

## CHAPTER 17.20

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## CHAPTER 17.20

### NONCONFORMING SITUATIONS

#### **17.20.010 NONCONFORMING**

Any use lawfully existing upon the effective date of this ordinance may be continued at the size and in the manner of operation existing upon such date except as hereinafter specified, or in the case of signage as specified in Chapter 17.52, Signs.

- A. Any nonconforming use may continue with the condition that the nonconformity does not increase the nonconformity. The conditions for nonconformity include but not limited to are:
1. Setback;
  2. Building Footprint;
  3. Parking.

For commercial properties, the type of business is not considered in the determination of nonconformity.

When any lawful nonconforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.

- B. Whenever a lawful nonconforming use of a building, structure or land is discontinued for a period of twelve (12) months, any future use of the building structure or land shall be in conformity with the provisions of this title.
- C. Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary structural repairs, provided such structural repairs do not enlarge, intensify or otherwise redefine the nonconforming use.

Enc Ord 433 December 5, 2012, Amended Ord 460 September 5, 2018

#### **17.20.020 CHANGES TO OR EXPANSIONS OF NONCONFORMING USES**

- A. Lawful Nonconforming Non-Residential Use.
1. Property owners or tenants are encouraged to make improvements that comply with standards of this title and comply with the Building Codes and the International Fire Code.
  2. A lawful nonconforming nonresidential use shall not be changed except in conformance with the use requirements of the district in which it is located. A lawful nonconforming nonresidential use may be expanded only through the granting of:
    - a. **Conditional Use Permit:** In considering the appropriateness of the Conditional Use Permit the Administrative Official, and the Zoning Commission shall weigh the criteria set forth in subsection three (3) below. In addition, the Zoning Commission shall consider whether the expansion is reasonable, natural and incidental to the growth and use of an existing business. In general, proposals to expand nonconforming uses

shall not be approved if the expansion would encompass new land or property which was not in use at the time of the enactment of zoning or a change in zoning.

3. To approve a Conditional Use Permit to change or expand a nonconforming nonresidential use, the designated Administrative Official and Zoning Commission shall determine that the proposed nonconforming use is more appropriate to the district than the existing nonconforming use, and that no unsafe or unhealthy conditions are perpetuated. In making such a determination, the designated Administrative Official and Zoning Commission shall weigh the following criteria in addition to the criteria applicable to all Conditional Use Permits:
  - a. Traffic impacts, both onsite and offsite;
  - b. Off-street parking and loading requirements;
  - c. The visual impact on the surrounding area;
  - d. The degree of compliance with the Growth Policy and this title;
  - e. The level of conflict with other uses in the surrounding area;
  - f. The presence of other nonconformities in the surrounding area;
  - g. The degree to which any existing unsafe or hazardous conditions would be mitigated;
  - h. The viability of the subject structure(s); and
  - i. Onsite and offsite impacts from noise, dust, smoke, surface or groundwater contamination, or other environmental impacts.
  - j. Requirements of American Disabilities Act are satisfied.

B. Lawful Nonconforming Residential Use.

1. A lawful nonconforming residential use may be reduced in terms of the number of dwelling units, in an effort to achieve greater conformance with the underlying zoning designation, through the review process required in Chapters 17.12, General Land Use Standards and Requirements, and without the need to obtain a Conditional Use Permit. A lawful nonconforming residential use shall not be permitted to increase the number of dwelling units.
2. The maintenance and reconstruction of existing nonconforming residential dwelling units is allowed, in compliance with applicable fire and building codes, including expansion of up to twenty (20) percent of the existing total residential area, without the need of a Conditional Use Permit, as long as the number of dwelling units on the lot is not increased. In instances where new construction is allowed, all appropriate approvals such as a Certificate of Appropriateness or Building Permit shall be obtained prior to the initiation of construction.

Enc Ord 433 December 5, 2012, Amended Ord 460 September 5, 2018

**17.20.030      NONCONFORMING AREA AND BULK REQUIREMENTS FOR EXISTING LOTS**

At the time of the enactment of this ordinance, if any owner of land consisting of one or more adjacent lots, as defined in Chapter 17.108, Definitions, in a subdivision of record does not own sufficient land within the lot to enable the owner to conform to the lot size requirements, or does not have sufficient lot width to conform to the minimum lot width requirements, such land may nevertheless be used as a building site under certain conditions. The lot dimension requirements of the district in which the land is located may be reduced to the smallest amount that will permit a structure of acceptable size to be built upon the lot with such reduction to be determined by the Zoning Commission. Existing buildings on nonconforming lots may be expanded without variances as long as the expansion does not increase or create one or more nonconforming uses.

1. In the R-1 districts, the reduction shall permit only a single-household residence.
2. In the R-2 district, the reduction shall permit single-household and two-unit duplex. No lot, even though it may consist of one or more adjacent lots in common ownership at the time of passage of this ordinance, shall be reduced in size so that a lot width or size of yards or lot area per household or any other requirement of this title is not maintained except as provided for in this title. This section views lots as merged for the purpose of planning and zoning regulation of bulk size, or similar dimensional standards only, and does not aggregate individual parcels of land in a manner affected by 76-3-103(16)(b), MCA. This section shall not apply when a portion of a lot is acquired for a public purpose. Normal maintenance of a lawful nonconforming structure is permitted, including necessary structural repairs provided such structural repairs do not enlarge the structure or intensify the use.

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**17.20.040      CHANGES TO OR EXPANSIONS OF NONCONFORMING STRUCTURES**

- A. A lawful nonconforming structure shall not be changed except in compliance with the requirements of the district which it is located or as provided in this Chapter. A lawful nonconforming structure may be expanded through the principal use plan review process required by Chapter 17.12. Unless the proposed expansion would create a new nonconforming use or increase an existing nonconformity, no variance is required for the expansion.
- B. If a lawful nonconforming structure is proposed to be changed or expanded in a manner which would increase the degree of nonconformity, or would create a new nonconformity, a hardship variance cannot be granted. Maintenance and reconstruction of existing nonconforming residential structures is allowed, in compliance with applicable fire and building codes, as well as provisions of this Chapter, so long as the number of dwelling units on the lot is not increased. Maintenance activities may not increase the degree of nonconformity.

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