

CHAPTER 7: NONCONFORMITIES AND VESTED PROPERTY RIGHTS

7.01 Nonconformities¹

7.01.1 Purpose. This chapter governs uses, buildings, structures, lots, and other situations that came into existence legally prior to the effective date of this Code or the effective date of future amendments to this Code, but do not comply with or conform to one or more requirements of this Code. All such situations are collectively referred to as “nonconformities”.

7.01.2 General Policy. While nonconformities may continue, this chapter is designed to curtail substantial investment in nonconformities to bring about their eventual improvement or elimination to preserve the integrity of this Code and the character of the Town. Any nonconformity or site condition that becomes nonconforming because of any subsequent rezoning or amendment to this text of this Code may be continued or maintained only pursuant to this chapter. Also, this chapter intends to reduce vacancies, promote appropriate redevelopment and re-use of existing structures and lots, and establish requirements.

7.01.3 Continuation Permitted. Any nonconformity that legally exists on ^{***2}, or that becomes nonconforming upon the adoption of any amendments to this Code, may be continued pursuant to this chapter.

7.01.4 Determination of Nonconformity Status. In all cases, the burden of establishing that any nonconformity is a legal nonconformity is solely upon the owner of that nonconformity.

7.01.5 Repairs and Maintenance. Incidental repairs and normal maintenance of nonconformities are permitted unless those repairs increase the extent of nonconformity or are otherwise expressly prohibited by this Code. Structures may be structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

7.01.6 Tenancy and Ownership. The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

7.01.7 Exception Due to Variance or Modification. This chapter shall not apply to any development standard or feature that is the subject of a variance or modification granted by the Zoning Board

¹ This section proposes new language from the consultant team’s best practices that strengthens the Town’s existing nonconformity language.

² Date of Code adoption

of Adjustment. Where a variance or modification has been granted for a development standard that does not otherwise conform to the requirements of this Code, that development standard is deemed conforming.

7.01.8 Enforcement of Requirements. The Town may withhold necessary permits, inspections, or other approvals to ensure compliance with this chapter.

7.01.9 Nonconformity Due to Town Action. A use, lot, or structure conforming to Town ordinance shall not be considered nonconforming if the Town reduces the size of the lot on which the structure is located by widening an abutting street or through the exercise, or potential exercise, of the Town's eminent domain power. Any status claimed under this subsection must be the result of Town action only and not otherwise result in a situation that jeopardizes the public health, safety, or welfare. Further, the Town's action must make it impossible or highly impracticable for the structure to be brought into conformity with this Code. The right to rebuild or add-on shall not be given to properties described in this subsection. This subsection is intended to provide conforming status for the use, lot, or structure immediately after such Town action, only regarding the following requirements:

- A. The amount of square footage removed from the structure's minimum required lot area by the Town action;
- B. The number of linear feet removed from the structure's minimum required lot depth or width by the Town's action;
- C. The number of linear feet removed from the structure's minimum required front setback, side setback, or rear setback by the Town's action;
- D. The number of then existing properly marked parking spaces removed from the structure's minimum required off-street parking by the Town's action;
- E. The increased percentage of lot coverage directly attributable to the Town's action; and
- F. The landscaping requirement.

7.01.10 Nonconforming Uses.

- A. General. Any use of land that was legally in existence and nonconforming on the effective date of this Code and has been in regular and continuous use, but which does not conform to the use regulations prescribed by this Code, shall be deemed a nonconforming use.
- B. Registration of Nonconforming Uses³. The operator, owner, or occupant of any nonconforming uses of land or buildings shall, within 365 calendar days after the date on which the same became nonconforming, register such nonconforming use by obtaining a certificate of occupancy from the Building Official. The certificate of occupancy (nonconforming) shall be considered as evidence of the

³ We need to check with the Building Official for how we might keep these records or if there's an appetite for this.

legal existence of a nonconforming use, as contrasted to an illegal use or violation of this Code. The Building Official shall maintain a register of all certificates of occupancy issued for nonconforming uses.

C. Change of Use.

1. A nonconforming use may only be changed to a conforming use allowed in the zoning district in which it is located.
2. Once a nonconforming use is converted to a conforming use, it shall not be changed back to a nonconforming use.
3. A nonconforming use shall not be changed to another nonconforming use.

D. Enlargement or Extension of Nonconforming Use. There shall be no increase in the floor area or the land area devoted to a nonconforming use or other enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulation that made the use nonconforming was adopted.

