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AMERICAN SOCIETY OF PLANNING OFFICIALS

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JOINT REFERENCE

## ELIMINATION OF NON-CONFORMING USES

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“There is little doubt that under zoning ordinances municipalities if they wish, can succeed in ousting non-conforming uses and buildings. If the police power can be invoked to prevent a new non-conforming building because of its relation to the community health, safety, morals, convenience, and general welfare, it follows that the police power can be invoked to oust existing non-conforming uses. Theoretically, the police power is broad enough to warrant the ousting of every non-conforming use but the courts would rightly and sensibly find a method of preventing such a catastrophe. ...This brings us to the difficult problem with which we must often cope in zoning - that is, the establishment of the line between what is a reasonable regulation and what is unreasonable.”-

*Edward M. Bassett.*

This report will indicate some of the ways communities have devised to establish reasonable regulations for the elimination of non-conforming uses.

In the past, believing that zoning could stabilize land use and protect future development, without removing structures or land uses already in existence, most communities adopting zoning regulations permitted existing uses and buildings to continue even if they did not conform to the regulations for the district in which they were situated. It was believed that so long as additional non-conforming uses were forbidden and existing non-conforming uses were not extended, that no substantial injury would be caused to the community.

Some state zoning enabling acts contain provisions that zoning regulations shall not be made retroactive, thus precluding the elimination of non-conforming uses. However, the standard zoning enabling act prepared by the United States Department of Commerce in 1926 contains no such provision, nor do most state enabling acts. New York City, the first city to establish height, area and use zoning (even before the word “zoning” was used), does not contain such a provision in its Charter, nor does the zoning enabling legislation of the State of New York contain such a provision. Municipalities have generally been permitted to decide whether zoning ordinances should or should not include regulations applying to uses and buildings already in

cific sections in zoning enabling legislation authorizing regulations for the elimination of non-conforming uses.

While communities in the past have generally permitted the continuation of the structures and uses that existed at the time a zoning ordinance was adopted, they have taken advantage of occurrences which tend toward the elimination of non-conforming uses. Various restrictions have been placed on non-conforming buildings and uses. The most commonly accepted restriction is that no non-conforming use may be extended. A non-conforming use usually may be extended throughout a building, but additions may not be made to the building, or the non-conforming use may not extend to another building. Other restrictions include those of limiting the alterations or repairs that may be made in a non-conforming building; prohibiting rebuilding or reconstruction of buildings damaged to a specified extent in cases of fire, flood, or similar cause; refusing to allow a non-conforming use to be re-established once a more highly restricted use has been substituted, and refusing to permit a re-establishment of a use if the use or building has been discontinued or abandoned for a specified period of time.

Some localities provide that no structural changes or alterations may be made other than to maintain the building in safe repair. Enid, Oklahoma is one such community. The more usual provision is that the structural changes or alterations will not be permitted to exceed a specified percentage of the assessed valuation of the building. Springfield, Oregon permits alterations totalling up to 50% of the value of the building in a ten year period. La Crosse, Wisconsin permits alterations up to 50% of assessed valuation for the life of the building. The percentages and the time in which they may be made vary with localities; many communities do not specify a time in which the cost of alterations aggregate.

If there are limitations on the rebuilding of structures following damage by fire, flood or similar cause, the regulations usually provide that if a specified percentage of the value of a building (ranging typically from 50 to 75%) has been destroyed, the building shall not be reconstructed. Some ordinances specify a time limit (generally no more than 2 years, and usually one year or less) in which reconstruction must be started if it is to be started at all.

If a non-conforming use is abandoned for a specified period of time, the use usually may not be re-established. Regulations vary from an unqualified statement that if discontinued, a non-conforming use may not be re-established, as in Schenectady, New York, to a statement that a period of 5 years constitutes abandonment as in Bergenfield, New Jersey. One year is the most frequently specified time period. Examples of shorter specified periods are the Brainerd, Minnesota ordinance which provides that 30 days constitutes abandonment and the Fairfax County, Virginia ordinance which specified 90 days. If it is not explicit in the ordinance, the zoning agency and the courts hold that the period of abandonment must

exceed a "reasonable" time interval between tenants. Also, discontinuance of use caused by war service of the proprietor, or accident, or unpropitious circumstances does not constitute abandonment.

