

ARTICLE VIII

NONCONFORMITIES

PART 1. GENERAL PROVISIONS

8-101. Nonconformities.

- (A) Any property which does not comply with all applicable provisions of these Zoning Regulations shall be deemed to be nonconforming. Any property that is nonconforming shall be required to comply with all such provisions, unless such property is legally nonconforming. Property is legally nonconforming if it has previously conformed to all applicable Zoning Regulations, or has not been subject to such regulations, and it has remained in the same condition continuously since such time, and the only reason it no longer conforms, is because of a change in the regulations. Legally nonconforming properties may be continued or modified, subject to the remaining parts of this article.
- (B) Vesting rights. Property that has rights vested pursuant to the provisions of Section 3-414 shall not be deemed to be nonconforming.
- (C) Notwithstanding sections (A) and (B) above, this Article shall not apply to Adult Businesses, as defined by the Code of Ordinances. Nonconforming Adult Businesses shall comply with Section 5-74(e) of the Code of Ordinances.
- (D) Notwithstanding sections (A) and (B) above, this Article shall not apply to Telecom Structures, as defined by Article XII. Nonconforming Telecom Structures shall comply with the provisions of Article XII, Section 12-116.

PART 2. UNIMPROVED NONCONFORMING LOTS

8-201. In Residential Districts.

- (A) In any residential district, notwithstanding the regulations imposed by any other provision of these regulations, a single-family detached dwelling which complies with the requirements in Section 8-201(B) may be erected on a lot that is legally nonconforming, because of lot area, width, depth, or any combination thereof only if:
 - (1) The lot is at least twenty-five (25) feet in width; and
 - (2) The lot has never been held in common ownership with adjacent property during any period of its nonconformity; and

- (3) The lot has never been transferred during any period of its nonconformity whereby both the transferor and the transferee voluntarily entered into such transfer, except for transfers from a purchaser at a judicial sale.
- (B) Construction permitted by Section 8-201(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 side yard requirements shall apply in place of the side yard requirements otherwise applicable:
- (1) The dwelling shall be placed on the lot so as to provide a yard on each side of the dwelling.
 - (2) The sum of the widths of the two yards on each lot shall be not less than the smaller of:
 - (a) Twenty-five (25) 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.
 - (3) No side yard shall be less than ten (10) percent of the width of the lot, and in no case less than three feet.

8-202. In Districts Other Than Residential Districts.

- (A) In any district other than a residential district, notwithstanding the regulations imposed by any other provision of these regulations, a building designed for any permitted use may be erected on a lot that is legally nonconforming, because of lot area, width, depth, or any combination thereof only if:
- (1) The lot is at least twenty-five (25) feet in width; and
 - (2) The lot has never been held in common ownership with adjacent property during any period of its nonconformity; and
 - (3) The lot has never been transferred during any period of its nonconformity, whereby both the transferor and the transferee voluntarily entered into such transfer, except for transfers from a purchaser at a judicial sale.
- (B) Construction permitted by Section 8-202(A) shall comply with all of the regulations (except lot area, width and depth) applicable in the zoning district in which the lot in question is located; provided, however, that the width of any side yard need not be greater than that derived by applying the following

formula (wherein the width of any side yard required = X):

$$X = \frac{(\text{Actual lot width}) \times (\text{district's minimum side yard})}{\text{district's minimum lot width}}$$

PART 3. IMPROVED NONCONFORMING LOTS

8-301. Authority to Continue. Any improved lot which is devoted to a use permitted in the zoning district where it is located, but which is legally nonconforming for other reasons, may be utilized in its existing state, so long as it remains otherwise lawful, subject to the remaining sections of this part.

8-302. Enlargement, Repair, Alterations. Improvements upon a lot described in Section 8-301 may be added, enlarged, maintained, repaired or remodeled, provided, however, that no such addition, enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such lot. Any such enlargement, maintenance, repair, remodeling, restoration, or addition upon lots that are legally nonconforming because of lot size shall maintain side yards in accordance with Section 8-201 in the case of residential property, and Section 8-202 in the case of nonresidential property.

8-303. Damage or Destruction.

