

A LOCAL LAW TO AMEND
CHAPTER 220 OF THE CODE OF
THE VILLAGE OF BRIARCLIFF
MANOR RELATING TO
NONCONFORMING BUILDINGS,
LOTS, AND USES

Section 1. Village Code Section 220-16, "Nonconforming buildings and uses" is amended to read as follows:

"§220-16. Nonconforming buildings, lots, and uses.

"A. May be continued subject to conditions. Any building, lot, or use lawfully existing under the provisions of the Zoning Ordinance in effect immediately prior to the date on which this chapter became effective, although not conforming with the provisions of this chapter for the district in which it is situated, may be continued or built upon subject to compliance with the conditions set forth in this section. Similarly, whenever a district shall be changed hereafter, the provisions of this chapter with regard to any building, or use, or lot lawfully existing at the time of the passage of this chapter shall apply, subject to the conditions set forth in this section, to any building, use, or lot lawfully existing in such changed district at the time of the passage of such amendment.

"(1) Nonconforming Buildings.

"(a) A building which is nonconforming with respect to any of the Zoning District lot and building limitations set forth in §220-4 of this chapter may be enlarged or altered in any manner that does not increase that nonconformity and otherwise complies, after the enlargement or alteration, with the Zoning District lot and building limitations, other than size of lot, set forth in § 220-4 of this chapter.

"(2) Nonconforming Lots.

"(a) A lot which does not conform to the minimum lot size requirement for the Zoning District in which it is situated and which:

[1] Conformed with that lot size requirement on January 1, 2009, and was not in the same ownership as an adjacent lot on that date, may be used and developed as a lot for any purpose permitted in the district in which it is

situated so long as such use or development complies with the Zoning District lot and building limitations, other than size of lot, set forth in §220-4 of this chapter.

[2] Conformed with that lot size requirement on January 1, 2009, and was in the same ownership as an adjacent lot on that date, may be used and developed as a lot for any purpose permitted in the district in which it is situated so long as such use or development complies with the Zoning District lot and building limitations, other than size of lot, set forth in §220-4 of this chapter.

[3] Did not conform with that lot size requirement on January 1, 2009, but was not in the same ownership as an adjacent lot on that date, may be used and developed as a lot for any purpose permitted in the district in which it is situated so long as such use or development complies with the Zoning District lot and building limitations, other than size of lot, set forth in §220-4 of this chapter.

"(b) A building which is located on a nonconforming lot but is conforming with respect to all of the Zoning District lot and building limitations, other than size of lot, set forth in §220-4 of this chapter may be enlarged or altered in any manner that complies, after the enlargement or alteration, with the Zoning District lot and building limitations, other than size of lot, set forth in §220-4 of this chapter.

"(c) A building which is located on a nonconforming lot and is nonconforming with respect to any of the other Zoning District lot and building limitations set forth in §220-4 of this chapter may be enlarged or altered in any manner that does not increase that nonconformity and otherwise complies, after the enlargement or alteration, with the other Zoning District lot and building limitations, other than size of lot, set forth in §220-4 of this chapter.

"(3) “Nonconforming Uses.

"(a) No nonconforming use of a lot shall be enlarged or extended to additional land except that, in the case of golf clubs, the Board of Trustees may, by special permit, issued in accordance with the provisions of §220 6 of this chapter, authorize such an enlargement or extension to adjoining residential parcels, which such nonconforming land touches, if the Board of Trustees finds that (a) such use (1) furthers the goal of open space preservation and the purposes of §220-7 of this chapter, (2) maintains or

improves the relationship between the subject property and the surrounding community, (3) results in improvement in the public welfare, health, safety and applicable environmental concerns; and (b) unique circumstances exist that support the need for such enlargement or extension. Such special permit may include such conditions and restrictions relative to the use and operation of such nonconforming use as the Board of Trustees may find are necessary to achieve such purposes. Except as may be permitted under Subsection A(4) of this section, no such building which is nonconforming with respect to use shall be enlarged, nor shall such building be altered structurally except as may be required by order of the Building Inspector to strengthen or restore such building or restore such building or any part thereof to a safe condition.

"(b) After notice and hearing the Board of Appeals may permit an existing nonconforming use to be extended throughout those parts of a building which were manifestly arranged or designed for such use prior to the time of enactment of this chapter, if no structural alterations except those required for health or safety are made therein.

"(c) A nonconforming use may not be changed to another nonconforming use, except that within six months after cessation of a lawfully existing nonconforming use, after notice and hearing the Board of Appeals may grant a temporary conditional permit for a new nonconforming use within the same structure, provided the Board of Appeals finds that the proposed new nonconforming use (1) will be more in keeping with the character of the neighborhood than the former nonconforming use, (2) will generate less traffic and (3) will tend to facilitate the later conversion of the structure to a conforming use. However, no such temporary permit shall be for more than five years, with not more than two successive extensions thereof of not more than five years each, and the Board of Appeals in granting such temporary permit or any renewal thereof shall impose such conditions as it deems necessary in the public interest for the protection of nearby conforming uses.

