

ARTICLE 10 NONCONFORMING USES AND STRUCTURES

Section 10.10 Intent

Upon the adoption of this Ordinance or subsequent amendments, there may exist lots, structures, and uses of land and structures which were lawful prior to the adoption of the Ordinance, or amendment thereto, but which are not in conformance with the provisions of this Ordinance, or amendment thereto. It is the intent of this Ordinance to permit these nonconforming lots, structures and uses to continue, but not to encourage their prolonged existence. Because nonconforming lots, structures and uses, so long as they exist, prevent the full realization of the goals and objectives of the City of Ferrysburg Master Plan, the spirit of this Ordinance is to reduce, rather than increase, the nonconformance.

Section 10.20 Change of Tenancy of Ownership of Non-Conforming Uses

There may be a change of tenancy, ownership or management of any existing non-conforming use of land, structures and premises, however, there shall be no change in the nature or character of the non-conforming use without approval of the Zoning Board of Appeals as based on the standards of Article XI. [Ordinance No. 265, 10/4/2010]

Section 10.30 Nonconforming Lots

- a) **Existing Lot of Record** - In any zoning district, notwithstanding limitations imposed by other provisions of this Ordinance, where an existing lot of record which does not abut any lot or lots of record in the same ownership, fails to meet the requirements for minimum lot area, minimum lot width, or both, of the zoning district in which it is located, the lot may be used for the permitted uses of the zoning district, provided that all other dimensional requirements not involving lot area, lot width, or both, of the zoning district in which the lot is located are met.
- b) **Abutting Lots of Record Under Single Ownership** - In any zoning district, where one or more abutting lots of record in the same ownership do not, when considered individually, meet the requirements for minimum lot area, minimum lot width, or both, of the zoning district in which the lots are located, the lots shall be considered as one lot for the purposes of this Ordinance, including subparagraph a), above. Contiguous lots so combined shall not be divided or reduced in dimensions or area so as to increase noncompliance with the minimum requirements of this Ordinance. [Ordinance No. 265, 10/4/2010]

Section 10.50 Nonconforming Uses of Land Not Involving a Building or Structure

The lawful use of any land, not involving a building or structure, existing and lawful on the effective date of this Ordinance, or amendment thereto, may be continued, even though the use does not conform with the provisions of this Ordinance, or amendment thereto, subject to the following provisions:

- a) **Enlargement** - Except as permitted under Sections 10.40 and 10.50, no nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on the effective date of this Ordinance, or amendment thereto.
- b) **Relocation** - Except as permitted under Sections 10.40 and 10.50, no nonconforming use shall be moved in whole or in part to any other portion of the lot occupied by the use on the effective date of this Ordinance, or amendment thereto.
- c) **Cessation** - If any nonconforming use of land ceases for any reason for a period of more than six (6) months, any subsequent use of the land shall conform to the requirements of this Ordinance. Maintenance of the land or buildings or structures, including the provision of maintaining utility service or postal service, shall not constitute a continuation of the use of land.

Section 10.60 Nonconforming Structures

The lawful use of any structure existing and lawful on the effective date of this Ordinance, or amendment thereto, may be continued, even though such use does not conform with the provisions of this Ordinance, or amendment thereto, subject to the following provisions:

- a) **Extending Use Within a Structure** – Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of this Ordinance, or amendment thereto, but no such use shall be extended to occupy any portion of a building which was not manifestly arranged or designed for such use at the effective date of this Ordinance, or amendment thereto, nor shall such use be extended to occupy any land outside such building.
- b) **Alteration of Structure Possessing a Nonconforming Use** – Except as otherwise permitted in this Article, no existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located.
- c) **Reconstruction of Structure Occupied by a Nonconforming Use:**
 - 1) Except for certain nonconforming single family dwellings as outlined below, if a structure which conforms with the provisions of this Ordinance but this is occupied by a nonconforming use is damaged by any means or in any manner to the extent that the cost of reconstruction or restoration exceeds one-half (½) the value of the structure prior to the damaging occurrence, as determined by the most

recent assessment of the market value of such structure, for purposes of taxation, the structure may be reconstructed or restored only if its use conforms with the provisions of this Ordinance.

