ARTICLE 1800
NONCONFORMING PROVISIONS

1800.01 STATEMENT OF LEGISLATIVE INTENT
1800.02 NONCONFORMING VACANT LOT
1800.03 NONCONFORMING STRUCTURE USED FOR A PERMITTED USE
1800.04 NONCONFORMING USE OF STRUCTURE OR LAND
1800.05 EXPANSION OR ENLARGEMENT OF NONCONFORMING USES
1800.06 APPLICATION REQUIREMENTS FOR EXPANSION OR ENLARGEMENT OF NONCONFORMING USES *(Amended 07-25-23)*
1800.07 STANDARDS FOR REVIEW OF EXPANSION OR ENLARGEMENT OF NONCONFORMING USES
1800.08 ADHERENCE TO APPROVED PLAN FOR EXPANSION OR ENLARGEMENT OF NONCONFORMING USES; MODIFICATIONS
1800.09 LOSS OF RIGHT TO EXPAND NONCONFORMING USE

1800.01 STATEMENT OF LEGISLATIVE INTENT

It is the intent of this article to:

A. Control construction of structures on nonconforming lots

B. Restrict expansion of nonconforming structures used for a permitted use

C. Encourage the eventual elimination of nonconforming nonresidential uses

D. Prevent the re-establishment of nonconforming uses after they are moved or abandoned.

1800.02 NONCONFORMING VACANT LOT

A. A single-family dwelling may be constructed, only by special permission of the Board of Zoning Appeals, on a pre-existing nonconforming lot of record, and shall comply with all applicable setbacks. The Board of Zoning Appeals shall hold a public hearing on such requests. The filing, notification, and public hearing procedures are as provided in Article 1100.00 - Special Permit Uses, Sections 1100.04 (A) (B) (C) of said Zoning Ordinance. Exception to the approval requirements shall include lots reviewed and approved by the Board of Zoning Appeals prior to the adoption of this ordinance.

B. Where such a lot does not meet the minimum frontage requirement but does meet the minimum area requirement, the following setback requirements shall apply:

1. No required side setback shall be less than ten percent of the width of the lot. When there is more than one side setback, their sum shall be not less than 25 percent of the width of the lot.

2. No side setback shall be less than five feet in any event.

1800.03 NONCONFORMING STRUCTURE USED FOR A PERMITTED USE

A lawfully existing structure, which contains a permitted use but does not comply with the other requirements of this ordinance for the zoning district in which it is located, may be continued but shall be subject to the regulations below. In such cases, however, the failure to meet landscaping or screening requirements shall not be considered a nonconformity.

A. **Enlargement, repair, alteration.** A nonconforming structure may be enlarged, maintained, repaired, or structurally altered, provided no such enlargement, maintenance, repair, or structural alteration shall create any additional nonconformity or increase the degree of the existing nonconformity of such structure.

B. **Reconstruction.** In the event a nonconforming structure is destroyed by fire, flood, or other natural cause, said structure may be rebuilt on the same foundation with the previously existing setbacks, provided the reconstruction of such structure is begun within 12 months of the date it was destroyed.

C. **Damage or destruction**. In the event a nonconforming structure is damaged or destroyed, to such an extent that the cost of restoring it to its prior condition exceeds 50 percent of the current replacement cost of the entire structure, exclusive of foundations, such structure shall not be permitted to be restored unless it shall thereafter conform to the regulations of this ordinance for the district in which it is located.

D. **Moving.** No nonconforming structure shall be moved, for any distance, to any other location on the same or other lot, unless the structure shall conform to the regulations of this ordinance for the district in which it is located after being moved.

E. **One-for-One Replacement.** An existing single wide manufactured home having a width of less than 20 feet may be replaced with a unit of the same dimensions or greater on the same lot if the replacement occurs within one year of the existing home being removed.

1800.04 NONCONFORMING USE OF STRUCTURE OR LAND

A use of part or all of a structure or land which is not permitted under the applicable zoning district regulations of this ordinance, but which is lawfully established on the effective date of this ordinance, shall be termed a "nonconforming use". Such use may be continued so long as otherwise lawful but shall be subject to the regulations below.

A. **Enlargement**. An existing structure and related improvements which are being used in accordance with this ordinance as a nonconforming use, may not be enlarged or expanded in the following specified situations:

1. If the existing use of the structure or the proposed improvement of the structure is a land use which is not permitted in any zoning district within any of the zoned areas of Putnam County, neither the structure nor the proposed improvements nor use shall be permitted to be enlarged or expanded.

