

## **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, such nonconformance.

#### **Section 10.20 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, such 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 such lot is located are complied with.
- b) **Abutting Lots of Record Under Single Ownership** - In any zoning district, where two 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, such lots shall be combined and considered as one lot for the purposes of this Ordinance, including subparagraph a), above.

#### **Section 10.30 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 such 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 such 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 such nonconforming use shall be moved in whole or in part to any other portion of the lot occupied by such use on the effective date of this Ordinance, or amendment thereto.

**c)Cessation** - If any such nonconforming use of land ceases for any reason for a period of more than six (6) months, any subsequent use of such 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 10.40 Nonconforming Structures**

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

**A)Enlargement/Alteration** - Except as provided for, no nonconforming structure may be enlarged or altered in a way which increases its nonconformity with the provisions of this Ordinance, unless authorized by the Zoning Board of Appeals, following a public hearing. In authorizing such enlargement or alteration, the Zoning Board of Appeals shall consider and document all of the following:

- 1) Whether the proposed enlargement or alteration will change the essential character of the area.
- 2) Whether the proposed enlargement or alteration will be contrary to the Master Plan.
- 3) Whether the proposed enlargement or alteration will have an adverse impact on adjoining property or the general welfare of the City, by reason if its nonconformity with the provisions of this Ordinance.
- 4) Whether there are reasonable and practical alternatives to achieving the desired enlargement or alteration in a manner which does not increase the degree of nonconformity of the structure with the provisions of this Ordinance.

**b)ZBA Conditions Pursuant to Enlargement/Alteration** - In authorizing approval to enlarge or alter a nonconforming structure, the Zoning Board of Appeals may impose conditions including, but not limited to: additional site landscaping; site buffers; fencing; facade design requirements, building materials and building color changes; additional off-street parking and vehicular circulation modifications; signage; exterior lighting; and related building and site design modifications and conditions.

### **c)Damage and Reconstruction:**

**1)Nonconforming Structure** - In the event that any nonconforming structure shall be damaged by fire, wind, accident, act of God, or other such means or manner, to the extent that the cost of reconstruction or restoration is equal to or less than one-half (1/2) of the value of such structure prior to the damaging occurrence, as determined by the most recent assessment of the market value of the structure, exclusive of the market value of

land, for purposes of taxation, such reconstruction or restoration shall be permitted by right, subject to the provisions of this Ordinance. Structures damaged in excess of one-half (1/2) of the value of such structure prior to the damaging occurrence, as determined by the most recent assessment of the market value of the structure, exclusive of the market value of land, for purposes of taxation, shall only be reconstructed subject to compliance with underlying zone district standards.

**2)Building Permit Required** - The above reconstruction or restoration shall require the issuance of a building permit within one (1) year of the occurrence of such damage.

**3)Secured Building Requirement** - A damaged structure awaiting reconstruction or restoration shall be properly secured to prevent trespass, vandalism, and injury to the public.

**d)Decrease of Nonconformity and Reestablishment** - If a nonconforming structure is altered or modified so as to eliminate, remove, or lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later re-established or increased.

## **Section 10.50 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 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** - 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** - If a structure which conforms with the provisions of this Ordinance, but which 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 (1/2) the value of such structure prior to the damaging occurrence, as determined by the most recent assessment of the market value of the structure, excluding the value of land, for purposes of taxation, such structure may be reconstructed or restored only if its use conforms with the provisions of this Ordinance.

**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 in 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 purposes 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 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. 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 10.60      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 such official.

## **Section 10.70      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 such 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 such 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.