

City of Beacon, NY
Monday, December 9, 2019

Chapter 223. Zoning

Article III. General Regulations

§ 223-10. Nonconforming uses and structures.

- A. Continuing existing nonconforming uses. Except as provided in § **223-10H** herein, any lawful use of a structure or of land existing on the effective date of this chapter may be continued even though such use does not conform to the use provisions of this chapter. Such uses shall be deemed nonconforming uses.
[Amended 12-29-1997 by L.L. No. 14-1997]
- B. Nonconforming use of land. Where no structure is involved, the lawful nonconforming use of land may be continued, provided that:
- (1) Such nonconforming use shall not be enlarged or increased, nor shall it be extended to occupy a greater area of land than occupied by such use at the time of the adoption of this chapter.
 - (2) Such nonconforming use shall not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of the adoption of this chapter.
 - (3) If such nonconforming use of land, or any portion thereof, ceases for any reason whatsoever for a continuous period of more than six months, or is changed to a conforming use, any future use of such land shall be in conformity with all provisions of this chapter.
 - (4) No nonconforming use of land shall be changed to another nonconforming use.
- C. Nonconforming use of structures. The nonconforming use of a building or structure may be continued, provided that:
- (1) Such building or structure shall not be enlarged or extended unless the use therein is changed to a conforming use. (See Subsection **E**.)
 - (2) Such nonconforming building shall not be structurally altered during its life to an extent greater than 25% of its fair market value, as determined by the City Tax Assessor, unless such alterations are required by law or by the provisions of Subsection **H** herein; provided, however, that such maintenance and repair work as is required to keep a nonconforming building or structure in sound condition shall be permitted and provided further that any such nonconforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of the adoption of this chapter.

- (3) A nonconforming use of a building may be changed only to a use of less nonconformity, as determined by the Board of Appeals.
 - (4) If any nonconforming use of a building ceases for any reason for a continuous period of more than one year or is changed to a conforming use or if the building in or on which such use is conducted or maintained is moved for any distance whatever for any reason, then any future use of such building shall be in conformity with the standards specified by this chapter for the district in which such building is located.
 - (5) If any building in which any nonconforming use is conducted or maintained is hereafter removed, the subsequent use of any land on which such building was located, and the subsequent use of any building thereon, shall be in conformity with the standards specified by this chapter for the district in which such land or building is located.
- D. Restoration of damaged buildings. If any nonconforming building shall be destroyed by any means to an extent of more than 50%, no repairs or reconstruction shall be made unless every portion of such building is made to conform to all the regulations of this chapter for the district in which it is located. Where the destruction of such nonconforming building is less than 50%, it may be restored and the nonconforming use continued, provided that the total cost of such restoration does not exceed the replacement value of the destroyed portion of the building at the time of its destruction and further provided that such restoration is started within a period of six months of such destruction and is diligently prosecuted to completion. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any wall declared unsafe by the Building Inspector.
- E. Nonconformity other than use. A building that is conforming in use but does not conform to the height, yard, lot area, lot dimension, land coverage, off-street parking, loading, minimum house size or similar dimensional requirements of this chapter shall not be considered to be nonconforming within the meaning of Subsections C, F and H. No permit shall be issued that will result in the increase of any such nonconformities, except that each side yard of the aforementioned lots may be reduced by one inch for every foot that such lot is less than the minimum width required by this chapter.
- F. Registration of nonconforming uses. During the first three complete calendar months following the effective date of this chapter or of any amendment thereto, the owner or owners of property on which there is a nonconforming use of land or buildings (within the definition of this chapter or which may be made so by an amendment thereto) shall register such nonconforming use by filing, with the Board of Appeals, a statement of such nonconforming use. The acceptance of such statements shall not constitute an authorization to operate an unlawful use. The filing of a false registration statement shall constitute a violation of this chapter. If the owner of a nonconforming use shall not so register it, such use shall be presumed to have been discontinued unless the owner submits proof that the use existed legally prior to the effective date of the regulation that made it nonconforming. Annually, the Board of Appeals may send a questionnaire to the persons who have registered a nonconforming use, inquiring as to the status of such use. Such questionnaire shall be sent by certified mail, return receipt requested, to the last addresses available from the filed registration statements. If such questionnaire is not returned within 90 days, the Board of Appeals shall so record this fact and send a notice to the last address of the owner, to the effect that the nonconforming use is presumed to have been abandoned or discontinued unless the

owner establishes, to the satisfaction of the Board of Appeals, proof that the use has continued.