- (A) In the event that any improvement described in Section 8-301 is damaged or destroyed, by any means, to the extent of fifty (50) percent or more of its total market value, such improvement shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that the improvements located on a lot which does not comply with the applicable lot size requirements shall maintain side yards in accordance with Section 8-201 in the case of residential property, and Section 8-202 in the case of nonresidential property.
- (B) When any improvement is damaged to a total extent of less than fifty (50) percent, it may be repaired or restored, pursuant to Section 8-302, if a building permit is obtained and repair or restoration is actually begun within one (1) year after the date of such partial destruction and is diligently pursued to completion; otherwise any such repairs or restoration must comply with the regulations of the Zoning District in which it is located.
- (C) Notwithstanding the above, any improvement, described in Section 8-301, which is damaged to any extent, or totally destroyed, may be repaired, restored, or rebuilt, to its prior condition, if all of the following conditions are met, to-wit:

- (1) The nonconformity was created by the City of Manhattan acquiring a portion of the property upon which the improvement is located; and,
- (2) The acquisition document (i.e., deed, easement, eminent domain petition, etc.) contains language substantially as follows: "The provisions of Section 8-303(C) of the Manhattan Zoning Regulations apply to this acquisition."; and,
- (3) The repair, restoration or rebuilding of the improvement does not create any additional nonconformity, or increase the degree of nonconformity, of the improvement as it originally existed; and,
- (4) A building permit is obtained and repair, restoration, or rebuilding is actually begun within one (1) year after the date of such damage or destruction and is diligently pursued to completion.

8-304. Moving. No improvement described in Section 8-301 shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire improvement shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

PART 4. NONCONFORMING USES

8-401. Authority to Continue. Any legally nonconforming use of part or all of a structure or any legally nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use of land, may be continued, so long as otherwise lawful, subject to the regulations contained in Sections 8-402 through 8-406.

8-402. Expansion. A legally nonconforming use shall not be expanded, enlarged or increased in intensity beyond that which existed at the time it became legally nonconforming. Any change in a legal nonconforming use which requires the use of additional structures, additional land area, or additional floor space within the same structure not originally designed or arranged for such use, shall be deemed an expansion, enlargement or increase in violation of this section.

8-403. Change in Use. A legally nonconforming use shall not be changed or modified in any manner from what existed at the time it became legally nonconforming, without complying with all applicable regulations. A legal nonconforming use shall not be deemed to have been changed or modified as long as:

- (A) it reflects the nature and purpose of the use prevailing at the time it became legally nonconforming; and,
- (B) there is no difference in the intensity and character of the use; and,

(C) there is no different effect upon the neighborhood.

8-404. Land Uses. All legally nonconforming uses of land, not involving a structure or involving only structures which are accessory to such use of land, shall be eliminated or made to conform with the regulations of the zoning district in which located within two years from the date such use became legally nonconforming.

8-405. Structures Devoted to Legally Nonconforming Uses.

(A) No structure that is devoted in whole, or in part, to a legally nonconforming use shall be remodeled, enlarged or added to in any manner unless the entire structure, and the use thereof, shall thereafter conform to all applicable zoning regulations.

(B) Normal maintenance and incidental repair of a structure, which does not expand, enlarge or increase the degree of the legal nonconformity shall not be a violation of this section. Normal maintenance and incidental repair of a structure may include the replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing.

(C) Nothing in these regulations shall be deemed to prevent the strengthening, or restoring to a safe condition, of a structure in compliance with any order pursuant to legislative authority dealing with unsafe structures, as long as such strengthening or restoration is not in violation of 8-402, or 8-405(D).

(D) When any principal structure, except those in (E) hereafter, devoted in whole, or in part, to a legally nonconforming use is damaged to an extent of more than fifty percent (50%) of its fair market value, or an accessory structure or combination of structures are damaged such that the damage is greater than fifty percent (50%) of the fair market value of all structures on the property, the legally nonconforming use shall cease, and all uses thereafter existing on said property shall comply with all applicable zoning regulations. When such a structure, or combination of structures, is damaged to an extent of fifty percent (50%) or less of its fair market value, such use may continue only if a permit is obtained and repairs are commenced within one (1) year of the date of damage and are diligently pursued to completion.

(E) When any residential dwelling, or dwellings, located in a residential district are legally nonconforming and are damaged or destroyed by any means, other than the willful act of the owner, such structure may be restored so that such use may continue if a building permit is issued and restoration is begun within one (1) year of the damage, is diligently pursued to completion, and no greater number of living units are provided than existed prior to the damage and no greater nonconformity exists than existed prior to the damage.

8-406. Abandonment.

- (A) No legally nonconforming use shall be reestablished or resumed after it has been abandoned. In order for a use to be abandoned, there must be an intent on the part of the user to abandon the use, and an overt act or failure to act, which carries the implication that the user does not claim or retain any interest in the nonconforming use.
- (B) Notwithstanding (A), when a nonconforming use of land, not involving a structure, or involving only a structure which is accessory to the nonconforming use of land, is discontinued for a period of six (6) consecutive months (regardless of any intent not to abandon such use), such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.
- (C) Notwithstanding (A), when a nonconforming use of a part or all of the structure which was designed and intended for a use which is permitted in the zoning district in which such structure is located, regardless of how it was originally used or is presently being used, is discontinued for a period of twelve (12) consecutive months (regardless of any intent not to abandon such use), such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.
- (D) Notwithstanding (A), when a nonconforming use of a part or all of a structure which was not designed or intended for any use which is permitted in the zoning district in which such structure is located, regardless of how it was originally used or is presently being used, is discontinued for a period of eighteen (18) consecutive months (regardless of any intent not to abandon such use), such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.

