

CHAPTER XXIII. NONCONFORMING USES

ARTICLE 1. General Provisions

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23-101. NONCONFORMING LOTS OF RECORD.

1. IN CERTAIN RESIDENTIAL DISTRICTS.

a. In the “R-1” Single-Family Residential District, notwithstanding the restrictions imposed by any other provision of these Regulations, a single-family detached dwelling which complies with the restrictions in Section 23-101(1)(b), below may be erected or expanded on a lot that is not less than 25 feet in width and that consists entirely of a tract of land that:

(1) Has less than the prescribed minimum lot area, width or depth, or all three; and,

(2) Is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations; and,

(3) Has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable zoning regulation or regulations.

b. Construction as permitted by Section 23-101(1)(a) shall comply with all of the Regulations (except lot area, width and depth applicable to single-family dwellings in the zoning district in which the lot in question is located) provided, however, that the following front and side yard requirements shall apply in place of the front and side yard requirements otherwise applicable:

(1) The dwelling shall provide a yard on each side of the dwelling.

(2) The dwelling shall provide a front yard equal to either the required front yard or the established front yard as provided by these Regulations. In no case shall an expansion be allowed to encroach into the required front yard greater than what exists for the existing structure.

(3) The sum of the widths of the two side yards on each lot shall not be less than the smaller of:

(a) Twenty-five percent of the width of the lot; or,

(b) The minimum total for both side yards prescribed by the bulk regulations for said zoning district; and,

(c) No side yard shall be less than 10 percent of the width of the lot, and in no case less than 3 feet.

23-102.       NONCONFORMING USE OF LAND. Where open land is being used as a nonconforming use at the time of the enactment of these Regulations, and such use is the principal use and not accessory to the main use conducted in a structure, such use may be continued, provided such nonconforming use shall not be extended or enlarged, either on the same or adjoining property. The protection afforded to nonconforming use of land by this section applies only to such land held under ownership or lease agreement for said activity on or before the effective date of these Regulations, but shall not apply to new land purchased or leased after said date. In addition, said protection shall not apply to any activities which were nonconforming under the terms of other regulations which these Regulations replace.

23-103.       NONCONFORMING USE OF STRUCTURES. Except as otherwise provided herein, the lawful use of a structure existing on the effective date of these Regulations may be continued although such use does not conform to the provisions hereof. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use. The nonconforming use of a structure may be hereafter extended throughout those parts of a structure which were lawfully and manifestly arranged or designed for such use at the time of the enactment of these Regulations.

23-104.       DISCONTINUANCE OF NONCONFORMING USES. No land or structure or portion thereof used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of six (6) months, whether or not the equipment, fixtures, improvements, or facilities are removed, shall again be used except in conformity with the Regulations of the district in which such land or structure is located.

23-105.       DESTRUCTION OF A NONCONFORMING USE. No structure which has been damaged by any cause whatsoever, to the extent of more than 50 percent of the fair market value of the structure immediately prior to damage, shall be restored except in conformity with the provisions of these Regulations, and all rights as a nonconforming use are terminated. If a structure is damaged to the extent of 50 percent or less of fair market value of the structure immediately prior to damage, it may be repaired or reconstructed and used as before the time of damage, provided,

that such repairs or reconstruction be substantially completed within twelve (12) months of the date of such damage.

23-106.        INTERMITTENT USE. The casual, intermittent, temporary or illegal use of land or structures shall not be sufficient to establish the existence of a nonconforming use. The existence of a nonconforming use on the part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

23-107.        EXISTENCE OF A NONCONFORMING USE. Whether a nonconforming use exists shall be a question of fact and shall be decided by the Zoning Administrator subject to appeal to the Board of Zoning Appeals after public notice and hearing and in accordance with the rules of the Board and of these Regulations.