

## ORDINANCE #1044

### AN ORDINANCE OF THE BOROUGH OF OCEANPORT, COUNTY OF MONMOUTH, STATE OF NEW JERSEY AMENDING CHAPTER 390 "LAND DEVELOPMENT" OF THE CODE OF THE BOROUGH OF OCEANPORT CONCERNING CONTINUATION OF EXISTING USES AND CERTIFICATES OF NONCONFORMITY

**BE IT ORDAINED** by the Mayor and Council of the Borough of Oceanport, in the County of Monmouth, State of New Jersey that the purpose of this Ordinance is to amend the ordinance entitled "Land Development" passed and approved on December 20, 2020 as follows:

**NOTE:** Additions are underlined and deletions are marked by strike through.

#### SECTION I:

##### § 390-9 Continuation of existing uses

If, at the time of the enactment of this chapter, any building is being used or any building is being constructed or altered and is completed within six months thereafter in a manner or for a purpose which does not conform with requirements of this chapter, but which is not prohibited by any other existing ordinance of the Borough of Oceanport, such use, manner or purpose may be continued, and any building designed, arranged, intended or devoted to a nonconforming use may be reconstructed or altered, subject to § 390-10 nor shall any change of title or of right to possession affect such continuation of an existing use.

#### SECTION II

##### § 390-10 Regulation of nonconforming uses.

#### A. Continuation.

- (1) Any use, located either within a building or other structure, or on the land, which was lawful immediately prior to the effective date of this chapter but which became nonconforming by virtue of this chapter may be continued so long as the use is continued without abandonment, including subsequent sales of the property.
- (2) Any building which was lawful immediately prior to the effective date of this chapter but which became nonconforming by virtue of this chapter may be continued or reconstructed if declared to be substandard by any building, housing or related code or authority of the Borough, provided that it shall comply with the area regulations of the district in which it is located and reconstruction of the building is commenced within one year.
- (3) Any lot which was lawful at the time of its creation, but which is nonconforming by virtue of this chapter, may be continued to be used for the use existing at the time the lot became nonconforming. Any subsequent use of the lot which requires variances from the provisions of this chapter shall be governed by the Planning Board.
- (4) For purposes of this section, the date of the adoption of the first Zoning Ordinance in the Borough of Oceanport shall be February 2, 1933.

#### B. Expansion of nonconforming uses, buildings, or structures.

- (1) The expansion of nonconforming uses, buildings, or structures shall be governed by the following rules:
  - (a) A nonconforming use shall not be expanded, enlarged, or increased in any way without the grant of a variance by the Planning Board.
- (2) No structural alterations may be made to any building or structure which is itself nonconforming or which contains a nonconforming use unless:
  - (a) The alteration is ordered by a public official to eliminate a hazardous condition, or
  - (b) The alteration reduces the extent of nonconformity of the building or structure.

#### C. Abandonment.

A nonconforming use of land or of a building shall be presumed to have been abandoned if the active use of the land or building is discontinued through inactivity or when there is an apparent act or failure to act on the part of the tenant or owner to reinstate such use.

D. Change in use.

- (1) A nonconforming use shall not be changed to any use other than a conforming use.
- (2) Any nonconforming use which has been changed to a conforming use shall not be changed back again into a nonconforming use.

E. Restoration of existing buildings.

(1) Nothing in this section shall be construed to prohibit the restoration of a nonconforming building or use destroyed or partially destroyed by fire, explosion, act of God or act of public enemy, provided that any building or use so partially destroyed may be reconstructed and thereafter used only in such a manner as will not increase, enlarge or extend the preexisting nonconformity.

(2) The owner of any nonconforming building or use that is destroyed or partially destroyed as above mentioned must apply for a building (construction) permit to rebuild the same within 12 months from the date of such destruction. If the application to rebuild is filed after such twelve-month period, a building (construction) permit shall be issued only for a conforming use. Nothing in this section shall prohibit the restoration of a wall declared unsafe by the Construction Official.

F. Nonconformance due to reclassification.

The foregoing provisions of this section shall apply to all buildings, structures, land or uses which may hereafter be rendered nonconforming by reason of any reclassification of zone districts under this chapter or any subsequent change in the regulations of this chapter.

G. Certificate of nonconformity.

Any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied and any such structure may be maintained or restored/repared in the event of destruction or partial destruction thereof. A Certificate of Nonconformity shall not be required for said use or structure to continue, be maintained or restored/repared. If any nonconforming building, other than an existing one-family or two-family detached dwelling or a service station, shall be destroyed by reason of windstorm, fire, explosion or other act of God or the public enemy, then such destruction shall be deemed complete destruction, and the structure may not be rebuilt, restored or repaired except in conformity with the regulations of this chapter.

(1) If it is less than one year of an ordinance change making such building, use, structure or lot nonconforming, the owner of any nonconforming building, use, structure, or lot may apply to the Zoning Officer for a certificate of nonconformity, within one year of an ordinance change making such building, use, structure, or lot nonconforming. a prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing to the Zoning Officer for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof. Denial by the Zoning Officer shall be appealable to the Planning/Zoning

(2) The Zoning Officer shall issue a certificate of nonconformity only upon the presentation of satisfactory evidence that the nonconforming building, use, structure, or lot was lawful prior to enactment of this chapter.

(23) If it has been more than one year from an ordinance change making such building, use, structure or lot nonconforming, a prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing to the Planning/Zoning Board for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof. the owner of any nonconforming building, use, structure, or lot may apply to the Planning Board for certification of a nonconformity, if such nonconformity is more than one year from an ordinance change making such building, use, structure or lot nonconforming.

(4) The burden of proof shall be entirely upon the owner or developer.

(3) A Certificate of nonconformity shall not be required, including but not limited to, where the following apply:

- a. There is no physical expansion of a nonconforming use, structure, accessory structure or driveway on the site
- b. The nonconforming use, structure, accessory structure or driveway on the site is merely being replaced / improved / maintained (in kind)
- c. There is no adverse impact on the parking inventory at the site

- d. There is no new Variance created in connection with the subject request
- e. There is no expansion / intensification / exacerbation of any previously granted Variance or any pre-existing / grandfathered non-conforming conditions
- f. There is no adverse health / safety impact associated with the request; and
- g. The interests of justice and sound planning are not unreasonably compromised by the request.

In the event a request satisfies the above conditions, the Zoning Officer is authorized to administratively issue a Zoning Permit.

**BE IT FURTHER ORDAINED** that all other terms and provisions of Chapter 390 of the Borough Code shall remain unchanged.

**BE IT FURTHER ORDAINED** that this Ordinance shall take effect upon final passage and publication in accordance with the law.

**APPROVED ON FIRST READING**

DATED: August 19, 2021

JEANNE SMITH  
Clerk of the Borough of Oceanport

**ADOPTED ON SECOND READING**

DATED: September 16, 2021

JEANNE SMITH  
Clerk of the Borough of Oceanport

**APPROVAL BY THE MAYOR ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_.**

**JOHN F. COFFEY, II**  
**Mayor**