

**ORDINANCE 1211-2013**

**AN ORDINANCE AMENDING ARTICLE 10, SECTION 1005(b) OF THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE REGARDING ALTERATION, EXTENSION OR ENLARGEMENT OF NONCONFORMING USES AND STRUCTURES**

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that there is a need to amend Section 1005(b) of the Land Use Ordinance to reinstate the previous sections as pertains to Alteration, Extension or Enlargement of Nonconforming Uses or Structures.

WHEREAS, by Ordinance No. 1204-2012 and 1197-2012, the Borough previously amended such sections.

WHEREAS, upon further recommendation by the Borough Planner, the Mayor and Council have determined that it is in the interest of the Borough to amend Section 1005(b).

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows: Article 10, Section 1005(b) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1005(b):

(b) Alteration, Extension or Enlargement of Nonconforming Uses or Structures. Nonconforming uses or structures in all zoning districts shall conform to the following requirements:

(1) Any structure or use of land which is nonconforming because of use shall not be enlarged or extended in any manner whatsoever.

(2) There shall be no structural alterations or enlargement made to any nonconforming building or structure that is nonconforming because of use. Structural alterations or enlargements may be made in a building which is nonconforming because it fails to comply with height, area, yard, off-street parking or other like requirements of this Ordinance, so long as the structural alteration or enlargement does not further violate said height, area, yard, off-street parking or other like requirements, and provided that all other provisions of this Ordinance are complied with.

(3) A nonconforming use changed or altered to a conforming use may not thereafter be changed back to a nonconforming use, but nothing hereinbefore stated shall prevent the strengthening or restoring to a safe and lawful condition of any part of any building declared unsafe by the Construction Official, the Chief of the Borough Fire Department or the Borough Engineer. A nonconforming use changed or altered to a different nonconforming use shall be deemed abandoned immediately and the new nonconforming use shall not be considered to be lawfully existing.

(4) In the event that there shall be a cessation of operation of any nonconforming use for a period of twelve (12) consecutive calendar months, the same shall be presumed an abandonment of such nonconforming use. Any subsequent attempt to rely upon, exercise or reinstate such abandoned nonconforming use (the provisions of 1005(a) of this Ordinance notwithstanding) shall be deemed a violation of the terms of this Ordinance.

(5) Nothing in this Ordinance shall require any change in plans, construction or designated use of a structure or building for which a building permit has been heretofore validly issued or if a variance has been authorized by the Board of Adjustment or if construction has been legally started and diligently prosecuted at the time of the adoption of this Ordinance.

(6) Nothing in this Ordinance shall be construed as authorization for or approval of the continuance of the use of a building, structure or premises in violation of any zoning ordinances, rules or regulations in effect immediately preceding the time of the effective date of this Ordinance unless made conforming by the enactment of this Ordinance.

(7) Restoration of Existing Buildings or Structures Which Are Nonconforming Because of Use. Nothing in this Ordinance shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because of its use and which is partially destroyed by fire, explosion, act of God, or of any public enemy, or the like, if the extent of the destruction be not more than fifty per cent (50%) of said value of the whole building or structure at the time of such destruction, then the same may only be reconstructed and thereafter used in such a manner as to conform to all the requirements, terms and conditions of this Ordinance.

(8) Restoration of Existing Buildings Which Are Nonconforming Because of Reasons Other Than Use. Nothing in this Ordinance shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because it fails to comply with any height, area, yard, off-street parking or other like requirements of this Ordinance, and which is partially destroyed by fire, explosion, act of god, or of any public enemy, or the like; provided, however, that any restoration of any such building or structure shall not enlarge the previously existing nonconformance.

(9) Any nonconforming lot existing at the time of the adoption of this Ordinance that fails to comply with the minimum lot area and lot width requirements of this Ordinance may be used for any use not otherwise prohibited in the zoning district in which it lies, provided said lot is not in common ownership as defined in Section 211 of this Ordinance, and further provided all other requirements of this Ordinance are complied with.

(10) Ordinance Section 1014(e)(1) is deleted.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.