Eminent domain could be used to eliminate non-conforming uses; indeed, eminent domain was used in the early applications of zoning. However, it would be very costly to eliminate non-conforming uses through eminent domain procedures. Massachusetts is one state in which, for the protection of approaches to publicly owned airports, non-conforming structures and land or easements thereon, may be acquired through eminent domain. (Laws of 1941, c.537)

Section 40G says in part:

"Whenever airport approach regulations have been adopted or amended and the public safety and convenience require the removal or lowering of a structure or tree not conforming to such regulations, as adopted or amended, or require other interference with the continuance of any such non-conforming structure or tree, the city or town owning the airport to which such regulations relate may take by eminent domain under chapter seventy-nine or chapter eighty A, or acquire by purchase or otherwise, the land upon which such structure or tree stands, or such an air right, easement or other estate or interest thereon, as may be necessary..."

Time limits have been established by zoning ordinances in which non-conforming uses must be eliminated; the time limits are presumed sufficient for the amortization of the structure and/or investment. There are not many examples of either local provisions for or enforcement of such provisions in cases of uses conducted in buildings designed for purposes later classified as non-conforming uses. The most numerous examples and the most successful application of provisions for the elimination of non-conforming uses have covered structures which are inexpensive or merely accessory to a non-conforming use of the land, and/or when the non-conforming use partakes somewhat of the character of a nuisance. Thus billboards and overhanging signs, junk yards, automobile wrecking yards, laundries, and poultry slaughter yards, are among the non-conforming uses for which many ordinances specify elimination and of which there has been actual elimination. Extracts from such ordinances will be presented in this report.

Both Los Angeles and New Orleans now have provisions for the elimination of non-conforming uses in buildings specifying a period of amortization. Both have had favorable court interpretation of municipal action to enforce the elimination of non-conforming uses, although the cases did not test the present ordinances. Los Angeles by means of a local ordinance based on the home rule constitution of California excluded brick-kilns from a district that was largely residential. The city authorities proceeded to oust a brick-burning establishment which made bricks from clay obtained on the premises. In the *Hadacheck* case, (*Hadacheck v. Sebastian*, 165 Cal. 416, 132 P. 584, 239 U. S. 394, 36 S. Ct. 143 (1915)), this action was upheld by the Supreme Court of California and by the United States Supreme Court, although the brick-burning establishment was in existence at the time the ordi-

nance was passed. The court decided that although the taking of clay from the earth was not prohibited, baking it was harmful to the community.

The California courts in a later case, however, rendered a decision in which the court said: "does the broad view of the police power which justifies the taking away of the right to engage in such businesses in certain territory, also justify the destruction of existing businesses? We do not think that it does." The court also stressed that the ordinance in question was designed to eliminate asylums and rest homes in residential districts and was not connected with an integrated zoning plan but was "directed toward one type of business." (*Jones v. Los Angeles*, 295 P. 14 (1930))

In 1929, two cases were decided by the courts (*State ex rel. Dema Realty Co. v. Jacoby*, 168 La. 752, 123 S. 314 (1929) and *State ex rel. Dema Realty Co. v. McDonald*, 168 La. 172, 121 S. 613 (1929) cert. den. 280 U. S. 556 (1929)); upholding the action of New Orleans city officials in ousting existing non-conforming uses, one a grocery store, the other a drug store, both of which were ordered to cease operating and depart after one year. The court seemed to find that one year was a reasonable time for amortization.

