

CHAPTER 10 | NONCONFORMITIES

Table of Contents

ART. 10.1 GENERAL 10-1

ART. 10.2 NONCONFORMING USES 10-2

ART. 10.3 NONCONFORMING STRUCTURES..... 10-3

ART. 10.4 NONCONFORMING LOTS..... 10-4

ART. 10.5 NONCONFORMING SIGNS 10-5

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ARTICLE 10.1 GENERAL

§10.1.1 PURPOSE

It is the general policy of the County to allow uses, structures, lots, signs and other situations that came into existence legally—in conformance with then-applicable requirements—to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with existing regulations as is reasonably possible. This Chapter establishes regulations governing uses, structures, lots and signs that were lawfully established but that do not comply with one or more existing requirements of this Ordinance. The regulations of this Chapter are intended to:

- A. Recognize the interests of property owners in continuing to use their property;
- B. Promote reuse and rehabilitation of existing buildings; and
- C. Place reasonable limits on the expansion of nonconformities that have the potential to adversely affect surrounding properties and the county as a whole.

§10.1.2 AUTHORITY TO CONTINUE

Any nonconformity that legally existed on April 21, 1999, or that becomes nonconforming upon the adoption of any amendment to this Ordinance may be continued in accordance with the provisions of this Chapter.

§10.1.3 DETERMINATION OF NONCONFORMITY STATUS

The burden of establishing that a nonconformity is a legal nonconformity shall, in all cases, be solely upon the owner of such nonconformity.

§10.1.4 REPAIRS AND MAINTENANCE

Incidental repairs and normal maintenance of nonconformities shall be permitted unless such repairs are otherwise expressly prohibited by this Ordinance. Nothing in this Chapter shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of the Director of Building Services or their designee.

§10.1.5 CHANGE OF TENANCY OR OWNERSHIP

The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

§10.1.6 NONCONFORMITIES CREATED BY PUBLIC ACTION

When lot area or setbacks are reduced as a result of conveyance to a federal, state or local government for a public purpose and the remaining area is at least 50 percent of the otherwise applicable minimum standard, then that lot shall be deemed to be in compliance with the minimum lot area and setback standards of this Ordinance.

ARTICLE 10.2 NONCONFORMING USES**§10.2.1 DEFINITION**

A "Nonconforming Use" is a use that was legally established but which is no longer allowed by the use regulations of the zoning district in which it is located.

§10.2.2 EXPANSION

A nonconforming commercial or industrial use shall not be enlarged or expanded unless one of the following conditions exists:

- A. Such expansion eliminates or reduces the nonconforming aspects of the situation; or
- B. The expansion is into a part of the building or structure that was lawfully and manifestly designed or arranged for such use, provided that no such expansion shall be allowed if it displaces a conforming use.

§10.2.3 CHANGE OF USE

- A. A Nonconforming Use may not be changed to any use other than a use allowed in the zoning district in which it is located, provided that the Board of Zoning Appeals shall be authorized to approve a change to another Nonconforming Use in accordance with the Special Exception procedures of this Ordinance. In acting upon such requests, the Board of Zoning Appeals shall not be guided by the Special Exception approval criteria of this Ordinance, but rather shall approve the change of use only upon a finding that the new use will be less detrimental to adjacent property and general area than the existing Nonconforming Use.
- B. When a conforming use becomes nonconforming as a result of a Zoning Map Amendment initiated by the applicant, the Nonconforming Use shall then be removed prior to the issuance of a Certificate of Occupancy for the conforming use.

§10.2.4 LOSS OF LEGAL NONCONFORMITY STATUS**A. Abandonment**

If a Nonconforming Use is replaced with another use or is discontinued for any reason for a period of more than 12 consecutive months or 18 months in cumulative total within any three-year period, the use shall be considered abandoned. Once abandoned, the use's legal nonconforming status shall be lost and re-establishment of a Nonconforming Use shall be prohibited. Any subsequent use of the property shall comply with the regulations of the zoning district in which it is located.

B. Damage or Destruction

1. No nonconforming Commercial or Industrial Use that is damaged by fire or any other cause shall be restored if the cost of the repair work equals 50 percent or more of the use's total physical replacement cost (which shall consist solely of labor and materials). Determination of physical replacement costs shall be made by the Director of Building Services. When such repairs are allowed to be made, they shall be in full compliance with the regulations of this Ordinance.
2. A nonconforming Residential Use that is damaged by fire or any other cause may be restored. In such cases, the use may be re-established to the extent that existed before the time of damage (within the pre-existing structure boundaries [footprint and height]), provided that the repairs or rebuilding do not increase the degree of nonconformity and provided that such repairs, restoration or reconstruction begin within 12 months of the date of such damage.

