30.76 Nonconformities

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30.76 Nonconformities

30.76.010 **Purpose.** This Chapter regulates the continued existence of lots, structures, and uses of land that came into existence legally but do not comply with one (1) or more requirements of this Title. It is the intent of this Chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Chapter that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited in the same district.

30.76.020 **General Standards of Applicability.** This Chapter applies to nonconformities created by the initial adoption of, or amendments to, this Title. It also applies to non-conformities under previously applicable ordinances, even if the type or extent of the nonconformity is different.

1. The burden of establishing that any nonconformity is a legal nonconformity shall, in all cases, be solely upon the property owner.

2. Illegal uses existing at the time the ordinances codified in this Title were adopted shall remain illegal and not be validated by their adoption.

3. To avoid undue hardship, nothing in this Chapter shall be deemed to require a change in the plans, construction or designated use of any existing building for which a building permit for construction has been issued, providing the permit has not expired prior to the effective date of the ordinance which made the use or structure nonconforming.

4. Incidental repairs and normal maintenance shall be permitted on any nonconforming structure containing a nonconforming use.

5. If the condition of a property constitutes a nuisance, as determined by the Board in accordance with the procedure established in Chapter 11.06 Abatement of Public Nuisances, the Board shall have the authority to require an improvement to the property sufficient to mitigate the nuisance.

6. Any nonconforming structure, or portion of a structure containing a nonconforming use, which is declared by any duly authorized official to be unsafe or unlawful by reason of physical conditions shall be repaired regardless of the nonconforming status.

7. Whenever a permitted use replaces a nonconforming use, the nonconforming use may not be resumed thereafter.

8. The adoption of an ordinance which revises restrictions so that an existing nonconforming use or structure is in compliance with this Title shall have the effect of making the use or structure conforming.

30.76.030 Nonconforming Lots of Record.

a. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on a lot of record at the effective date of the ordinance codified in this Title, even if it does not conform with lot requirements, if construction otherwise conforms to the setbacks required for the district in which the lot is located.

b. An existing lot from which right-of-way dedication is required which causes a lot to be substandard, or less conforming in the case of an existing nonconforming lot, shall be considered to be a nonconforming lot.

c. Nonconforming lots shall be considered to be any substandard lot created prior to May 5, 1970 if any property adjacent to it with continuous frontage has not been under the same ownership since May 5, 1970 or any substandard lot which was subject to a contract of sale in full force and effect prior to June 20, 1962.

d. With respect to the creation of lots without a subdivision, lots created without a subdivision map prior to July 1, 1973, or created by a court order, shall be considered to be legally created. A contract for the sale of land after June 20, 1962, or a legal description listed on a single recorded deed recorded prior to July 1, 1973 with the legal description of adjacent parcels also listed, does not constitute the division of land. (Ord. 2573 § 16, 2001)

30.76.040 Nonconforming Structures. Any structure legally established which, because of revised regulations on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, becomes nonconforming as a result of the passage of an ordinance codified in this Title, may be maintained so long as it remains otherwise lawful, subject to the following provisions.

1. Structures within a floodplain for which the finished floor of the lowest floor is below the base flood elevation and have been damaged or is to be remodeled to fifty percent (50%) of the pre-disaster fair market value shall only be repaired or reconstructed in accordance with the Floodplain Management Ordinance.

2. The nonconforming structure may not be enlarged or altered in a way which increases its nonconformity. However, any structure may be enlarged or altered if the construction does not increase the nonconformity.

3. If a nonconforming structure is destroyed to an extent of more than fifty percent (50%) of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Title.

4. A nonconforming structure can only be moved if the move results in the structure being in compliance with the requirements of this Title.

5. The owner of any existing nonconforming structure may be required to install, operate, and maintain thereon such markers and lights as may be deemed necessary by the Director of Aviation to indicate to the operators of aircraft in the vicinity of the airport the presence of an obstruction into the Airport Airspace Overlay District, as required by Part B of Chapter 30.48.

6. Any dwelling not meeting the design standards for single-family dwellings, listed in Chapter 30.56, which is demolished may be reconstructed or replaced provided the original dwelling was constructed prior to January 1, 2000 and shall have the same appearance as the demolished dwelling, or be compatible with the architectural style and building materials of dwellings in the vicinity. An administrative design review shall be approved prior to the issuance of any building permits.