G. Nonconforming signs. Regardless of any other provisions of this chapter, every sign which, after the adoption of this chapter, may exist as a nonconforming use in any district shall be discontinued and removed or changed to conform to the standards of said district within a period of 120 days from the date of the adoption of this chapter.

H. Residential uses on Main Street.

[Added 12-29-1997 by L.L. No. 14-1997]

(1) Legislative intent. The Central Business (CB) and General Business (GB) Districts along Main Street have traditionally been and will continue in the future to essentially be retail/service in nature. In order for the Main Street business district to be healthy and vital, it must compete successfully with other business districts. One of the essential characteristics of a healthy downtown business district is a high degree of continuity between adjacent retail and service uses, so that consumers can conveniently walk from one storefront to the next without frequently being interrupted by gaps between the retail and service uses. These gaps are the result of uses which are not open to the general public such as, in this case, residential uses. Residences which are located at the front of the ground floor of the buildings on Main Street are believed to be more injurious to the health and vitality of this business district than residences located at the rear of the ground floor of said buildings because the shopping portion of the business district is primarily, but not exclusively, at the front of said buildings. It is recognized, however, that there are currently several vacant storefronts on Main Street. The City Council has determined that the residential units affected by this subsection should not be converted to retail space unless the vacancy rate for such retail space has declined to an acceptable level in the discretion of the City Council. As a result, the special permit procedure outlined herein will specifically take into consideration the vacancy rate on Main Street at the time this subsection is implemented.

(2) Discontinuance. The following provisions pertain to buildings located on Main Street in the Central Business and General Business Zoning Districts: residential uses which are neither located on the upper floors nor in the rear of the first floor of said buildings shall be discontinued effective October 1, 2002. The City of Beacon shall notify all affected property owners no later than October 1, 2001, that all residential units so situated in the Central Business (CB) and General Business (GB) Zoning Districts must be converted no later than October 1, 2002, pursuant to the terms of this subsection.

(3) Special use permit. Any property owner affected by this section shall be eligible to apply to the City Council for a special use permit to continue said residential occupancy for a period of two years. There shall be no further permits issued after the aforementioned permit has expired. Such application must be made no later than April 1, 2002, in order to maintain eligibility for the special use permit. The general provisions regarding the issuance of special use permits set forth in this chapter shall also apply to this application. In addition, the City Council shall take the vacancy rate for storefronts on Main Street into consideration when determining whether to issue such a permit.

[Amended 10-7-2002 by L.L. No. 27-2002]

I.

Variance procedure. Any person or persons jointly or severally aggrieved by the terms of this chapter shall have the right to review a special permit determination by the City Council by a public hearing before the Zoning Board of Appeals and by a proceeding under Article 78 of the Civil Practice Law and Rules, which proceedings must be commenced within 30 days of the filing of such determination with the City Clerk.

[Added 12-29-1997 by L.L. No. 14-1997]

- J. Exemption. This local law shall not apply to the residence located at 317 Main Street. This use as a single-family dwelling shall be continued as a nonconforming use notwithstanding the remaining provisions of this local law. However, the existing commercial portion of these premises which front on Main Street, may not be converted to a residential use.

[Added 12-29-1997 by L.L. No. 14-1997]

- K. (Reserved)^[1]

[1] *Editor's Note: Former Subsection K, Discontinuance of existing tattoo and body-piercing parlors, added 12-4-2000 by L.L. No. 18-2000, was repealed 6-18-2012 by L.L. No. 12-2012.*

- L. General nuisances. Upon a complaint registered by the Building Inspector or 50% of the property owners within 250 feet of a nonconforming use which is considered to be a general nuisance or hazard to the health, safety, welfare and morals of uses or structures within 250 feet of such nonconforming use or uses, the Zoning Board of Appeals shall hold a public hearing and make a finding with respect to the nuisance or hazardous condition which exists and shall determine the necessity of terminating such nonconforming use. Such uses shall be terminated within such reasonable time as shall be determined by the Zoning Board of Appeals as related to the reasonable amortization of the capital investment in such uses.

[Added 7-7-2003 by L.L. No. 7-2003]

§ 223-12. Buildings, uses and lots.

