

Chapter 10 NONCONFORMITIES

§10.1 | General

10.1.1 | Purpose

The purpose of this Chapter is to regulate uses, structures, improvements, lots, and other current circumstances that came into being lawfully but that do not conform to one or more requirements of this Land Development Code.

10.1.2 | Nonconformities Regulated

The regulations of this chapter address the following types of situations, all of which are collectively referred to as nonconformities.

A. Nonconforming Uses

A “nonconforming use” is one that was legally established but which no longer complies with the use regulations that apply within the zoning district in which the use is located.

1. A use that was legally established without a Conditional Use Permit shall be deemed to have a Conditional Use Permit and shall not be deemed nonconforming solely because a conditional use permit is now required for the use.

B. Nonconforming Structures

A “nonconforming structure” is a building, improvement, and/or structure, not including signs, that was legally established but which no longer complies with the dimensional or development standards that apply within the zoning district in which the building, improvement, or structure is located.

C. Nonconforming Signs

A “nonconforming sign” is one that was legally established but which no longer complies with the sign regulations of Chapter 8.

D. Nonconforming Lots

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

10.1.3 | Policies

A. Nonconforming Uses, Structures, Signs and Lots

It is the general policy of the County to allow uses, structures, signs, and lots that came into existence legally and in conformance with then-applicable requirements and do not have a negative impact on public health or safety, but that do not conform to all of the applicable requirements of this Land Development Code, to continue to exist and be put to productive use while bringing as many aspects of the use or structure into conformance with the Land Development Code as is reasonably practicable, all subject to the limitations of this Chapter. The limitations of this Chapter are intended to recognize the interests of the property owner in continuing to use the property in a safe and beneficial manner and allow changes and modifications to specified nonconformities, while working to reduce or eliminate nonconformities that may be detrimental to the public welfare.

Property owners shall be encouraged to pursue all remedies available within this Land Development Code, including but not limited to Administrative Adjustments, Rezoning, Variances, or Subdivision in order to reduce or eliminate nonconformities.

B. Authority to Continue

Nonconformities shall be allowed to continue in accordance with the regulations of this Chapter.

- C. **Determination of Nonconformity Status**
The burden of establishing that a nonconformity lawfully exists shall be on the owner, not the County (see Section 10.7).
- D. **Maintenance**
Normal maintenance required to keep nonconforming uses, nonconforming structures, nonconforming signs, and nonconforming lots in a safe condition shall be permitted, provided that no changes or expansion shall be made unless specifically allowed by this chapter or allowed by law or ordinance.
- E. **Change of Ownership, Tenancy, or Management**
Changes of ownership, tenancy, or management of an existing nonconformity shall be permitted, and in such cases the nonconforming situation shall continue to be subject to the standards of this Chapter.
- F. **Appeals**
The Planning Director's decisions regarding nonconformities as set forth in this Chapter may be appealed to the Board of Adjustment, in accordance with the provisions of Section 3.15 of this Land Development Code.

§10.2 | Nonconforming Uses

Nonconforming uses shall be subject to the following standards.

10.2.1 | Nonresidential Uses

- A. **Expansion.** In a nonresidential zone, on a parcel of land on which there exists an otherwise lawful nonconforming use, an existing structure and/or an outdoor operations/storage/display area may be expanded provided all other provisions of this code are met.
 - 1. A nonconforming nonresidential use shall not be expanded in any residential zoning district.
 - 2. Any expansion of a nonresidential use that is nonconforming with respect to parking, landscaping, screening/buffering or similar development standards shall be required to meet the requirements of this Code as follows:
 - a. An increase less than twenty-five percent (25%) of the existing structure shall not require any correction other than what may be required by fire and building codes or other applicable regulations. This allowance shall only be permitted once. All subsequent increases shall be subject to subsection b.
 - b. For structures that are increased by twenty-five percent (25%) or more, parking, landscaping and other requirements shall be provided proportionally for the increased area, as set forth in this Code.
- B. **Change of Use.** The Planning Director may approve a different use, provided such use is deemed by the Director to be less intense and/or have fewer negative impacts on public health or safety than the existing use. Prior to approval, the Director shall consider traffic generation, parking, and screening requirements for the new nonconforming use. No change to a more intense nonconforming use is allowed.
 - 1. A nonconforming use may be changed to a conforming use subject to the processes identified in this Land Development Code.
- C. **Abandonment.** A nonresidential nonconforming use that has been discontinued for a period of one (1) year period for whatever reason shall be considered to be abandoned and shall not be reestablished. Any use on the property after that time shall conform to all provisions of this code. Evidence of intent to abandon is not required.

