

## ZONING

### **§ 180-21. Nonconformity. [Replaced in its entirety 06-19-01, Ord. 01-14. Amended 2-13-07, Ord. 07-04]**

#### A. Purpose.

It is the intent of this section to permit nonconforming lots, uses, and structures to continue to exist until they are removed, but not to encourage their continuation. Over time, any changes, extensions, or alterations to nonconforming properties shall bring the property substantially closer into conformance with the town code.

#### B. Conformance to Chapter Required.

All uses of land and buildings, other than those in conformity with this chapter shall be regulated as set forth in this section.

#### C. Definitions.

The following definitions are applicable to this Section:

**Nonconforming Lot.** Means a lot that does not meet the minimum lot size, or street frontage requirements of the zone district in which it is located, but that was lawfully created prior to the effective date of the ordinance establishing the zone district or subsequent amendments thereto that created the nonconformity.

**Nonconforming Use.** Means any activity, development or condition that is not a permitted use in the zone district in which it is located, or is not a conditional use in that zone district that has received conditional use approval under applicable law or other special permitting process, but that was lawfully established prior to the effective date of the ordinance establishing the zone district or subsequent amendments thereto that created the nonconformity, and that has been continuously maintained. A nonconforming use may or may not involve buildings or structures and may involve part of or all of a building or property.

**Nonconforming Structure.** Means a building or structure that does not comply with the setback, height, lot coverage and other development requirements of the zone district or overlay district in which it is located, but that was lawfully constructed prior to the effective date of the ordinance that established the zone district or subsequent amendments thereto that created the nonconformity, and that has been continuously maintained. This term does not apply to any substandard condition that was legally granted a variance.

**Substantial Destruction.** For the purpose of this Chapter, a building or structure has suffered substantial destruction if the cost of repair of the building or structure exceeds seventy-five percent (75%) percent of the replacement cost of the entire building, excluding the foundations. The replacement cost shall be derived from the fair market value of the building or structure, or the value as defined by the Town's building code, whichever is greater.

#### D. Existing Nonconforming Lots of Record.

Subject to approval of a variance by the Planning Commission, an existing nonconforming lot or lots of record may be developed with reduced yard setbacks, provided that the existing lot(s) cannot be merged with adjacent properties to form a property in conformance with the lot area and/or lot frontage requirements of the zone district

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### E. Nonconforming Uses.

**Continuance of Lawful Use.** A nonconforming use may be continued, although such use does not conform with the provisions of this chapter or amendment thereto, unless otherwise specifically stated in the chapter.

**Changes to Nonconforming Uses.** A nonconforming use may be changed to a conforming use, or to any use that is less intensive in nature. For purposes of this section, the intensity of a use is determined by the Community Development Director after consideration of factors reasonably related to the intensity of a land use including, but not limited to, the amount of commercial activity, the number of visitors and/or customers, the amount of parking required, the number of trips generated, and the level of noise generated by the use. A nonconforming use may not be expanded or enlarged under any circumstance.

### F. Nonconforming Buildings or Structures.

**Change, Extension or Alteration.** Applications for tenant finishes, exterior finishes, and small project in residential and commercial nonconforming structures,, and applications for additions to single-household and duplex nonconforming structures may be approved by the Community Development Department staff if the criteria below are met. All other applications for changes, extensions, and alterations to nonconforming structures may be approved by the Planning Commission if the criteria below are met

A nonconforming structure may be changed, altered or extended provided that the following criteria are met:

1. Does not increase the nonconformity of said structure and,
2. Serves to alleviate hardship on the owner or occupant, and promotes property values in the neighborhood.

Refer to Section 180-19 of this Article for information on the application process. All changes, extensions, alterations, and additions to nonconforming structures must meet the requirements of Chapter 180, Zoning, including but not limited to, the respective setback, height, density, lot coverage, parking, landscaping, and overlay district requirements. Any proposal which increases the nonconformity of the structure or use will require a variance. Once brought into conformance, no structure or use shall be permitted to revert to nonconforming status.

