

Article 8: Nonconformities

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Division 8.1: General Applicability

Sections:

- 8.1.10 Purpose
- 8.1.20 Applicability
- 8.1.30 Determination of Nonconformity Status
- 8.1.40 Continuance, Minor Repairs and Maintenance
- 8.1.50 Change of Tenancy or Ownership

8.1.10 Purpose

In the provisions established by this Development Code, there exist uses of land, structures, lots, signs, and other site features that were lawfully established before this Development Code was adopted or amended, that do not conform to its terms and requirements. The County recognizes that nonconformities vary in the degree of conflict, annoyance, incompatibility, or hazard to the community. It is the general policy of the County to allow such uses, structures, lots, signs, and other site features to continue to exist. It is also the policy of the County, over time, to bring as many nonconformities into conformance with this Development Code as is reasonably practicable, subject to the requirements of this Article. It is recognized this is a gradual process, and not one that is intended to be unduly disruptive to a landowner or the community. The procedures and standards in this Article are intended to balance the desire to eventually eliminate nonconformities against the degree of the problem and landowners' rights.

8.1.20 Applicability

- A. **Legal Nonconformities.** Legal nonconformities are those nonconformities that were properly permitted and legally established but that no longer comply with the applicable provisions of this Development Code. This Article shall apply to those nonconformities created by initial adoption of, or amendments to, this Development Code.
- B. **Illegal Nonconformities.** Illegal nonconformities are those nonconformities that were neither properly permitted nor legally established and that do not comply with the applicable provisions of this Development Code. Illegal nonconformities are subject to cessation by the County upon a determination of such illegality by the Director.
- C. **Nonconformities in the MCAS Airport Overlay.** In addition to the requirements of this Article, nonconforming uses and structures within the MCAS Airport Overlay (MCAS-AO) District shall meet the requirements of Section 3.4.30 (MCAS Airport Overlay Zone Standards). Where the requirements of Section 3.4.30 and this Article conflict, the standards contained in Section 3.4.30 shall apply.

8.1.30 Determination of Nonconformity Status

In all cases, the burden of establishing that a nonconformity lawfully exists shall be the responsibility of the owner of the land on which the nonconformity is located.

8.1.40 Continuance, Minor Repairs and Maintenance

Legal nonconformities are allowed to continue, and are encouraged to receive routine maintenance in accordance with the requirements of this Article as a means of preserving safety and appearance. Minor repairs and normal maintenance that are required to keep legal nonconforming uses, structures, lots, signs, and other site features in a safe condition are permitted. For the purposes of this Subsection, "minor repair or normal maintenance" shall mean:

- A. Repairs that are necessary to maintain a legal nonconforming use, structure, lot, sign, or site feature in a safe condition; and
- B. Maintenance of land areas to protect against health hazards and promote the safety of surrounding uses.

8.1.50 Change of Tenancy or Ownership

No change of title or possession or right to possession of land involved shall be construed to prevent the continuance of such legal nonconformity.

Division 8.2: Nonconforming Uses

Sections:

- 8.2.10 General
- 8.2.20 Extension, Expansion, or Relocation
- 8.2.30 Change In Use
- 8.2.40 Discontinuance of Use
- 8.2.50 Reconstruction or Repair after Casualty Damage of Nonconforming Use
- 8.2.60 Special Use Permit

8.2.10 General

Nonconforming uses are uses that are not permitted in the zone in which they are located. Such uses are declared generally incompatible with the permitted uses in the zone in which they are located and with the provisions of this Development Code. Nonconforming uses shall be subject to the standards in this Section.

8.2.20 Extension, Expansion, or Relocation

- A. A legal nonconforming use may be expanded by 15 percent of the disturbed land area or gross floor area occupied on December 8, 2014 as long as setbacks are not reduced and the development complies with landscaping, buffers, and screening standards, see Division 5.8 (Landscaping, Buffers, and Screening Standards) to the maximum extent practicable.
- B. No additional accessory use or structure associated with the principal nonconforming use may be established on the site of a nonconforming use.

8.2.30 Change In Use

A nonconforming use may not be changed to another nonconforming use without a written determination by the Director that the extent of the nonconforming nature of the new use is no greater than the nonconforming nature of the existing use, provided the size of the use, or gross floor area of the building in which it is located, is not expanded. Once a nonconforming use is converted to a conforming use, it shall not be changed back to a nonconforming use.