- D. Relocation. A nonresidential nonconforming use may be moved in whole or in part to another portion of the property, provided the relocation will bring the use into conformance with applicable development standards or otherwise reduce the degree to which the use is nonconforming or impacts to neighboring properties.
- E. Damage or Destruction. A nonconforming nonresidential use that is damaged or destroyed may be reestablished in accordance with the following:
 - 1. A use may only be reestablished within a conforming structure, except as may be permitted in Section 10.3 of this chapter;
 - 2. All restorative and other work must be in compliance with current fire and building codes and other applicable regulations;
 - 3. A building permit must be issued within one (1) year from the date of the damage; and
 - 4. The certificate of occupancy (or other final inspection) must be issued within two (2) years of the issuance of the building permit.
 - 5. Deadlines for obtaining a permit and completing construction may be extended by the Planning Director for up to one (1) year if the work is subject to delays caused by litigation, settlement of insurance claims, weather, or other conditions related to the claim beyond the applicant's control.

10.2.2 | Residential Uses

A “nonconforming residential use” is a structure or property that contains more dwellings than allowed by the zone or is a dwelling located in a nonresidential zone that does not permit residential uses.

- A. Expansion. In all zones, a residential use may be expanded if no additional dwelling units are created and all other provisions of this code are met. Accessory structures for a nonconforming residential use such as a garage or storage shed shall be allowed if all applicable provisions of this Land Development Code are met. Accessory dwelling units shall not be permitted.
 - 1. Any expansion of a residential use that is nonconforming with respect to parking, landscaping, screening/buffering or similar development standards shall be required to meet the requirements of this Code as follows:
 - a. An increase less than twenty-five percent (25%) of the existing structure shall not require any correction other than what may be required by fire and building codes or other applicable regulations. This allowance shall only be permitted once. All subsequent increases shall be subject to subsection b.
 - b. For structures that are increased by twenty-five percent (25%) or more, parking, landscaping and other requirements shall be provided proportionally for the increased area, as set forth in this Code.
- B. Abandonment.
 - 1. A nonconforming residential use, other than a single-family dwelling, that has not been occupied for a continuous period of one (1) year, for whatever reason, shall be considered to be abandoned and shall not be reoccupied except in conformance with all applicable provisions of this code. Evidence of intent to abandon the nonconforming use is not required.
 - 2. A nonconforming single-family dwelling that has not been occupied for a continuous period of one (1) year or longer shall not be considered to be abandoned and may be reoccupied at any time provided the structure has not been changed, legally or illegally, to a nonresidential use or multiple-unit residential use, and unless reoccupying the structure poses a risk to public health and safety.

3. Removal of a nonconforming mobile home or manufactured home, not in a mobile home park, from its foundation or pad for a continuous period of one (1) year shall constitute abandonment of the use and placement of a new unit must comply with the provisions of this code. Evidence of intent to abandon the nonconforming mobile home or manufactured home use is not required.
- C. Damage or Destruction. Nonconforming residential uses that are damaged or destroyed may be reestablished in accordance with the following:
1. All portions of the structure being restored are not and were not on or over a property line;
 2. The number of dwelling units does not increase;
 3. All construction must be in compliance with current fire and building codes and other applicable regulations;
 4. A building permit must be obtained within one (1) year from the date of the damage; and
 5. The certificate of occupancy (or other final inspection) must be issued within two (2) years of the issuance of the building permit.
 6. Deadlines for obtaining a permit and completing construction may be extended by the Planning Director for up to one (1) year if the work is subject to delays caused by litigation, settlement of insurance claims, weather, or other conditions related to the loss beyond the applicant's control.

10.2.3 | Agricultural Uses

Agricultural uses, as defined in Section 12.7 of this Code, that are located in the Rural zoning districts shall not be deemed to have been abandoned regardless of how long the use has been abandoned.

10.2.4 | Accessory Uses

No use that is accessory to a principal nonconforming use shall continue after the principle use is abandoned, damaged or destroyed and not reestablished according to this Section.

§10.3 | Nonconforming Structures

Nonconforming structures shall be subject to the following standards.

10.3.1 | Enlargement

Any expansion of a nonconforming structure that increases the degree of nonconformity shall be prohibited. Expansions of the structure that comply with applicable dimensional standards shall be permitted. (For example, adding to a building within the allowable setbacks when another part of the building is encroaching into a setback is permissible. Increasing the height of a building over the portion of a building that is encroaching in a setback would not be permitted.) The determination of whether a proposed expansion increases the degree of nonconformity shall be made by the Planning Director.

Any expansion of a structure that is nonconforming with respect to parking, landscaping, screening/buffering or similar development standards shall be required to meet the requirements of this Code as follows:

- A. An increase less than twenty-five percent (25%) of the existing structure shall not require any correction other than what may be required by fire and building codes or other applicable regulations. This allowance shall only be permitted once. All subsequent increases shall be subject to subsection B.
- B. For structures that are increased by twenty-five percent (25%) or more, parking, landscaping and other requirements shall be provided proportionally for the increased area as set forth in this Code.

