
PART THIRTEEN — PROJECT AND ZONING CODE

ARTICLE 1322 Nonconforming Provisions

1322.01 Purpose.

1322.02 Nonconformities.

1322.03 General provisions.

1322.04 Mitigation of Nonconforming Uses, Signs and Structures.

1322.01 Purpose.

Many Nonconforming Uses, Signs and Structures that exist for a long period of time become an integral part of a neighborhood's character and function. It is possible that, with appropriate mitigation, a Nonconforming Use, Sign or Structure may be made conforming to meet an important purpose of the Zoning Ordinance to preserve the overall historical integrity of neighborhoods. The following establishes procedures for bringing a Nonconforming Use, Sign or Structure into conformance.

1322.02 Nonconformities.

The following are the three types of nonconformities within this Zoning Ordinance.

- (a) Nonconforming Uses. As defined.
- (b) Nonconforming Structures. As defined.
- (c) Nonconforming Signs. As defined.

1322.03 General provisions.

- (a) Change or conversion of Nonconforming Use, Structure or Sign. Except as set forth below,
 - (1) Use. A Nonconforming Use shall not be altered, enlarged or replaced with any other Nonconforming Use.
 - (2) Structure. A Nonconforming Structure shall not be altered or enlarged.
 - (3) Sign. A Nonconforming Sign shall not be altered, enlarged or replaced with another Nonconforming Sign.
- (b) Abandonment or discontinuance of a Nonconforming Use.
 - (1) Presumption of Abandonment. Abandonment will be presumed unless the owner of the property can show that a Nonconforming Use, Structure and Sign has not been Abandoned. For Nonconforming Uses that require a Business license and payment of Business and Occupation (B&O) or sales tax, the necessary proof of continued Use will be a valid license and a proper submission of an official Business income tax return for the period in question.
 - (2) Continuation. Nothing in this Zoning Ordinance shall prevent the replacement of any nonconforming Structure damaged or destroyed by fire, windstorm, snowstorm, rainstorm, Flood or other casualty damage beyond the control of the owner, provided such replacement utilizes the original Structure footprint (Gross Floor Area at ground level) or less, does not increase the original Net Floor Area of the original Structure, does not encroach on public property and otherwise complies with this Zoning Ordinance. Such replacement shall commence within 18 months of the damage or destruction.
 - (3) Future use. Except as otherwise set forth below, if a Use, Structure or Sign is

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015), Ord. 2015-09 (passed 11-09-2015), and Ord. 2017-01 (passed 02-25-2017).

PART THIRTEEN — PROJECT AND ZONING CODE

Abandoned, then any future Use, future alterations to such Structure or future alteration of such Sign, must conform with the provisions of this Zoning Ordinance.

- (c) Alteration, Enlargement, or extension of a Nonconforming Use.
 - (1) Normal Maintenance of a Nonconforming Structure, or of a conforming Structure containing a Nonconforming Use, including necessary repairs and incidental alterations which do not extend the Nonconforming Use are permitted.
 - (2) No structural alteration shall be made to any Structure containing a Nonconforming Use, except in the following situations:
 - A. The alteration is required by law;
 - B. The alteration will result in eliminating the Nonconforming Use; or
 - C. A Structure that is located in a Residential District and which contains residential Nonconforming Uses may be altered to improve livability, provided no structural alteration shall be made which would enlarge the Structure or change its external appearance visible from a public way.
 - (3) If a Structure is conforming but the property on which such Structure is located contains a Nonconforming Use, such Structure shall not be altered or enlarged in any manner that would enlarge such Nonconforming Use.
- (d) Nonconforming Structure. Nonconforming Structures shall not be altered or expanded in a manner that increases the degree of the nonconformity.

1322.04 Mitigation of Nonconforming Uses, Signs and Structures.

- (a) Procedure. An owner of a Nonconforming Use, Sign or Structure may apply to the Board of Zoning Appeals for a Conditional Use Permit for mitigation in accordance with Article 1324 of this Zoning Ordinance.
- (b) Criteria for removing nonconforming status of a Nonconforming Use or Structure. In addition to the criteria for approval of a Conditional Use Permit in Article 1324, the Board of Zoning Appeals must first find that the applicant meets the following requirements in order to issue a Conditional Use Permit:
 - (1) The Nonconforming Use, Sign or Structure has minimal nonconformities and is integrated into the neighborhood's function; or
 - (2) The Nonconforming Use or Structure has regular patronage by neighborhood residents or employment of neighborhood residents in performing the Nonconforming Use.
- (c) Findings. Upon finding that a Nonconforming Use, Sign or Structure satisfies the requirements of Section 1322.04(b) of this Article, the Board of Zoning Appeals may attach mitigating conditions or other such conditions, as it deems necessary, to protect the health, safety, and general welfare of the public and surrounding property owners, including, but not limited to:
 - (1) Screening of equipment and material not normally found in a residential neighborhood; or
 - (2) Elimination of nuisances such as noise, light, waste materials, congested On-Street Parking, or similar conflicts through appropriate management practices.
- (d) Effect. Upon granting a Conditional Use Permit, in accordance with Article 1324 of this Zoning Ordinance, and upon compliance with any conditions placed on it, the Board of Zoning Appeals shall have a notation placed on the Zoning Map stating that the property has a Conditional Use Permit and the application case number and date thereof. Granting a Conditional Use Permit makes the Nonconforming Use, Sign or Structure conform to the specifics of the conditional approval, thereby eliminating the nonconformity.