

Chapter 15.08

NONCONFORMITIES

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15.08.010 Purpose.

This chapter establishes regulations that govern uses, structures, lots, and signs that came into being lawfully but that do not conform to one or more requirements of this Development Code as of the effective date of this Development Code. (Ord. 0-2001-78 § 1 (part))

15.08.020 Nonconformities regulated.

This chapter addresses the following types of situations, all of which are collectively referred to as “nonconformities”:

A. Nonconforming Uses.

1. General Rule. Except as otherwise allowed by this subsection, uses legally established but which, as of the effective date of this Development Code or any subsequent amendment thereto, no longer comply with the use regulations within the applicable zoning district (Chapter 15.04) are “nonconforming uses.”

2. Exceptions.

a. Conforming Uses Without Required Use Permit or Approval. A use legally established without conditional use or limited use approval is deemed to have a conditional use or limited use approval, and is not nonconforming solely because this Development Code now requires a conditional use or limited use approval for the subject use.

b. Uses Conforming Under Previous Regulations. Except for sexually oriented businesses, uses legally established and conforming to the use and zoning district regulations in effect prior to the effective date of this Development Code may continue after the effective date and are not subject to this chapter’s limitations on enlargement and expansion, relocation, or discontinuance of such uses (see

Sections 15.08.060(A) through (C) below), provided the use complies with the following requirements:

i. A use may not be enlarged or expanded beyond the lot or parcel it occupied on the effective date, unless the city approved such enlargement or expansion prior to the effective date and such approval has not lapsed or expired.

ii. Any change in use shall be to a new conforming use.

iii. If a use is discontinued for a period of one year, such use shall not thereafter be reestablished and any future use shall conform with this Development Code.

B. Nonconforming Structures.

1. General Rule. Except as otherwise allowed by this subsection, structures, except signs, legally established but which, as of the effective date of this Development Code, or any subsequent amendment thereto, no longer comply with the dimensional standards of the applicable zoning district are “nonconforming structures.” See Chapter 15.10 for a definition of “dimensional standards.”

2. Exceptions.

a. Structures Granted Variances. Structures granted a variance from the dimensional standards of either the previous land development regulations or this Development Code are not nonconforming, provided the structure and owner comply with the terms of the variance approval. Variances granted under previous land development regulations shall be subject to the lapse and redevelopment provisions in Section 15.02.060(F)(7) (“Variances—Effect of Approval”).

b. Structures in Approved PUDs. Structures in an approved PUD that are granted modifications from the dimensional standards of this Development Code are not nonconforming. See Section 15.03.060, “Planned Unit Development Districts.”

c. Nonconforming Lots. Lots of record legally established but which, as of the effective date of this Development Code, or any subsequent amendment thereto, no longer comply with the dimensional standards of the applicable zoning district are “nonconforming lots.”

d. Nonconforming Signs. Signs legally established but which, as of the effective date of this Development Code, or any subsequent amendment thereto, no longer comply with the sign regulations of Chapter 15.06 (Signs) are “nonconforming signs.” (Ord. 0-2006-73 § 2; Ord. 0-2001-78 § 1 (part))

15.08.030 Prior nonconformities continue.

Any nonconformity created under application of previous land development regulations shall continue to be a nonconformity under this Development Code and is sub-

ject to this chapter, unless the subject use, structure, or lot is clearly consistent with the express terms of this Development Code. (Ord. 0-2001-78 § 1 (part))

15.08.040 Policies.

A. **General Policy.** Except as otherwise provided in an applicable annexation ordinance, it is the city's general policy to allow nonconformities to continue to exist and be put to productive use. However, it is the city's intent to bring as many aspects of the nonconforming use, structure, sign, or lot into compliance with this 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 but to limit expansion of the nonconformity and re-establishment of abandoned nonconforming uses, and to limit the re-establishment of nonconforming buildings and structures that are substantially destroyed.

B. **Authority to Continue.** Nonconformities are allowed to continue according to this chapter's requirements.

C. **Determination of Nonconformity Status.** The burden of establishing that a nonconformity lawfully exists is on the owner, not the city. See Section 15.08.110, "Certification of Nonconforming Status," below.

D. **Change of Tenancy or Ownership.** Changes of tenancy, ownership, or management of an existing nonconformity are permitted, and in such cases the nonconforming situation continues to be subject to this chapter. (Ord. 0-2001-78 § 1 (part))

15.08.050 Repairs and maintenance.

A. **General Rule.** Ordinary repairs and normal maintenance required to keep nonconforming uses, structures, and signs in a safe condition shall be permitted. All ordinary repair and normal maintenance shall be subject to this chapter's limitations regarding expansion and enlargement of the nonconforming structure or use.

