

CHAPTER 11: NONCONFORMITIES

Section 11-101 Intent

The intent of this Section is to recognize that within zoning districts established by this Code there exist land, uses of land, structures, and uses of structures that were lawful before this Code was adopted or amended, but which would be prohibited, regulated, or restricted under the provisions of this Code. Accordingly, except as authorized by this chapter, nonconformities shall not be enlarged, expanded, increased, used as grounds for adding other structures or uses now prohibited in the same zoning district.

Section 11-102 Types of Nonconformities Regulated

The regulations of this chapter address the following types of situations, all of which are collectively referred to as “nonconformities.”

11-102.01 Nonconforming Uses

Uses that were legally established but that no longer comply with the zone district regulations of this Code that apply within the zoning district in which the use is located are referred to as “nonconforming uses.”

11-102.02 Nonconforming Structures

Buildings and structures, not including signs, that were legally established but that no longer comply with the dimensional standards that apply within the zoning district in which the building or structure is located are referred to as “nonconforming structures.”

11-102.03 Nonconforming Land

- A. A parcel of land, designated on a duly recorded plat, or by a duly recorded deed, or by other lawful means, that complied with the lot area, lot width, and other dimensional standards of the zoning district in which it was located at the time of its creation, but that does not comply with the minimum lot area, minimum width, or other dimensional requirement of the zoning district in which it is now located, is referred to as “nonconforming land.”
- B. This provision shall apply even though such parcel fails to meet these Regulations’ requirements for area, width, or both, that are applicable in the given zoning district. However, all minimum yard requirements as set forth in the applicable zoning district shall apply to such parcel(s), unless a variance is obtained from the Board of Adjustment. No variance to the minimum lot area for any parcel may be obtained.

11-101.04 Nonconforming Signs

Signs that were legally established but that no longer comply with the sign regulations of the Land Development Code are referred to as “nonconforming signs.”

11-102.05 Reserved – Nonconforming Development Standards

Section 11-103 General Provisions

11-103.01 Determination of Nonconformity Status

The owner, and not the County, has the burden of establishing that a nonconformity lawfully exists.

11-103.02 Nonconformities Must Be Legal

Any use, structure, and/or parcel of land that was used, erected, or maintained in violation of any previous Zoning Regulations shall not be considered as a legal, nonconforming use, structure and/or land, and shall be required to comply with all provisions of this Code.

11-103.03 Previous Approvals May Continue

- A. Nothing in this section shall be interpreted to require a change in plans, construction, or designated use of any building, land, or structure for which a building permit or other development approval was lawfully obtained from the County prior to the effective date of adoption or amendment of this Code, provided the development, construction, or use is commenced and completed according to the applicable permit or approval terms.
- B. The Planning Manager may, for good cause shown, grant an extension of up to one (1) year to complete the development, construction, or establishment of the use under the terms of the previous Land Development Code.
- C. If the building or structure is not completed, or the use established, within the time allowed under the original permit or approval, or any extension granted, then the development, building, structure or use may be constructed, completed, established, or occupied only in compliance with this Land Development Code.

11-103.04 Change of Tenancy or Ownership

Changes of ownership, tenancy, or management of an existing nonconformity shall be permitted, and in such cases the nonconforming situation shall continue to be subject to the standards of this chapter.

11-103.05 Repairs and Maintenance

A. General Rule

Repairs and normal maintenance required to keep nonconforming uses and structures in a safe condition shall be permitted, provided that no alterations shall be made except those allowed by this Chapter or required by law or ordinance. Such repairs and maintenance shall not exceed fifty percent (50%) of the current replacement cost of the nonconforming structure or a structure devoted to a nonconforming use. Substantial repairs that exceed fifty percent (50%) of the current replacement cost of a nonconforming structure or structure devoted to a nonconforming use shall not be made except in conformance with this Code.

B. Compliance Required if Non-Repair Results in Safety Hazard

If a nonconforming structure, or a portion of a structure devoted to a nonconforming use, becomes physically unsafe or unlawful due to a lack of repairs and maintenance and is declared by an authorized county official to be unsafe or unlawful by reason of physical

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condition, it shall thereafter be restored, rebuilt, or repaired only in conformity with the regulations of the zoning district in which it is located.