- A. Lot for every building. Every building hereafter erected shall be located on a lot as herein defined, and, except as herein provided, there shall be not more than one main building and its accessory buildings on one lot, except for multifamily or nonresidential buildings in districts where such uses are permitted.
- B. Yard and open space for every building. No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building; no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot.
- C. Subdivision of a lot. Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be affected in such a manner as not to impair conformity with any of the requirements of this chapter with respect to the existing building and all yards and other required spaces in connection therewith, and no permit shall be issued for the erection of a building on the new lot thus created unless it complies with all the provisions of this chapter.
- D. Irregularly shaped lots. Where a question exists as to the proper application of any of the requirements of this chapter to a particular lot or parcel because of the peculiar or

irregular shape of the lot or parcel, the Board of Appeals shall determine how the requirements of the chapter shall be applied.

- E. Oversize lots. A lot which does not conform to one or more of the minimum dimensional requirements of this chapter for the district in which it is located, but contains within its boundaries the potential outlines for a lot which would conform to all of the applicable requirements of this chapter, shall be deemed to be a conforming lot within the meaning of this chapter.
- F. Lots under water or within the one-hundred-year floodplain ("area of special flood hazard"). No more than 10% of the minimum area requirement of a lot may be fulfilled by land which is under water or within the one-hundred-year floodplain ("area of special flood hazard"). All minimum front, side and rear yard requirements must be satisfied by measurement on dry land.
[Amended 10-21-1991 by L.L. No. 12-1991]
- G. Required street frontage. No building permit shall be issued for any structure unless the lot upon which that structure is to be built has the required frontage on a street, private road or highway, as defined herein, which frontage, except in the case of a common driveway, provides the actual access to such structure, and which street, private road or highway shall have been suitably improved to the satisfaction of the Planning Board or a performance bond posted therefor as provided in § 36 of the General City Law (Chapter 21 of the Consolidated Laws) of New York State.
[Amended 6-20-2005 by L.L. No. 4-2005]
- H. Lot width required, Within any residence district, no part of any dwelling or other structure housing a main use and, within any business district, no part of any residence structure shall be erected on that part of a lot where the lot width is less than the minimum requirements for the district in which it is located.
- I. New buildings on lots less than the minimum area. A permit may be issued for the erection of a building on a lot for which a valid conveyance has been recorded or contract of sale has been signed and the conveyance recorded prior to the adoption of this chapter, notwithstanding that the area or dimensions of such lot is less than that required for the district in which such lot lies, provided that all yard setbacks and other requirements which are in effect at the time of the obtaining of the building permit are complied with and provided that the owner of such lot does not own other lots contiguous thereto. If this is the case, such other lots or so much thereof as might be necessary shall be combined with the first named lot to make a single conforming lot, or a lot that conforms to the fullest extent possible, whereupon a permit may be issued, but only for such combined lots.
- J. Modification of lot requirements. For the purposes set forth earlier in this chapter, and to promote the most appropriate use of land, to preserve the natural and scenic qualities of open lands, to promote natural resource preservation and conservation, and to facilitate the adequate and economical construction of community facilities and utilities, all directed towards the objective of fostering and obtaining land development of good quality and design at reasonable economic cost, the Planning Board is hereby authorized to review and act upon all subdivisions in accordance with the following provisions. In all cases, the Planning Board shall have the full power of subdivision approval, approval with conditions or denial, as authorized by the General City Law. These provisions may be utilized:
[Amended 3-1-2004 by L.L. No. 3-2004; 4-5-2004 by L.L. No. 6-2004]

- (1) When applied for by the applicant of the land to be subdivided if, in the judgment and discretion of the Planning Board, their application would benefit the City by satisfying one or more of the purposes set forth in Subsection J above; or
- (2) Where the Planning Board determines that their application would benefit the City by satisfying one or more of the purposes set forth in Subsection J above and where the Planning Board determines that one or more of the criteria as set forth in subsections (a) through (d) below would be achieved. In this case the Planning Board shall seek authorization from the City Council, on a case-by-case basis, to require the applicant to submit an application which reflects such modifications of applicable provisions of this chapter.
 - (a) The preservation of a unique or significant natural feature of the site, including but not limited to a vegetative feature, wildlife habitat, surface water supply, underground aquifer, endangered species, rock formation, steep slope area, etc.
 - (b) The protection of a unique or significant feature of the man-made environment of the site, including but not limited to a building, structure or artifact of architectural, historical or archaeological value.
 - (c) The preservation of any unique or significant aesthetic feature of the site, including but not limited to a community vista, ridgeline, historic setting, etc.
 - (d) The protection of any other unique or significant feature of the site which the Planning Board determines to be important for historic, recreational, educational, open space or similar purposes.
- (3) Provisions.
 - (a) Average density subdivisions. Simultaneously with the approval of a subdivision plat and pursuant to § 37 of the General City Law, the Planning Board may modify the zoning regulations with respect to lot area and dimensions, provided that the average size of all lots shown on the subdivision plat shall be equal to or greater than the permitted minimum lot area in such district and that there shall not be a greater average density of population or cover of the land with buildings than is permitted in such district and further provided that no lot shall have less than the minimum lot area and dimensions required for lots in the next less restrictive residential zoning district to the one in which the property is located. For the purpose of this section, "average density" shall be determined by the number of single-family residences which could be built under the zoning district standards in full conformity with the City's Subdivision Regulations^[1] and all other applicable requirements. The basis for this determination by the Planning Board shall be a conventional subdivision sketch layout for the subject property.

