

Ordinance No. 360

36-2.2 DEFINITIONS

Existing definition in the Zoning Ordinance:

Nonconforming uses means the use of a building or of land lawfully existing at the time of adoption or amendment of the ordinance from which this Chapter derives became effective but which does not no longer conforms with the present use regulations of the zone district in which it is located.

New definitions created for this ordinance amendment:

Nonconforming lot means a parcel, lot, or building site, the size, or dimensions of which was lawfully existing at the time of adoption or amendment of this Chapter, but which no longer conforms to the requirements of the zone district in which it is located.

Nonconforming structure means a structure or building, the size, dimensions, or location of which was lawfully existing at the time of adoption or amendment of this Chapter, but which no longer conforms to the requirements of the zone district in which it is located.

Building footprint means the horizontal area, as seen in plan view, measured from the outside of all exterior walls, or supporting columns. In the absence of surrounding exterior walls, the building footprint shall be the area under the horizontal projection of the roof. Eaves that extend beyond the building or structure are excluded.

36-7.9 ~~NONCONFORMING USES~~ NONCONFORMITIES

1. General Requirements.

- A. Nonconformities Permitted. It is recognized that there exists certain uses, buildings, structures, and lots which were lawful before this Ordinance was passed or amended, which would be prohibited, regulated, or restricted under the terms of this Ordinance. It is the intent of this section to permit these nonconforming uses, buildings, structures, and lots to continue until they are abandoned, removed, or brought into conformance, but not to encourage their continued use or survival.
- B. Determination of Nonconformity Status. The burden of establishing that any nonconformity is a legal nonconformity shall in all cases be upon the owner of the nonconformity.
- C. Repairs and Maintenance. Incidental repairs and normal maintenance of nonconformities shall be permitted unless such repairs increase the extent of nonconformity or are otherwise expressly prohibited by this Ordinance. Nothing in this section shall be construed to prevent structures from being maintained in a safe condition.
- D. Change of Tenancy or Ownership. The status of nonconformity is not affected by changes of tenancy, ownership, or management.

- E. Change to Conforming. If a nonconformity becomes conforming because of the adoption of an ordinance, or any subsequent amendment, then it shall no longer have nonconforming status.
2. Nonconforming Uses. Nonconforming uses are those uses that were legally established but no longer comply with the use regulations of the zone district in which they are located.
- A. Enlargement or Increase. Nonconforming uses shall not be enlarged or increased, nor extend to occupy a greater area of land than was occupied when the use became nonconforming.
 - B. Extension Within a Building. Any nonconforming use may only be extended to locations within the building which were manifestly arranged or designed for that permitted use at the time of adoption or amendment of this Ordinance, but the use shall not be extended to occupy any other locations within the building or land outside the building.
 - C. Relocation. A nonconforming use shall not be moved in whole, or in part, to another location on the lot on which it is located, unless the relocation of the nonconforming use decreases the nonconformity.
 - D. Change to Conforming Use. A nonconforming use may be changed to any use that is permitted in the zone district in which it is located, subject to the standards and requirements applicable to the new use.
 - E. Conversion of Conforming Use. Once a nonconforming use is converted to a conforming use it may not be changed back to a nonconforming use.
 - F. Loss of Nonconforming Status.
 - i. Abandonment. If a nonconforming use is abandoned for any reason for a continuous period of at least twelve (12) consecutive calendar months, regardless of ownership, it shall be deemed abandoned. Any subsequent use or occupancy of the structure or open land must comply with the regulations of the zone district in which it is located and all other applicable requirements of this Ordinance.
 - ii. Evidence of Abandonment. A nonconforming use shall be presumed abandoned and its rights as a nonconforming use extinguished when any one of the following has occurred:
 - a. The owner has in writing or by public statement indicated intent to abandon the use.
 - b. Physically changes have been made to the building or structure or its permanent equipment in a manner that clearly indicates a change in use or activity to something other than the nonconforming use.
 - c. Failure to maintain current licenses, certificates, permits, registrations, or other appropriate documentation for the operation of the nonconforming use.
 - d. One or more utility meters has been removed, or utilities have been turned off for twelve (12) consecutive calendar months.

- e. Other actions, which in the opinion of the Zoning Administrator, constitute an intention by the property owner or lessee to abandon the nonconforming use.
 - G. Site Elements for Nonconforming Uses. Any site elements such as buildings, structures, signs, temporary or movable structures, fences, or other site elements which are not necessary to the lawful nonconforming use of land shall be discontinued and the incidental structures removed within five years from the date of passage of the ordinance from which this section derives. All subsequent use of such land shall be in conformity with the provisions of this section.
 - H. Agricultural Uses. Agricultural uses that are legally nonconforming shall be considered conforming for purposes of adding land and/or buildings or structures in support of the agricultural operation. This shall not permit the use of land, buildings, or structures that do not have an existing agricultural use from establishing such use in the future.
3. Nonconforming Buildings or Structures. Nonconforming buildings or structures are those that were legally established but no longer comply with the dimensional standards of the zone district in which they are located.
- A. Continuation. A nonconforming building or structure may be continued so long as it remains otherwise lawful, subject to the provisions of this Chapter.
 - B. Use. A nonconforming building or structure may be utilized for any use allowed in the underlying zone district, subject to all applicable use standards.
 - C. Expansion. A nonconforming building or structure may be enlarged or expanded only if the expansion does not increase the extent of nonconformity. Any expansion of the building or structure must comply with all dimensional standards of the zone district in which it is located.
 - D. Moving. A nonconforming structure may be moved if the movement or relocation eliminates the nonconformity.
 - E. Reconstruction.
 - i. Should a nonconforming building or structure be damaged, demolished, or destroyed by storm, fire, flood, or other involuntary catastrophe by more than 50 percent of the footprint of the first floor of the building or structure at grade, it shall be reconstructed only in conformance with the provisions of this Ordinance.
 - ii. Should a nonconforming building or structure be damaged, demolished, or destroyed by storm, fire, flood, or other involuntary catastrophe to an extent equal to or less than 50 percent of the footprint of the first floor of the building or structure at grade it may be reconstructed in its previously nonconforming location. Any additions or expansions to the reconstructed building must comply with all dimensional standards of the zone district in which it is located.
 - iii. Should any portion of a nonconforming building be voluntarily demolished, reconstruction must comply with all dimensional standards of the zone district in which it is located.

4. Nonconforming Lots. Nonconforming lots are those that were legally established, such as lots of record, but no longer comply with the minimum area or width standards of the zone district in which they are located.
 - A. Vacant Lots. If the nonconforming lot was vacant at the time it became legally nonconforming, it may be used for any use allowed in the underlying zone district. Development on nonconforming lots shall comply with the dimensional standards of the underlying zone district.
 - B. Developed Lots. If the nonconforming lot contained a building or structure at the time it became nonconforming, then the building or structure may be maintained or expanded in accordance with the standards herein.
5. Nonconforming Signs. For regulations pertaining to nonconforming signs, see Section 36-5.8: Signs.