E. Loss of Legal Nonconformity Status.

1. Abandonment. If a nonconforming use is discontinued or ceases for any reason for a period of more than 365 calendar days, the use shall be considered abandoned. Once abandoned, the legal nonconforming status shall be lost, the right to operate the nonconforming use shall cease, and re-establishment of the nonconforming use shall be prohibited. Any subsequent use of the property shall comply with the regulations of the zoning district in which it is located. If a nonconforming use is discontinued or ceases, but is re-established within 365 calendar days, then the nonconforming use may continue, provided the nature and degree of the nonconformity will not be changed or increased from that which existed before the nonconforming use was abandoned.
2. Damage or Destruction.
 - a. If the structure in which a nonconforming use is housed, operated, or maintained is destroyed by any means to the extent of more than 50 percent of its fair market value, the use may not be re-established except in compliance with all regulations applicable to the zoning district in which it is located.
 - b. If the structure in which a nonconforming use housed, operated, or maintained is partially destroyed, where the damage does not exceed 50 percent of its fair market value, the nonconforming use may be allowed to continue and the structure may be rebuilt but not enlarged upon approval of a building permit.
3. Action by the Zoning Board of Adjustment. The right to maintain or operate a nonconforming use may be terminated by the Zoning Board of Adjustment in accordance with the provisions of this Code.

7.01.11 Nonconforming Lots.

A. No use or structure shall be established on a lot of record that does not conform to the lot area, lot width, or lot depth requirements established in this Code for the zoning district in which it is located, except as otherwise provided for in this section.

B. Residential Lots.

1. Lot Size. If a lot of record created by subdivision has less width or area than the minimum requirements of the district in which the lot is located, the standard for width or area shall not prohibit the erection of a structure if the lot width and area do not vary more than 10 percent from the minimum requirements of the district in which the lot is located.

2. Setbacks.

a. Setbacks made nonconforming by the adoption of this Code are exempt from the requirements of this section if the following findings can be made:

- i. The proposed addition or alteration will either meet current setback requirements or will not encroach any further into the required setback than the existing structure; and
- ii. If the proposed alteration or addition is located on the side of the existing dwelling, and there is a minimum distance of 10 feet between the side of the existing structure and the nearest dwelling on the adjoining property.

b. Residential lots with setbacks made nonconforming by the installation of roadways or other easements/property line adjustments created or enacted by a governmental entity are also exempt from the requirements of this section, and are not required to address the finding(s) above.

C. Adjacent Lots in Single Ownership. If two or more adjacent and vacant nonconforming lots are in single ownership at any time, and such lots individually have less width or area than the minimum requirements of the district in which such lots are located, then such lots shall be considered in combination and treated as a single lot or several lots that meet the minimum requirements of this Code for the district in which they are located. Any construction, replacement, or enlargement of a dwelling or building requires the appropriate subdivision procedures of all necessary lots to achieve compliance with the provisions of this Code.

7.01.12 Nonconforming Buildings/Structures.

A. General. A nonconforming structure is a building or structure the size, dimension, design, or location of which was lawful prior to the adoption, revision, or amendment of this Code, but which fails to conform to the requirements of the development regulations applicable to the property by reasons of such adoption, revision, or amendment.

B. Continuation of Use. Except where prohibited by this chapter, a nonconforming structure may be used for any use allowed in the underlying zoning district, including a legal nonconforming use.

- C. Maintenance and Repair. The maintenance or minor repair of a nonconforming structure is permitted, provided that the maintenance or minor repair does not extend or expand the nonconforming structure. For the purposes of this subsection, “maintenance and minor repair” means:
1. Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness 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 hazards and promote the safety of surrounding land uses; and
 3. Repairs that are required to remedy unsafe conditions that cause a threat to public safety.
- D. Enlargement and Expansion. A nonconforming structure in which only permitted uses are operated may be enlarged or expanded if the enlargement or expansion can be made in compliance with all of the provisions of this Code established for structures in the district in which the nonconforming structure is located. Such enlargement or expansion shall also be subject to all other applicable Town ordinances.
- E. Loss of Nonconforming Status/Damage or Destruction.
1. Continuation of Nonconforming Structure. The use of a nonconforming structure may be continued subsequent to the effective date of this Code, if that such continuance is in accordance with the provisions of this chapter and all other applicable codes of the Town necessary to ensure adequate protection and safety of adjacent property and the users and occupants of such nonconforming structure. However, the right to continue a nonconforming structure shall cease and such use contained therein shall conform to the provisions of this Code under any of the following circumstances:
 - a. If a nonconforming structure is destroyed by any means to the extent of more than 50 percent of its fair market value, it may not be re-established except in compliance with all regulations applicable to the zoning district in which it is located. This provision shall not apply to single-family dwelling units in residential zoning districts, which may be reconstructed with substantially the same floor area, provided there is no increase in any other nonconformity.
 - b. If the nonconforming structure is partially destroyed, where the damage does not exceed 50 percent of its fair market value, the nonconforming structure may be rebuilt but not enlarged upon approval of a building permit.
 2. Action by the Zoning Board of Adjustment. The right to maintain or operate a nonconforming structure may be terminated by the Board of Adjustment in accordance with the provisions of this Code.