B. **Compliance Required if Non-Repair Results in Safety Hazard.** If, due to a lack of repairs and maintenance, the chief building official of the city of Longmont declares a nonconforming structure, or a portion of a structure devoted to a nonconforming use to be unsafe, unlawful, or in violation of Section 203 of the adopted Building Code, such structure shall thereafter be restored, rebuilt, or repaired only in compliance with the regulations of the applicable zoning district. The restored, rebuilt, or repaired structure shall thereafter be used only in compliance with the uses permitted in the zoning district in which the structure is located. (Ord. 0-2006-73 § 3; Ord. 0-2001-78 § 1 (part))

15.08.060 Nonconforming uses.

Nonconforming uses are hereby declared incompatible with the principal permitted uses in the zoning districts involved. Nonconforming uses shall be subject to the following standards:

A. Enlargement and Expansion.

1. **Structure Enlargement.** A structure or portion thereof devoted to a nonconforming use shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered except to change the use of the structure to one permitted in the applicable zoning district.

2. Expansion of Nonconforming Uses.

a. A nonconforming use shall not be extended to any land or portion of property outside of any building that was not used for the nonconforming use when the use was legally established, except when such extension is the direct result of an intervening government action.

b. A nonconforming use may be enlarged, expanded, or extended to occupy any parts of the building housing such use that were designed or arranged for such use when the use was legally established. However, if such enlargement, expansion, or extension will result in an increased impact, the board of adjustment shall review the request according to the procedures stated in Section 15.02.060(F), "Variances." For purposes of this provision, "increased impact" occurs when:

- i. The parking demand or needs for the expanded use will increase;
- ii. The expanded use will generate more traffic;
- iii. The expanded use will create an adverse impact on the surrounding neighborhood because of an increase in glare, noise, air emissions, refuse/litter, outdoor storage;
- iv. The expanded use will operate in a different manner, in areas such as hours of operation or number of employees.

The planning director shall make all determinations of "increased impact" according to procedures in Section 15.02.110, "Written Code Interpretations."

c. The board of adjustment may approve an expansion request only if the expansion satisfies the following criteria:

- i. The expansion will not interfere with the operation of conforming uses in the surrounding neighborhood, in the applicable zoning district;
- ii. The expansion will not interfere with vehicle circulation on adjacent public streets; and
- iii. The expansion will cause no greater adverse impacts on surrounding properties than did the original nonconforming use.

3. **Additional Signs or Uses.** In connection with a nonconforming use, the following are prohibited:

a. The attachment on the building or premises of additional signs; and

b. The addition of other uses that are prohibited in the zoning district involved.

B. Relocation. No person shall move a nonconforming use within the same parcel or to another parcel unless the use conforms with the use regulations of the applicable zoning district. This provision shall not apply if the relocation of the nonconforming use is the direct result of government action.

C. Discontinuance—Reestablishment Prohibited.

1. Whenever a nonconforming use is discontinued for a period of one hundred eighty consecutive days, such use shall not thereafter be reestablished and any future use shall conform with this Development Code.

2. At such time as any nonconforming, individual mobile home existing on a private lot is removed from such lot or is vacated, the use shall be deemed abandoned and shall not thereafter be returned or occupied except in compliance with this Development Code.

D. Changes in Use. A nonconforming use may only be changed to a new conforming use unless the planning director, under the procedures for a written Code interpretation (Section 15.02.110), makes a determination that the change in use would not increase the degree of nonconformity, would not create adverse impacts on surrounding properties or neighborhoods, the natural environment or the city's ability to provide services and maintain public facilities, and would be consistent with the purpose and intent of this Development Code.

E. Accessory Uses.

1. No use that is accessory to a principal nonconforming use shall continue after the nonconforming principal use ceases to exist.

2. No additional accessory use, building, or structure that did not exist when the nonconforming use was legally established shall be established on the site of a nonconforming use.

F. Damage or Destruction.

1. If a structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by unavoidable means or cause, the structure may be restored, if the restoration does not increase the degree of nonconformity and is otherwise consistent with this chapter.

2. No repairs or restoration shall be made unless a building permit is obtained within one hundred eighty days and restoration is actually begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.

3. The planning director, under the procedures for a written Code interpretation (Section 15.02.110), shall

make the initial determination of whether a proposed expansion increases the degree of nonconformity. The owner or applicant may appeal a determination of increased nonconformity to the board of adjustment under the procedures stated in Section 15.02.040(P), "Appeals." (Ord. 0-2006-73 § 4; Ord. 0-2001-78 § 1 (part))

15.08.070 Nonconforming structures.

Nonconforming structures are subject to the following standards:

A. Enlargement.

1. Any enlargement, alteration, or expansion of a nonconforming structure that increases the degree of nonconformity is prohibited unless the board of adjustment (BOA) grants a variance. Expansions of the structure that comply with applicable dimensional standards or that decrease the degree of nonconformity are permitted and do not require a variance, provided such expansion meets all other applicable standards in this Development Code.