30.76.050 **Nonconforming Uses.** Where, at the time of passage of any ordinance codified in this Title, a lawful use existed, which has been made nonconforming by this Title, that use may be continued so long as it remains otherwise lawful, subject to the following provisions.

1. Nonconforming uses, which were lawfully established before the ordinance codified in this Title was passed or amended, are declared to be compatible with permitted uses in the districts involved. Legal nonconforming uses shall run with the land and shall be considered for the benefit of the property owner.

2. The use shall not be enlarged, increased or extended to occupy a greater area of land or building than was occupied when the use became nonconforming, nor shall a structure in which a nonconforming use is being conducted be expanded unless in conformance with this Title.

3. A nonconforming use may not continue if the structure is removed or destroyed to the extent of fifty percent (50%) of the replacement cost at the time of destruction, nor shall the use be moved to any other portion of the lot or building on the lot.

4. When animals are permitted as a nonconforming use, the replacement of animals within the time limit, as specified in Subsection 30.76.050(5)(A) or 30.76.050(5)(B), is permitted, providing the number of animals is not increased.

5. Except when government action impedes access to the premises, a nonconforming use may not continue if abandoned for:

   A. Six (6) consecutive months for uses in conjunction with structures having a replacement cost of three thousand five hundred dollars ($3,500) or more.

   B. Thirty (30) days for uses on land without structures, or structures with a replacement cost of less than three thousand five hundred dollars ($3,500).

30.76.060 Exceptions.

a. The reconstruction of a lawfully constructed nonconforming structure is permitted if a governmental entity required the structure to be relocated from its previously approved location due to the construction of a public improvement, and then only if the reconstruction occurs on the same parcel and the applicant applies for permits within ninety (90) days of receiving notice of completion of the improvement from the County. (Ord. 2725 § 5, 3/2002)

b. A nonconforming on-premises sign, display, or structure may not be relocated, replaced, or structurally altered unless the relocation, replacement, or structural alteration results in a minimum 50% reduction of its nonconforming height or area. This provision shall not apply to a relocation, replacement, or structural alteration resulting from a street widening project or other public improvement project within the right-of-way, in which case the nonconforming on-premises sign, display, or structure may be relocated, replaced on the same parcel, or structurally altered without conformity being required. (Also see 30.76.040) (Ord. 2787 § 6, 9/2002)

c. A structure nonconforming to the development standards in effect when destroyed or damaged to more than 50% of its replacement cost by an act of God, war, natural catastrophe, or criminal act such as terrorism may be reconstructed or repaired in accordance with the development

standards in effect when it was originally constructed if approved by the Board through a public hearing design review. The Board may impose reasonable aesthetic conditions, including without limitation landscape buffering, designed to mitigate the impact of the nonconformity on adjacent properties or the community. (Ord 2825 § 1, 12/2002)

30.76.070 **Nonconforming Manufactured Home Parks.** The provisions of this Section apply only to manufactured home parks which were constructed and occupied prior to August 27, 1976. The requirements of this section supersede requirements of the same type defined in other Chapters of this Title for all manufactured home parks listed in Appendix D.

1. Parks established prior to August 27, 1976 (reference Ordinance 510) are considered to be legally nonconforming regarding all code requirements. New manufactured homes may be placed in conformance with the restrictions in effect upon establishment of the park.

2. Parks having a majority of the spaces one thousand five hundred (1,500) square feet or larger shall be allowed to remove a previously required laundry facility (reference Ordinance 1075).

3. The front setback for a manufactured home may be reduced to two (2) feet, where the drawbar, tongue or other attachments to the front are removed.

30.76.080 **Nonconforming Adult Uses.** Adult uses which are classified by the definition of this Title which do not conform to this Title and the regulations or adult uses set forth in this Title shall be allowed to continue until they are removed or discontinued provided:

1. The uses had fully complied with building, fire and licensing codes when the uses commenced; and

2. The uses had fully complied with the Clark County Code, including the acquisition by the land owner of required use permits if applicable, when the uses commenced; or

3. An existing use shall be allowed to expand if building permit applications are submitted in conformance to a land use application to expand an existing use approved prior to August 19, 1999, so long as the applicable building permit is issued on or before August 19, 2000, or within one year of approval of the land use application approving the expansion, whichever is earlier.

4. Uses which were not lawful in all respects as provided in this Title shall be considered illegal uses and shall not be allowed to remain.