

PART II - CODE OF ORDINANCES
APPENDIX B - ZONING
ARTICLE 7. NONCONFORMING BUILDINGS AND USES

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Section 1. Nonconforming buildings and uses.

The following provisions shall apply to all buildings and uses existing on the effective date of this ordinance, which buildings and uses do not conform to the requirements set forth in this ordinance; to all buildings and uses that become nonconforming by reason of any subsequent amendment to this ordinance and the zoning map which is a part thereof; and to all conforming buildings housing nonconforming uses:

- 1.1 Any nonconforming use, except those nonconforming uses specified in [sub)section 1.5, may be continued indefinitely, but:
 - 1.11 Shall not be enlarged, extended, reconstructed or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this ordinance, nor shall any external evidence of such use such as traffic, noise, vibration, smoke, dust, odor, heat or glare be increased by any means whatsoever; or
 - 1.12 Shall not be changed to another nonconforming use without a special permit from the board of adjustment, and then only to a use which, in the opinion of said board, is of the same or a more restricted nature; or
 - 1.13 Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more, or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.
- 1.2 Except as provided in paragraph [subsection] 1.4 below, no building which houses a non-conforming use shall be:
 - 1.21 Structurally altered or enlarged; or
 - 1.22 Moved to another location where such use would be nonconforming; or
 - 1.23 Restored for other than a conforming use after damage from any cause exceeding 75 percent of the replacement cost of such building, exclusive of foundations. Any such building damage[d] to a lesser extent may be restored, but not enlarged, and the nonconforming use reinstated within one year of such damage; [however,] if the restoration of such building is not completed within the said one-year period, the nonconforming use of such building shall be deemed to have been discontinued, unless such nonconforming use is carried on without interruption in the undamaged portion of such building.
- 1.3 Normal maintenance and repair, structural alteration in, and moving, reconstruction or enlargement of a building which does not house a nonconforming use, but is nonconforming as to the district regulations for lot area, lot width, front yard, side yard, rear yard, maximum height, maximum lot coverage, or minimum livable floor area per dwelling is permitted if the same does not increase the degree of, or create any new nonconformity with such regulations in such building.
- 1.4 Nothing in this article shall be deemed to prevent normal maintenance and repair of any building, or the carrying out, upon the issuance of a building permit, of major structural alterations or demolitions necessary in the interest of public safety. In granting such a permit, the city planner shall state the precise reason why such alterations were deemed necessary.

1.5 Each of the nonconforming uses specified below is deemed sufficiently objectionable, undesirable, and out of character in the district in which such use is located as to depreciate the value of other property and uses permitted in the district, and blight the proper and orderly development and general welfare of such district and the city to the point that each of such nonconforming uses shall be terminated on or before the expiration of the specified period of time after the effective date of this ordinance; which period of time is specified for the purpose of permitting the amortization of the remaining value, if any, of such use.

1.51 In any residence zone, any nonconforming use of open land, including such uses as a parking lot, junkyard, or open storage yard for materials or equipment, may be continued for three years after the effective date of this ordinance, or after annexation of the property into the City of Dover, provided that, after the expiration of that period, such nonconforming use shall be terminated (see also article 6, section 1.12). Any "mobile home" as that term is defined in article 12 hereof, that was located within the limits of the City of Dover at the effective date of this ordinance [November 22, 1976], or that was in place on any land subsequently annexed into the City of Dover, shall constitute a nonconforming use and shall be permitted to be maintained as a nonconforming use indefinitely. However, such mobile home shall be required to connect to city sewer and water mains, if available, and such mobile home shall be subject to and shall comply with all other city codes and ordinances applicable to structures and residences.

1.52 In any residence zone, any sign not of a type permitted, or of a permitted type, but greater than two times the maximum permitted size may be continued for one year following the effective date of this ordinance, provided that, after the expiration of that period, such nonconforming use shall be terminated.

1.53 In any residence zone, any non-conforming use of buildings which is not permitted under the provisions of this ordinance may be continued for a period of:

- (a) Twenty years after the effective date of this ordinance, or
- (b) Forty years after the initial construction of the building containing such use or of any addition thereto adding 50 percent or more to the floor area occupied by such use,

whichever is the longer period, provided that, after the expiration of that period, such nonconforming use shall be terminated. However, no such nonconforming use shall be permitted to continue for a period exceeding two years, unless such use shall be operated in conformance with performance standards established in article 5, section 8.

1.6 Residential occupancies that meet the definition of "student home," as provided in article 12 of this ordinance, that can be proven to have been in existence as a student home use prior to the enactment of regulations governing student homes, shall be permitted to remain as legal nonconforming uses as to location and shall not be subject to the conditional use approval requirements set forth in article 10, section 2, provided that all such uses shall be made to conform with all other provisions of article 3, section 2.4, subsection (b), with regard to licensing as a student home, off-street parking requirements and number of students in residence in the student home, within six months of the effective date of the ordinance amendment establishing article 3, section 2.4, subsection (b). Documentation to prove that a student home use existed prior to the enactment of this ordinance shall be limited to executed lease agreements, City of Dover licensing data, and/or [a] sworn legal affidavit from the owner of record of the property. Failure to bring a nonconforming student home use into compliance within the specified six-month period shall be deemed a violation of this ordinance and subject to penalties as set forth in article 8 of the zoning ordinance [this appendix] and all applicable provisions of [the] Dover Code of Ordinances.

Any student home use that existed prior to the enactment of this ordinance, that ceases to exist or that is changed to any form of occupancy other than a student home use for a period in excess of 120 days,

shall not be reactivated as a student home use without conditional use approval as set forth in article 3, section 2.4 and article 10, section 1 of this ordinance.