8.2.40 Discontinuance of Use

- A. If a nonconforming use is abandoned for a period of one year or longer, it shall not be reestablished and shall only be replaced with a conforming use.
- B. The Director shall have the authority to determine if a legal nonconforming use has been abandoned for a period of one year or longer. In making such a determination, the Director shall consider all of the facts and circumstances regarding the nonconforming use, including, but not limited to the following:
 - 1. If steps have been taken by the property owner to resume the nonconforming use;

2. If utility services such as water, gas, and electricity to the property have been disconnected;
3. If equipment or fixtures necessary for the operation of the nonconforming use have been removed;
4. If signs advertising the nonconforming use have been removed;
5. If business licenses for the nonconforming use have expired or not been renewed;
6. If activities generally associated with the nonconforming use are no longer observed on the property; and
7. Other actions which, in the opinion of the Director, demonstrate an intention on the part of the owner to abandon the nonconforming use.

8.2.50 Reconstruction or Repair after Casualty Damage of Nonconforming Use

The reconstruction or repair of a nonconforming use, or a structure housing a nonconforming use, damaged as a result of a fire, natural disaster or other unforeseen and unpreventable accident or occurrence shall be subject to the provisions of Section 8.3.50 (Reconstruction or Repair after Casualty Damage).

8.2.60 Special Use Permit

A landowner whose property contains a nonconforming use may apply for approval of a Special Use Permit to make the nonconforming use conforming under this Development Code, in accordance with the provisions of Section 8.3.50 (Special Use Permit for Nonconforming Uses and Structures).

Division 8.3: Nonconforming Structures

Sections:

- 8.3.10 General
- 8.3.20 Relationship between Conforming and Nonconforming Uses
- 8.3.30 Enlargement or Alteration
- 8.3.40 Reconstruction or Repair after Casualty Damage of Nonconforming Use or Structure
- 8.3.50 Special Use Permit for Nonconforming Uses and Structure

8.3.10 General

Nonconforming structures shall be subject to the standards in this Section.

8.3.20 Relationship between Conforming and Nonconforming Uses

Where a nonconforming principal structure contains a conforming use, only the nonconforming structure is subject to the standards and limitations in this Section. Where a nonconforming structure contains a nonconforming use, the nonconforming structure is subject to the standards and limitations of this Section and the nonconforming use is subject to the standards and limitations in Division 8.2 (Nonconforming Uses).

8.3.30 Enlargement or Alteration

A nonconforming structure may be expanded by up to 15 percent of the gross floor area existing on December 8, 2014 if setbacks are not reduced and the development complies with landscaping, buffers, and screening standards, see Division 5.8 (Landscaping, Buffers, and Screening Standards), to the maximum extent practicable.

8.3.40 Reconstruction or Repair after Casualty Damage of Nonconforming Use or Structure

The reconstruction or repair of a nonconforming use or structure damaged as a result of a fire, natural disaster or other unforeseen and unpreventable accident or occurrence shall be subject to the following provisions.

- A. **Damage of 50 Percent or Less of Value.** If a nonconforming use or structure is damaged to an extent whereby the cost of restoring the use or structure to its before-damaged condition would be 50 percent or less of its market value before the damage, the use or structure may be reconstructed or repaired if:
 - 1. The reconstruction or repair does not increase, expand, enlarge, or extend the degree of nonconformity beyond what is allowed in this Article; and
 - 2. The reconstruction begins within six months after the damage and is diligently pursued to completion.
- B. **Damage Greater than 50 Percent of Value.** If a nonconforming use or structure is damaged to an extent whereby the cost of restoring the use or structure to its before-damaged condition would exceed 50 percent of its market value before the damage, the

use or structure shall not be reconstructed or repaired except in conformity with the provisions of this Development Code, unless:

1. The structure is a single-family residential use, in which case it may be rebuilt as long as it complies with all applicable building codes;
 2. It is rebuilt using the former building footprint and does not increase the nonconformity of the structure; and
 3. Substantial reconstruction is started within one year of the date of destruction, and completed in good faith.
- C. **Damage That Creates Unsafe Condition.** Regardless of the percent of damage to a nonconforming structure, any structure deemed unsafe by the Building Codes Official and is a threat to the life and safety of repair crews, the public, or neighbors, shall be demolished and terminated. Future structures then shall comply with the requirements of this Development Code.

