

ARTICLE 21

NONCONFORMITIES

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SECTION 21-1 GENERAL PROVISIONS

21-101. Nonconformities are of three types: nonconforming lots of record, nonconforming structures and nonconforming uses, each type defined as follows.

- a. *Nonconforming lots of record:* Means an unimproved lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded with the Lyon County Register of Deeds prior to the original adoption of zoning regulations and neither said lot nor parcel complies with the lot width or area requirements for any permitted use in the district in which it is located.
- b. *Nonconforming structure:* Means an existing structure which does not comply with the lot coverage, height or yard requirements which are applicable to new structures in the zoning district in which it is located.
- c. *Nonconforming use:* Means an existing use of a structure or land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

SECTION 21-2 NONCONFORMING LOTS OF RECORD

21-201. The zoning administrator may issue a zoning certificate for any nonconforming lot of record, provided that:

- a. Said lot is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations, and
- b. Said lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable zoning regulations, and
- c. Said lot can meet all yard regulations for the district in which it is located, and
- d. Said lot can meet minimum standards for sewage treatment as required by the county sanitation code.

SECTION 21-3 NONCONFORMING STRUCTURES

21-301. a. *Authority to continue.* Any structure that is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable intensity of use regulations and/or the applicable yard and height regulations, may be continued, so long as it remains otherwise lawful.

b. *Enlargement, repair, alterations.* Any nonconforming principal structure may be enlarged, maintained, repaired or remodeled; provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure. Notwithstanding the above, a porch which is covered by a roof which extends into a front setback area may be enclosed but not in excess of the area covered by the existing roof.

c. *Damage or destruction.* In the event that any nonconforming structure is damaged or destroyed, by any means, to the extent of more than fifty (50) percent of its fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located or unless such restoration is authorized as an exception by the board of zoning appeals in conformance with Article 20. When a structure is damaged to the extent of fifty (50) percent or less of its fair market value, no repairs or restoration shall be made unless a zoning certificate is obtained and substantial restoration is underway within one year after the date of such partial destruction and repair or restoration is diligently pursued to completion.

d. *Moving.* No nonconforming structure shall be moved in whole or in part for any distance whatever, to any other location on the same lot or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

e. *Damage or destruction of multiple family structures.* If greater than 50% damaged, multiple family structures built under previous intensity requirements may be reconstructed at the same intensity as the original construction, in the event of a hardship not created by the owner, with the stipulation the structure is rebuilt within 18 months from the damage date with an extension being allowed under extenuating circumstances.

SECTION 21-4 NONCONFORMING USES

21-401. a. *Authority to continue.* Any nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land which was lawful and in existence at the effective date of these regulations and does not involve a structure or only involves a structure which is accessory to such use of land, may be continued, so long as otherwise lawful and so long as it is not specified to be terminated by these regulations.

b. *Ordinary repair and maintenance.*

1. Normal maintenance and incidental repair, or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use.

2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition.

c. *Extension.* A nonconforming use shall not be extended, expanded, enlarged, or in-creased in intensity. Such prohibited activities shall include, without being limited to, the following:

1. Extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of these regulations or on the effective date of subsequent amendments to these regulations that cause such use to become nonconforming.

2. Extension of such use within a building or other structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of these regulations or on the effective date of subsequent amendments to these regulations that cause such use to become nonconforming; provided, however, that such use may be extended throughout any part of such building or other structure that is found by the zoning administrator to have been lawfully and manifestly designed

or constructed for such use on such effective date.

- d. *Enlargement.* No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.
- e. *Damage or destruction.* In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than fifty (50) percent of its fair market value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located or unless such restoration is authorized as an exception by the board of zoning appeals in conformance with Article 25. When such damage or destruction is fifty (50) percent or less of fair market value, no repairs or restoration shall be made unless a zoning certificate is obtained, and substantial restoration is underway within one year after the date of such partial destruction and repair or restoration is diligently pursued to completion.
- f. *Moving.* No structure that is devoted in whole or in part to a nonconforming use and no nonconforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure and the use thereof or the use of land shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. Manufactured housing may be replaced on an existing pad having utility hook-ups if such pad has not been vacant for the previous ninety (90) consecutive days.
- g. *Change in use.* Unless structural alterations are made which will expand the area or change the dimensions of the existing structure, any nonconforming use of a structure, or nonconforming structure and premises, may change to another nonconforming use provided that the board of zoning appeals either by general rule or by making findings in the specific case, shall find that the proposed nonconforming use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the board of zoning appeals may require appropriate conditions and safeguards to protect surrounding areas and the public welfare, in accordance with Article 25. Once such use has changed, it may no longer be returned to the original use or any other less appropriate use.
- h. *Abandonment or discontinuance.* When a nonconforming use is discontinued or abandoned for a period of twelve (12) consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land or buildings shall comply with the regulations of the zoning district in which such land is located.

i. *Nonconforming accessory uses.* No nonconforming use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate,

j. *Nonconforming residential uses.* Notwithstanding the provisions of subsections c and d of this section, any structure which is devoted to a residential use and which is located in a commercial or industrial district, may be remodeled, extended, expanded, and enlarged; provided that after any such remodeling, extension, expansion or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to the undertaking of any such work.

SECTION 21-5 EXCEPTIONS AS CONFORMING USES

21-501. a. *Status of existing exceptions.* Where a use exists at the time of the effective date of these regulations and is permitted by these regulations only as an exception in the zoning district in which it is located, such use shall not be deemed to be a nonconforming use, but shall, without further action, be deemed a lawful conforming use in such zoning district. However, such use shall not expand or enlarge until application is made to and approved by the board of zoning appeals as set out in Article 25.

b. *Status of future exceptions.* Any use for which an exception has been issued, as provided in these regulations, shall not be deemed to be a nonconforming use, but shall, without further action, be deemed a lawful conforming use.