



# CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

## BOARD OF ZONING APPEALS – NONCONFORMING USE APPLICATION

### Submittal Requirements:

- Original Application with original signatures and 9 copies
- 10 copies of all site drawings and any additional supporting documentation
- Filing fee (please consult [current fee schedule](#))

Case No. Z - \_\_\_\_\_

Office Use Only

Location of Property: \_\_\_\_\_  
(Please include street address, if known)

Size of Property (acres/square feet): \_\_\_\_\_

Applicant's Interest in 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.**

\_\_\_\_\_  
\_\_\_\_\_

Applicant's Name: \_\_\_\_\_

Trading As (if applicable): \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Daytime Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

<b>This Chart for Staff Use Only</b>	<b>Munis #:</b>		
<b>Date Accepted for Processing:</b>	<b>Drawing Attached:</b>	<b>Yes</b>	<b>No</b>
<b>Zoning District:</b>	<b>Posting Deadline:</b>		
<b>Assigned Hearing Date:</b>	<b>Opinion Due:</b>		

**Nonconforming Use Request:**

The undersigned hereby applies to the Board of Zoning Appeals for consideration of the nonconforming use 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 1, 2, 5 and 6 below)
- Enlargement by up to 35%** (complete Sections 1, 2, 3, and 5 below)
- Change of Use** (complete Sections 1, 4 and 5 below)

**1. Description of Existing Use (and Proposed Expansion or New Use when applicable):**

Please provide answers to the following questions. Be as thorough as possible. Attach 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.:

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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 Board of Zoning Appeals case number(s). If no, write "None." \_\_\_\_\_

**2. Request to the Board to Confirm a Nonconforming Use (and Proposed Expansion or New Use when applicable):**

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.

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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. \_\_\_\_\_

**3. Expansion of 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.

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**4. 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 use is recommended (i.e., use of buildings, parking, outdoor areas, etc.).

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**5. Exhibit Showing Extent of Nonconforming Use and Proposed Expansions or New Uses (when applicable):**

Please provide a drawing showing:

- Extent of buildings and land uses that are part of the nonconforming use;
- Proposed expansions of the nonconforming use, if applicable; and
- Proposed configuration and use of the site if the proposal is to change the nonconforming use to a different use.

The 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.

**6. Documentation of the Nonconforming Use:**

In addition to the drawing in #5 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:

- Business records or historic city directories identifying the use (or number of dwelling units) at that location.
- Old photographs.
- Historic property, insurance, land use maps, surveys, government records or deeds that may identify the use.
- Direct testimony from witnesses who have direct knowledge that the use predates the date it became nonconforming and has not ceased for a period of two (2) years 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. Secondhand accounts of persons deceased or otherwise no longer available may be accepted at the discretion of the Board of Zoning Appeals.
- Any other materials that are pertinent to documenting the use on the property.

Attached to this application is a sample drawing for you to use as an example and guide in preparing a drawing for your application.

### **Additional Materials, Fees, Posting, and Advertising:**

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

**This original application form and nine (9) copies of the 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. Single copies of original photographs and large graphic exhibits are sufficient. Please do not mount large exhibits to foam core or other rigid backing, as the exhibit can be damaged when removed for placement in the file.**

B. The undersigned agrees to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the property is required to be posted. Failure to comply with this requirement will delay the Board hearing the case.

C. The undersigned agrees to pay all costs in accordance with the current fee schedule adopted by the Mayor and City Council. Checks are to be made payable to the “City of Hagerstown.”

### **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.

\_\_\_\_\_  
Attorney’s Signature (if applicable)

\_\_\_\_\_  
Applicant’s Signature (if different from owner)

\_\_\_\_\_  
Property Owner’s Signature (if other than applicant)

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## What is a Nonconforming Use and what are the Standards Used by the Board to Make a Decision?

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” zoning district that would not permit this use.

There are three ways a property can become nonconforming:

- 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.
- 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.
- 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 two (2) years 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 two years or more, the nonconforming status of the property is lost and must 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 one-acre used car lot on a two-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 located in a residential district 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.*

## May I Change a Nonconforming Use to Another 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. Changing the use without Board of Zoning Appeals' approval is a zoning violation and jeopardizes the nonconformity when the legal permitted use has ceased for two years or more to accommodate the new (and illegal) use. Changes to nonconformities can only be approved by the Board of Zoning Appeals.

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### **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 months of the destruction or damage, and the restoration or construction is commenced within one year of the date notice was given to the Zoning Administrator. If the notice is not filed within six 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 two-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 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 is not subject to the two-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.**

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For more information, please contact:

#### **Hagerstown Planning and Code Administration Department**

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