PART 5. MODIFYING NONCONFORMING USES UTILIZING A CONDITIONAL USE APPLICATION

8-501. Authorization. Any legally nonconforming use shall be deemed to be a conditional use of the zoning district in which it is located. The Board of Zoning Appeals is hereby authorized to grant such conditional use and subsequent amendments thereto, subject to the following:

- (A) All procedures and conditions which are applicable to the granting of such conditional use and related exception, if any, are contained within this Section and no portion of Part 7 of Article XIV shall be applicable to a request hereunder, unless it is specifically referenced in this section. Once such conditional use is granted, all enforcement provisions of these regulations

shall apply to such nonconforming use.

- (B) The owner of the property upon which such use exists must submit an application for such conditional use to the Board of Zoning Appeals.
- (C) The application for such conditional use shall be made using the forms provided by the Secretary of the Board of Zoning Appeals, and shall contain in complete form all information requested on the forms, as well as such information as may be requested by the Secretary, or the Board. As part of the application, the applicant shall be obligated to provide, at least, the following information:
 - (1) A complete site plan showing all existing structures and improvements on the property;
 - (2) A complete description of all existing uses on the property, including the dates when such uses were established on the property in question;
 - (3) A site plan showing all proposed modifications, deletions, or additions to structures, the site itself, or improvements thereon;
 - (4) A complete description of all proposed modifications to the existing use(s) on the site;
 - (5) A complete and correct list of all owners of record of all property located within 200 feet of the boundaries of the property on which the nonconforming use is located; and
 - (6) The complete and correct legal description of the property on which the nonconforming use is located.
- (D) A hearing on the application shall be conducted, and notice given, by the Board of Zoning Appeals in the same manner as hearings are conducted, and notice given, for any other conditional use application.
- (E) The Board of Zoning Appeals shall not grant a conditional use or related exception hereunder, unless it shall, in each specific case, make specific written findings of fact, based upon the particular evidence presented to it, that all the following standards have been met.
 - (1) That the size of the zoning lot is not increased from that which currently exists;
 - (2) That either: (a) the current existing use does not have a significantly adverse impact upon either the surrounding neighborhood or the public health, safety or general welfare, and the proposed modifications,

- additions and deletions will not worsen such impact; or, (b) that the current existing use does have such a significantly adverse impact and the granting of the proposed modifications, additions and deletions will be more likely to reduce or eliminate such impact than a denial of such proposal;
- (3) The proposed conditional use complies with all applicable provisions of these regulations, except for those existing conditions that are legally nonconforming; however, the proposal may contain requests for exceptions to such requirements as provided in Paragraph (F) hereinafter; and
- (4) The existing use continues in a substantially similar form, or in a form that is altered only to make it more modern or efficient.
- (F) An applicant may request an exception as part of the conditional use, and the Board of Zoning Appeals may grant an exception to these regulations as to any of the following:
- (1) Any bulk regulation.
- (2) Any regulation dealing with signage.
- (3) Any regulation dealing with parking.
- (G) As a condition of granting a conditional use hereunder, the Board of Zoning Appeals shall require that, in the event the use upon the site changes to a use permitted at that location by these regulations, the conditional use shall expire and shall not be re-established.
- (H) Conditions and Restrictions. In granting a conditional use and any related exception, the Board of Zoning Appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use or exception as may be necessary to comply with the standards set out in Paragraph (E), and to carry out the general purpose and intent of these regulations. Failure to comply with all of the conditions, safeguards and restrictions placed on a conditional use or exception shall constitute a violation of these regulations.
- (I) Decisions and Records. A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the conditional use and exception request at the public hearing. The Board of Zoning Appeals shall render a written decision containing specific findings of fact on an application for a conditional use and exception, if any, without unreasonable delay after the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to such

applications.

- (J) Period of Validity. No conditional use permit and related exception, if any, granted by the Board of Zoning Appeals shall be valid for a period longer than 180 days from the date on which the Board of Zoning Appeals grants the conditional use, unless within such 180 day period; (1) a building permit is obtained and the modifications, deletions or additions to the structures, the site or improvements thereon are started, or (2) the modified use is commenced pursuant to the conditional use. The Board of Zoning Appeals may grant additional extensions not exceeding 180 days each, upon written application, without notice or hearing.