

**CITY OF HAGERSTOWN BOARD OF ZONING APPEALS
APPLICATION PERTAINING TO NONCONFORMING USES**

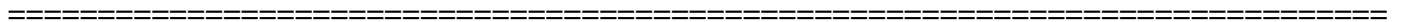
Planning Department Use Only: BZA Case No.: Z - ____ - ____ Date Received: _____ Drawing attached:
Zoning District: _____ City Tax Map No.: _____ Block: _____ Parcel: _____
Posting Deadline: _____ Assigned Hearing Date: _____ Deadline for Written Decision: _____

Please type or print all material legibly. Please provide:

- 1. This original application form plus nine (9) copies of this application and**
- 2. 10 copies of all additional supporting information you wish to include.**
(Additional copies of large display exhibits and original photographs are not required)

1. APPLICANT'S NAME _____
TRADING AS (IF APPLICABLE) _____
ADDRESS _____
DAYTIME PHONE NUMBER: _____ FAX: _____
E-MAIL ADDRESS (IF AVAILABLE) _____

2. ATTORNEY: (Legal counsel is not required, but if an attorney will represent you, please complete.)
NAME _____
ADDRESS _____
DAYTIME PHONE NUMBER: _____ FAX: _____
E-MAIL ADDRESS (IF AVAILABLE) _____



3. PROPERTY IDENTIFICATION
ADDRESS: _____ ACREAGE: _____

4. APPLICANT'S INTEREST IN SUBJECT PROPERTY:
[] OWNER (including joint ownership) [] OTHER (describe your interest in the property on the lines below and provide the name, address and telephone number of the owner. **Attach written authorization from the owner of the property that they consent to this appeal, or have them sign this application form as a co-applicant.**)

5. NONCONFORMING USE REQUEST:

The undersigned applies to the Board of Zoning Appeals for consideration of the nonconforming uses status of the subject property, pursuant to Section M of the Zoning Ordinance (Article 4 of the Land Management Code). The following is requested (check all that apply):

Confirmation
Complete Sections 6,7, 10 & 11 below.

Enlargement by up to 35%
Complete Sections 6,7,8 & 10 below.

Change of Use
Complete Sections 6, 9 & 10 below.

6. DESCRIPTION OF EXISTING USE (AND PROPOSED EXPANSION OR NEW USE WHEN APPLICABLE):

Please provide answers to the following questions. Be as thorough as possible. Add additional sheets if necessary.

A. Present or most recent use of the subject property (including square footage of building area and/or land area used for the nonconforming use, number of units, etc.:

B. Has the Zoning Administrator previously confirmed the existence of this use as nonconforming? _____ If yes, provide documentation, if available.

C. Has this claimed nonconforming use been reviewed by the Board of Zoning Appeals in the past for confirmation, enlargement or change of nonconforming use? If yes, please provide case number(s). If no, write "none". _____

7. REQUEST TO THE BOARD TO CONFIRM A NONCONFORMING USE

A. What is the date that this use became nonconforming? Please enter the date of the adoption of the Zoning Ordinance (March 3, 1977) or a subsequent amendment to the Zoning Map or Ordinance that caused the use of this property to become nonconforming: _____

B. If the use is not currently operating, what was the date that the use ceased? Provide the specific date, or if not known, provide your best estimate. _____

8. EXPANDING A NONCONFORMING USE BY UP TO 35%

Do you propose to expand, enlarge or extend the existing use? If yes, describe in detail the nature and extent of the enlargement. If your application does not involve enlarging an existing nonconforming use, please move to the next question.

9. CHANGE OF NONCONFORMING USE

If this proposal involves changing the use of the property to another nonconforming use, please provide a description of the operation of the proposed use, including where applicable: types of activities; hours of operation; number of employees, occupants, and customers; quantity and types of vehicles and trips to be generated to and from the site, etc. Providing a drawing showing how the property would be used (use of buildings, parking, outdoor areas, etc.) is recommended.

10. EXHIBIT SHOWING EXTENT OF NONCONFORMING USE (AND PROPOSED EXPANSIONS OR NEW USES WHEN APPLICABLE).

Please provide a drawing showing:

- 1) the extent of buildings and land uses that are part of the nonconforming use,
- 2) proposed expansions of the nonconforming use, if applicable and
- 3) proposed configuration and use of the site if the proposal is to change the nonconforming use to a different use.

Drawing need not be completed by a surveyor or engineer, but should be accurate enough to allow the viewer to be able to clearly understand the location of existing and proposed buildings and uses on the property.

11. DOCUMENTATION OF THE NONCONFORMING USE

In addition to the drawing in #10, above, if this application includes a request to confirm the existence of a nonconforming use, the applicant will need to provide evidence documenting the existence of the nonconforming use. Anything that lends documentation to an application case is viable, however, you are strongly advised to provide the testimony of neighbors and past property owners in person (i.e., the person must appear at the hearing and testify themselves). The Board has discounted testimony provided through letter or affidavit because the person is not there to answer questions or be cross examined by those who may oppose your application. The following are examples of evidence:

- (1) Business records or historic city directories identifying the use (or number of dwelling units) at that location.
- (2) Old photographs.
- (3) Historic property, insurance, land use maps, surveys, government records or deeds that may identify the use.
- (4) Direct testimony from witnesses who have direct knowledge that the use predates the date it became nonconforming and hasn't ceased for a period of one year or more. This may include former property owners or tenants of the property, neighbors of the property or other persons with direct knowledge of the history of the site. Second hand accounts of persons deceased or otherwise no longer available may be accepted at the Board of Zoning Appeals' discretion.
- (5) Any other materials that are pertinent to documenting the use on the property.

