

CHAPTER 3 DISTRICTS AND REGULATIONS
ARTICLE 1349 NON-CONFORMITIES

1349.01 Purpose and applicability

The purpose of this Article is to regulate and limit the continued existence of uses and structures established prior to the effective date of this zoning ordinance (or any amendment subsequent thereto) that do not conform to this zoning ordinance. Any nonconformity created by a change in the classification of property or the text of these rules and regulations shall be regulated by the provisions of this Article. Many non-conformities may continue, but the provisions of this Section are designed to curtail substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located and the intent of this zoning ordinance.

1349.02 Non-conforming uses

(a). Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses, may continue only in accordance with the provisions of this Article, but this Article shall only apply to the extent said nonconformities fully and clearly meet the definition of “non-conforming use” in Article 1303 of this zoning ordinance.

(b). Normal structural repair and maintenance may be performed to allow the continuation of a nonconforming use.

(c) A nonconforming use may be re-established in case of damage due to fire or other disaster event pursuant to the issuance of a permit by the planning commission upon a finding by the planning commission that the estimated cost of repairs does not exceed 100% of the assessed value of the building or structure as determined by the Marion County Assessor as of the July 1 preceding the date of the fire or other disaster, together with any improvements thereto which can be established by credible documentary evidence and which may have been made after said date. This shall include, as well, the repair or reconstruction of any structure or on-site utility, parking or street infrastructure in support of or accessory to said nonconforming use. If said supporting or accessory structure was also nonconforming, the reconstruction shall meet the setback requirements of the applicable district. An application to the planning commission for permission to undertake to re-establish said non-conforming use must be filed prior to undertaking the repairs after the use has been destroyed or damaged, otherwise re-establishment of the non-conforming use shall not be allowed and any subsequent use thereof shall conform to and be in accordance with all applicable rules, regulations and requirements of the particular district as provided in this zoning ordinance.

(d). A nonconforming non-residential use shall not be expanded, changed or enlarged, nor shall such a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached). However, if a nonconforming

non-residential use can expand within the existing structure, it may do so as long as the Board of Zoning Appeals determines that the interior expansion will not have a negative impact upon surrounding conforming uses. Except as otherwise permitted by law, any occupation of additional lands beyond the boundaries of the lot on which said non-residential nonconforming use is located is prohibited. An existing nonconforming residential use located in a nonresidential district may, however, be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements of such structures as required in the specific district.

(e). Upon authorization by the Board of Zoning Appeals, a nonconforming use may be changed to another equal or less intense nonconforming use.

(f). Once a nonconforming use has been changed or converted to a conforming use, it shall not thereafter be used for any nonconforming use.

(g). If a use of a property that does not conform to this zoning ordinance has ceased and the property has been vacant for one year, abandonment will be presumed and the non-conforming use shall not be allowed to re-establish. If the property has been abandoned, then any future use of the land, buildings, or structures shall conform to and be in accordance with all applicable rules, regulations and requirements of the particular district wherein the property is located as provided in this zoning ordinance, unless the property is a duly designated historic landmark, historic site, or historic district.

1349.03 Nonconforming principal structures which contain a permitted use.

(a). A nonconforming structure containing a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this Article.

(b). Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

(c). A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.

(d). If a nonconforming non-residential structure is damaged due to fire or other disaster event, it shall only be rebuilt only upon the issuance of a permit by the planning commission upon a finding by the planning commission that the estimated cost of repairs does not exceed 100% of the assessed value of the building or structure as determined by the Marion County Assessor as of the July 1 preceding the date of the fire or other disaster, together with any improvements thereto which can be established by credible documentary evidence and which may have been made after said date. An application to the planning commission for permission to undertake to re-construct the structure must be filed prior to undertaking the repairs after the use has been destroyed or damaged, otherwise any structure shall conform to and be in accordance with all applicable rules, regulations and requirements of the particular district as provided in this zoning ordinance.

In addition to the finding, in the issuance of said permit, the planning commission shall follow these standards:

1. If the structure can be rebuilt on the same lot and meet all setback requirements, it shall be.

2. If the structure cannot be rebuilt at the same size (ground floor area) in accordance with the minimum standards of the district in which it is located, then it shall be placed on the lot in as conforming a manner as possible.