"(d) Effect of discontinuance. No such nonconforming use, if discontinued for six months or longer, shall be resumed.

"B. If made to conform, may not revert to nonconformity. No such nonconforming building or use, if changed to a building or use which conforms to the provisions of this chapter shall be changed back to a nonconforming building or use.

"C. Effect of serious damage.

"(1) In all nonresidential zoning districts, no nonconforming nonresidential building destroyed or damaged from any cause to the extent, as determined by the Building Inspector, of over 50% of the value of its structure above the foundation shall be restored in nonconforming form or location on the lot or for the continuance of a nonconforming use therein. Any such building destroyed or damaged accidentally due to fire, explosion or other cause to the extent, as determined by the Building Inspector, of not more than 50% of the value of its structure above the foundation may, if so permitted by the Board of Appeals, be restored in substantially the same location, provided that it be not enlarged and that it comply with height, yard, area and other requirements of the schedule, and provided also that the Board of Appeals may permit the continuance without enlargement of such previous existing nonconforming use subject to such additional limitation and safeguards as it may deem necessary in the public interest for the protection of nearby conforming uses. Anything to the contrary in this subsection notwithstanding, the Board of Trustees may, by special permit issued in accordance with the provisions of §220-6 of this chapter, authorize a nonconforming golf clubhouse to be reconstructed or replaced, in whole or in part (but in no case enlarged), for its prior nonconforming use in substantially the same location and may permit the construction or replacement of any ancillary structure necessary or appropriate for such golf club use, provided that, in each such case, the Board of Trustees finds that (a) such construction, reconstruction or replacement (1) furthers the goal of open space preservation and the purposes of §220-7 of this chapter, (2) maintains or improves the relationship between the subject property and the surrounding community, and (3) results in improvement in the public welfare, health, safety and applicable environmental concerns; and (b) unique circumstances exist that support the need for such construction, reconstruction or replacement. Such special permit may include such conditions and restrictions relative to the use and operation of such nonconforming use as the Board of Trustees may find are necessary to achieve such purposes.

"(2) In all residential zoning districts, any nonconforming residential building destroyed or damaged from any cause to any extent may be repaired or reconstructed with the same habitable floor area, height, footprint, or less, as it existed prior to the destruction or damage, provided that the building fell within the definition of a legal preexisting nonconforming structure.

"(3) Any nonconforming residential building in a nonresidential zoning district destroyed or damaged from any cause to any extent may be repaired or reconstructed with the same habitable floor area, height, footprint, or less, as it existed prior to the destruction or damage, provided

that the building fell within the definition of a legal, preexisting nonconforming structure.

"(4) Any repair or reconstruction as provided in this §220-16(C) must comply with all fire, construction, health and safety rules, regulations, ordinances and laws applicable at the time of repair or reconstruction. Substantial work of any such repair or reconstruction must be commenced within a period of 24 months after the damage or destruction of the building and shall be diligently prosecuted to completion.

"(5) Application to rebuild must be made within six months. Application for permit to rebuild or restore the damaged portion of any building damaged or destroyed as set forth in this Subsection (C) shall be filed within six months of the day of such damage and shall be accompanied by plans for reconstruction which, as to such portion, shall comply with the provisions of this chapter in all respects save as to the use of the building or structure.

"(6) Rebuilding must be completed within 18 months after a permit to rebuild or restore is granted. If a permit for such rebuilding or restoration is granted it, shall lapse 18 months thereafter except that the Building Inspector in his discretion may grant a three-month extension thereof.

"D. Certain uses must cease within five years. Any nonconforming sign made so by this chapter and any nonconforming use of land upon which there is no substantial structure or building, and the use of which is temporary in nature, such as a golf driving range, parking lot, junkyard, outdoor auto sales, or any use similar to those enumerated, shall be discontinued within five years from the adoption of this chapter."

Section 2. Village Code Schedule 220:A14, "Schedule Limiting the Use of Buildings and Land and the Location, Arrangement, and Size of Buildings, Exceptions and Modifications," is amended at Note 3, "As to miscellaneous matters," to delete Entry (d), to rename current Entry (e) as Entry (d), and to rename current Entry (f) as Entry (e).

Section 3. Severability. The invalidity of any word, section, clause, paragraph sentence, part, or provision of this local law shall not affect the validity of any part of this local law which can be given effect without such invalid part or parts.

Section 4. Effective Date. This local law shall take effect immediately upon filing in the Office of the Secretary of State of New York in accordance with the provisions of the Municipal Home Rule Law.