

ORDINANCE 1153

AN ORDINANCE AMENDING SECTION 6. NONCONFORMITIES, OF ORDINANCE 613 OTHERWISE KNOWN AS THE CITY OF WILLISTON ZONING ORDINANCE, WHICH CLARIFIES SECTION C.2 AND C.4 NONCONFORMING STRUCTURES, AND SECTION D.6 NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WILLISTON, NORTH DAKOTA, TO-WIT:

SECTION 6. NONCONFORMITIES

(Ord. No. 613, Ord No. 716, Ord No 837, Ord. No. 898)

Within the districts established by this ordinance or amendments thereto, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this ordinance was passed or amended but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment. It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently.

A. Nonconforming Lots of Record.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that

yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustments.

If two or more lots or combinations of lots and portion of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, with the exception of existing lots which are 50 feet or greater in width, the land involved shall be considered to be an undivided parcel for the purposes of this ordinance; and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

B. Nonconforming Uses of Land (or Land with Minor Structures Only).

Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, and where such use involves no individual structure with a replacement cost exceeding \$1000.00 the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
2. No such conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance.
3. If any such nonconforming use of land ceases for any reason for a period of more than 3 years, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.
4. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

C. Nonconforming Structures.

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

3. If the original structure on the lot is damaged or destroyed beyond 50 percent of its replacement cost, then a similar structure may be built as to setbacks, lot coverage, lot size, and building square footage as the original foundation. The Development Services Director shall ensure the integrity of the original foundation if the owner chooses to keep the existing foundation. Approval may be made by Letter of Consent signed by the Development Services Director. (Ord. No. 898)

D. Nonconforming Uses of Structures or of Structures and Premises in Combination.

If lawful use involving individual structures with a replacement cost of \$1000.00 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued as long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such buildings.
3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use provided that the Board of Adjustments, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustments may require appropriate conditions and safeguards in accord with the provisions of this ordinance.
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for 3 years (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the districts in which it is located.
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction. The following shall be exempt from this subsection:
 - a. Residential zoned lots with existing buildings originally designed for multiple dwelling units exceeding the number of units allowed by Ordinance 613 in 1983.

- i. A similar structure may be rebuilt as to setbacks, lot coverage, lot size, and building square footage as the original foundation. Approval may be made by Letter of Consent. At time of building reconstruction, the Development Services Director shall ensure the integrity of the original foundation if the owner chooses to keep the existing foundation. Development standards for new construction such as installing missing sidewalks, landscaping and surfacing standards for parking pads shall be required. Any parking creating a conflict with a public right-of-way shall be corrected.
- ii. Parking:
 - 1. No additional on-site parking is required, but it can be added if it meets the lot coverage requirements of the zoning district (or)
 - 2. Additional off-street parking could be considered with a Special Permitted Use process.
 - 3. Non-compliant parking garages should be made compliant if room on the site allows.
- iii. Applicant must provide evidence the original building was constructed prior to 1983, the final determination will be made by the Development Services Director.

E. Repairs and Maintenance.

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacements of nonbearing wall, fixtures, wiring, or plumbing, to an extent not exceeding 10 percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located. Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

F. Uses Under Special Permitted Use Provisions Not Nonconforming Uses.


Any use which is permitted as a Special Permitted Use in a district under the terms of this ordinance (other than a change through Board of Adjustments action from a nonconforming use to another use not generally permitted in the district) shall not be deemed a nonconforming use in such district but shall without further action be considered a conforming use. If the property ceases to be used for the nonconforming use (Special Permitted Use) for a continuous 3-year period, this section shall not apply and any subsequent similar use shall require a special use permit pursuant to Section 27 of this Zoning Ordinance.

(Ord. No. 613, Ord. No. 716, Ord. No. 837, Ord. No. 898)

Commissioner Cymbaluk moved the adoption of the foregoing Ordinance. The motion was seconded by Commissioner Bekkedahl. On roll call vote of the Commissioners, the following Commissioners voted "AYE": Bekkedahl, Piesik, Bervig, Cymbaluk, Klug, and the following Commissioners voted "NAY": none. Absent and not voting: none.


WHEREUPON, the motion was passed and the Ordinance declared adopted this 27th day Of February, 2024.

ATTEST:



Hercules Cummings,
City Finance Director

APPROVED:



Howard Klug,
President of Commission

PASSED FIRST READING: 02/13/2024

PASSED SECOND READING: 02/27/2024

PUBLISHED:

ADOPTED THIS 27th Day of February 2024