

ARTICLE 9: NONCONFORMITIES

9.1. GENERAL PROVISIONS

9.1.1. PURPOSE AND SCOPE

The purpose of this article is to regulate and limit the development and continued existence of legal uses, structures, lots, signs, and use characteristics such as parking and landscaping, established prior to the effective date of this Land Use Code or prior codes, or the effective date of future amendments to this Land Use Code, that no longer conform to the requirements of this Land Use Code. All such situations are collectively referred to in this chapter as “nonconformities.” While nonconformities may continue, the provisions of this chapter are designed to curtail substantial investment in nonconformities to bring about their eventual elimination in order to preserve the integrity of this Land Use Code and the goals of the Town of Pagosa Springs.

9.1.2. DEFINITION

A nonconformity shall include any lawful use of property or any lawful structure, sign, or platted lot, or any site feature:

- A. That exists or existed on the date of the adoption of an ordinance that rendered it nonconforming with the provisions of the new ordinance or this Land Use Code; or
- B. That currently conforms to the regulations in this Land Use Code, but in the future will not conform to a future rezoning, or amendment to the text of this Land Use Code; or
- C. That currently conforms to the regulations in this Land Use Code, but because of future governmental action, such as the acquisition of property for a public purpose, will not conform to the provisions of the code in effect at the time.

9.2. REGULATIONS APPLICABLE TO ALL NONCONFORMITIES

9.2.1. AUTHORITY TO CONTINUE

Nonconformities may continue to be used and occupied, subject to regulations as to the maintenance of premises and conditions of operations set forth in this article, or unless such nonconformity is terminated as provided in this article.

9.2.2. DETERMINATION OF NONCONFORMITY STATUS

In all cases, the burden of proof for establishing the existence of a legal nonconformity shall be solely upon the owner of the nonconformity.

9.2.3. MINOR REPAIRS AND MAINTENANCE

- A. Minor repairs or maintenance of nonconformities that are required to keep structures or sites in a safe condition are permitted, provided that the minor repair or maintenance does not increase the extent of nonconformity. For purposes of this Section, “maintenance or minor repair” shall mean:
 - 1. Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or exterior or interior appearance of a building or structure without expanding or altering the building or structure;
 - 2. Maintenance of land areas to protect against health and environmental hazards and promote the safety of surrounding land uses;
 - 3. Repairs that are required to remedy unsafe conditions that cause a threat to public safety; and

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SECTION 9.3 ADDITIONAL REGULATIONS FOR NONCONFORMING USES

SUBSECTION 9.2.4 CHANGE OF TENANCY OR OWNERSHIP

4. Repairs and maintenance of nonconforming signs otherwise permitted by this Land Use Code.
- B. In addition, any existing occupied single-family residential dwelling that is deemed to be a nonconforming use shall be allowed to make improvements to the main and accessory structures so long as improvements do not increase the degree of nonconformity or increase the height or building footprint.

9.2.4. CHANGE OF TENANCY OR OWNERSHIP

Changes of ownership, tenancy, or management of property with an existing nonconformity are permitted but such nonconformities shall continue to be subject to the provisions of this Land Use Code.

9.2.5. DAMAGE OR DESTRUCTION

- A. If a nonconforming structure, other than an occupied single-family or duplex residential dwelling, 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 as determined by the latest tax rolls, then such nonconformity shall not be re-established and the such structure may only be rebuilt in compliance with the requirements of this Land Use Code.
- B. Any existing single-family or duplex residential dwelling that is a nonconforming use that is destroyed by more than 50 percent due to fire, flood, or acts of nature or God, shall be allowed to rebuild on site, provided that the use is either for single-family or duplex residential use and/or in conformance with the prevailing zoning district.

9.2.6. ABANDONMENT OF USE

If a nonconforming use is discontinued for a period exceeding six months, such discontinuance shall create a rebuttable presumption of abandonment and, absent a showing by the owner of an intent not to abandon the use, shall be discontinued. Any future use of the property shall conform to the terms of this Land Use Code.

9.3. ADDITIONAL REGULATIONS FOR NONCONFORMING USES

9.3.1. LIMITATIONS ON CONTINUATION OF NONCONFORMING USES OF LAND OR STRUCTURES

Nonconforming uses of land or structures are subject to the following additional limitations:

- A. A conditional use permit shall be required to enlarge or increase or extend a nonconforming use of land to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the regulations that make the use nonconforming. Any nonconforming use on a lot or portion of a lot may be altered to decrease its nonconformity.
- B. A conditional use permit shall be required to move a nonconforming use of land in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of the regulations that make the use nonconforming.
- C. A conditional use permit shall be required to enlarge, extend, reconstruct, move, or structurally alter an existing structure devoted to a use not permitted by this Land Use Code in the district in which it is located. A conditional use permit shall not be required to change the use of the structure to a use permitted in the district in which it is located.

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SECTION 9.4 ADDITIONAL REGULATIONS FOR NONCONFORMING STRUCTURES

SUBSECTION 9.3.2 CHANGE OF USE

- D. Any nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed for such use at the time of adoption or amendment of the applicable regulations, but no such use shall be extended to occupy any land outside such buildings without a conditional use permit.
- E. No additional structure not conforming to the requirements of this Land Use Code shall be erected in connection with the nonconforming use of land or structure.