From later information, it appears that New Orleans did not take advantage of the court ruling and permitted the uses to continue. Section 10 (d) of the New Orleans 1929 zoning ordinance provided for the removal of non-conforming commercial and industrial uses from residential districts:

"Removal of Non-Conforming Commercial or Industrial Uses: All non-conforming commercial or industrial uses located in a residence or apartment district according to the provisions of this ordinance, shall vacate within a period of fifteen (15) years in an 'A' Residence District and 20 years in 'B', 'C' & 'D' Districts from the date of the passage of this ordinance, provided, however, that this provision shall apply only to commercial or industrial uses and shall not be construed or interpreted to apply to the removal of uses herein permitted in residential or apartment districts as enumerated under Section 3, 4 and 5, and which were legally established at the time of the passage of this ordinance. "The foregoing provisions shall also apply to non-conforming uses in districts hereafter changed."

("B", "C" and "D" Districts are multiple dwelling districts with accessory buildings; the "A" residence district includes one and two family dwellings and accessory buildings. Sections 3, 4, and 5 specify the uses permitted in these districts.)

Hundreds of retail establishments were to be removed by 1944, thus allowing the merchants 15 years to amortize their investments and move to one of the many commercial districts in the city. However, in 1944, the ordinance was amended to extend this period for an additional five years, and the Commission Council of the City of New Orleans has been again considering the extension of this period for two years beyond the 1949 expiration date.

The Los Angeles zoning ordinance provides not only for the elimination of non-conforming uses of both land and buildings, but also for the elimination of buildings or structures that do not conform to all the height and area regulations of the zones in which they are located. Sec. 12.23 of the Comprehensive Zoning Plan of the City of Los Angeles, adopted by Ordinance No. 90,500 and amended to and including Ordinance No. 93,346, says in part:

“In all ‘R’ Zones, every nonconforming building or structure which was designed, arranged or intended for a use permitted only in the ‘C’, ‘CM’ and ‘M’ Zones or in the ‘A’ or ‘RA’ Zones but not in the ‘R’ Zones, shall be completely removed, or altered and converted to a conforming building, structure and use when such buildings or structures have reached, or may hereafter reach, the ages hereinafter specified, computed from the date the building was erected. In the case of buildings defined in the Los Angeles City Building Code as Class I and II, forty (40) years; Class III and IV, thirty (30) years; and Class V, twenty (20) years. Provided, however, that this regulation shall not become operative until twenty (20) years from the effective date of this article.”

(“R” zones are residential zones, “C” commercial, “CM” business, “M” industrial, “A” agricultural, and “RA” suburban. “Nonconforming building” is defined in the ordinance as “a building or structure or portion thereof lawfully existing at the time this Article became effective, which was designed, erected or structurally altered, for a use that does not conform to the use regulations of the zone in which it is located, or a building or structure that does not conform to all the height and area regulations of the zone in which it is located.”)

There are also the following provisions in the same section:

“...all nonconforming uses of buildings or structures conforming to the use regulations shall be discontinued not later than five (5) years from the effective date of this Article.”

“The nonconforming use of land (where such use is the principal use) existing at the time this Article became effective, may be continued for a period of not more than five (5) years from said effective date and shall also be subject to the following regulations:

“(a) No such nonconforming use of land shall be expanded or extended in any way either on the same or adjoining property;

“(b) Where such nonconforming use of land or any portion thereof is discontinued or changed, any future use of such land shall be in conformity with the provisions of this Article.”

Also:

“...all such nonconforming signs, billboards, commercial advertising structures and statuary and their supporting members shall be completely removed from the premises not later than five (5) years from the effective date of this Article.”

An amendment passed by City Council on December 3, 1942 to the Chicago Zoning Ordinance differs from the preceding ordinances cited not only in the period of amortization but in the provision that the non-conforming use shall be discontinued upon transfer of ownership or termination of an existing lease:

“Amortization of non-conforming uses. All non-conforming specialty shop, business, commercial, manufacturing and industrial uses in Family Residence, Duplex Residence, Apartment House and Group House districts shall be discontinued upon transfer of ownership or termination of the existing lease, as the case may be, of the person in possession as owner or lessee of the property devoted to such non-conforming use on the effective date of this ordinance, unless then maintained in a building designed for such non-conforming use which is not older than 50 years or in a building designed for such non-conforming use which has been reconstructed in major part or enlarged in major part within 50 years, in which event such non-conforming use of the building shall be discontinued when fifty years have elapsed from the time when it was erected or so reconstructed or enlarged.”