2. If the existing nonconforming use or structure is located in whole or in part within a residential zoned district within the zoned area of Putnam County, neither the structure nor the proposed improvements nor use shall be permitted to be enlarged or expanded.

Application requirements and review criteria for requesting enlargement or expansion of a nonconforming use are included in sections 1800.05 through 1800.08 of this article.

B. **Ordinary repair and maintenance.** Ordinary maintenance and repairs, or repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, shall be permitted, provided such allowance shall not be deemed to authorize any violation of the other parts of this section (Section 1800.04). Nothing in this ordinance shall be deemed to prevent the strengthening of a structure or restoring a structure to a safe condition (except for a damaged or destroyed structure subject to provisions of subsection (D) of this section) in accordance with the order of a public official who is charged with protecting the public safety, and who declares such structure to be unsafe, and orders its restoration to a safe condition.

C. **Structural alteration.** No structural alteration shall be made unless the entire structure and the use thereof shall thereafter conform to the regulations of this ordinance for the district in which they are located. However, nothing in this ordinance shall be construed to prevent owners of nonconforming residential structures those structural alterations which do not increase the number of dwelling units within it or enlarge its exterior dimension.

D. **Damage or destruction.** In the event a structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to such an extent that the cost of restoration to its prior condition exceeds 50 percent of the current replacement cost of the entire structure, exclusive of foundations, such structure shall not be permitted unless a building permit

is obtained and restoration actually begun within one year of the date of such partial destruction and is diligently pursued to completion. However, in a residential zoning district, a nonconforming residential structure destroyed by a natural disaster or fire, including a structure in an area which has been downzoned, may be replaced, provided the new structure does not contain more bedrooms or dwelling units than the previous structure and provided the new structure is in the process of reconstruction within twelve (12) months of the date it was destroyed.

E. **Moving.** No nonconforming use of land or structure shall be moved, in whole or in part, for any distance whatsoever, to any other location on the same or on any other lot, unless such use shall conform to the regulations of this ordinance for the district in which it is located after being moved.

F. **Extension.** Except as hereinafter provided, a nonconforming use shall not be extended, expanded, or increased in intensity. Such prohibited activities shall include the following:

1. Extension of a nonconforming use to any structure or land area other than one occupied by such use on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that causes such use to be nonconforming).

2. Extension of a nonconforming use within a structure to any portion or the floor area that was not occupied by such use on the effective date of this ordinance (or on the effective date of an amendment thereto that causes such use to become nonconforming), provided a nonconforming use may be extended throughout any part of such structure that was lawfully and manifestly designed or arranged for such use on said effective date.

G. **Change.** A nonconforming use shall not be changed to any use other than the same use, or a use permitted by this ordinance in the district in which the land is located, or a use that is of less non-conformity in terms of the type of intensity of use. When a nonconforming use has been changed to a permitted use, it shall not thereafter be changed to a nonconforming use.

H. **Discontinuance.** A nonconforming use which is hereafter voluntarily discontinued and remains such for a continuous period of one year, shall not thereafter be reestablished. Such location shall thereafter be occupied by a use which conforms to the regulations of this ordinance for the district in which it is located.

I. **Nonconforming accessory use.** No nonconforming accessory use shall continue after the principal use to which it is accessory has been destroyed, moved, or abandoned.

J. **Avoidance of Undue Hardship.** To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or development on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently. Actual construction is hereby defined as work done which is beyond the preparation stage and into that stage where the changes or additions are made permanent.

1800.05 EXPANSION OR ENLARGEMENT OF NONCONFORMING USES

It is the intent of this section of the nonconforming provisions article of the zoning ordinance to:

A. Manage and accommodate the rapid growth and development in Putnam County in a planned and orderly manner

B. Provide for greater flexibility of nonconforming nonresidential land uses located in nonresidential zoned districts which provide necessary commercial and industrial amenities to county residents and contribute financially to a viable economy

C. Encourage more creative design of nonresidential developments than generally is possible under conventional zoning regulations, and

D. Decrease the negative impact which may be created by adjacent non-compatible land uses, where one or more of the adjacent land uses is nonconforming.

1800.06 APPLICATION REQUIREMENTS FOR EXPANSION OR ENLARGEMENT OF NONCONFORMING USES *(Amended 07-25-23)*

Provided that existing nonconforming uses do not meet the criteria stated at Section 1800.04(a)1,2 of this article, nonconforming uses may apply for expansion or enlargement.