12. ADDITIONAL MATERIALS, FEES, POSTING AND ADVERTISING:

- A. If desired, supplemental pages may be attached to this application.

This original application plus nine (9) copies of this application must be submitted. If the applicant desires to submit additional materials, pages, etc., ten (10) copies are required. However, additional copies of original photographs and large graphic exhibits are not required. One set of original photographs and large exhibits is sufficient. Please do not mount large exhibits to foamcore or other rigid backing, as the exhibit becomes damaged when removed for placement in the file.

- B. The undersigned agrees to properly post the property at least 10 days immediately prior to the hearing and maintain the property poster(s) during the period the property is required to be posted.
- C. The undersigned agrees to pay all costs in accordance with the current schedule of fees adopted by the Mayor and City Council. Make checks payable to "City of Hagerstown".

13. SIGNATURES

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Signature of Counsel (if applicable)

Signature of Applicant

WHAT IS A NONCONFORMING USE AND WHAT ARE THE STANDARDS THE BOARD USES TO MAKE DECISIONS REGARDING SUCH USES?

A nonconforming use is the use of a building or property that does not conform with the use regulations prescribed by the Zoning Ordinance for the district in which it is located, *but lawfully existed when the Ordinance took effect or when a subsequent Zoning Ordinance or Map amendment made the use nonconforming*. An example of a nonconforming use is the continued use of a property for an automobile repair business on a property that was later classified in a “residential” district that would not permit this use.

There are three ways a property can become nonconforming:

1. When the Zoning Ordinance and Map was adopted on March 3, 1977, the use existed at that time, but the use did not conform to the uses that were permitted in the newly created district at that time.
2. The use may have complied with the rules when the original Ordinance took effect in 1977, but since then, an amendment to the Ordinance was adopted that made the use nonconforming.
3. The use may have complied when the original Map took effect in 1977, but since then, the map has been amended to place the property into a different zoning district that made the use nonconforming.

A nonconforming use may continue in perpetuity, provided that it does not cease for a period of one year or more, and does not expand or change without approval by the Board of Zoning Appeals. If the nonconforming use ceases for any reason whatsoever for a period of one year or more, the nonconforming status of the property is lost and must now conform with the regulations currently in effect in that zoning district. If a nonconforming use is converted to a use permitted in the district in which it is located, the nonconforming use is automatically extinguished.

WHY SHOULD I GET MY NONCONFORMING USE CONFIRMED?

As time goes by, it becomes more difficult to document the history of a nonconforming use. Paperwork is discarded. Witnesses die or move away. While a nonconforming use may go unnoticed or unchallenged for years, it is easier to document the use now rather than years from now. Having your use confirmed creates an official record with the City that the use is nonconforming.

HOW CAN I EXPAND OR ENLARGE MY NONCONFORMING USE?

Upon application to and approval by the Board of Zoning Appeals, a nonconforming use may expand up to 35% in building space and/or land area that existed when the use became nonconforming. *For example, if approved by the Board, a 1 acre used car lot on a 2 acre residentially zoned parcel may expand to a total size of no greater than 1.35 acres. Another example would be a wholesale bakery plant, which is located in a residential district and is in a 3,000 square foot building, could build an addition of up to 1,000 square feet.* The total lifetime expansion cannot exceed 35%. Once this threshold is achieved, further enlargements are prohibited.

CAN I CHANGE A NONCONFORMING USE TO SOME OTHER USE?

Yes, if the change is approved by the Board of Zoning Appeals. In order to approve a change, the Board must find that the proposed change will have less objectionable external effects than the existing use with respect to traffic generation and congestion, including truck, passenger car and pedestrian traffic; noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration; storage and waste disposal and appearance. Changing a nonconforming use shall be considered a special exception.

WHAT IF MY NONCONFORMING USE IS DESTROYED BY CATASTROPHE?

If a nonconforming use is destroyed by fire, windstorm, explosion, act of public enemy or accident, the use may be rebuilt or otherwise reestablished provided that notice to do so is filed with the Zoning Administrator within six (6) months of the destruction or damage, and the restoration or construction is commenced within one (1) year of the date notice was given to the Zoning Administrator. If the notice is not filed within 6 months, the use is deemed to have been abandoned.

WHAT ELSE DO I NEED TO KNOW ABOUT NONCONFORMING USES?

A nonconforming use consists of the building space and/or land area occupied by the use. A whole property is not necessarily a nonconforming use. For example, if a nonconforming use operates from half of a parcel, and the other half is vacant or used for permitted uses in that district, only the land area of the half of the property containing the nonconforming use is considered. If a nonconforming use operates from half of a building, only that half of the building containing that nonconforming use is considered. Permission from the Board will be necessary to expand the use into the land areas or building areas that do not currently contain the nonconforming use.

If a new use is substituted for a nonconforming use without the Board's review and approval, the one year limit on the existing nonconforming use begins. This substitution is a violation of the Zoning Ordinance and failure to obtain approval of the new use may cause a loss of the nonconforming status of the legitimate nonconforming use.

The Board cannot approve applications to enlarge a nonconforming use to increase the number of dwelling units in a nonconforming single family, two family and multi-family dwellings.

Once a nonconforming use ceases and has been replaced by a permitted use, the nonconforming use is automatically extinguished and not subject to the 1 year vacancy grace period.

Nonconforming single family homes in commercial and industrial districts may be enlarged without having to apply to the Board of Zoning Appeals, provided that no additional dwelling units are created and the enlarged house complies with the setback requirements for the district.

A nonconforming use cannot be moved to another property. A nonconforming use cannot be expanded onto an adjacent property.

For more information, contact:
Telephone: 301-739-8577, Extension 138
Fax: 301-739-3117

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