The provisions for the elimination of non-conforming uses in the zoning ordinance adopted by Muncie, Indiana in 1947 are almost identical with those of the Chicago ordinance. The Muncie ordinance does not describe the non-conforming uses or residential districts in the same detail as the Chicago ordinance.

The Zoning and Planning Ordinance of The City of Topeka, Kansas, as revised to December 1, 1948, specifies in Article 16:

“30-1606. Expiration non-conforming uses. Except as provided in Paragraph 7 of this section, all non-conforming commercial or industrial buildings located within “A”, “B” and “C” districts shall be removed or converted, and the building thereafter devoted to a use permitted in the district in which such building is located, on or before April 1, 1952; Provided, however, that non-conforming commercial or industrial buildings located within “A”, “B”, and “C” districts for which building permits were issued after April 1, 1920, shall be removed or converted, and the building thereafter devoted to a use permitted in the district in which such building is located, within forty (40) years from the date of the issuance of a building permit therefor but in all cases on or before April 1, 1982. (Revised Ordinances 1942, Part One, Sec. 53-1406)”

These provisions for the elimination of non-conforming uses are also included in the zoning ordinance adopted by the Village of Glendale, Ohio in 1943, except that in the Glendale ordinance, April 1, 1922 is the date specified instead of April 1, 1920, and “AA”, “A”, “B”, and “C” Residential Districts are specified instead of “A”, “B” and “C” districts.

The Topeka ordinance also states:

“30-1607. Same, junk yards, etc. 1. The non-conforming use of a building or premises for the purpose of dismantling or wrecking automobiles and other vehicles of any kind, or for the purpose of storing junk, scrap iron and scrap material including dismantled and wrecked automobiles or other vehicles, shall be discontinued and the building or premises thereafter devoted to a use permitted in the district in which such building or premises is located, on or before January 1, 1946. 2. Any non-conforming use as defined above in (1) which comes within the corporate limits of the city by virtue of annexation shall be discontinued and the building and premises thereafter devoted to a use permitted in the district in which such building or premises is located, on or before five years after the date of annexation. (Revised Ordinances 1942, Part One, Sec. 53-1407, as amended by Ord. 7681, Sec. 5, 1947)”

The Revised Zoning Ordinance of Wichita, Kansas, (September, 1946) Section 24, “Non-conforming Use Regulations”, says in part:

“...provided that all non-conforming commercial or industrial buildings located within the ‘AA’ and ‘A’ Dwelling Districts shall be removed or converted, and the building thereafter devoted to a use permitted in the district in which such building is located, on or before January 1, 1997; provided further that non-conforming commercial or industrial buildings located within the above enumerated districts for which a building permit was issued after January 1, 1937, shall be removed or converted, and the building thereafter devoted to a use permitted in the district in which such building is located, within sixty (60) years from the date of the issuance of a building permit.”

Fernandina, Florida’s Zoning Ordinance No. 119 of December, 1937, as amended by Ordinance No. 123 of April, 1938, contains in Section 11, “Non-Conforming Uses”, an unique provision:

“A non-conforming use existing at the time of the passage of this ordinance may be continued for a length of time based on an amortization period of one year for each one thousand (\$1,000.00) dollars, or major fraction thereof, of valuation of building and real stock at the time of the passage of this ordinance; said valuation being set out in full in the certificate of occupancy issued as provided herein. At the expiration of said amortization period, any further use of said land shall be in conformity with the provisions of this ordinance.”