8.3.50 Special Use Permit for Nonconforming Uses and Structures

A landowner whose property contains a nonconforming use or nonconforming structure may apply for approval of a Special Use Permit to expand the use or structure by more than 15 percent of disturbed land area or gross floor area and/or to make the nonconforming use or structure conforming under this Development Code in accordance with the provisions of this Section and Section 7.2.130 (Special Use Permit).

- A. **Procedure.** The procedure for the review of the application for Special Use Permit shall be in accordance with Section 7.2.130 (Special Use Permit).
- B. **Additional Special Use Permit Review Standards.** In addition to the Special Use Permit Review Standards in Section 7.2.130 (Special Use Permit), an application for a Special Use Permit for a nonconforming use or structure shall only be approved if the applicant also demonstrates the following additional standards are met:
 1. The nonconformity, as conducted and managed, will have minimal incompatibilities, and they are coordinated and harmoniously integrated into the functioning of adjacent lands and the neighborhood. Factors to evaluate this standard include the following:
 - a. Neighborhood residents patronize or are employed at the use (for non-residential uses);
 - b. Current management practices eliminate operational problems such as noise, waste materials, competition for on-street parking, or similar conflicts;
 - c. The nonconformity's history of complaints against it; and
 - d. The nonconformity is and has been maintained in good condition, or the nonconformity represents a disincentive for such maintenance.
 2. Conditions to address external impacts and ensure compatibility and address operation of the use in the structure are included in the permit approval. The conditions may contain specific limitations necessary to address concerns of the operation of the use that might make it a nuisance.

Division 8.4: Nonconforming Lots

8.4.10 General

No use or structure shall be established on a nonconforming lot of record except in accordance with the standards in this Section.

8.4.20 Status of Structures on Nonconforming Lots

- A. Conforming structures legally established on a nonconforming lot before December 8, 2014 may be continued, enlarged, extended, reconstructed, or structurally altered in any way that is in conformance with the standards of this Development Code.
- B. Nonconforming structures legally established on a nonconforming lot before December 8, 2014 may be continued, enlarged, or redeveloped only in accordance with the standards in Division 8.3 (Nonconforming Structures).

8.4.30 Alternate Setbacks for Nonconforming Lots of Record

New single-family development or meeting facilities/places of worship on lots legally created prior to December 8, 2014 that cannot conform to the setbacks established in Article 3 (Specific to Zones) may be modulated by the Director in accordance with Division 7.2.30 (Modulation Permit).

8.4.40 Governmental Acquisition of a Portion of Lot

If a conforming lot is made nonconforming due to governmental acquisition of a portion of the lot for a public purpose that results in the lot no longer complying with applicable lot area or lot width standards, required setbacks and buffers shall be measured from the property line location prior to acquisition.

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Division 8.5: Nonconforming Signs

8.5.10 General

Nonconforming signs shall be subject to the standards in this Section. Off-premises signs in the public right-of-way may be removed by the County without notice.

8.5.20 Enlargement or Alteration

A nonconforming sign shall not be enlarged or structurally altered in any way that increases the nonconformity.

8.5.30 Reconstruction or Repair of Damaged Sign

The reconstruction or repair of a damaged nonconforming sign shall be subject to the following provisions:

- A. **Damage Up To 50 Percent of Value.** If a nonconforming sign is damaged by any means to an extent whereby the cost of restoring the sign to its before-damaged condition would be less than 50 percent of its replacement value before the damage, the structure may be reconstructed or repaired if:
 1. The reconstruction or repair does not increase, expand, enlarge, or extend the degree of nonconformity; and
 2. The reconstruction or repair is actually begun within one year after the damage and is diligently pursued to completion.
- B. **Damage Greater Than 50 Percent of Value.** If a nonconforming sign is damaged by any means to an extent the cost of restoring the sign to its before-damaged condition would be 50 percent or more of its replacement value before the damage, the structure shall not be reconstructed or repaired except in conformity with the provisions of this Development Code.

8.5.40 Abandonment or Discontinuance of Sign

- A. **General.** If a nonconforming sign is abandoned or ceases to be used for a period exceeding 60 days, it shall not be reestablished and shall only be replaced with a conforming sign. A sign shall be considered abandoned or discontinued if its copy area is no longer readable or comprehensible, or if the business it identifies or advertises ceases to operate.
- B. **Partially Destroyed Sign.** Any partially destroyed nonconforming sign shall be considered abandoned if action is not initiated to have it inspected to determine if it can be rebuilt within 60 business days of its date of destruction.

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