

## ARTICLE VII

### NONCONFORMING USES AND STRUCTURES

#### SECTION 7.010: PURPOSE

The purpose of the NONCONFORMING USES AND STRUCTURES provisions are to establish standards and procedures regulating the continuation, improvement and replacement of structures and uses which pre-date, and which do not comply with, this Ordinance. The intent is to allow changes to nonconforming uses and structures in a manner that does not increase the level of adverse impact to surrounding areas. These provisions are intended to be consistent with ORS 215.130

#### SECTION 7.020: NONCONFORMING USES AND STRUCTURES

##### (1) DEFINITIONS:

- (a) **NONCONFORMING USE:** A use that does not conform to current requirements of this Ordinance but which legally existed at the time the applicable section(s) of the Ordinance took effect and has continued into the present without discontinuance as described in Section 7.020 (6).
- (b) **A NONCONFORMING STRUCTURE:** A structure that does not conform to current requirements of this Ordinance but which legally existed at the time the applicable section(s) of the Ordinance took effect.
- (c) **ALTERATION of a NONCONFORMING STRUCTURE:** A partial change to a structure, not involving enlargement of the external dimensions of the structure.
- (d) **ALTERATION of a NONCONFORMING USE:** A change in the characteristics of the use (for example, hours of operation; type of vehicle serviced) but not a change in the use.
- (e) **EXPANSION:** Any increase in any external dimension of a structure, or any increase in land area devoted to a use.
- (f) **REPLACEMENT OF USE:** The discontinuance as described in Section 7.020 (6) of an existing use and commencement of a new use.
- (g) **REPLACEMENT OF STRUCTURE:** Removal that exceeds 80 percent of an existing structure and placement of a new structure.
- (h) **100% MARKET VALUE THRESHOLD:** ALTERATIONS or EXPANSIONS within any five-year period, of which equals or exceeds 100% of the market value of the structure (as indicated by the records of the County Assessor) at the beginning of the five-year period. The 100% MARKET VALUE THRESHOLD shall not apply to an ALTERATION or EXPANSION for purposes of conformance with Section 3.510 Flood Hazard Overlay Zone.

- (2) **BURDEN OF PROOF:** In matters relating to the continuation, alteration, expansion or replacement of a nonconforming structure or use, the applicant bears the burden of proof for establishing:

- (a) The current use or structure lawfully existed at the time the applicable zoning requirement went into effect; and
- (b) The level of use and/or dimensions of the structure that existed at the time the applicable zoning went into effect.

Standard evidence that a use or structure has been maintained over time may include dated documents such as: building permits, land use approvals, development permits, other governmental permits, utility bills, tax records, assessor records, loan statements, business license, directory listings, published references or other documents deemed admissible by the Director.

If the regulation, which rendered the structure or use nonconforming, was enacted more than 20 years prior to the time of application, the applicant need only provide evidence or information pertaining to the 20 years immediately previous to application.

- (3) CONTINUATION: A NONCONFORMING USE OR STRUCTURE may be continued at the level of use or dimension of structure existing on the date the applicable zoning went into effect, subject to the requirements of Section 7.020.
- (4) ALTERATION OR EXPANSION:
  - (a) ALTERATION of a NONCONFORMING STRUCTURE or a structure devoted to a NONCONFORMING USE is allowed, subject to all other provisions of this ordinance. If such alteration causes the 100% MARKET VALUE THRESHOLD to be exceeded, then it shall be subject to Major Review under Section 7.020(12). The 100% MARKET VALUE THRESHOLD shall not apply to an ALTERATION for purposes of conformance with Section 3.510 Flood Hazard Overlay Zone.
  - (b) EXPANSION of a NONCONFORMING STRUCTURE, EXPANSION of a structure devoted to a NONCONFORMING USE, or ALTERATION or EXPANSION of a NONCONFORMING USE shall be subject to Minor Review under Section 7.020(11). If the criteria of Section 7.020(11) are not met, then the proposed alteration or expansion can only be allowed through a Variance (Article VIII). EXPANSION of a NONCONFORMING STRUCTURE shall be allowed outright for purposes of conformance with Section 3.510 Flood Hazard Overlay Zone if the EXPANSION meets the height standard for the subject property and does not reduce existing nonconforming setbacks. The 100% MARKET VALUE THRESHOLD shall not apply to an EXPANSION for purposes of conformance with Section 3.510 Flood Hazard Overlay Zone.
- (5) REPLACEMENT OR USE ADDITION:
  - (a) If a NONCONFORMING STRUCTURE is replaced, the new structure shall conform to the current requirements of this ordinance.
  - (b) If a NONCONFORMING USE involving a structure is replaced or a new use is added to the existing use, the new use shall conform to the current requirements of this ordinance, unless it is determined that the structure is suitable only for nonconforming uses. Such determination shall be made as part of the procedure and criteria of Minor Review under Section 7.020(11).
  - (c) If a NONCONFORMING USE not involving a structure is replaced, or a new use is added to the existing use, the new use shall conform to the current requirements of this ordinance.

