

# CHAPTER 9: LEGAL NONCONFORMING USES STRUCTURES AND LOTS

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## 10.9.1 GENERAL PROVISIONS

### A. Purpose

The purpose of this Chapter is to regulate and limit the development and continued existence of legal nonconforming uses, structures, lots and to curtail substantial investment in such nonconformities to bring about their eventual elimination in order to preserve the integrity of this UDC and the character of the Town.

### B. Authority to Continue

#### 1. Generally

Any nonconforming use, structure or lot that lawfully existed as of the effective date of this UDC, and any nonconforming use, structure or lot that is created as a result of any rezoning or amendment of this UDC, may be continued or maintained only in accordance with the terms of this Chapter.

#### 2. Variances

This Chapter shall not apply to any structure or lot that is the subject of a variance granted under this UDC, because a variance renders such structure or lot conforming.

#### 3. Special Review Uses

- a. A permitted use existing prior to the effective date of this UDC that is permitted by this UDC as a Special Review Use in the district in which it is located, but that lacks an approved Special Review Use permit, shall be considered to exist as a conforming Special Review Use.
- b. A special use existing prior to the effective date of this UDC that is permitted without condition or modification by this UDC as a principal use in the district in which it is located shall be deemed a permitted principal use and any associated Special Review Use permit shall be null and void.

### C. Determination of Status

In all cases, the burden of establishing the existence of a legal nonconforming use or structure shall be solely upon the owner of the nonconformity, not the Town.

### D. Nonconformities Created Through Government Action

If a use, structure or lot does not comply with this UDC solely as a result of an acquisition of land or other action by a government agency for a public purpose, then such use, structure or lot shall be deemed conforming.

#### **E. Damage or Destruction**

1. If a nonconforming structure is damaged or destroyed by any means to an extent greater than 50 percent of its replacement cost at the time of damage or destruction, then such nonconforming structure shall not be re-established unless it is made to conform to the requirements of this Title.
2. If a nonconforming structure is damaged less than 50 percent of the cost of its replacement cost, it may be repaired or restored, provided any such repair or restoration is commenced within 12 months and is completed within 18 months from the date of the initial damage or destruction.
3. The Chief Building Official shall determine the applicable replacement costs.

#### **F. Maintenance and Minor Repair**

Minor repairs and maintenance of nonconforming structures are permitted, provided that the minor repair or maintenance does not increase the extent of the nonconformity. For purposes of this Section, "maintenance or minor repair" shall mean:

1. Repairs that are necessary to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the footprint of the building or structure; and
2. Repairs that are required to remedy unsafe conditions that cause a threat to public safety.

### **10.9.2 LEGAL NONCONFORMING USES OF LAND**

#### **A. Limitations**

1. No legal nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was occupied when the use was rendered nonconforming. Any nonconforming use may be decreased.
2. No legal nonconforming use shall be moved in whole or in part to any portion of a lot or parcel other than that occupied by such use when the use was rendered nonconforming.
3. No existing structure devoted to a legal nonconforming use shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a conforming, permitted use, or if such enlargement, extension, construction, reconstruction, movement or structural alteration does not increase the footprint of the structure.
4. No additional structure shall be erected in connection with a legal nonconforming use.

#### **B. Abandonment**

If a legal nonconforming use ceases for any reason, except when government action impedes access to the premises, for a period of 12 or more consecutive months, the legal nonconforming use shall be considered abandoned and terminated, and any subsequent use of the property shall comply with all applicable provisions of this Title.

### **10.9.3 LEGAL NONCONFORMING STRUCTURES**

#### **A. Continuation**

1. No legal nonconforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Alterations to a legal nonconforming structure that do not increase the footprint of the structure shall not be considered an increase in the structure's nonconformity.
2. No legal nonconforming structure shall be moved, unless upon relocation it conforms with the applicable requirements of this Title.

#### **10.9.4 LEGAL NONCONFORMING LOTS OF RECORD**

- A.** Unless otherwise provided in this UDC, single-family residences and customary accessory buildings may be erected on any legally created single lot of record existing at the time of adoption of this UDC. Such lot must have been in separate ownership and not of continuous frontage with other lots under the same ownership. This provision shall apply even though such lot fails to meet the requirements of the district in which it is located for area, width or both area and width; provided however, that the minimum setback requirements of the district shall be met unless a variance is granted.
- B.** If 2 or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of adoption of this UDC, and part or all of said lots do not meet the requirements of the district in which they are located as to minimum area or width, or both minimum area and width, for the purpose of this Chapter, the lots shall be considered to be an undivided parcel, and no portion of said parcel shall be sold or used in a manner which diminishes compliance with the lot area and width requirements established in this UDC.
- C.** If the characteristics of a lot, such as off-street parking, off-street loading, lighting, landscaping, or other features regulated by this UDC, do not conform to the requirements of this UDC, no changes shall be made that increase the nonconformity, but changes that decrease the nonconformity shall be permitted.