CHAPTER 10 | NONCONFORMITIES

10.3.2 | Damage or Destruction

In the event that any nonconforming structure is damaged or destroyed, such structure may be reconstructed in accordance with the following:

- A. All portions of the structure being restored are not and were not on or over a property line;
- B. The number of dwelling units does not increase;
- C. All construction is in compliance with current construction codes, such as the fire and building codes and other applicable regulations;
- D. A building permit must be obtained within one (1) year from the date of the damage;
- E. The certificate of occupancy (or other final inspection) must be issued within two (2) years of the issuance of the building permit; and
- F. Deadlines for obtaining a permit and completing construction may be extended by the Planning Director for up to one (1) year if the work is subject to delays caused by litigation, settlement of insurance claims, weather, or other conditions related to the loss beyond the applicant's control.

10.3.3 | Relocation

Nonconforming structures shall not be moved unless the movement or relocation will bring the structure into compliance or closer to compliance with applicable dimensional standards.

§10.4 | Nonconforming Lots

10.4.1 | Uses

A parcel of land with an area or other dimension less than prescribed in the applicable zone may be used for any purpose permitted in the zoning district if:

- A. the owner is able to demonstrate to the satisfaction of the Planning Director that the parcel was lawful at the time it was created;
- B. no reasonable alternative exists to make the nonconforming lot conforming, such as the addition of adjoining land under the property owner's control; and
- C. the use meets all other regulations prescribed for the zoning district prior to occupancy or use.

10.4.2 | Vacant Lots

Vacant nonconforming lots may be developed with uses permitted in the underlying zoning district, provided that they comply with the minimum setback standards of this Land Development Code. If the underlying zoning district allows a variety of uses and one or more uses and intensities that would comply with applicable lot area, lot width, or other dimensional and development standards while others would not, then only the uses or intensities that comply with applicable dimensional standards shall be permitted.

10.4.3 | Developed Lots

If a developed nonconforming lot is occupied by a building or structure, then the owner may continue the use of that building or structure in any way that does not increase the extent of nonconformity. An increase in building size shall not be deemed to increase the extent of nonconformity unless it encroaches into a required minimum setback, exceeds the maximum allowed height or otherwise violates a required zoning district intensity, density, dimensional, or development standard.

10.4.4 | Dimensional Standards

Development on nonconforming lots shall comply with the dimensional standards of the underlying zoning district. If the owner is able to demonstrate to the satisfaction of the Planning Director that there would not be sufficient area to build a structure on a nonconforming lot in compliance with the dimensional standards, the following alternative setbacks may be used:

CHAPTER 10 | NONCONFORMITIES

- A. Interior Side and Rear Setbacks
The minimum interior side and rear setback shall be permitted to be three (3) feet.
- B. Street Setbacks
The minimum street setback shall be permitted to be twenty percent (20%) of the lot depth.

§10.5 | Nonconforming Signs

10.5.1 | Change of Copy; Repairs

Change of copy or the substitution of panels or faces on nonconforming signs shall be permitted. Repairs and maintenance of nonconforming signs, such as repainting, electrical repairs, and neon tubing replacement shall be permitted. Alterations to nonconforming signs that change the structure, character, or function of the sign shall not be permitted, except in accordance with Chapter 8 of this Code.

10.5.2 | Discontinuance

Any nonconforming sign that ceases being used for a continuous period of one (1) year or more shall not be reused for sign purposes until it is brought into full compliance with the standards of Chapter 8. Any nonconforming sign that pertains to a business or institution that ceases operation for a period of one (1) year or more shall not be reused for sign purposes until it is brought into full compliance with the sign regulations of Chapter 8.

§10.6 | 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 seventy-five percent (75%) of the required minimum standard for the district in which it is located, then that lot is deemed to be in compliance with the minimum lot size and setback standards of this Land Development Code.

§10.7 | Certification of Nonconforming Status

Owners of nonconforming uses, structures, or signs may request a "Certificate of Legal Nonconforming Status" by filing an application with the Planning Director in accordance with the "Written Interpretation" procedures of Section 3.14. The application shall be accompanied by documentation that establishes the approximate date that the use, structure, lot, or sign was established. The Planning Director shall be authorized to require additional information if deemed necessary to permit an accurate determination. "Certificates of Legal Nonconforming Status" shall not be required. Once issued, a certificate shall be recorded with the Mesa County Clerk and Recorder, clearly identifying the land by parcel number and/or a legal description of the property. The certificate shall "run with the land;" and its status shall not be affected by changes of tenancy, ownership, or management.