11-103.06 Damage or Destruction

Should a nonconforming structure or portions thereof be damaged or destroyed by any means, or be declared unsafe by the Department of Public Works and Development to an extent of more than fifty percent (50%) of its replacement cost, it shall not be reconstructed except in conformity with the provisions of this Code. If the reconstruction cost and/or area of reconstruction (whichever is less) is less than or equal to fifty percent (50%), the structure may be strengthened or restored to a safe condition provided the original nonconformity is not enlarged, increased, or extended, and construction is commenced within six (6) months after obtaining the required building permit(s), unless the Planning Manager grants an extension of time.

11-103.07 Nonconformities Created by Public Action

When lot area, lot width, or setbacks are reduced as a result of land conveyance to a federal, state, or local government for a public purpose, and the remaining area is at least seventy-five percent (75%) of the required minimum standard for the zoning district in which it is located, then that lot or parcel of land shall be deemed to be in compliance with the minimum lot area, lot width and setback standards of this Code.

Section 11-104 Nonconforming Uses

Nonconforming uses shall be subject to the following provisions:

11-104.01 Alteration/Extension of Nonconforming Uses Require Site Plan Approval

A. Except as expressly allowed by this chapter, alteration, extension, or enlargement of a nonconforming use shall not be allowed except with the County's approval of a Site Plan according to this Land Development Code, and subject to this chapter's regulations.

B. Extension of a nonconforming use shall require full compliance with the provisions of all Arapahoe County building and safety codes and this Land Development Code, including but not limited to, installation of site improvements, parking, street improvements, and screening/enclosure of outdoor storage. If full compliance with one or more development standards is not possible, the applicant may apply for a variance or amend the Preliminary Development Plan or Final Development Plan according to the procedures and criteria stated in this Land Development Code.

C. "Alteration," "extension," or "enlargement" shall mean to enlarge or replace a structure containing the nonconforming use or to enlarge the area of nonconforming use to additional buildings or areas of a building or parcel except as otherwise provided in this chapter, or to change the use to any use other than a lawful use, and includes new construction remodeling that adds any additional space.

11-104.02 Relocation

A nonconforming use shall not be moved in whole or in part to any other portion of such parcel, or to another lot, unless the use will be in conformance with all applicable use-related regulations of this Code.

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11-104.03 Discontinuance and Abandonment

If a nonconforming use is discontinued or abandoned for a period of more than six (6) months, a subsequent use shall conform to the provisions of this Code and amendments, unless the Board of County Commissioners grants an extension of time.

11-104.04 Accessory Uses

No use that is accessory to a principal nonconforming use shall continue after the principal nonconforming use ceases to exist.

Section 11-105 Nonconforming Structures

Nonconforming structures shall be subject to the following provisions:

11-105.01 Enlargement

A structure conforming as to use, but nonconforming as to height, setback, or other dimensional standard, may be altered or extended provided that the alteration or extension does not result in a new violation of this Code and does not increase the extent of the existing nonconformity (e.g., does not further decrease a side setback that is already less than the minimum required by this Code). If full compliance with one or more development standards is not possible, the applicant may apply for a variance or amend the Preliminary Development Plan or Final Development Plan according to the procedures and criteria stated in this Land Development Code.

11-105.02 Relocation

Nonconforming structures shall not be moved unless the movement or relocation will bring the structure into compliance or closer to compliance with applicable dimensional standards.

Section 11-106 Nonconforming Land

Nonconforming parcels of land shall be subject to the following provisions:

11-106.01 Limited Use of Nonconforming Parcels of Land Allowed

This Code specifies minimum lot area, width, and setback/yard requirements within each zoning district for the purpose of creating “building envelopes” in which construction can occur on any parcel in the unincorporated areas of Arapahoe County. It is the intent of this provision to allow construction of a permitted principal use and customary accessory structure(s) on any parcel that was of record before this Code was adopted or amended, unless such parcel was created in violation of State of Colorado Senate Bill 35 (Subdivisions) or this Land Development Code. This provision shall apply even though such parcel fails to meet this Code’s requirements for lot area, width, or both, that are applicable in the given zoning district. However, all minimum setback/yard requirements as set forth in the applicable zoning district shall apply to such parcel(s), unless a variance is obtained from the Board of Adjustment. No variance to the minimum lot area for any parcel may be obtained.