

# Nonconforming Uses, Structures and Lots

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# Chapter 1137

**Section 1137-1****Intent**

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- A. It is recognized that there exist within zoning districts certain lots, buildings, structures and uses which were lawful before this code was passed or amended, but are now prohibited, regulated or restricted under the terms of this code. It is the City's intent to permit these legal nonconformities to continue until they are removed, but not to encourage their growth or survival.
- B. Nonconforming lots, buildings, structures and uses are declared by this code to be incompatible with the provisions of the districts in which they are located. It is the intent of this code that these nonconformities shall not be enlarged upon, expanded, or extended, except as otherwise permitted in this chapter, nor be used as grounds for adding other buildings, structures or uses prohibited elsewhere in the district.
- C. Nothing in this code 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 this code and upon which actual building construction has been diligently pursued.
- D. Nothing in this code shall be interpreted as authorization for, or approval of, the continuance of the use of a structure or premises in violation of a zoning regulation in effect at the time of the adoption of this code.

**Section 1137-2****Nonconforming Uses**

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- A. *Conditions Applicable to Nonconforming Uses.* Uses that were lawfully established but are no longer permitted within the zoning district in which the property is located are subject to the following extension and change limitations:
  - 1. Extension within structure or site. The nonconforming uses may not be extended throughout those parts of a building or site which was not arranged or designed for such use at the time this code was enacted, unless approved by the Board of Zoning Appeals. The Board of Zoning Appeals may approve up to a 50 percent extension or expansion of a nonconforming use in accordance with the provisions of Chapter 1106.
  - 2. Change to conforming use. Any nonconforming use may, subject to site plan review and all applicable requirements of the zoning district, be changed to a use allowed within the zoning district in which the property is located. When a nonconforming use is changed to one that is conforming to the requirements of this code, the use shall not be changed back to a nonconforming use.
  - 3. Change to other nonconforming use. In accordance with the provisions of Chapter 1106, the Board of Zoning Appeals may permit the change of a nonconforming use to another nonconforming use, provided the new use is determined to be less obtrusive than the original use and more consistent with the zoning district in which the property is located. A nonconforming use shall not be changed to another nonconforming use if the original nonconforming use was not lawfully established.
  - 4. Limitations on change of use. Any change of use shall conform to the development standards required by this code and the applicable City of Hilliard Design Guidelines.
- B. *Discontinuance.* If a nonconforming use of land or structure is discontinued for 12 consecutive months (except where government action impedes such use), any future use of the land or

structure shall only be in conformity with the provisions of the zoning code. Discontinuance of a nonconformity shall terminate the right to continue the nonconformity.

- C. *Non-Reversion*. Any nonconforming use or structure that is changed, in whole or in part, for any reason to a conforming use or structure, or to a use or structure that is closer to conformity than it was prior to the change, shall not revert to its prior nonconforming status, or to a less conforming use or structure, at any time in the future.
- D. *Open Uses*. Uses consisting of lots occupied by storage yards, used car lots, auto wrecking, junk yards, golf driving ranges, miniature golf courses and similar open uses, where the only buildings on the property are ancillary to the open use and where the use is nonconforming, shall be subject to the following restrictions, in addition to all other applicable provisions of this article.
1. When a nonconforming open use of land has been changed to a conforming use, it shall not be used again for any other nonconforming use.
  2. Nonconforming open uses of land shall only be converted to a conforming use.
  3. A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.
  4. When any nonconforming open use of land is discontinued for a period of more than six consecutive months, any future use of the land shall be limited to those uses permitted in the zoning district under which the property is governed. Vacancy and/or nonuse of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

### Section 1137-3

### Nonconforming Buildings or Structures

Where a lawful building or structure exists at the effective date of this ordinance, or an amendment thereto, that does not comply with the requirements of this ordinance because of restrictions such as lot area, lot coverage, width, height, or setbacks, that building or structure may continue to be occupied and used so long as it remains otherwise lawful, subject to the following provisions:

- A. *Reconstruction Due to Damage*. The right to rebuild a nonconforming structure shall cease to exist when the nonconforming structure is damaged in any manner from any cause whatsoever, and the cost of repairing the damage exceeds 50 percent of the fair market value of the structure, prior to such damage or destruction, on the date of the damage; provided, the Board of Zoning Appeals may, upon application, permit the reconstruction of the nonconforming building or structure if all of the following conditions are met:
1. The prior nonconforming condition(s) shall not be increased.
  2. All building materials and architectural details shall conform to the requirements of this code, as applicable.
  3. The new building or structure shall not extend beyond the limits of the original foundation, unless the building or structure could be so located as to reduce the extent of its nonconformity on the lot.
  4. The application to reconstruct the nonconforming building or structure shall be filed with the zoning inspector within six months of the event in which the building or structure was damaged or destroyed.
  5. The reconstruction of the building or structure shall not be detrimental to adjacent property and the surrounding neighborhood.

- B. *Reconstruction Due to Obsolescence.* The right to rebuild a nonconforming structure and operate a nonconforming use within a nonconforming structure shall cease to exist when the nonconforming structure becomes obsolete or substandard under any City ordinance, and the cost of repairing the damage exceeds 50 percent of the fair market value of the structure on the date the Building Official determines the structure to be obsolete or substandard.
- C. *Renovation.* For any nonconforming structure or structure containing a nonconforming use, work may be done to repair or replace nonbearing walls, fixtures, wiring, heating, air conditioning or plumbing, to an extent not exceeding 10 percent of the fair market value of the structure prior to the repairs; provided, the cubic content existing when it became nonconforming shall not be increased.
- D. *Repair.* If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to a lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of its physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located. Nothing in this section shall 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.
- E. *Extension or Enlargement.* A nonconforming structure may be extended or enlarged if the improvement can be made in compliance with all applicable requirements of this code, and if the improvement will not increase the nonconformity of the structure. Extension or enlargement must be approved by the Board of Zoning Appeals in accordance with the provisions of Chapter 1106.
- F. *Moving.* If a nonconforming building or structure is moved for any reason and for any distance, it shall be moved to a location which complies with the requirements of this code.

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#### **Section 1137-4                      Nonconforming Lots of Record**

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- A. *Nonconforming Lots of Record.* A lot of record that exists at the time of adoption or amendment of this code that does not meet the minimum requirements for lot width or lot area may be used for any permitted use in the district in which the lot is located; provided, that any building or structure constructed on the lot complies with all other requirements of the zoning district. The nonconforming lot may also be used for conditional uses, if it meets all applicable requirements for those uses.
- B. *Completion of Pending Projects.* Nothing in this chapter 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 this code and upon which actual building construction has been diligently conducted.
- C. *Contiguous Nonconforming Lots.* If two or more vacant lots of record or combination of lots and portions of lots of record, in existence at the time of the passage of this code, or an amendment thereto, with continuous frontage and under single ownership do not meet the requirements established for lot width or lot area, the lands involved shall be considered to be an undivided parcel for the purposes of this code, and no portion of that parcel shall be used or divided in a manner which diminishes compliance with lot width and area requirements established by this code.

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#### **Section 1137-5                      Unlawful Nonconformities**

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Any lot, use, building or structure established in violation of the provisions of this code or any prior zoning code or amendment shall not be considered a legal nonconformity and shall not be entitled to the provisions, remedies and safeguards of this chapter.