9.3.2. CHANGE OF USE

- A. A nonconforming use of a building may be changed to another nonconforming use, provided that (a) the new use creates no greater impacts on surrounding properties and is no more intensive than the use it replaces, and (b) no structural alterations to the building are required to accommodate such change. A nonconforming use that has been changed to a less nonconforming use pursuant to this subsection may not thereafter be changed back to a more nonconforming use.
- B. A nonconforming use, if changed to a conforming use, may not thereafter be changed back to any nonconforming use.

9.4. ADDITIONAL REGULATIONS FOR NONCONFORMING STRUCTURES

Nonconforming uses of land or structures are subject to the following additional limitations:

- 9.4.1. No nonconforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion of a structure may be altered to decrease its nonconformity. This subsection shall not be construed to allow the expansion of a nonconforming use of a conforming structure.
- 9.4.2. Should a nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- 9.4.3. Any structure in which a nonconforming use is superseded by a permitted use shall thereafter conform to the use regulations for the district, and the nonconforming use may not thereafter be resumed.

9.5. ADDITIONAL REGULATIONS FOR NONCONFORMING LOTS/PARCELS/TRACTS

- 9.5.1. In any residential district, notwithstanding limitations imposed by other provisions of this Land Use Code, a single-family dwelling and customary accessory buildings may be erected on any lot that is of record at the effective date of the original adoption or amendment of applicable regulations. This provision shall apply even if the lot fails to meet the requirements for the area or width, or both, that are applicable in the district. Setback and lot coverage requirements applicable to nonconforming lots of record shall be those of the zone with the largest lot area requirement within which the lot would be conforming.
- 9.5.2. Where two or more adjacent nonconforming lots are held in common ownership, they will be considered a single lot for purposes of development review and approval. Treatment as a single lot for purposes of development review and approval shall not be thereafter be affected by any subsequent resale of all or a part of any such lots into separate ownership.

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SECTION 9.6 ADDITIONAL REGULATIONS FOR NONCONFORMING SIGNS

SUBSECTION 9.6.1 TERMINATION

9.6. ADDITIONAL REGULATIONS FOR NONCONFORMING SIGNS

9.6.1. TERMINATION

A nonconforming sign shall immediately lose its legal nonconforming status, and therefore shall be brought into conformance with this Land Use Code or removed, when any of the following occur:

- A. The size or shape of the sign is changed; or
- B. The sign structure is altered. Alteration does not include repairs and/or maintenance; or
- C. The nonconforming sign is accessory to a nonconforming use that has lost its nonconforming status; or
- D. A structure(s) on the property on which the sign is located is subject to an application for a building permit for reconstruction, remodeling, expansion, or other improvements, and the value of the proposed improvements totals \$50,000 or more.
- E. An approved application for a change of business is issued and a sign is associated with such occupancy. This subsection applies to on-premise advertising signs only.

9.6.2. MAINTENANCE OF NONCONFORMING SIGNS

Nonconforming signs shall continue to be maintained in safe condition pursuant to the building regulations of the Town.

9.6.3. ALTERATION, RELOCATION OR REPLACEMENT OF NONCONFORMING SIGNS

A nonconforming sign shall not be structurally altered, relocated, or replaced unless it is brought into compliance with the provisions of this Land Use Code.

9.6.4. RECONSTRUCTION OF DAMAGED SIGN

If a sign and/or its support are damaged to the extent where the repair costs exceed 50 percent of the replacement cost of the sign, the sign shall be removed or brought into compliance.

9.7. ADDITIONAL REGULATIONS FOR OTHER NONCONFORMITIES

If (a) an application is filed for a building permit or the for reconstruction, remodeling, expansion, or other improvements of a multi-family, commercial, industrial, or mixed-use structure, and (b) the assessed value of the proposed improvements totals more than 50 percent of the assessed value of the primary structure(s) on the property, the applicant shall be required to address the following nonconformities prior to, or as part of the improvements authorized by, such building permit, unless the Director determines in writing that such nonconformities have no significant adverse impact on surrounding properties:

- 9.7.1. Screening of mechanical equipment;
- 9.7.2. Screening walls or fences (for parking, waste, or storage areas);
- 9.7.3. Driveway surface materials;
- 9.7.4. Landscaping;
- 9.7.5. Parking; and
- 9.7.6. Lighting.

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SECTION 9.8 ILLEGAL NONCONFORMITIES

SUBSECTION 9.6.4 RECONSTRUCTION OF DAMAGED SIGN

9.8. ILLEGAL NONCONFORMITIES

An illegal nonconformity exists when:

9.8.1. A nonconforming structure is destroyed or substantially destroyed by an intentional act of the owner or an agent. If this occurs, the nonconforming structure shall lose its nonconforming status and thereafter shall be required to be in conformity with existing codes. If a nonconforming use was also in the structure, the nonconforming use and all site improvements shall lose their nonconforming status and be required thereafter to come into compliance with existing codes.

A use, structure, or site improvement occurs without being lawfully authorized in accordance with the provisions of this Land Use Code. Such use and/or structure shall therefore cease all operations until such time that the required plans and/or permits are approved.