[1] *Editor's Note: See Ch. 195, Subdivision of Land.*
 - (b) Conservation subdivisions. Simultaneously with the approval of a subdivision plat and pursuant to § 37 of the General City Law, the Planning Board may modify the zoning regulations in R1 and RD Residence Districts with respect to layout, configuration and design of lots, including minimum lot area, width, depth and frontage, minimum front, side and rear yards, and other similar requirements, buildings and structures, roads, utility lines and other infrastructure, parks or landscaping, provided that:

- [1] The permitted number of dwelling units in no case exceeds the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming to all the normally applicable requirements of this chapter, the Land Subdivision Regulations,^[2] the Dutchess County Department of Health regulations and all other applicable standards. The basis for this determination by the Planning Board shall be the conventional subdivision sketch layout information as may be required by said Board.
[2] *Editor's Note: See Ch. 195, Subdivision of Land.*
 - [2] The maximum permitted building height requirements shall be the same as those normally applicable to other dwellings in the zoning district in which the property is located.
 - [3] In both the R1 and RD Residence Districts, the dwelling units permitted may, at the discretion of the Planning Board, be in detached, semidetached, attached or multistory structures.
 - [4] In the event that some part of said subdivision plat includes land to be devoted to park, recreation or open space, the Planning Board, as a condition of plat approval, may establish such conditions as shall be approved by the City Council.
 - [5] In addition to compliance with any special standards, requirements and procedures as set forth in this Subsection **J(3)(b)**, conservation developments shall also be subject to review and public hearing by the Planning Board in accordance with the same procedures as would otherwise be applicable to conventional subdivision plats. Upon the filing of the plat in the office of the County Clerk, a copy shall also be required to be filed with the City Clerk, who shall make the appropriate notations and references thereto on the official copy of the City Zoning Map.
- K. Business entrances on residential streets extending into districts. Where any street extends through a residential district and into a business district, any block with frontage on said street, which frontage is partly in the residential district and partly in the business district, shall not be used for any business purpose except as herein set forth. Any business structure erected in said business district shall face and open upon a street which, for its entire extent adjacent to said block, is within the business district, except that show windows in such business structure may be built and exposed upon another street within the area set aside as a part of such business district. All other entrances to the business structures must face on the street which for its entire extent adjacent to the block is within the business district, except that entrances may be made from the other street to the upper stories of such business structures, a single entrance may be made at the corner of such other street and any second means of egress required by law and access to the structure from off-street parking facilities shall be permitted.
- L. Transition between residential and nonresidential districts. Where a lot in a commercial or industrial district abuts a lot in a residential district, there shall be provided along such abutting lines a yard equal in width or depth to that required in the residential district.
- M.

Premature subdivision. No building permit shall be issued for any construction, other than that required for the maintenance of minimum health and safety standards, within the area of a subdivision designated by the City Council as being premature, as defined herein, until such time as a revised plat has been filed in the office of the Dutchess County Clerk, nor shall any such building permit be issued within a period of 60 days from the date a report on a premature subdivision has been sent to the City Council by the City Planning Board.

- N. Front of new dwellings. The front of any new one-family dwelling shall face the front lot line. In the case of a lot fronting on more than one street, the new dwelling shall face the street frontage which will make it most consistent with the front of other dwellings in the block in which it is located. For purposes of this section, the front of the dwelling shall be as determined by the Building Inspector based upon such factors as the location of the front door, the interior floor plan and the exterior appearance of the building.

[Added 6-20-1988]