- 2) Notwithstanding the above, in the LI-1 or LI-2 districts, if a structure containing a nonconforming single family residential use or an accessory structure serving a nonconforming single family residential use is damaged or destroyed more than one-half (½) the value of the structure prior to the damaging occurrence, as determined by the most recent assessment of the market value of the structure, the structure may be re-established upon the same footprint, provided that:
 - a. With regard to lot, setback, lot coverage, height or other requirements pertaining to the structure, the new structure shall not increase any nonconformity or result in any new nonconformity;
 - b. Notwithstanding the location of the original footprint, the new structure may be no closer than five (5) feet from any side lot line if it is the principal dwelling and no closer than three (3) feet from any side or rear lot line and no closer than then (10) feet from the principal dwelling if it is an accessory structure.
- d) **Re-establishment of Nonconforming Use** - If a nonconforming use of any structure is terminated and replaced by a permitted use, such nonconforming use shall not be later re-established.
- e) **Abandonment** – When a nonconforming use of a structure, or structure and land is combination, is discontinued or abandoned for six (6) consecutive months, the structure, or structure and land in combination, shall not hereafter be used except in conformance with the regulations of the zoning district in which it is located. For purposed of this provision, the maintenance of utility service, mail service, newspaper service, and other such services shall not, in and of themselves, be considered evidence of non-abandonment.
- f) **Removal of Nonconforming Use Status After Removal or Destruction of Building** – Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming use status of the land.
- g) **Change in Use (Substitution)** – A nonconforming use of a structure may be changed to another nonconforming use, subject to prior approval of the Zoning Board of Appeals. The Board may approve such change only if it complies with all of the following standards:
 - 1) The proposed use does not increase the degree of nonconformity existing prior to such change of use. Pursuant to this standard, the proposed use shall not create, or result in, impacts which are considered more objectionable than the use to be replaced. Such impacts shall include, but are not limited to, increased traffic, truck deliveries, parking requirements, hours of operation, noise, vibration, odors, litter, outside storage, pedestrian movement, off-site drainage, and other factors.
 - 2) No structural alteration of the existing structure will be required to accommodate the new use, unless the alteration will render the structure more conforming to the underlying zoning district

In approving a change in use, the Zoning Board of Appeals may require reasonable conditions in order to increase the degree of conformity. Such conditions shall include, but are not limited to, buffers, landscaping, off-street parking, access controls, hours of operation, and other such conditions to bring about a greater degree of conformity.

Section 10.70 Nonconforming Use of Structure

The lawful use of any structure existing and lawful on the effective date of this Ordinance, or amendment thereto, may be continued, even though the use does not conform with the provisions of this Ordinance, or amendment thereto, subject to the following provisions:

- a) **Extending Use Within a Structure** - Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for the use at the effective date of this Ordinance, or amendment thereto, but no such use shall be extended to occupy any portion of a building which was not manifestly arranged or designed for the use at the effective date of this Ordinance, or amendment thereto, nor shall the use be extended to occupy any land outside the building.
- b) **Alteration of Structure Possessing a Nonconforming Use** - Except as otherwise permitted in this Article, no existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located.
- c) **Reconstruction of Structure Occupied by a Nonconforming Use** –
 - 1) If a structure that conforms with the provisions of this Ordinance, but that is occupied by a nonconforming use, is damaged by any means or in any manner to the extent that the cost of reconstruction or restoration exceeds one-half (½) the value of the structure prior to the damaging occurrence, as determined by the most recent assessment of the market value of the structure, for purposes of taxation, the structure may be reconstructed or restored only if its use conforms with the provisions of this Ordinance.
 - 2) Notwithstanding the above, in the LI-1 or LI-2 districts, if a structure containing a nonconforming single family residential use or an accessory structure serving a nonconforming single family residential use is damaged or destroyed more than one-half (½) the value of the structure prior to the damaging occurrence, as determined by the most recent assessment of the market value of the structure, the structure may be re-established upon the same footprint, provided that:
 - a. With regard to lot, setback, lot coverage, height or other requirements pertaining to the structure, the new structure shall not increase any nonconformity or result in any new nonconformity;
 - b. Notwithstanding the location of the original footprint, the new structure may be no closer than five (5) feet from any side lot line if it is the principal dwelling and no closer than three (3) feet from any side or rear

