

## Article 12: Nonconformities

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### Section 12.1. Purpose and Intent

- A. Changes to the LUC can impact the status of legal, existing uses, lots, and structures. It is the general policy of the Town to allow uses, structures, and lots that came into existence legally to continue to exist and be put to productive use. As these uses and structures change, they should be brought into compliance with applicable regulations as expediently as is reasonably possible.
- B. These regulations are intended to:
  - 1. Recognize the interests of property owners in continuing to use their property;
  - 2. Promote the reuse and rehabilitation of existing buildings; and
  - 3. Place reasonable limits on the expansion of nonconformities that have the potential to adversely affect surrounding properties, neighborhoods, or the Town as a whole.
- C. Nothing in this article shall be interpreted as authorization for or approval of a continuance of the use of a structure or premises in violation of the Land Use Code in effect at the time of the effective date or any amendments of this LUC.

### Section 12.2. Applicability

- A. The provisions of this article shall apply to buildings, structures, lands, and uses that become nonconforming as a result of adoption, revision, or amendment to this LUC.
- B. The effective date for these regulations shall be established by the ordinance enacting the same. This section of the LUC applies to any property that was located within the limits of the Town of Dolores on or before that date.
- C. Any legal nonconformity existing as of the effective date of this LUC will also be a legal nonconformity under this LUC, as long as the situation that resulted in the nonconforming status under the previous Code continues to exist.
- D. If a nonconformity under the previous LUC becomes conforming because of the adoption of this LUC, then the situation will no longer be a nonconformity.

### Section 12.3. Nonconforming Status

#### A. Establishment

The burden of establishing that a nonconforming use or structure lawfully exists under this Code shall, in all cases, be the owner's and not the Town's. The use of land, use of a structure, or a structure itself shall be deemed to have nonconforming status when each of the following conditions are satisfied:

- 1. The use or structure does not conform to the regulations prescribed in the district in which such use or structure is located and was in existence and lawfully constructed, located and operating prior to, and at the time of, the event that made such use or structure nonconforming.
- 2. The event that made such use or structure nonconforming was one of the following:
  - a. Annexation into the Town of Dolores,
  - b. Adoption of this Code or a previous zoning ordinance, or

- c. Amendment of this Code or a previous zoning ordinance.
3. The nonconforming use or the use occupying the nonconforming structure has been operating since the time that the use or structure first became nonconforming without abandonment, as abandonment is defined in Section 12.4.C.~~5. below~~ Discontinuance and Abandonment.

**B. Ordinary Repair and Maintenance**

Normal maintenance and incidental repair may be performed on all structures, both conforming and nonconforming. This section shall not be construed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of the Building Official who declares a structure to be unsafe and orders its restoration to a safe condition.

**C. Discontinuance and Abandonment**

1. When a nonconforming use is replaced with a conforming use, the nonconforming use is considered terminated and may not be resumed. Any structure specific to the use, or structures and land in combination specific to the use, in or on which a nonconforming use is replaced by a permitted use shall be brought into compliance with the zone district in which the structure(s) is located and the nonconforming use may not be resumed.
2. Whenever a nonconforming use or structure is abandoned, all nonconforming rights shall cease and the use of the premises shall be brought into conformance with this Code. Abandonment shall involve the actual act of discontinuance, regardless of the intent of the user or owner to discontinue a nonconforming operation.
  - a. Any nonconforming use that is discontinued for, or that remains vacant for a period of 12 months, shall be considered to have been abandoned. Maintaining connection to or payment of public services or utilities is not evidence of continuing operations.
  - b. Any nonconforming use that is moved from the premises shall be considered to have been abandoned.

**D. Destruction**

1. If a non-residential nonconforming structure or a structure specifically designed to be occupied by a nonconforming use is destroyed, it may not be rebuilt except to conform to the provisions of this Code. In the case of partial destruction of a structure specifically designed to be occupied by a nonconforming use not exceeding 60 percent of its replacement value, reconstruction may be permitted and the use may be resumed, provided, however: subject to the approval of a Special Exception pursuant to Section 13.~~\*25~~ and the following standards:
  - a. The size and function of the nonconforming use shall not be expanded; and
  - b. Work on the restoration of the use must begin within 3 months and be completed within 12 months of the time of the calamity.
2. Nonconforming residential structures may be rebuilt regardless of the amount of damage of destruction suffered by the building.

**Section 12.4. Nonconforming Uses**

**A. Continuation**

Nonconforming uses may be continued so long as the use remains otherwise lawful.

**B. Expansion**

1. No nonconforming use may be expanded or increased except that any nonconforming use may be extended throughout any parts of a building designed for such use that existed as of the effective date of the land use regulation that made the use nonconforming, but no such use shall be extended to occupy any land outside such building.
2. No existing structure specific to a nonconforming use shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in conjunction with changing to a conforming use.

**C. Change of Use**

1. Any nonconforming use may be changed to a conforming use and once such change is made, the use shall not thereafter be changed back to a nonconforming use.
2. Where a conforming use is located in a nonconforming structure, the use may be changed to another conforming use.
3. A change from one nonconforming use to another nonconforming use may be made by securing a Zoning Development Permit provided such change is to a permitted use in a more restrictive zoning district classification. For the purpose of interpreting this paragraph, a use that is authorized in a district with a conditional use permit shall not be considered a permitted use in such district.

