

# **Chapter 5 Nonconforming Uses and Development**

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**5.0** Introduction

**5.1** Nonconforming Uses and Development

## **Chapter 5.0 Introduction**

This chapter provides standards and procedures for nonconforming situations (i.e., existing uses or development that do not comply with the Code). The standards for nonconforming uses and development are intended to allow for land uses which would not be permitted by the regulations imposed by this Code and were lawful at the time they were established, provided they adhere to the regulations of Chapter

## **Chapter 5.1 Nonconforming Uses and Development**

### **Sections**

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### 5.1.1 Nonconforming Uses.

Where at the time of adoption of this Code a use of land exists which would not be permitted by the regulations imposed by this Code and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful, provided:

- A. **Expansion Prohibited.** Nonconforming uses shall not be enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this Code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land.
- B. **Location.** No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Code;
- C. **Discontinuation or Abandonment.** The nonconforming use of land is not discontinued for any reason for a period of more than 12 months. For purposes of calculating the 12 month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
  - 1. On the date when the use of land is physically vacated;
  - 2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
  - 3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
  - 4. On the date a request for final reading of water and power meters is made to the applicable utility districts.
- D. **Application of Code Criteria and Standards.** If the use is discontinued or abandoned for any reason for a period of more than 12 months, any subsequent use of land shall conform to the applicable standards and criteria specified by this Code for the land use zone in which such land is located.

### **5.1.2 Nonconforming Development.**

Where a structure exists at the effective date of adoption or amendment of this title that could not be built under the terms of this title by reason of restrictions on lot area, lot coverage, height, yard, equipment, its location on the lot or other requirements concerning the structure; and the structure was lawful when constructed, the structure may remain on the site so long as it remains otherwise lawful, subject to the following provision:

- A. No such nonconforming structure may be repaired, maintained, enlarged or altered in a way which increases its nonconformity.
  - 1. Destruction of Nonconforming Structure by the Beachie Creek and Lionshead Wildfire of 2020. For properties impacted by the Beachie Creek and Lionshead Wildfire of 2020, they may restore or replace any lawful nonconforming building or structure. Restoration or replacement shall be commenced prior to February 23, 2025. Commencement of restoration or replacement shall mean to have completed any of the following: to have submitted an application for a land use or development permit, to have submitted an application for a building or trade permit including septic permit, or to have begun site construction. This does not relinquish compliance with State and Federal Codes.
- B. Where a dwelling or other primary structure located on two or more separate lots/parcels under single ownership, so that the structure straddles a lot/parcel line, any alteration of the structures shall require the separate lots/parcels to be consolidated with a property line adjustment application.
- C. Destruction of Nonconforming Structures. In case any nonconforming structure is damaged or destroyed by fire, explosion, an act of God or an act by any other cause to the extent that the total deterioration exceeds 60 percent of the cost of replacement of the building using new materials, the land and the building shall be subject to all the regulations specified by this Code for the zone where such land and building are located.
- D. Should such structure be moved for any reason and by any distance, it shall thereafter conform to the regulations of the Development Code.

### **5.1.3 Non-conforming Lots and Parcels.**

- A. A legal lot or lot of record with an area or dimensions that do not meet the standards of the zoning district in which the property is located, may be occupied by a use permitted in the zone, subject to other requirements of the zone. If there is a lot area deficiency, residential use shall be limited to a single-family dwelling.
- B. Construction of single-family dwelling on property within residential zone districts may occur on legal lots of record based upon approval of a septic system by Marion County Public Works Department. Such properties shall not be deemed non-conforming development.

### **5.1.4 Conditional Uses.**

Any use that is permitted as a conditional use as provided in this Code shall not be deemed a non-conforming use, but shall without further action, be deemed a conforming use, qualified with such conditions as the Planning Commission or City Council has required.