7.01.13 Nonconforming Signs. Nonconforming signs shall follow the regulations established in Chapter 5.08.9.

7.01.14 Termination.

- A. The violation of any of the provisions of one or more of the following categories or ordinances or requirements shall cause the immediate termination of the right to operate such nonconforming use:
 - 1. Constructing, maintaining, or operating a use conducted in, or associated with, a building or structure erected without a permit from the Town;
 - 2. Operating a use or occupying a building or structure without a valid Certificate of Occupancy from the Town;
 - 3. Operating a use in violation of a valid Certificate of Occupancy;
 - 4. Unlawful expansion of a nonconforming use or nonconforming structure;
 - 5. Unlawful outside display or storage in required parking spaces;
 - 6. Violation of any provision of a federal or state statute with respect to a nonconforming use;
 - 7. Violation of any provision of an ordinance of the Town with respect to a nonconforming use.
- B. It is the clear intent of this subsection that nonconforming uses that operate unlawfully shall be considered illegal uses. Illegal uses shall not be considered nonconforming regardless of remedial measures taken to resurrect nonconforming status.
- C. For purposes of this subsection, the term "violation" shall mean a final finding by a court of record that an ordinance has been violated⁴.

7.02 Vested Property Rights

7.02.1 Purpose. The purpose of this chapter is to provide the procedures necessary to implement the provisions of Article 68 of Title 24, C.R.S. (Ord. 11-2007 §1)

7.02.2 Request for Site-Specific Development Approval. For those developments for which the landowner wishes the creation of vested property rights pursuant to Article 68 of Title 24, C.R.S., the landowner shall request the approval in writing at least thirty (30) days prior to the date said approval is to be considered. Failure of the landowner to request such an approval renders the plan not a site-specific development plan, and no vested property rights shall be deemed to have been created. (Ord. 11-2007 §1)

7.02.3 Notice and Hearing. No site-specific development plan shall be approved until after a public hearing called for that purpose, preceded by notice of such hearing published as provided by law at least fourteen (14) days before the hearing. Such notice may, at the Town's option, be combined with any other required notice. At such hearing, all interested persons shall have an opportunity to be heard. (Ord. 11-2007 §1)

⁴ Staff wants more understanding of the intent. Possibly send the violation to municipal court and if found guilty, somehow document that the nonconforming status is terminated. Then if terminated, establish a length of time for compliance, and possibly send them back to court for failure to bring the nonconformity into compliance. Would we court order the remedy? Things to consider as we move forward with revisions.

7.02.4 Approval, Conditional Approval, Effective Date, Amendments, Referendum, and Review.

- A. A site-specific development plan shall be deemed approved upon the effective date of the ordinance granting final approval of the plan. The vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site-specific development plan, including any amendments thereto.
- B. The Board of Trustees may approve a site-specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. Such conditional approval will result in a vested property right, although failure to abide by such terms and conditions will result in a forfeiture of vested property rights.
- C. In the event amendments to a site-specific development plan are approved, the effective date of such amendments, for purposes of duration of a vested property right, shall be the date of the approval of the original site-specific development plan, unless the Board of Trustees specifically finds to the contrary and incorporates such findings in its approval of the amendment.
- D. The approval of vested property rights shall be subject to all rights of referendum and judicial review; except that the period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication of a notice to the general public of the site-specific development plan and creation of vested property rights. (Ord. 11-2007 §1)

7.02.5 Notice of Approval.

- A. Each plat or development agreement constituting a site-specific development plan shall contain the following notice:

Approval of this plan may create a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended.
- B. Failure to contain this statement shall invalidate the creation of the vested property right. In addition, a notice describing generally the type and intensity of the use approved and the specific parcel or parcels of property affected and stating that a vested property right has been created shall be published once, not more than fourteen (14) days after approval of the site-specific development plan, in a newspaper of general circulation within the Town. Publication of the notice of creation of the vested property right shall be the obligation of the landowner. The Town shall have no obligation to see that the notice is properly published. (Ord. 11-2007 §1)

7.02.6 Duration of Vested Property Right. A property right which has been vested as provided herein shall remain vested for a period of three (3) years; except that the Board of Trustees may, in its sole discretion, grant vested property rights for a longer period when warranted in light of all relevant circumstances, including but not limited to the size and phasing of the development, economic cycles and market conditions. The vesting period shall not be extended by any

amendments to a site-specific development plan unless expressly authorized by the Board of Trustees in the chapter approving such amendments. (Ord. 11-2007 §1)

7.02.7 Other Provisions Unaffected. Approval of a site-specific development plan shall not constitute an exemption or waiver of any other provisions of this Code pertaining to the development or use of the property. (Ord. 11-2007 §1)

7.02.8 Payment of Costs. In addition to any and all other fees and charges imposed by this Code, the applicant for approval of a site-specific development plan shall pay all costs occasioned to the Town pertaining to such application, including but not limited to publication of notices, public hearing and review costs, county recording fees and review costs. (Ord. 11-2007 §1)

7.02.9 Limitations. Nothing in this chapter is intended to create any vested property right, but only to implement the provisions of Article 68 of Title 24, C.R.S. In the event of the repeal of said article or a judicial determination that said article is invalid or unconstitutional, this Article shall be deemed to be repealed and the provisions hereof no longer effective. (Ord. 11-2007 §1)

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