A. **Initiation by Owner of Record.** An application for the expansion or enlargement of a structure or improvement being used for a nonconforming use or for the expansion or enlargement of a nonconforming use, must be initiated by the owner of record of the property for upon which the requested expansion is to occur.

B. **Pre-Application Conference.** The applicant shall schedule a pre-application conference with the planning officer to: (1) discuss the application for expansion or enlargement of a nonconforming use prior to initiating the application process, (2) determine the eligibility of the property for expansion or enlargement prior to the applicant incurring application expenses, and (3) establish the exact requirements for a complete and full submission of an application.

C. **Formal Application.** The applicant shall make a formal application to the Office of Planning & Infrastructure requesting the expansion or enlargement of a nonconforming use. The initial application shall include the following:

1. A completed application form as prescribed by the Office of Planning & Infrastructure, and

2. The application fee as stated in the fee policy maintained on file in the planning office, and

3. A list of property owners' names and addresses located within 250' of the boundaries of the property upon which expansion or enlargement is required, as of record in the Office of the Putnam County Tax Assessor. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of the property owners in the affected area. If the list includes a lot within a residential subdivision, the applicant must submit the name of the president of the homeowners' association along with a stamped and addressed envelope for that member, and

4. A sketch plat drawn to scale that shows the size of the lot, the footprint of the existing structure and the proposed expansion or enlargement.

D. **First Public Hearing Scheduled.** If the planning officer determines that the applicant is eligible to apply for an expansion or enlargement of a nonconforming use, according to section 1800.04(A) of this ordinance, the first of two public hearings is scheduled before the Board of Zoning Appeals. The purpose of the first public hearing is to solicit public comment and review the staff's report on the proposed expansion or enlargement.

E. **Public Notice of Proposed Land Use Action.** The Office of Planning & Infrastructure (OPI) hall publish a legal advertisement describing the request for expansion or enlargement of the nonconforming use, structure, or improvement in a local newspaper of general circulation fifteen (15) days prior to the scheduled public hearing before the Board of Zoning Appeals. The prepared envelopes notifying the property owners located within 250 feet of the affected property and a homeowners association board member of an affected subdivision will be mailed at or about the same time the legal advertisement is submitted to the newspaper for publication.

Planning staff shall post suitable signs upon the property for which the application has been made giving notice to the public that the application has been made for expansion or enlargement of the existing nonconformity.

F. **First Public Hearing Held Before Board of Zoning Appeals.** The Board of Zoning Appeals shall hold the first of two public hearings on the applicant's request and consider public comment and the planning officer's report. If the Board of Zoning Appeals determines that the applicant meets the established criteria to expand or enlarge a nonconforming use, the Board shall approve a Notice to Proceed to the applicant to initiate an overall site development plan. In exercising its judgment and discretion, the Board of Zoning Appeals shall consider that generally expansion and enlargement of nonconforming structures, improvements and uses are not favored and should only be approved when it can be reasonably expected that the expansion or enlargement can be approved and undertaken upon specific terms and conditions and in such a manner that the

existing, expanded and enlarged structure, improvement, and use will constitute an overall improvement to the economic, social and aesthetic betterment of the immediately affected area.

G. **Denial of Applicant's Request by Board of Zoning Appeals.** If the request for expansion or enlargement of the nonconforming structure, improvement or use is denied by the Board of Zoning Appeals, the applicant shall be formally notified in writing by the OPI of the denial and shall be advised of his right to appeal the decision to the Circuit Court of Putnam County within thirty (30) calendar days from the date of the original decision of the Board of Zoning Appeals.

The Board of Zoning Appeals may deny the applicant's request based on one or more of the following:

1. Written denial of the proposed expansion or enlargement by another regulatory entity (e.g., public service district, Division of Highways, etc.) for valid and documented reason(s).

2. Inability of the applicant to reasonably meet conformance requirements of the zoning ordinance.

3. The proposed expansion or enlargement will, in the opinion of the Board of Zoning Appeals, increase the degree of nonconformity of the existing land use with surrounding properties.

4. The applicant does not agree to implement reasonable conditions placed on the overall site development plan, as imposed by the Board of Zoning Appeals which result from the public input received at the first public hearing.

H. **Approval of Applicant's Request by Board of Zoning Appeals.** If the request for expansion or enlargement of a nonconforming use is approved by the Board of Zoning Appeals and a Notice to Proceed is issued, the applicant shall within a reasonable time thereafter be formally notified by mail by the OPI of the approval.

