

Chapter Nine

Nonconforming Structures, Lots and Uses

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9.1 Intent

Upon adoption of this Ordinance and Zoning Map, some buildings, structures, lots and uses may no longer conform to the regulations of the Zoning District where they are located. For this reason, this Article has been generated to provide the rules, policies, and regulations that apply to these buildings, structures, lots, and uses referred to as Legal Nonconforming.

9.2 Distinction Between Illegal Nonconforming and Legal Nonconforming

A building, structure, or lot, which was constructed or is being used without an approved Building Permit, Location Improvement Permit, or approval from the Board of Zoning Appeals or Plan Commission, is considered illegal nonconforming. All illegal nonconforming properties shall be subject to actions and penalties allowed by this Ordinance and all other applicable County law and shall be altered to conform to all applicable standards and regulations of this Ordinance. Further, an illegal nonconforming building, structure, lot or use is created at the fault of the owner, tenant or property manager.

Legal Nonconforming differs from Illegal Nonconforming in that the reason for the nonconformance is caused by the enactment of a Zoning Ordinance or a change to the Zoning Ordinance. The building, structure, lot or use has not changed, but due to the enactment of a Zoning Ordinance or a change in the Ordinance, the property no longer conforms to the policies and standards of the Zoning District in which the property is located. When this situation occurs, the property is deemed Legal Nonconforming or another term commonly used is “Grandfathered”.

9.3 Nonconforming Buildings and Structures

Any continuously occupied, lawfully established structure or building prior to the effective date of this Ordinance, or its subsequent amendments that no longer meets the development standards due to reasons stated below shall be deemed a Legal Nonconforming Building(s) or Structure(s).

Legal Nonconforming Building(s) or Structure(s) no longer meet one or more of the following development standards of this Ordinance:

- a. Front, Side and Rear Yard Setbacks,
- b. Maximum Lot Coverage,
- c. Minimum Main Floor Area,
- d. Minimum Finished Floor Area,
- e. Height,
- f. Bufferyard,
- g. Parking,
- h. Accessory Structures/Buildings, and
- i. Any other provision of this Ordinance that is applicable to the building or structure.

A legal nonconforming building or structure may continue provided that it remains the same or fits within the below described tolerances:

- A. Any legal nonconforming building(s) or structures(s) shall not be enlarged or altered in a manner that increases its nonconformity but any building(s) or structures(s) or portion thereof may be altered to decrease its nonconformity.
- B. Any legal nonconforming building(s) or structure(s) which is damaged or destroyed by fire, flood, explosion, or other casualty may be reconstructed and used as before if such reconstruction is performed within twelve (12) months of that casualty, and if the restored structure has no greater coverage or square footage than before that casualty.

- C. If a building or structure is moved for any reason, for any distance, it shall thereafter conform to the provisions of this Ordinance.

9.4 Nonconforming Lots of Record

All legally established and recorded lots prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meet the lot standards listed below shall be deemed a Legal Nonconforming Lot of Record.

A Legal Nonconforming Lot of Record no longer meets one or more of the following lot standards of this Ordinance:

- a. Lot Area,
- b. Lot Width,
- c. Lot Depth,
- d. Lot Frontage, and
- e. Any other provision of this Ordinance that is applicable to Lots.

A Legal Nonconforming Lot of Record may be built upon only if the proposed use is permitted and all development standards of the applicable zoning district of this Ordinance are met.

9.5 Nonconforming Uses of Structures, Land, or Structures and Land in Combination

Any continuous, lawful use of structures, land, or structures and land in combination established prior to the effective date of this Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located shall be deemed a Legal Nonconforming Use. A legal nonconforming use may continue provided that it remains otherwise lawful, subject to the following conditions:

- A. No existing structure devoted to a legal nonconforming use shall be enlarged, expanded, increased, extended, constructed, reconstructed, moved, or structurally altered except as to change the use of the structure to a use permitted in the district in which it is located or as otherwise specified in this Chapter.
- B. No building or structure shall be constructed in connection with an existing legal nonconforming use of land.
- C. Any legal nonconforming use or a structure may be extended throughout any parts of a building which were plainly arranged or designed for such use at the effective date of this Ordinance or its subsequent amendments, but no such use shall be extended to occupy any land outside the building.
- D. In the case of a legal nonconforming use of structure, the structure may be expanded not to exceed twenty percent (20%) of the floor area as of the date of adoption of this Ordinance. The expansion shall conform to all applicable development standards, unless a variance of developmental standards is received from the Board of Zoning Appeals. If the structure is a commercial or industrial use in a residential district, Section 5.10 shall be used for parking standards.
- E. If no structural alterations are made, a legal nonconforming use of structure or structure and land in combination may be changed to another legal nonconforming use, provided that the zoning administrator shall make specific findings that the proposed use is equally appropriate or more appropriate to the district than the existing legal conforming use. With the exception that if the new use requires more parking or loading than the previous use, such new use will comply with the requirements of Section 5.10 and 5.11 of this Ordinance, unless a variance from development standards is granted by the Board of Zoning Appeals.
- F. If a legal nonconforming use is discontinued or abandoned for two (2) years, except when government action impedes access to the premises, any subsequent use of such land, structure or land and structure shall conform to the provisions of this Ordinance.

- G. When a legal nonconforming use is superceded by a permitted use, it shall thereafter conform to regulations of the district; the legal nonconforming use may not thereafter be resumed.

9.6 Repairs and Maintenance

The following applies to legal nonconforming structures or buildings, and legal nonconforming uses of structures, or structures and land in combination:

- A. Work may be done for ordinary repairs or replacement of walls, heating, fixtures, wiring or plumbing; under the condition that the square footage existing when the structure became nonconforming shall not be increased.
- B. If a structure or portion of a structure were to become unsafe or condemned due to lack of repairs or maintenance, and is declared by an authorized official to be unsafe or condemned due to physical condition; the building or structure shall be restored, repaired or rebuilt within six (6) months of the declaration. If the improvements have not been made within the six (6) months, all future improvements must conform to all standards and regulations within this ordinance.
- C. If a building or structure becomes unsafe or unlawful due to physical condition and is razed, the building or structure shall be rebuilt in conformity with the district in which it is located.
- D. Nothing in this Section shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any building or structure or part thereof declared to be unsafe by any official charged with protecting public safety upon order of such official.