- (d) NONCONFORMING manufactured dwellings or recreational vehicles located in the LM or M-1 zones may be replaced provided the required setbacks of Section 3.016 (4) (d), (e) and (f) are met and the structure meets the standards of Section 5.010.
  - (e) A NONCONFORMING recreational vehicle may be replaced with a manufactured home or mobile home subject to the procedure of Section 6.020. The replacement shall conform to the criteria of Section 6.040. The manufactured dwelling shall also conform to the standards of Section 5.010 and the setback requirements of the zone in which it is located.
  - (f) A NONCONFORMING farm structure may be replaced by a new structure provided the new structure conforms to the standards of the zone in which it is located.
- (6) DISCONTINUANCE OF USE:
- (a) If a NONCONFORMING USE is discontinued for a period of one year, subsequent use of the property shall conform to this Ordinance.
  - (b) If a NONCONFORMING USE of a mineral or aggregate mining operation is discontinued for a period of two years, subsequent use of the property shall conform to this Ordinance.
  - (c) DISCONTINUANCE OF USE shall not apply to a medical leave of absence for a serious illness suffered by the owner/operator of the use, or serious illness suffered by member of owner/operator's immediate family related by blood, marriage, adoption or guardianship for which primary care is the responsibility of the owner/operator of the use, that resulted in an inability to continue the use for the period of the illness not in excess of two years. Burden of proof shall be with the owner/operator of the use and shall consist of the following:
    - i. A Medical Doctor's affidavit stating the nature and term of the illness and necessity for the medical leave of absence;
    - ii. Copies of receipts of medical bills related to the illness; and
    - iii. Proof of relationship to owner/operator.
- (7) RELOCATION OF USE: A NONCONFORMING USE may be relocated upon the same parcel after review according to the procedure of Section 8.020 and findings that the proposed relocation conforms to the following standards:
- (a) The proposed location is no more detrimental to adjacent and nearby properties and uses than is the use at the current location.
  - (b) The proposed location does not reduce the productivity of the parcel of land if the use is located in an F, F-1, or SFW-20 zone.
- (8) DESTRUCTION OF USE: If a NONCONFORMING STRUCTURE or a structure devoted to a NONCONFORMING USE is destroyed or damaged by any cause other than an action of the property owner or his agent, to an extent exceeding 80 percent of its fair market value as indicated by the records of the County Assessor, that structure may be rebuilt, subject to the following conditions:

- (a) Reconstruction of the structure shall conform to the setbacks, building height and other requirements of the zone in which it is located.
- (b) Reconstruction of a structure shall be allowed in the same location if the destroyed structure was not in conformance with Section 4.140 Requirements for Protection of Water Quality and Streambank Stabilization.
- (c) Restoration or replacement shall be commenced within one year from the occurrence of the event that destroyed or damaged the structure. This requirement shall be satisfied by obtaining a building permit for the restoration or replacement of the structure or by demonstrating that circumstances beyond the control of the applicant made it impossible to obtain a building permit within that time. In any case a building permit must be obtained and construction must commence within 24 months after the destructive event. If this requirement is not satisfied, the use of the property shall be in conformance with the requirements of the zone in which it is located.

If destruction or damage is caused by an action of the property owner or their agent the reconstruction shall be subject to Section 7.010(5) of this ordinance.

(9) **NONCONFORMING STRUCTURE EXCEPTIONS:** Notwithstanding Section 7.020(3), a structure having a conforming main use but not conforming to setback or height standards may be expanded as follows:

- (a) If all proposed new construction complies with all standards of the zone, the expansion may be allowed;
- (b) If the structure has a nonconforming non-street side yard of three feet or more, the structure may be expanded to the interior edge of required front or rear yards.
- (c) If the structure has a nonconforming non-street side yard of less than three feet, the structure may be expanded at no less than three feet from the side property line, to the interior edge of required front or rear yards.

If the expansion exceeds the 100% MARKET VALUE THRESHOLD, then the Major Review criteria must be met.

(10) Notwithstanding the provisions of this section, alteration or expansion of a **NONCONFORMING USE OR STRUCTURE** shall be allowed if necessary to comply with any lawful requirement.

(11) **MINOR REVIEW:** Application is made under the fee and procedures for a Type II Administrative Review and is reviewed using the following review criteria. A request may be permitted if:

- (a) The request will have no greater adverse impact on neighboring areas than the existing use or structure when the current zoning went into effect, considering:
  - i. A comparison of existing use or structure with the proposed change using the following factors:
    - 1. Noise, vibration, dust, odor, fumes, glare, or smoke detectable at the property line or off-site;

2. Numbers and kinds of vehicular trips to the site;
  3. Amount and nature of outside storage, loading and parking;
  4. Visual impact;
  5. Hours of operation;
  6. Effect on existing vegetation;
  7. Effect on water drainage and water quality;
  8. Service or other benefit to the use or structure provides to the area; and
  9. Other factors relating to conflicts or incompatibility with the character or needs of the area.
- ii. The character and history of the use and of development in the surrounding area.
- (b) The request shall maintain a minimum separation of six feet between structures, and comply with the clear vision area of Section 4.010.

The Department may require the applicant to submit a site survey or similar information to assist in making these determinations.

(12) MAJOR REVIEW: Application is made under the fee and procedure for a Type II Administrative Review and is reviewed relative to the following criteria:

- (a) The proposed alteration or expansion may be allowed only if the nonconforming structure or use is brought into conformance, or the nonconforming structure or use, including the proposed alteration/expansion, meets the following criteria:
- i. The alteration/expansion meets the Minor Review criteria; and
  - ii. Either:
    1. The nonconforming structure or use, including the proposed alteration/expansion, is consistent with the purposes of relevant development standards as enumerated in Section 4.005 and preserves the rights of neighboring property owners to use and enjoy their land for legal purposes; or
    2. The applicant demonstrates that bringing the structure or use into compliance is either physically impracticable or financially onerous, and that mitigation will be implemented and maintained which will substantially offset the impact(s) to neighboring property owners.

The Department may require the applicant to submit a **site** survey or similar information to assist in making these determinations.