

TITLE NINE – SUPPLEMENTAL REGULATIONS

CHAPTER 1189 Non-Conforming Uses

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CROSS REFERENCES

Non-conforming uses: retroactive measures – See Ohio Revised Code 713.15
Non-conforming use defined - See P. & Z. 1131
Certificate required for change in non-conforming use – See P. & Z. 1135
Board powers as to non-conforming use - See P. & Z. 1137

1189.01 INTENT.

- A. Within the districts established by this Ordinance or amendments that may later be adopted, there may exist
 - 1. Lots,
 - 2. Structures,
 - 3. Uses of land and structures, and
 - 4. Characteristics of uses, which were lawful before this Ordinance was passed or amended,

But which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments.

It is the intent of this Ordinance to permit these non-conformities to Continue, until they are removed, but not to encourage their survival.

It is further the intent of this Ordinance that non-conformities shall not be

Replaced,

Enlarged upon,

Expanded, or

Extended, nor

Be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

- B. Non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved.

After passage of this Ordinance, a non-conforming use of a

Structure, a

Land, or

Structure and land in combination

Shall not be extended or enlarged by the addition of other uses, of a nature which would be prohibited generally in the district involved.

- C. Buildings Planned or Under Construction.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a

Change in the plans,

Construction, or

Designated use of

Any building, planned or under construction, which complies with all the following provisions:

1. Any required building permit or zoning permit must have been lawfully issued prior to the effective date of adoption or amendment of this Ordinance.
2. Actual building construction must have begun within ninety

(90) days of the effective date of adoption or amendment of this Ordinance.

Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner.

Excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently, and

If such excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding.

- D. All construction work, authorized by the issuance of the building permit, shall have been completed within three (3) years of the effective date of adoption or amendment of this Ordinance.

1189.02 Non-Conforming Lots of Record.

- A. A single-family dwelling and customary accessory buildings may be erected on any single lot of record, in any district in which single-family dwellings are permitted, at the effective date of adoption or amendment of this Ordinance,

Notwithstanding limitations imposed by other provisions 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 these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

Variance of yard requirements shall be obtained only through action of the Planning Commission.

- B. For the purposes of this Ordinance, the land involved shall be considered to be an undivided parcel:

If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and

If all or part of the lots do not meet requirements established for Lot width and area, and

No portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor

Shall any division of any parcel be made which creates a lot with width or area below the requirements state in this Ordinance.

1189.03 Non-Conforming Uses of Land (Or Land with Minor Structures Only).

Where, at the time of passage of this Ordinance, lawful use of land exists, which would not be permitted by the regulations imposed by this Ordinance, and

Where such use involves no individual structure with a replacement cost exceeding five thousand (\$5,000.00) dollars,

The use may be continued so long as it remains otherwise lawful, provided:

- A. No such non-conforming 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 Ordinance;
- B. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
- C. If any such non-conforming use of land is voluntarily discontinued for a period of one (1) year or more, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.
- D. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.
- E. A non-conforming recreational vehicle use of a premises shall be lost if any of the following shall occur:
 1. The use is discontinued form more than six (6) months.

2. The non-conforming recreational vehicle is replaced. Any replacement recreational vehicle must conform to all of the requirements of this Ordinance.
3. The ownership of the premises on which the non-conforming recreational vehicle use exists is changed and no former owner remains an owner.

1189.04 Non-Conforming Structures (Including Signs).

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance, that could not be built under the terms of this Ordinance by reason of restrictions on:

Area,

Height of structures,

Lot coverage,

Yards, (its location on the lot), or

Other requirements concerning the structure,

Such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity,

But any structure or portion thereof may be altered to decrease its non-conformity.

- B. A non-conforming structure, or non-conforming portion of a structure, shall not be reconstructed, except in conformity with the provisions of this Ordinance,

If it has been destroyed by any means to an extent of more than fifty (50%) percent of its replacement cost at time of destruction;

- C. A structure shall thereafter conform to the regulations for the district in which it is located, after it is moved,

If it is moved for any reason, for any distance whatever.

1189.05 Non-Conforming Uses of Structures or of Structures and Premises in Combination.

If lawful use involving individual structures,

With a replacement cost of more than five thousand (\$5,000.00) dollars, or of structure and premises in combination,

Exists at the effective date of adoption or amendment of this Ordinance,

That would not be allowed in the district under the terms of this Ordinance,

The lawful use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. No existing structure, devoted to a use not permitted by this Ordinance in the district in which it is located, shall be

Constructed,

Enlarged,

Extended,

Moved,

Reconstructed, or

Structurally altered

Except in changing the use of the structure to a use permitted in the district in which it is located;

- B. Any non-conforming use may be extended throughout any parts of a building

Which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance,

But no such use shall be extended to occupy any land outside such building;

- C. Any non-conforming use of a structure, or structure and premises, may, as a variance, be changed to another non-conforming use, if no structural alterations are made,

Provided that the Planning Commission,

Either by general rule or by making findings in the specific case,

Shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.

In permitting such change, the Planning Commission may require appropriate conditions and safeguards in accord with the provisions of this Ordinance;

D. Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed;

E. Voluntary discontinuation of a structure or a structure and premises in combination:

1. Non-Conforming Use of a Structure or Structure and Premises in Combination (Excluding Signs).

A non-conforming structure, or structure and premises in combination, shall not thereafter be used,

Except in conformity with the regulations of the district in which it is located,

When a non-conforming use of a structure, or structure and premises in combination, is voluntarily discontinued for one (1) year or more;

2. Non-Conforming Use of a Sign.

A sign shall not thereafter be used,

Except in conformity with the regulations of the district in which it is located,

When a non-conforming use of a sign is voluntarily discontinued for six (6) months or more.

F. Removal or destruction of the structure shall eliminate the non-conforming status of the land where non-conforming use status applies to a structure and premises in combination.

Destruction for the purpose of this section is defined as damage to an extent of more than fifty (50%) percent of the replacement cost at the time of destruction.

1189.06 Repairs and Maintenance.

- A. Work may be done on ordinary repairs, or on repair or replacement of

Non-bearing walls,

Fixtures,

Plumbing, or

Wiring,

Provided that the cubic content, existing when it became non-conforming, shall not be increased on any non-conforming structure, or portion of a structure, containing a non-conforming use.

- B. A non-conforming structure, or portion of a structure, containing a non-conforming use, shall not thereafter be restored, repaired, or rebuilt,

Except in conformity with the regulations of the district in which it is located,

If such non-conforming structure, or portion of a structure, containing a non-conforming use, becomes physically unsafe or unlawful due to lack of repairs and maintenance, and

Is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition.

- C. Nothing in this Ordinance 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.

1189.07 Uses Requiring Special Approval Not Non-Conforming Uses.

Any use,

Which is permitted, after receiving the required Special Approval in a zoning district, under the terms of this Ordinance (other than a change through Planning Commission action from a non-conforming use to

another use not generally permitted in the district)

Shall not be deemed a non-conforming use in such district, but

Shall, without further action, be considered a conforming use,

Unless a change or amendment has been made through a Planning Commission action from a non-conforming use to another use not generally permitted in the district.