I. **Preparation of Overall Site Development Plan.** Once the Notice to Proceed is issued, the applicant shall submit an overall site development plan for the proposed expansion or enlargement of the nonconforming use. The overall site development plan shall consist of the following: *(Amended 07-25-23)*

1. A site plan (3 copies), drawn to scale, that includes the following for the use of the planning officer:

   a. The actual dimensions, size, square footage, and shape of the affected lot as shown on an actual survey by a licensed land surveyor or registered professional engineer licensed by the State of West Virginia, said survey to be provided by the applicant.

   b. The exact sizes and locations on the lot of all existing structures as well as the proposed expansions or enlargements.

   c. The location, square footage, and dimensions of the proposed structure or alteration.

   d. The location of the lot with respect to adjacent rights-of-way.

   e. The existing and proposed uses of the structure and land.

   f. The location and dimensions of off-street parking and means of ingress and egress for such space.

   g. height of structure

   h. setbacks

i. buffer yard and screening

j. location of garbage collection area and screening

k. location of sign

l. street typical for internal roadways

m. location and size of drainage structures

n. location of stormwater detention system

o. utility lines and easements

p. signature of applicant.

2. Drainage plan and drainage calculations that bear the name, address, signature, and seal of a registered professional engineer, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets (See Article 1500)

3. If applicable, design of stormwater detention system and drainage calculations that bear the name, address, and seal of a registered professional engineer and that meet the requirements of Article 1500 of this ordinance and the design standards of the United States Natural Resource Conservation Service

4. Parking plan (See Article 1200)

5. Landscaping plan (See Article 1300)

6. Sign plan (See Article 1400)

7. Any other such information concerning the lot or neighboring lots as may be required by the Planning Officer to determine conformance with, and provide for the enforcement of, this ordinance; where deemed necessary, the Planning Officer may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or professional engineer licensed by the State of West Virginia, said survey to be provided by the applicant.

8. A statement listing and explaining any specific variances from provisions of this ordinance which may be necessary and giving the reasons, therefore. Requests for any variances shall be made to the Putnam County Board of Zoning Appeals and shall be made in accordance with Article 2100 of this zoning ordinance.

9. Where the Planning Officer determines that any of the items (1) through (6) above is unnecessary, he may waive its requirement.

No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.

The Planning Officer may require that the lot and location of the building thereon shall be staked out on the ground before construction is begun. The Planning Officer, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to make sure that a structure is placed on his property according to his approved site plan (zoning review) and as required by any applicable county ordinance.

Site plans approved by the Planning Officer authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement, or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this ordinance. The issuance of a building permit based upon site plans given approval by the Planning Officer shall not prevent the Planning Officer from thereafter requiring the correction of

errors in said site plans or from preventing operations from being carried on thereunder when in violation with this ordinance.

One copy of the site plan submitted for a permit shall be returned to the applicant after the Planning Officer has marked such copy as either approved or disapproved as to the provisions of this ordinance and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the planning officer.

It is the applicant's responsibility to obtain all applicable permits and plan approvals from all authorities having jurisdiction in the State of West Virginia (i.e., Department of Environmental Protection, West Virginia Department of Highways, Putnam County Health Department, Putnam Public Service District, West Virginia American Water, etc.). It is also the responsibility of the stated West Virginia entities to enforce their own agency regulations and violations. (Amended 07-25-23)

J. **Review of Site Plan.** The planning officer will conduct a formal review of the completed overall site development plan and will endeavor to complete such review within five (5) days. If the planning officer determines the application is complete, a second public hearing shall be held before the Board of Zoning Appeals for the purpose of approving the overall site development plan.

K. **Second Public Hearing Scheduled Before Board of Zoning Appeals**. Once the planning officer has completed his review of the overall site development plan, a second public hearing shall be scheduled. The second public hearing shall be advertised, and the surrounding property owners notified in the same manner as described for the first public hearing. The purpose of the second public hearing is to allow the public and the Board of Zoning Appeals to review the overall site development plan and to determine if any specific terms and conditions are required for approval.

L. **Approval of Applicant's Request by Board of Zoning Appeals.** The planning officer shall issue an approved building permit to the applicant only after the Board of Zoning Appeals has formally approved the overall site development plan. Construction of the proposed expansion or enlargement of the nonconforming use cannot be initiated until an approved building permit is issued by the planning officer.

M. **Certificate of Compliance with the Zoning Ordinance.** Once the expansion or enlargement of the nonconforming use is completed, the applicant shall contact the planning officer to schedule an inspection of the property. A Certificate of Compliance shall not be issued until all elements of the approved overall site development plan are achieved.

