the following findings:
- A. That the use proposed is equally appropriate or more appropriate to the district than the existing nonconforming use; and
- B. That the use proposed is in less conflict with the character of uses permitted in the applicable zoning district than the existing nonconforming use.
- (3) In permitting such change, the BZA may prescribe appropriate conditions and safeguards in accordance with other provisions of this code and when made a part of the terms under which the change is granted.
- (4) 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.
- (5) Whenever a nonconforming use is changed to a use permitted in the district in which the lot is located, it shall cease to be considered a nonconforming use. Upon such compliance, no nonconforming use shall be made, resumed, or reinstated.

(e) Expansion or Alteration of a Nonconforming Use

- (1) A nonconforming use of land shall not be physically enlarged, increased, nor extended to occupy a greater area of land than was occupied by the use at the time it became nonconforming, unless otherwise specified.

- (2) A nonconforming use of an existing structure may be extended throughout any parts of a building that were manifestly arranged or designed for such use at the time of adoption or amendment to this code. However, no such use shall be extended to occupy any land outside such building not previously occupied by such nonconforming use.
- (3) No such building shall be enlarged or expanded to increase the nonconforming use. No additional structures shall be constructed in connection with such nonconforming use, except as follows:
 - A. The construction of a detached accessory structure related to a nonconforming residential use shall be permitted subject to complying with the accessory use lot coverage & setback regulations of the zoning district in which the nonconforming residential use is located. The maximum height of such accessory structure shall not exceed 20 feet.
 - B. For nonconforming residential uses, non-habitable attached garages, porches and decks, although requiring zoning clearance and a zoning certificate, shall not be considered expansions of non-conforming uses. Such additions to non-conforming residential uses shall comply with the lot coverage & setback requirements of the zoning district in which the nonconforming residential use is located. The maximum height of such addition shall not exceed 35 feet.
- (4) No building or structure occupied by a nonconforming use shall be altered, improved, or reconstructed except when the use is changed to a permitted use in the district in which it is located, or upon prior approval of the BZA provided the cumulative cost of the alteration, reconstruction, or improvement permitted by the BZA does not exceed 50 percent of the building's replacement value.

(f) Relocation of Nonconforming Use of Land

A nonconforming use of land shall not be moved in whole or in part to any portion of the lot or parcel other than those portions occupied by the use at the time it became nonconforming.

(g) Removal of a Nonconforming Mobile or Manufactured Home Use of Land.

A nonconforming use of land for a mobile or manufactured home shall be voluntarily abandoned upon the removal of such mobile or manufactured home from the site of such use. Any subsequent use of the land shall conform to the use regulations specified by this Code for the district in which such land is located.

(h) 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, such discontinuance shall constitute voluntary abandonment and any new use shall conform to the regulations of the district in which it is located. Furthermore, a nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.
- B. The BZA shall only consider applications to reinstate a nonconforming use after the use has been discontinued or abandoned for more than 12 months through an use variance review as established in [Section 1105.11](#).

(2) Termination of Use by Damage or Destruction

- A.** If a nonconforming single-family detached dwelling in any district is damaged or destroyed to any extent, such structure and single-family detached dwelling 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. Such reestablishment of the use shall require the issuance of a zoning certificate and shall be required to commence within 12 months of the damage or destruction.
- B.** If any nonconforming use beyond a single-family detached building is damaged or destroyed, but not to an extent greater than 50 percent of the principal structure's market value according to the Wayne County Auditor, such structure and use may be reestablished on the same lot to the same size and intensity of use, with the same number or fewer dwelling units, as was previously existing immediately prior to the damage or destruction. Such reestablishment of the use shall require the issuance of a zoning certificate and shall be required to commence within 12 months of the damage or destruction. If the proposed use or development requires a development plan and/or a certificate of appropriateness in accordance with code, then such approvals shall be required for any reconstruction.
- C.** If any nonconforming use beyond a single-family detached building is damaged or destroyed to an extent greater than 50 percent of the principal structure's market value according to the Wayne County Auditor, such structure and use shall not be reestablished unless approved by the BZA through a use variance review (See Section [1105.11.](#))

1131.06 Nonconforming Structures and Sites

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, moved, or altered provided, however, no such enlargement, maintenance, repair, move, 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 building 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 Wayne 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 zoning certificate. If an owner rebuilds a legally nonconforming structure under this provision, they may expand the structure provided, as stated in Paragraph [1131.06\(a\)](#), any expansion or change does not increase the nonconformity that existed prior to the damage. Such restoration shall be required to commence within 12 months of the damage or destruction.
 - (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. Such reconstruction shall require the application and issuance of all necessary zoning and building permits.
 - (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.
- (f) Nonconforming Site Conditions Existing at the Time of Development Plan Review**
- If a nonconforming site condition(s) exists when a revised development plan is required pursuant to Section [1105.07](#), then such site condition(s) must be brought into compliance with district regulations, unless the Planning Commission determines that such conformance cannot be reasonably achieved because of existing site conditions. In such case, the Planning Commission shall approve a development plan that reduces the existing nonconforming site condition(s) to the maximum extent practicable.

1131.07 Nonconforming Lots of Record

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

- (a)** If an existing lot of record is occupied by conforming structures, such structures shall be maintained and may be repaired, modernized or altered, provided that:
 - (1)** The structure 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 shall not be increased unless in conformance with this code.
- (b)** In any R-1, R-2, or R-T District, a single-family dwelling and its customary accessory uses may be erected on a vacant single lot of record.
- (c)** A vacant nonconforming lot in all districts except the R-1, R-2, or R-T District may be used for any use permitted in the district in which it is located when the development of such lot meets all requirements of the district in which it is located, including the maximum lot coverage and minimum setback requirements, except for the minimum lot area and lot width requirements. No use that requires a greater lot size than the established minimum lot size for a particular district shall be permitted on a nonconforming lot. Review and approval of development on such lots of record shall be conducted according to the development plan review requirements set forth in Section [1105.07](#).

- (d) If a vacant nonconforming lot in any district adjoins one or more lots in common ownership on the effective date of this Planning and Zoning Code, or applicable amendment thereto, such lots shall be replatted to create conforming lots as a prerequisite for development.

1131.08 Nonconforming Signs

See Section [1127.12](#), for the regulation of nonconforming signs.

1131.09 Repair and Maintenance

- (a) Ordinary repairs, or repair or replacement of non-bearing walls, fixtures, wiring, or plumbing may be performed on a nonconforming structure or on any portion of a structure that contains a nonconforming use provided that the cubic content shall not be increased and no structural parts shall be replaced except when required by law to restore such building or structure to a safe condition or to make the building or structure conform to the regulations of the district in which it is located.
- (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 Zoning Administrator, Building Official, upon order of such official. Where appropriate, a building permit for such activities shall be required.