The Toledo-Lucas County Plan Commissions prepared in August 1948, a preliminary zoning resolution for the guidance of and potential adoption by townships in Lucas County, Ohio. Periods of amortization of non-conforming buildings or structures in residential districts were specified according to type of construction:

‘Removal: In all ‘R’ districts, every non-conforming building or structure shall be removed or altered and converted to a conforming building or structure and use when such buildings or structures have reached the

ages hereinafter specified, computed from the date when constructed.  
In the case of:

1. Fire-Resistive Construction . . . . . 40 years

These are buildings in which the structural members are of approved noncombustible construction having the necessary strength and stability and having fire resistance ratings of not less than four hours for exterior walls and for wall panels, for columns, and for wall-supporting girders and trusses; and not less than three hours for floors, for roofs, and for floor and roof supporting beams, girders and trusses; and in which exterior bearing wall and interior bearing walls, if any, are of approved masonry or of reinforced concrete, or other approved materials having equivalent fire resistance ratings.

2. Heavy Timber Construction . . . . . 30 years

These are buildings in which walls are of approved masonry or reinforced concrete; and in which the interior structural elements including columns, floors and roof construction, consist of heavy timbers with smooth flat surfaces assembled to avoid thin sections; sharp projections and concealed or inaccessible spaces; and in which all structural members which support masonry walls shall have a fire resistance rating of not less than three hours; and other structural members of steel or reinforced concrete, if used in lieu of timber construction shall have a fire resistance rating of not less than one hour.

3. Ordinary Masonry Construction . . . . . 30 years

These are buildings in which exterior walls and bearing walls are of approved masonry, or reinforced concrete, and in which the structural elements are wholly or partly of wood of smaller dimensions than required for heavy timber construction, or of steel or iron not protected as required for fire-proof construction.

4. Metal Frame Construction . . . . . 20 years

These are buildings in which the structural supports are unprotected metal and in which the roofing, and walls or other enclosures are of sheet metal, or of other noncombustible materials, or of a masonry deficient in thickness or otherwise not conforming to approved masonry.

5. Wood Frame Construction . . . . . 20 years

These are buildings in which walls and interior construction are wholly or partly of wood. Buildings of exterior masonry veneer,



metal or stucco on wooden frame, constituting wholly or in part, the structural supports of the building or its loads, are frame buildings within the meaning of this definition.

Provided, however, that this regulation shall not become operative until five (5) years from the effective date of this Resolution.’’

The Village of Dellwood, Minnesota designated itself as a residential district in 1940, permitting only residential buildings and their accessory buildings and land uses and community facilities such as churches and schools, libraries, community buildings owned by the municipality, and buildings for other municipal purposes, truck gardening nurseries and greenhouses, golf links and golf clubs, and ‘‘uses customarily incident to any of the above uses, when located on the same premises and not involving the conduct of a business.’’ A provision in the zoning ordinance states:

‘‘It shall be and is hereby declared to be unlawful for any person, firm, association or corporation to devote any property within the Village of Dellwood to any use forbidden by this ordinance, or to continue to use any such property for any use forbidden by this ordinance for a longer period than 60 days after the passage of this ordinance.’’

Penalties were provided for violations:

‘‘Any person who shall violate or fail to comply with any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed \$100.00, or by imprisonment for not to exceed 90 days for each offense. Each day that a violation of this ordinance continues shall constitute a separate offense.’’

We have no record of any enforcement or testing of this ordinance, nor do we know whether any non-conforming uses existed at the time the ordinance was passed.

The zoning ordinance of Grosse Pointe Shores, Michigan, approved in April 1927, provided for a two year period of amortization of non-conforming buildings and premises:

‘‘The lawful use of buildings and premises at the time of the adoption of this ordinance may be continued, although such use does not conform with the provisions thereof, for a period of 2 years from date when this ordinance shall be effective, after which time all of buildings and of premises within the Village shall be made to conform with the provisions of this Ordinance.’’

The Seattle Zoning Code as amended to May 1, 1942, contains Section 9, on Non-Conforming Uses:

‘‘(a) Any trade, industry or use listed as prohibited in Section 7 of this ordinance, which is existing in any district other than an Industrial

District at the time this ordinance becomes effective, shall not be continued as a non-conforming use, but shall be discontinued not later than December 31st, 1923, and a failure to discontinue the same on or before said date shall be unlawful.’’