**D. Obsolete or Substandard Non-Residential Structure**

The right to operate and maintain any nonconforming use shall terminate if the non-residential structure in which the use is operated and maintained becomes obsolete or substandard under any applicable Town, state, or federal code and the cost of placing such structure in lawful compliance with the applicable code exceeds 50 percent of the replacement cost of such structure on the date that the Building Official determines such structure is obsolete or substandard; provided, however, a determination of the replacement cost of any structure shall not include the cost of land or any factors other than the structure itself.

**Section 12.5. Nonconforming Structures**

- A. A nonconforming structure may continue to be used in conformance with the zone district where it is located so long as the structure remains lawfully occupied.
- B. The structure may not be enlarged or altered in a way which increases its nonconformity unless an enlargement or structural alteration is required by law ~~or allowed by subsection 12.4.C.2 above~~. Structural alterations may be permitted when necessary to adapt a nonconforming building to new technologies or equipment pertaining to uses housed in the building. Any enlargement greater than 10% of the GFA that is necessary to adapt to new technologies shall be authorized only by a variance, as described in Section 13.27.

## Section 12.6. Nonconforming Lots

### A. General

A single-family dwelling and customary accessory buildings may be developed on a lot that has less area than the minimum required by the underlying zone district and was an official "lot of record" prior to the adoption of the Town's original Zoning Ordinance [Oct. 27, 1987], if:

1. The "lot of record" is in separate ownership or contiguous to lots in the same ownership; and
2. The proposed single family dwelling can be located on the lot so that the yard, height, and other dimensional requirements of the underlying zone district can be met, or a variance is obtained from the dimensional requirements pursuant to Section 13.27.

### B. Undivided Lot

If two or more lots or combinations of contiguous lots in a single ownership (including husband and wife as, in all cases, a single owner) are of record at the effective date of the adoption or amendment of this Code, regardless of time of acquisition, or all or parts of the lots do not meet the requirements established for lot width and area, the lots shall be considered an undivided parcel, and no portion shall be used or occupied which does not meet the width and area requirements of this Code.

### C. Lot Reduction

1. No lot or interest therein shall be transferred, conveyed, sold or subdivided so as to create a new nonconforming lot, to avoid, circumvent or subvert any provision of this Code, or to leave remaining any lot in violation of the dimensional requirements of this Code.
2. No lot or portion of a lot required as a building site under this Code shall be used as a portion of a lot required as a site for another structure.
3. No Building Permit shall be issued for any lot or parcel of land that has been conveyed, sold, or subdivided in violation of this subsection. Any transferee who acquires a lot in violation of this subsection without knowledge of such violation, and any subsequent transferee, shall have the right pursuant to Colorado law to rescind and/or receive damages from any transferor who violates the provisions of this paragraph.

## Section 12.7. Nonconforming Signs

Any sign that is permitted to remain in place as a nonconforming use may be continued in use until the sign, or a substantial part of it, is blown down or otherwise destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign.

### A. Abandonment

Abandonment of a non-conforming sign shall immediately terminate the right to maintain the sign. When a sign has been abandoned as defined above, the Town shall send a letter requesting removal of the abandoned sign. If the sign is not removed within sixty days, the Town may remove the sign at the property owner's expense. Abandonment of a sign shall be evidenced by:

1. The expiration of a Town of Dolores Business License for the business associated with the sign by more than 30 days; or

2. The cessation of business, other than the customary cessation for a seasonal business, for more than 30 days other than sale or transfer of ownership.

**B. Violation of this Section**

Any violation of this section shall immediately terminate the right to maintain such a sign.

**C. Destruction, Damage or Obsolescence**

A sign, or a substantial part of it, shall be considered to have been destroyed or dismantled if the cost of repairing the sign is more than 60 percent of the cost of erecting a new sign of the same type at the same location.

**D. Change of Sign**

Any nonconforming sign may be changed so as to decrease the degree of nonconformity with respect to size, illumination, height, or any other requirement of this Code. Where a new nonconforming sign is proposed to replace a nonconforming sign, a Sign Permit may be issued for such new sign if the new sign is in compliance with at least two of the three primary criteria related to: illumination, maximum size, or maximum height. Once such a change is made, the sign shall not thereafter be changed back to increase the degree of nonconformity.

**E. Existing Signs**

All signs, other than billboard, existing on the effective date of Ordinance #436, series 1999, [December 13, 1999], including wall mounted signs, signs directly painted on the façade, and directional, projecting, free standing, and roof mounted signs shall be legal and excepted from the sign standards of this Code.

**F. Abatements**

Billboards shall be abated, or otherwise eliminated, within two (2) years from effective date of Ordinance #436, series 1999, [December 13, 1999] or on expiration of current variance, if any, whichever is first. The two (2)-year abatement period, plus the previous time period in which such signs were used, is calculated to provide sufficient time for the complete amortization of a sign investment.

~~1. Exception. The term "billboard" as used herein shall not include off premises signs erected in accordance with all the requirements of Article V.G.5.e, Directional signs.~~

**Commented [EAG1]:** The current code defines billboards as "all off-premises signs." I'm not sure that all off-premises signs were abated (not am I sure whether that was actually permissible). We may want to just delete this provision?