2. The planning director, under the procedures for a written Code interpretation (Section 15.02.110), shall make the initial determination of whether a proposed expansion increases the degree of nonconformity.

B. Damage or Destruction.

1. If a nonconforming structure is damaged or destroyed, by unavoidable means or cause, the structure may be restored if the restoration does not increase the degree of nonconformity and is otherwise consistent with this chapter.

2. No repairs or restoration shall be made unless a building permit is obtained within one hundred eighty days, and restoration is actually begun within one year after the date of such damage or destruction and is diligently pursued to completion.

3. The planning director, under the procedures for a written Code interpretation (Section 15.02.110), shall make the initial determination of whether a proposed expansion increases the degree of nonconformity. The owner or applicant may appeal a determination of increased nonconformity to the board of adjustment under the procedures stated in Section 15.02.040(P), "Appeals."

C. Relocation. If a nonconforming structure should, for any reason, be moved from its original location, the relocated structure shall conform to the provisions of the applicable zoning district.

D. Replacement Mobile Home Units. Any mobile home unit replacing a unit in an existing mobile home park shall be subject to the minimum distance between mobile home units requirements of Table 15.05-N. (Ord. 0-2002-52 § 1; Ord. 0-2002-13 § 2; Ord. 0-2001-78 § 1 (part))

15.08.080 Nonconforming signs.

All nonconforming signs shall be subject to the standards stated in Section 15.06.060(T), "Legal Nonconforming Signs." (Ord. 0-2001-78 § 1 (part))

15.08.090 Nonconformities created by public action.

When lot area or setbacks are reduced as a result of land conveyance to a federal, state, or local government for a public purpose and the remaining lot area or setback is at least seventy-five percent of the required minimum standard for the applicable zoning district, then that lot is deemed to be in compliance with the minimum lot size or setback standards of this Development Code. (Ord. 0-2001-78 § 1 (part))

15.08.100 Nonconforming lots of record.

A. One Family Detached Dwellings on Nonconforming Lots.

1. New Construction Allowed. In any zoning district that allows one-family dwelling uses, a one-family residence and customary accessory buildings may be erected on any single legal nonconforming lot of record that exists on the effective date of this Development Code, when such lot is ineligible for lot combination under subsection B below. This provision applies even though such lot fails to meet the area or width requirements, or both, of the applicable zoning district. However, the minimum setback dimension requirements of the applicable zoning district must be met unless the BOA grants a variance.

2. Enlargements Allowed. Existing one-family dwellings located on nonconforming lots of record may be enlarged, expanded, or extended only if such action does not increase nonconformities with applicable setbacks or cause a new area of nonconformity, or unless the BOA grants a variance.

B. Combination of Lots.

1. Two or more lots, or combinations of lots and portions of lots not separated by right-of-way, are considered to be a single, undivided lot for purposes of this Development Code if all the following factors apply:

a. The lots are in single and common ownership and are of record on the effective date of this Development Code;

b. The lots or parcels share continuous frontage; and

c. All or part of the lots do not meet the minimum lot area or lot width requirements stated for the applicable zoning district. See Chapter 15.05 (Development Standards).

2. Two lots, not separated by right-of-way, shall be considered one single, undivided fifty-foot wide lot under

this Development Code lot for the purpose of accommodating a one-family dwelling, if all the following factors apply:

a. The lots are in single and common ownership and are of record on the effective date of this Development Code;

b. The lots share continuous frontage;

c. Each lot is twenty-five feet wide; and

d. The total combined lot area is at least five thousand square feet.

3. After the effective date of this Development Code, development may proceed on any portion of such combined lots provided the development complies with the lot width and lot area requirements of the applicable zoning district to the maximum extent feasible using the total, combined area and width of the subject lots. (Ord. 0-2001-78 § 1 (part))

15.08.110 Certification of nonconforming status.

Owners of nonconforming uses or structures may request a "certificate of legal nonconforming status" by filing an application with the planning director according to the "written Code interpretation" procedures of Section 15.02.110. The application shall be accompanied by documentation that establishes the approximate date that the use, structure, or sign was established. The planning director is authorized to require additional information if deemed necessary to permit an accurate determination. Once issued, the owner shall record the certificate, which shall "run with the land" and shall not be affected by changes of tenancy, ownership, or management, subject to the requirements of this chapter and Development Code. (Ord. 0-2001-78 § 1 (part))