1800.07 STANDARDS FOR REVIEW OF EXPANSION OR ENLARGEMENT OF NONCONFORMING USES

The planning officer shall give general guidance to the applicant and review all completed applications requesting the expansion or enlargement of a structure or improvement for a nonconforming use according to the following standards:

A. **General conformance with the established regulatory requirements for the zoning district in which the nonconforming use is located.** The application must show that, except for the use to which any new, enlarged, or expanded structure or improvement shall be put, the proposed expansion or enlargement will conform, as closely as possible, to all the building, regulatory, subdivision and zoning requirements for the zoning district in which it is located and that any existing structure and all existing improvements will also be made to so conform as a condition for having the application considered by the Board of Zoning Appeals. The application must demonstrate that the proposed expansion conforms to the minimum standards permitted in the district, as much as possible, except as to use.

B. **Traffic.** The West Virginia Division of Highways - Highway Access Permit process shall be used to determine the provisions for the safe and convenient traffic flow onto highway accesses, if appropriate.

C. **Sanitary facilities.** The sanitary services and facilities plan shall be reviewed by, and a report received from, the provider and/or the West Virginia State Department of Health prior to action by the Board of Zoning Appeals, if appropriate.

D. **Utilities.** The plan must demonstrate the location and availability of necessary utility services.

E. **Off-site impact.** The plan must demonstrate that light, heat, glare, or any other use or activity on the subject property shall not deleteriously affect nor discourage orderly development of adjacent properties.

F. **General conformance with subdivision regulations and drainage considerations.** The plan must demonstrate that the traffic circulation system conforms with the provisions of the Putnam County Subdivision Regulations and the Zoning Ordinance for the Zoned Unincorporated Areas of Putnam County, West Virginia. The site shall be suitable for development in the manner proposed without hazards to persons or property, on or off the site; from probability of flooding, erosion, subsidence or slipping of the soil; or other dangers, annoyances, or inconveniences. The condition of the soil, ground water level, topography, and drainage plans shall be appropriate to both kind and pattern of intended use.

G. **Site planning.** The site shall be planned to provide for good functional relationships between land uses, buildings, parking areas, and recreation areas.

H. **Conformance with Floodplain Management Ordinance provisions.** All applicants must comply with the applicable floodplain management requirements.

1800.08 ADHERENCE TO APPROVED PLAN FOR EXPANSION OR ENLARGEMENT OF NONCONFORMING USES; MODIFICATIONS

A. The applicant and his successors in interest, be it owners, lessees, assigns, occupants, users, or otherwise, shall be bound by the approved terms and conditions as approved and recorded in the Office of the Clerk of the County Commission of Putnam County, until such time as there is a subsequent change or modification approved by the Board of Zoning Appeals. The approved and recorded final site plan shall control the issuance of all building permits and shall control, govern, limit, and restrict the expansion and enlargement upon the property upon which the application has been made and such adjoining property of the applicant, if any, from which the expansion or enlargement emanates.

B. Any substantial changes, modifications, or amendments to an approved plan shall require a new application. Any minimal changes, modifications or amendments to an approved plan may be approved by the planning officer or the planning officer may determine that the changes are substantial and require the approval of the Board of Zoning Appeals.

C. The approval of the expansion or enlargement under this article, upon recordation, shall vest a limited and conditional property right in the applicant which right shall be lost for the reasons set forth in the immediately following paragraph or if the applicant or his successors in interest fail to construct, develop, maintain or use the property for whose benefit the expansion or enlargement was granted in strict accordance with the plat, terms and condition of the approval; and, if the Board of Zoning Appeals decides there has been any such failure it shall have the legal authority to seek a judicial determination as to any such failure and compelled discontinuance of such use as allowed by its previous approval. In the event that the Board of Zoning Appeals is successful in obtaining a final judicial determination of such failure and loss of the expansion or enlargement of such nonconforming use, the Board of Zoning Appeals shall have a lien against the property having been given the approval for the reasonable costs of its attorney fees and expenses with interest thereon.

1800.09 LOSS OF RIGHT TO EXPAND NONCONFORMING USE

Approval of the expansion of a nonconforming use shall be null and void if construction work is not begun within one year from the date of approval, or in the event such work is suspended or abandoned at any time after the work is commenced for a period of ninety (90) days. Should the nonconforming use of a structure cease, for whatever reason, for a period of twelve (12) consecutive calendar months, the use of the property shall revert to a land use permitted within the zoning district.