lot line and no closer than ten (10) feet from the principal dwelling if it is an accessory structure.

[Ordinance No. 265, 10/4/2010]

- d) **Re-establishment of Nonconforming Use** - If a nonconforming use of any structure is terminated and replaced by a permitted use, the nonconforming use shall not be later re-established.
- e) **Abandonment** - When a nonconforming use of a structure or premises is discontinued or ceases to exist for twelve (12) consecutive months, with an intent to abandon the use, the structure, or premises shall no longer be used except in conformance with the regulations of the district in which it is located. A determination that a nonconforming use has ceased, with an intent to abandon the use, shall be made by the City based upon any one or more of the following:
 - 1) City or county government records, such as inspection reports, dated photographs/aerial photographs or notarized statements that provide clear evidence that the nonconforming use has ceased.
 - 2) Changes to listings in telephone directories providing clear evidence that the nonconforming use has ceased.
 - 3) Changes to utility records providing clear evidence that the nonconforming use has ceased.
 - 4) Dated advertising or other information published in a newspaper, magazine or website, such as a "going out of business sale," "moving sale," or "grand opening" at a new location providing clear evidence that the nonconforming use has ceased.

[Ordinance No. 265, 10/4/2010]

- f) **Removal of Nonconforming Use Status After Removal or Destruction of Building - Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming use status of the land.**
- g) **Change in Use (Substitution)** - A nonconforming use of a structure may be changed to another nonconforming use, subject to prior approval of the Zoning Board of Appeals. The Board may approve this change only if it complies with all of the following standards:
 - 1) The proposed use does not increase the degree of nonconformity existing prior to the change of use. Pursuant to this standard, the proposed use shall not create, or result in, impacts which are considered more objectionable than the use to be replaced. These impacts shall include, but are not limited to, increased traffic, truck deliveries, parking requirements, hours of operation, noise, vibration, odors, litter, outside storage, pedestrian movement, off-site drainage, and other factors.
 - 2) No structural alteration of the existing structure will be required to accommodate the new use, unless the alteration will render the structure more conforming to the underlying zone district standards.

In approving a change in use, the Zoning Board of Appeals may require reasonable conditions in order to increase the degree of conformity. These conditions shall include, but are not limited to,

buffers, landscaping, off-street parking, access controls, hours of operation, and other conditions to bring about a greater degree of conformity.

[Ordinance No. 261, 4/5/2010]

Section 10.80 Repairs and Maintenance

- a) **Basic Repairs and Maintenance** - On any structure devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, mechanical equipment, or plumbing, to an extent not exceeding twenty percent (20%) of the current replacement value of the structure as based on the records of the City Assessor, provided that the structure is not enlarged, extended, moved or structurally altered.
- b) **Safety Improvements** - Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public health, upon order of the official.

Section 10.90 Structures Under Construction

Any structure on which actual construction was lawfully begun prior to the effective date of this Ordinance, or amendment thereto, but, which under this Ordinance, or amendment thereto, is classified as nonconforming, shall be considered existing and legally nonconforming pursuant to construction purposes and the intended use. Nothing in this Ordinance shall be deemed to require any change in the plans, construction or use of the structure. Actual construction is hereby defined to include the placing of construction materials in a permanent position and fastened in a permanent manner, except that where demolition or removal of an existing building has been substantially begun preparatory to reconstruction the demolition or removal shall be deemed actual construction. All construction shall be done pursuant to issuance of a building permit by the City of Ferrysburg.