### G. Restoration.

A nonconforming structure, excluding signs, may be reconstructed or restored to its original condition, if damaged by fire or other accidental or natural cause, and if the structure has not suffered substantial destruction. Reconstruction or restoration of such structure shall begin within one (1) year of the event that caused the damage and shall be completed within two (2) years after the date of such event. The Planning Commission may grant one or more thirty (30) day extensions of the project commencement or completion deadline upon a showing by a party requesting such an extension of extraordinary or exceptional circumstances that do not generally exist for developers. In all other cases, the reconstruction or restoration of a nonconforming structure shall comply with the all the provisions of Chapter 180 of this code.

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### H. Abandonment.

A nonconforming structure or use, including signs, which has been abandoned or discontinued for a period of one (1) year, shall not be reestablished. Any future use of the premises shall comply with the provisions of this chapter.

### I. Historic Structures.

Where a legal, nonconforming structure meets the criteria for historic designation, as specified in Section 180-18.2.C.2 of the Historic Overlay District and the structure is damaged or destroyed, the structure may be reconstructed regardless of the amount of damage if the purpose of the reconstruction is to create an authentic reproduction of the historic structure.

### J. Unlawful Uses.

Any use of a structure or land that was unlawful under applicable zoning regulations at the time that the use was established shall not be considered a nonconforming use, but shall remain an unlawful use and is therefore a violation of the provisions of this chapter and shall be punishable as provided in Chapter 1, General Provisions, Article 1. Each day that a violation exists shall constitute a separate offense.

### K. Nonconforming Signs.

Signs legally erected prior to the effective date of the ordinance codified in Section 180-22 shall be deemed to be legal nonconforming signs. A nonconforming sign shall not be changed, extended, or altered in terms of its size, location, shape, height, colors, and materials without being brought into compliance with the provisions of this chapter. Changes of copy are allowed, provided that there is no change to the business name.

### L. Nonconforming Development Standards.

1. A nonconforming use or structure that is nonconforming due to inadequacies in its provision of onsite parking may be expanded, changed, or altered in accordance with the provisions of this Section, provided that parking is provided for the expansion in accordance with the current parking standards specified in Section 180-23 of the Frisco Development Code.
2. A nonconforming use or structure that is nonconforming due to inadequacies in its provision of landscaping may be expanded, changed, or altered in accordance with the provisions of this Section, provided that landscaping is provided for the expansion in accordance with the landscaping standards specified in Section 180-20.1 of the Frisco Development Code.
3. Nonconforming Outdoor Lighting. A legal nonconforming outdoor light fixture shall not be changed or altered without being brought into compliance with the provisions of Section 180-20.2, Outdoor Lighting. A nonconforming structure that is nonconforming in terms of its outdoor light fixtures may be expanded, changed, or altered provided that all outdoor light fixtures on the structure, new and old, are brought into compliance with the provisions of Section 180-20.2.

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4. Nonconforming Street Access and Driveways. The intent of the driveway requirements set forth in Chapter 155, Street Design Criteria, of this code is to create safe and visually appealing driveways that minimize the use of pavement and provide the space needed for snow storage in the Town Right-of-Way. Where an existing site is nonconforming in regard to the driveway standards provided in Chapter 155, any changes to the driveway shall bring the driveway as close to conformity as the physical circumstances make possible by utilizing the following methods:
  - a. Multiple driveway cuts on Single Family Residences shall be eliminated.
  - b. A nonconforming driveway shall not be modified in any manner that increases the width of the driveway where the property meets the Town Right-of-Way.
  - c. Any change to the type of surface of the nonconforming driveway (e.g. gravel to asphalt or concrete) shall bring the driveway fully into compliance with the maximum width requirements for driveways stated in Chapter 155.
  - d. Any change to the location of a nonconforming street access shall bring the access point fully into compliance with the minimum distance from an intersection requirement, and the maximum width requirements as stated in Chapter 155.