(These industries include slaughter houses, glue and hair factories, rendering of fat, tannery, wool pulling or scouring, fertilizer, ‘‘and any other trade, industry or use which is, or is likely to become, similarly objectionable by reason of the emission of dangerous, unwholesome, foul, nauseous or offensive gases, odors or fumes’’.)

### Examples of State Zoning Enabling Acts Authorizing Elimination of Non-Conforming Uses.

The Pennsylvania County Zoning Enabling Act, (Act. 435, P. L. 1937), authorizes counties of the second, third, fourth, fifth, sixth, seventh and eighth classes to eliminate non-conforming uses by this provision:

‘‘The board of county commissioners may in any zoning ordinance provide for the termination of non-conforming uses, either by specifying the period or periods in which non-conforming uses shall be required to cease, or by providing a formula or formulae whereby the compulsory termination of a non-conforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance.’’

Unfortunately, these powers have not been utilized. Francis Pitkin, Executive Director, Pennsylvania Planning Board, wrote in 1946:

‘‘So, after nine years of zoning authority for Pennsylvania’s sixty-seven counties, only one county can report the enactment of a county zoning ordinance and even there the ordinance covers only a portion of the county

Illinois Revised Statutes, 1945 (Chapter 24, Article 73), says in part:

‘‘The powers conferred by this article shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose of which it is then lawfully devoted, but provisions may be made for the gradual elimination of uses, buildings and structures which are incompatible with the character of the districts in which they are made or located, including, without being limited thereto, provisions (a) for the elimination of such uses or unimproved lands or lot areas when the existing rights of the persons in possession thereof are terminated or when the uses to which they are devoted are discontinued; (b) for the elimination of uses to which such buildings and structures are devoted, if they are adaptable for permitted areas; and (c) for the elimination of such buildings and structures when they are destroyed or damaged in major part, or when they have reached the age fixed by the corporate authorities of the municipality as to the normal useful life of such buildings or structures.’’

In enabling legislation for Boston, the Massachusetts Special Acts of 1941 specified in chapter 373: "No use of a building or premises, or part thereof, which does not conform to the provisions of sections one to nine, inclusive [use provisions] of this act, shall be continued after April one, nineteen hundred and sixty-one." Boston on May 15, 1941 adopted a new building code and appended to its zoning law, amendments which provided for the elimination of non-conforming uses based on a twenty-year period of amortization starting with April 1, 1941.

#### Elimination of Non-Conforming Uses of Land

The following are extracts from zoning ordinances which provide for the elimination of non-conforming uses of land not contained in buildings.

King County, Washington (zoning ordinance as amended to October 22, 1940)

"The lawful use of land, if connected as a business unit with the lawful use of a building on the same building site in Residence, Suburban, and Agriculture Use Districts, although such use does not conform to the provisions hereof, may be continued for the term of one (1) year only from and after the time of the passage of this resolution."

Twin Falls, Idaho (Code of 1933)

"In a Residence District any non-conforming use not conducted inside a building shall be discontinued with a period of one (1) year from the date of the adoption of this ordinance."

Oklahoma City, Oklahoma (Zoning Ordinance No. 5936 approved December 9, 1947)

"The lawful use of land not containing buildings which does not conform to the provisions of this Ordinance shall be discontinued within two years from the effective date of this Ordinance, and the use of land which becomes non-conforming by reason of a subsequent change in this Ordinance shall be discontinued within two years from the date of the change."

Lawrence, Kansas (Ordinance No. 1637, adopted August 8, 1927)

"A non-conforming use existing lawfully at the time of the passage of this ordinance may be continued. In a class U-1 or U-2 District [ Dwelling House and Apartment House District ] no non-conforming use shall be continued beyond the term ending one year from the time of the adoption of this ordinance unless such premises be wholly or partially occupied at the time of the adoption of this ordinance by a permanent enclosed building."