§10.2.5 ACCESSORY USES AND STRUCTURES

No use or structure that is accessory to a principal Nonconforming Use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it complies with all regulations of this Ordinance.

ARTICLE 10.3 NONCONFORMING STRUCTURES

§10.3.1 DEFINITION

A "Nonconforming Structure" is any building or structure that was legally established but which no longer complies with the Density, Intensity and Dimensional Standards of the underlying zoning district.

§10.3.2 USE

A Nonconforming Structure may be used for any use allowed in the underlying zoning district.

§10.3.3 EXPANSION

A nonconforming residential structure may be enlarged or expanded if such residential expansion follows the outside wall at ground level, other than porches, decks or canopies. The outside wall (other than porches, decks or canopies) of a non-conforming residential structure that does not meet current dimensional standards (setbacks), shall only be allowed to expand vertically from ground level provided that such expansion does not exceed the maximum height requirements for that zoning district or encroach into any setback. All other expansion shall meet all other applicable portions of the Ordinance including density, intensity and dimensional standards.

§10.3.4 MOVING

A Nonconforming Structure may be moved in whole or in part to another location if the movement or relocation does not increase the extent of nonconformity.

§10.3.5 SUBDIVISION

If a lot is occupied by a Nonconforming Structure, it may be subdivided provided that subdividing does not create a new nonconformity or increase the degree of nonconformance of the structure.

§10.3.6 LOSS OF LEGAL NONCONFORMING STATUS; DAMAGE OR DESTRUCTION

- A. No Nonconforming Commercial or Industrial Structure that is damaged by fire or any other cause shall be restored if the cost of the repair work equals 50 percent or more of the structure's total physical replacement cost. Determination of physical replacement costs shall be made by the Director of Building Services. When such repairs are allowed to be made, they shall be in full compliance with the regulations of this Ordinance.
- B. A Nonconforming Residential Structure that is damaged by fire or any other cause may be restored. In such cases, the structure may be re-established to the extent that existed before the time of damage (within the pre-existing structure boundaries [footprint and height]), provided that the repairs or rebuilding do not increase the degree of nonconformity and provided that such repairs, restoration or reconstruction begin within 12 months of the date of such damage.
- C. Nothing in this Section shall conflict with the requirements of the Federal Emergency Management Agency's Flood Plain Management Regulations.

ARTICLE 10.4 NONCONFORMING LOTS**§10.4.1 DEFINITION**

A "Nonconforming Lot" is a tract of land, designated on a duly recorded subdivision plat, or by a duly recorded deed, or by other lawful means, that complied with the lot area, lot width and lot depth standards of the zoning district in which it was located at the time of its creation, but which does not comply with the minimum lot area, lot width or lot depth requirements of the zoning district in which it is now located.

§10.4.2 VACANT LOTS

If a Nonconforming Lot or parcel was vacant on the date on which this Ordinance became applicable to it, then the owner may use the property for uses allowed by the underlying zoning district, provided that the use shall comply with applicable setback to the maximum extent possible. If the underlying zoning district permits a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with setback standards, while others would not, then only the uses or intensities that would comply with the applicable setback standards shall be permitted.

§10.4.3 LOT WITH BUILDING OR STRUCTURE

If a Nonconforming Lot or parcel contains a building or structure on the date on which this Ordinance become applicable to it, then the owner may continue the use of that building or structure and may reasonably expand the structure in any way that does not increase the degree of nonconformity; an increase in building size shall not be deemed to increase the degree of nonconformity unless it increases the encroachment on a required setback.

ARTICLE 10.5 NONCONFORMING SIGNS**§10.5.1 DEFINITION**

A "Nonconforming Sign" is any sign that was legally established but which no longer complies with the Sign Regulations contained in Chapter 9 of this Ordinance.

§10.5.2 ON-PREMISES SIGNS

All legal nonconforming permanent On-Premises Signs in place prior to April 21, 1999, shall be removed or replaced by April 20, 2001. All other On-Premises Signs not in conformance with the standards of this Ordinance shall be removed or otherwise brought into compliance with the standards of this Ordinance.

§10.5.3 OFF-PREMISES SIGNS

- A. All legally existing nonconforming Off-Premises Signs shall be removed, altered or otherwise made to conform to the provisions of this Ordinance.
- B. All other Off-Premises Signs shall be removed, altered, or brought into compliance with the provisions of this Ordinance.

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