

ARTICLE J. Nonconformities

SECTION 10-3-110. Nonconforming Uses and Structures

- A. **Applicability.** A use or structure that was lawful when established, which does not conform to this Ordinance at the time of enactment or later amendment, is a nonconformity regulated by this Section.
- B. **Nonconforming Uses.**
 - 1. **Continuation.** A lawful nonconforming use may continue so long as:
 - a. The use remains the same or changes to a use that is less intensive;
 - b. The use is not discontinued for more than 2 years; and
 - c. The structure is maintained in compliance with the USBC.
 - 2. **Discontinuance and Abandonment.**
 - a. If a nonconforming use ceases for more than 2 years, the nonconforming status is lost, regardless of intent to resume.
 - b. After the nonconforming use is abandoned, any subsequent use must comply with all requirements of this Ordinance.
 - 3. **Change to Another Use.**
 - a. A nonconforming use may be changed only to a use permitted in the zoning district or a less intensive nonconforming use.
 - b. If a less intensive nonconforming use continues for 2 years, the prior, more intensive nonconforming use has been discontinued and may not be re-established.
 - 4. **Enlargement or Expansion of a Nonconforming Use.**
 - a. A nonconforming use may not be enlarged, extended, intensified, or expanded in gross floor area, outdoor activity area, outdoor storage area, occupancy, number of dwelling units, or any other identifiable measure of intensity.
 - b. Any numerical increase in any use regulated by this Ordinance through numeric standards constitutes an enlargement.
 - 5. **Exception for Nonconforming Single-Family Detached Dwellings.** Whenever an otherwise nonconforming single-family detached dwelling in a district that does not

permit such use is converted to contain multiple dwelling units or expanded beyond its otherwise permitted number of occupants, the single-family detached dwelling may continue as a nonconforming single-family detached dwelling, notwithstanding (B)(4) above, provided that:

- a. The total square footage of the structure remains unchanged; and
- b. Occupancy of the single-family detached dwelling is reduced or limited to 1 family or 2 unrelated individuals.

C. **Alterations to Structures Containing Nonconforming Uses.** A structure containing a nonconforming use may be enlarged or structurally altered only if all of the following are true:

1. The Zoning Administrator has issued a zoning determination documenting the existence and extent of the nonconforming use;
2. The enlargement or alteration does not increase the floor area devoted to the nonconforming use; and
3. Any new floor area is used only for a use allowed in the zoning district.

D. **Nonconforming Structures.**

1. **Continuation.** A nonconforming structure may continue and may be maintained and repaired, provided that the work does not increase the degree of any nonconformity.
2. **Enlargement and Structural Alteration.** A nonconforming structure may be enlarged or structurally altered if both of the following are true:
 - a. The new or altered portion of the structure complies with this Ordinance; and
 - b. The enlargement or alteration does not increase the degree of any existing nonconformity.
3. **Relocation.** A nonconforming structure may not be moved, whether on the same lot or to another lot, unless the structure conforms to this Ordinance at its new location.
4. **Damage by Natural Disaster, Act of God, or Accidental Fire.** The following standards apply to a residential or commercial building damaged or destroyed by a natural disaster, other act of God, or accidental fire:
 - a. **Right to Rebuild.** The owner may repair, rebuild, or replace the building without a variance. The work must eliminate or reduce the building's nonconforming features to the extent possible.

- b. **Restoration of Original Condition.** The owner may restore a building damaged more than 50 percent to its original nonconforming condition if no other means of repair, rebuilding, or replacement is possible.
 - c. **Codes.** The owner must obtain a building permit. All work must comply with the Uniform Statewide Building Code and, where applicable, any floodplain regulations.
 - d. **Time Limit.** The rights to rebuild and restore expire 2 years after the date of the damage or destruction. After that, the building may be repaired, rebuilt, or replaced only in compliance with this Ordinance.
 - e. **Federal Disaster Declaration.** The time limit is 4 years for a building in an area under a federal disaster declaration, if the damage resulted from the conditions that gave rise to that declaration.
5. **Other Damage or Destruction.** The following standards apply to any other damage or destruction of a nonconforming structure:
- a. **Replacement Cost.** Replacement cost is the cost to construct a new structure of the same size and type as the damaged structure.
 - b. **Damage of 50 Percent or Less.** A structure damaged to an extent not exceeding 50 percent of its replacement cost may be restored within 2 years after the damage. The restoration may not increase the degree of any nonconformity.
 - c. **Damage Over 50 Percent.** A structure damaged to an extent exceeding 50 percent of its replacement cost may be rebuilt only in compliance with this Ordinance.

E. Public Acquisition of Land.

- 1. Whenever a portion of a lot or structure is acquired by the City or the Commonwealth for transportation improvements, including stormwater and drainage facilities that are part of such improvements, whether by dedication, negotiated conveyance, or condemnation, any resulting failure to meet lot area, lot width, setback, or other dimensional requirements of this Ordinance shall be deemed a lawful nonconformity.
- 2. The nonconformity shall be limited to that portion of the lot or structure affected by the public acquisition and shall not authorize enlargement or extension.

3. No variance shall be required to allow the continued use, maintenance, or replacement of any structure or lot rendered nonconforming solely due to such public acquisition.

SECTION 10-3-111. Nonconforming Lots

- A. **Purpose.** The purpose of this Section is to protect lawfully established lots that do not meet the dimensional standards of this Ordinance, or that do not meet the requirements of the Subdivision Ordinance, while preventing the creation or development of substandard lots that would undermine the intent of this Ordinance.
- B. **Applicability.** This Section applies to any lot that:
 1. Was lawfully established prior to the effective date of this Ordinance or prior to any subsequent amendment that created the nonconformity; and
 2. Does not meet one or more currently applicable dimensional requirements.
- C. **Use and Development of a Nonconforming Lot.**
 1. A single, lawfully established nonconforming lot that was held in individual and separate ownership on the effective date of this Section, and that was not contiguous to any other lot under the same ownership on that date, may be used and developed for any permitted principal use in the district, except that where the district permits residential uses, the lot may be used for no more than one single dwelling, regardless of the number or type of dwellings otherwise allowed in the district.
 2. Where 2 or more contiguous, lawfully established nonconforming lots were under common ownership on the effective date of this Section, the lots shall be considered a single lot for the purposes of development.
- D. **Required Lot Consolidation.**
 1. **Structures Crossing Lot Lines.** Where an existing principal structure extends across 2 or more contiguous lots under common ownership, no zoning or building permit shall be issued for the erection, expansion, relocation, or replacement of such principal structure until at least those lots have been consolidated.
 2. **Lots Necessary to Create a Conforming Lot.** If the consolidation of the lots required above does not meet the dimensional requirements of the zoning district, the owner shall also consolidate any additional contiguous lots under common ownership as necessary to create one conforming lot containing the principal structure whenever such additional contiguous lots exist.

- E. **Treatment of Remaining Substandard Lots.** After any required consolidation, any remaining contiguous lots under the same ownership that do not meet the current requirements of this Ordinance and the Subdivision Ordinance and are not required to create the conforming lot containing the principal structure shall not be considered buildable lots and shall not possess independent development rights.
- F. **Combination of Remaining Substandard Lots.** Two or more contiguous lots, whether or not under common ownership, may be conveyed to a single owner and combined into one lot, provided the resulting lot meets all applicable requirements of the zoning district. Upon recordation of the approved consolidation, the newly created conforming lot shall have development rights consistent with the zoning district. None of the individual substandard lots involved in the consolidation shall possess independent development rights until the consolidation has been recorded.