Quincy, Illinois (Ordinance No. 1074 of March 1946)

“The lawful use of land containing no buildings which does not conform to the provisions of this ordinance shall be discontinued within two (2) years from the date of the approval of this ordinance and the use of land which becomes non-conforming by reason of a subsequent change in this ordinance shall also be discontinued within two (2) years from the date of the change.”

Elimination of Non-Conforming Uses Contained in Special Buildings.

Blackwell, Oklahoma (Ordinance 995, of November 30, 1926)

“...in a primary residential or secondary residential district no non-conforming use shall be continued beyond a term ending one year from the time of the passage of this ordinance, unless such premises be wholly or partly occupied by a permanently enclosed building, designed and constructed for such non-conforming use.”

Greenwich, Connecticut (September 23, 1947)

“A non-conforming use of land not involving a building or involving buildings, structures or improvements which have a value of less than one thousand (\$1000.00) dollars shall be discontinued within three (3) years from the adoption of these regulations, and any such use which becomes non-conforming by reason of a subsequent change in these regulations or in the zone boundaries shall be discontinued within three (3) years from the date of such change.”

Excelsior Springs, Missouri (Ordinance No. 3270, December 10, 1928)

“A non-conforming use existing lawfully at the time of the passage of this ordinance may be continued in a Class U-1 or class U-2 district [Dwelling and Apartment House Districts]. No non-conforming use shall be continued beyond the term ending one year from the time of the adoption of this ordinance unless such premises be wholly or partially occupied by a permanent enclosed building, designed and constructed for a non-conforming use. In a class U-1 or class U-2 district no non-conforming use of a building, designed, and constructed for a conforming use, shall be continued beyond a term ending one year from the time of the adoption of this ordinance.”

Hartford, Connecticut (October 8, 1945)

“The use of any building as a boarding or rooming house in a residence zone ‘A-1’ shall be discontinued within one year from the adoption of this ordinance. The building shall thereafter be devoted to a use permitted in the ‘A-1’ zone.

“The use of any building as a boarding or rooming house in residence zones ‘A-2’ and ‘A-3’ shall be discontinued within ten years from the adoption of this ordinance and building shall thereafter be devoted to

a use permitted in the zone in which the building is located.’’

Kansas City, Missouri: (zoning ordinance as amended in 1941)

‘‘No non-conforming use of land shall be continued beyond the term ending one year from the time of the adoption of this ordinance unless such land be wholly or partially occupied by a permanent enclosed building, designed and constructed for a non-conforming use.

‘‘In a class U-1 or class U-2 district no non-conforming use of a building, designed and constructed for a conforming use, shall be continued beyond a term ending one year from the time of the adoption of this ordinance, except by authorization of the Board of Zoning Adjustment.’’

### Billboards or Signs

Many communities have regulated billboards and signs and eliminated those not conforming to the regulations. Arlington County, Virginia is an outstanding example of a community enforcing its provisions that all non-conforming billboards and signs be removed. Arlington’s original ordinance, adopted in 1938, permitted billboards only in the heavy industrial districts, the others to be removed in 90 days. This provision was challenged in the courts, and the ordinance was amended shortly thereafter to also permit billboards under certain restrictions in general commercial and light manufacturing districts. This amended ordinance was not challenged. More than half of the 108 billboards then standing were non-conforming and were removed within the 90 day time limit. Also within the 90 day time limit, 2,665 business signs were removed.

Marin County, California allowed six months for the removal of non-conforming signs. Knox County, Tennessee and Southampton, New York limited the continuance of non-conforming signs to two years. Spring Valley, New York and Fort Worth and Lufkin, Texas allowed three years; Huntington, Brookhaven and Smithtown, New York and Santa Cruz County, California, five years. Detroit Michigan in an ordinance of January 9, 1940 limited the continuance of non-conforming signs to 3 years, ‘‘Except that non-conforming signs, especially describing the business or nature of a non-conforming building, structure or use may be maintained during the lawful lifetime of such building, structure or use.’’

