

1127.09 NONCONFORMING FENCES AND WALLS.

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CHAPTER 1127 Nonconformities

1127.05 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, changed, or expanded 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 that was occupied at the effective date of adoption or amendment of this zoning code unless it complies with the provision of Section 1127.05(e): Expansion of a Nonconforming Use.

(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 if this zoning 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 of Nonconforming Use.

(1) A nonconforming use of a building, structure, or land shall not be changed or substituted to another nonconforming use unless the BZBA finds that the use proposed is equally appropriate or more appropriate to the district than the existing nonconforming use, and that the use proposed is in less conflict with the character of uses permitted in the applicable zoning district than the existing nonconforming use. In permitting such change or substitution, the BZBA may require appropriate conditions and safeguards in accordance with other provisions of this code.

(2) Whenever a nonconforming use is changed to a less intensive use, such use shall not thereafter be changed to a more intensive nonconforming use.

(e) Expansion of a Nonconforming Use.

(1) Notwithstanding the foregoing provisions to the contrary, the usable area of a nonconforming residential use may be increased or improved, regardless of the applicable zoning district.

(2) Notwithstanding the foregoing provisions to the contrary, the usable area of a nonconforming, nonresidential use may be increased or improved, regardless of the applicable zoning district, where the owner of such use can demonstrate through application to the BZBA that the manner in which the useable area of the nonconforming use will be increased or improved will have minimal adverse impact upon adjacent properties and other permitted land uses in the surrounding neighborhood or can be made compatible with the adjacent properties and the uses in the surrounding neighborhood upon compliance with specified conditions.

(3) Variances to expand a nonconforming use into a required setback or to otherwise vary a regulation that applies to the subject site shall be prohibited.

(f) Existing Use Reclassified as a Conditional Use. In the event an existing use that was permitted by right at the time the use was established is thereafter reclassified as a conditional use for applicable district due to a zoning text amendment, such use shall be considered to be an approved conditional use without any further action. However, any subsequent change to such use shall require review and approval by the BZBA in accordance with this chapter.

(g) Termination of Nonconforming Uses.

(1) Termination of Use through Discontinuance. When any nonconforming use is voluntarily discontinued or abandoned for one (1) year or more, any new use shall not thereafter be used except in conformity with the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.

(2) Termination of Use by Damage or Destruction.

A. If a nonconforming residential use in any district is damaged or destroyed to any extent, such structure and use may be reestablished, restored, or reconstructed on the same lot. Such reestablishment, restoration, or reconstruction of the use shall require the issuance of a zoning permit.

B. If any nonconforming nonresidential use is damaged, but not to an extent greater than fifty percent (50%) of the principal structure's replacement cost, such structure and use may be reestablished, restored, or reconstructed 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, restoration, or reconstruction of the use shall require the issuance of a zoning permit.

C. If any nonconforming nonresidential use is damaged beyond fifty percent (50%) of the principal replacement cost, such structure and use may only be reestablished, restored, or reconstruction with approval by the BZBA after consideration of surrounding uses and the impact of the nonconforming use.

D. The determination of the replacement cost shall be determined by an independent commercial appraisal firm, or bank, appointed by the Zoning Inspector and the President of Council and which appraisal cost will be paid for by the applicant at the time the building permit is applied for.

(Ord. 26-22. Passed 4-26-22.)

1127.06 NONCONFORMING STRUCTURES AND SITES.

A nonconforming building or structure may continue to be used or occupied by a use permitted 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, or altered provided, however, no such enlargement, maintenance, repair 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 fifty percent (50%) of the principal structure's replacement cost, such structure and use may be reestablished, restored, or reconstructed 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, restoration, or reconstruction shall require the issuance of a zoning permit.

(2) If any nonconforming nonresidential use is damaged beyond fifty percent (50%) of the principal replacement cost, such structure and use may only be reestablished, restored, or reconstruction with approval by the BZBA after consideration of surrounding uses and the impact of the nonconforming structure or site.

(3) The determination of the replacement cost shall be determined by an independent commercial appraisal firm, or bank, appointed by the Zoning Inspector and the President of Council and which appraisal cost will be paid for by the applicant at the time the building permit is applied for.

(4) If an owner rebuilds a legally nonconforming structure, they may expand the structure provided any expansion or change does not increase the nonconformity that existed prior to the damage.

(5) If the owner voluntarily removes the structure or reduces the nonconformity, that owner shall not be permitted to rebuild the structure to the original height, size, or setback and shall be required to bring the structure into compliance with these regulations to the maximum extent feasible. (Ord. 26-22. Passed 4-26-22.)

1127.07 NONCONFORMING LOTS OF RECORD.

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

(a) Nonconforming Lots of Record in Residential Districts.

(1) If an existing lot of record in residential district is occupied by a dwelling, such dwelling shall be maintained and may be repaired, modernized or altered, provided that:

- A. The building shall not be enlarged in floor area unless the enlarged section(s) complies with all regulations of this code, with the exception of the lot area and the lot width regulations.
- B. The number of dwelling units shall not be increased unless in conformance with this code.
- C. Dwelling units may be expanded without requiring any additional garage space or parking space provided the addition does not occupy space that could be used for parking or a garage in compliance with these regulations.

(2) In any residential district, a single-family dwelling and its customary accessory uses may be erected on a vacant single lot of record after the effective date of this code provided the buildings comply with the following:

- A. The width of the side yard of any such lot need not exceed ten percent (10%) of the width of the lot, provided, however, that there shall be a minimum side yard setback of five (5) feet.
- B. The rear yard setback of any such lot need not exceed twenty percent (20%) of the depth of the lot, provided, however, that the minimum rear yard setback shall be ten (10) feet.

(b) Nonconforming Lots of Record in Nonresidential Districts. In any nonresidential district, a use that is permitted in the applicable district, and its customary accessory uses, may be erected on a vacant single vacant lot of record provided the buildings comply with the following:

- (1) The width of the side yard of any such lot need not exceed ten percent (10%) of the width of the lot, provided, however, that there shall be a minimum side yard setback of five (5) feet.
- (2) The rear yard setback of any such lot need not exceed twenty percent (20%) of the depth of the lot, provided, however, that the minimum rear yard setback shall be ten (10) feet.

(Ord. 26-22. Passed 4-26-22.)

1127.08 NONCONFORMING SIGNS.

See Section 1119.11: Nonconforming Signs, for the regulation of nonconforming signs.

(Ord. 26-22. Passed 4-26-22.)

1127.09 NONCONFORMING FENCES AND WALLS.

See Section 1113.04(b)(21), for the regulation of nonconforming fences and walls.

(Ord. 26-22. Passed 4-26-22.)

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- ord in residential district is occupied by a dwelling, such dwelling shall be maintained and may be repaired, modernized or altered, provided that:
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