3. A nonconforming structure shall not be rebuilt in a manner, which increases its nonconformity.

4. The reconstruction of a nonconforming structure (at the same or smaller size) shall require the installation of sufficient parking, landscaping or buffering.

(e). Should a nonconforming structure be moved for any distance on the lot upon which it is located, if possible, it shall be moved so as to make the structure conforming. Otherwise the structure, if moved shall be placed on the lot in as conforming a manner as possible.

(f). A nonconforming manufactured home used as a principal residential structure may be replaced with another manufactured home only if 1) the replacement is a manufactured home which bears a valid seal indicating conformance with the 1976 National Manufactured Housing Construction and Safety Standards Act, and 2) the replacement manufactured home is newer in age than the one it is replacing. The replacement manufactured home must receive a Certificate of Occupancy within six months of the removal of the original manufactured home. The manufactured home must meet all district requirements.

1349.04 Nonconforming accessory uses and structures

(a) A nonconforming accessory use or accessory structure may be expanded only if the nonconforming features of that use or structure are not expanded so as to increase the degree of nonconformity.

(b). No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located. No non-conforming accessory use or structure shall become or replace any terminated principal non-conforming use or structure.

1349.05 Nonconforming lots

(a) Except as provided in b and c of this Section, a nonconforming vacant lot existing and of official record as of the effective date of this ordinance may be developed for any of the uses permitted by these regulations in the zoning district in which it is located, provided that the use meets all applicable yard and setback requirements for the zoning district in which the lot is located.

(b). A nonconforming vacant lot shall not be developed if it could be combined with an adjoining lot (said lot being owned by the same person and any or all future assigns) on or after the effective date of these regulations in order to create a single lot. Where an owner owns adjoining property, construction may occur across the lot lines if that is the only way the yard requirements may be met without a variance. If said combination, however, results in the creation of a single lot that is more than one and one-half (1 ½) times the minimum lot width or area required in the zoning district, then the single lot may be divided into two lots of equal width and area without being further classified as nonconforming. For the purposes of this Section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.

(c). Notwithstanding Section (b), a nonconforming lot may be developed if, at the effective date of this Ordinance or any subsequent date upon which the lot became nonconforming, (i) the subdivision in which the lot was located had received preliminary plat approval; or (iii) the subdivision in which the lot was located had received final plat approval; or (iv) the lot was in a subdivision which constituted a vested right.

1349.06 Nonconforming landscaping and screening

A. If there is a change of use or an expansion to the heated square footage of an existing business the lot shall fully comply with all street yard landscaping, and loading and storage area screening requirements.

B. Expansions to the parking area or loading areas which increase the total area more than 40% shall be required to comply with all applicable parking and loading area landscaping and screening.

1349.07 Non-conforming private clubs

The specific locations at which a private club and/or beer retail licenses exist on the date of this ordinance shall become legal non-conforming uses except that any such non-conforming use shall not be permitted to expand within the building it occupies; however, notwithstanding any other provision of this code, any location which had a private club or beer retail license on the effective date of this ordinance and which exists as a non-conforming use shall have one year from the expiration of such license to obtain state and city private club and or beer retail licenses otherwise any use at such locations shall be in accordance with the provisions of this zoning ordinance.

1349.08 Non-conforming limited video lottery

Establishments which offer or provide limited video lottery regulated under the provisions of West Virginia Code 29-22B-101 et seq., by virtue of a valid license issued by the West Virginia Lottery Commission as defined by West Virginia Code 29-22B-314 as of the effective date of this zoning ordinance within the corporate limits of the City of Fairmont in a zoning district other than Highway Commercial, City Center and Industrial District shall be deemed a legal non-conforming uses except that any such establishment shall not be permitted to expand within the building it occupies; however, notwithstanding any other provision of this code to the contrary, any such establishment upon which limited video lottery existed as a non-conforming use and the license for

which has been non-renewed, expired cancelled, revoked or suspended shall remain a legal non-conforming use if within one year from the expiration, non-renewal, cancellation, revocation or suspension of such license by the West Virginia Lottery Commission a valid license is applied for, otherwise any use of such location shall be in accordance with the provisions of this zoning ordinance.