In 1945, the Michigan State Supreme Court upheld Detroit’s program of sign elimination and control on Woodward Avenue, stating, ‘‘We conclude that the amendment to the ordinances under consideration was not unreasonable, does not infringe upon the constitutional limitation that the control of its streets by a municipality must be a reasonable control, and that it is a valid ordinance as against the objections raised...’’ (*1426 Woodward Avenue Corporation (James Vernor Co. et al., Interveners) v. Wolff et al., Supreme Court of Michigan (October 8, 1945), 20 North Western (2d) 217*

Junk yards, automobile wrecking yards, storage yards, parking lots, and similar uses.

Cleveland, in its zoning ordinance of 1939 provides that salvaged materials could not be stored or sold except within an enclosed fireproof building:

“From and after eighteen months after the effective date of this section, it shall be unlawful, except as may be authorized by the Board of Zoning Appeals under Section 1281-23 of the municipal code, for any person, persons, partnership, firm or corporation to operate or maintain or to permit to be operated or maintained a space not within an enclosed fireproof building for the storage and/or sale of salvaged lumber or other used building material or of junk metal, paper, rags, rubber, glass or other discarded salvaged articles....”

Englewood and Longmont, Colorado adopted identical provisions in 1940:

“The non-conforming use of land for parking lots, storage yards, auction yards, junk yards, used cars or wrecking yards, golf practice tees, and similar uses, where no building of more than one hundred (100) square feet is in existence at the time of the passage of this ordinance, shall revert to a use conforming with this zoning ordinance within a period of two years after the passage of this ordinance.”

Boulder and El Paso Counties, Colorado, have somewhat similar provisions as above, but specify three years as the time limit for elimination of non-conforming advertising signs, junk yards, auction yards, saw mills and coal yards.

The ordinance of Vallejo, California (1936) states:

“Regardless of any other provisions of this ordinance, the following regulations shall apply to any junk yard, building materials storage yard, contractors’ yard or any similar more or less temporary use of land when located as a non-conforming use in any dwelling district.

“1. Any such use is hereby declared to be a public nuisance in any dwelling district established by this ordinance and shall be abated, removed or changed to a conforming use within a period of one (1) year after the date of passage of this ordinance.

“2. Whenever any district shall have been changed to a dwelling district from any other district, the date of abatement, removal or change of such non-conforming use shall be within a period of one (1) year after the date of change of such district.”

Spring Valley, New York’s Ordinance of 1939 provides:

“Notwithstanding any other provisions of this Ordinance, any automobile or other junk yard, any automobile dismantling plant, or any live chicken or poultry market or chicken or poultry slaughter house

or place where live chickens or poultry are kept or killed for commercial purposes, in existence at the date of the passage of this Ordinance in a Residence or Commercial District, shall, at the expiration of three (3) years from the date this Ordinance becomes effective, be discontinued. The Board of Appeals may, however, permit its continuance as a special exception as herein provided.’’

The zoning ordinance of 1939 for Solano County, California states:

‘‘Regardless of any other provision of this ordinance, no junk yard which, after the adoption of this ordinance, exists as a non-conforming use in any district, shall continue as herein provided for non-conforming uses unless such junk yard shall, within 1 year after the same has become a non-conforming use, be completely enclosed within a building or within a continuous solid fence not less than 8 feet in height and in any case of such height as to screen completely all the operations of such junk yard, of which building or fence the plans shall first have been approved by the Planning Commission. All other provisions of this section shall apply to any non-conforming junk yard.’’

The ordinances of Santa Clara and Santa Cruz Counties, California, are drafted along the same general lines as above. Kern County, California provides for a one year period prior to elimination of junk yards; Lindenhurst, Huntington, Brookhaven and Smithtown, New York, all provide for the elimination of automobile wrecking and junk yards within two years from residential districts, while Babylon, New York allow three years, and Hempstead and Malverne, New York specify elimination from business districts, also, allowing a three and two year period, respectively.

