

CHAPTER 7 PLANNING, DEVELOPMENT AND BUILDING

ARTICLE 5 ADMINISTRATION AND PROCEDURES

PART 12 NONCONFORMING DEVELOPMENT

SECTION:

- 7.5.1201: Purpose
- 7.5.1202: Effective Date Of Zoning Regulations
- 7.5.1203: Nonconforming Uses
- 7.5.1204: Nonconforming Buildings Or Structures
- 7.5.1205: Nonconforming Lots
- 7.5.1206: Nonconforming Landscaping And Parking
- 7.5.1207: Reclassification
- 7.5.1208: Nonconforming Uses In AO Overlay

7.5.1201: **PURPOSE:** The purpose of this part is to establish criteria for the reasonable continuation of legally established uses which do not meet current use requirements and the reasonable use of nonconforming structures and lots. It is also intended to prevent the expansion of nonconforming uses and structures. (Ord. 94-107; Ord. 01-42; Ord. 12-73)

7.5.1202: **EFFECTIVE DATE OF ZONING REGULATIONS:** The first zoning ordinance adopted by the City of Colorado Springs became effective August 24, 1926. Since that date there have been numerous annexations to the City, changes of zones as well as changes to the development standards contained with the Zoning Code. The effective date of an annexation ordinance determines the date upon which the Zoning Code of the City became applicable to a specific annexed property. The effective date of a rezoning or change to the development standards would determine the date upon which the action would become applicable to a particular property. The effective date of this section will vary for specific properties accordingly. Therefore no single effective date of general application can be used for all nonconforming uses, buildings and/or structures, landscaping and off street parking. (Ord. 01-42)

7.5.1203: **NONCONFORMING USES:**

A. Continuation: The use of a nonconforming building and/or structure, landscaping and parking

may continue, except as otherwise provided in this section.

B. Extension Of Use:

1. Use Of Land: A legal nonconforming use of land shall not be expanded, enlarged or extended in any way either on the same or adjoining properties.

2. Use In Structure: The extension of a legal nonconforming use into any other portion of the structure in which it is housed shall be allowed only if the following conditions are met:

a. Such portion of the structure was primarily arranged or designed for such nonconforming use at the time this Zoning Code became effective, and

b. The extension of the nonconforming use in floor area does not exceed fifty percent (50%) of the floor area which was used by the nonconforming use at the time this Zoning Code became effective.

C. Change Of Use: A legal nonconforming use may be changed only to a use which is the same intensity and as restricted, is a lesser intensity and more restricted, or is conforming to the provisions of this Zoning Code.

The determination to allow a legal nonconforming use to change to a nonconforming use of the same intensity and restriction, to a nonconforming use of a lesser intensity and greater restriction, or to a conforming use shall be made by the Manager. The following criteria shall be used to make a determination of change of use:

1. Restriction: The proposed use is permitted in the same or more restrictive zone districts (as described in article 2, part 1 of this chapter) than the existing use.

2. Intensity: The proposed use requires less or the same amounts of off street parking and

landscape buffering and has lower or the same levels of associated traffic generation, noise, light and dust than the existing use.

3. Neighborhood: The proposed use shall be no more harmful to the surrounding neighborhood than the existing use.

When a legal nonconforming use is changed to a less intensive and/or more restrictive legal nonconforming use, such use shall not be returned to a more intensive or less restrictive nonconforming use. When a legal nonconforming use is changed to a conforming use, such use shall not be returned to a nonconforming use.

- D. Repairs And Maintenance: A structure occupied by a legal nonconforming use may be repaired and maintained and if it is declared to be unsafe by a Regional Building Official, it may be strengthened or restored to a safe condition. However, the cost of repairs and maintenance shall not exceed fifty percent (50%) of the replacement cost of the entire structure.
- E. Additions And Enlargement To A Structure: A structure housing a legal nonconforming use may not be added to, enlarged, or structurally altered for the nonconforming use.
- F. Discontinuance: If a nonconforming use located on any land or any structure is discontinued or its normal operation stopped for a continuous period of one year, then any subsequent use of the land or structure must conform to all use regulations in the zone district in which it is located.
- G. Damage Or Destruction To A Structure: When a legal nonconforming use located on any land or a structure occupied by a legal nonconforming use is damaged by fire or other causes to the extent that the cost of restoration exceeds fifty percent (50%) of the replacement cost of the use of land or replacement cost of the entire structure, then the nonconforming use shall no longer be permitted.
- H. Nonconforming Uses And Conditional Uses: A preexisting, legal nonconforming use which would require the approval of a conditional use in its zone district shall be presumed to have the required conditional use approval. Modifications to the structure or site shall be processed as either a minor or major amendment or modifica-

tion to a conditional use development plan in accord with part 7 of this article. The appropriate approval shall be governed by the regulations and procedures in part 7 of this article. (Ord. 80-130; Ord. 84-28; Ord. 85-11; Ord. 91-30; Ord. 94-107; Ord. 01-42; Ord. 03-16; Ord. 12-73)

7.5.1204: NONCONFORMING BUILDINGS OR STRUCTURES:

- A. Continuation: Nonconforming buildings or structures under this section which are damaged or destroyed by fire or other causes may be rebuilt under the following conditions:
 1. Any necessary building permits are obtained within twelve (12) months of the date of destruction, unless an extension has been approved by the Manager due to extraordinary circumstances;
 2. The gross floor area and height of the new structure shall not exceed the gross floor area and height of the original nonconforming structure;
 3. The new structure shall comply with all development standards for the particular zone district in which the property is located, with the exception of lot coverage and height which may be exceeded to the extent of the previously existing legal nonconforming development; and
 4. Reconstruction of single-family detached homes or duplexes, which are legal nonconforming buildings or structures, shall be subject to the submittal and approval of a site plan in conjunction with the building permit review process. Reconstruction of all other legal nonconforming buildings or structures shall be subject to the submittal and approval of a development plan in accord with section 7.5.502 of this article prior to the issuance of a building permit.
 5. Existing attached stoops, porches and decks on nonconforming residential structures are considered a part of the entire structure and are not eligible for a stand alone fifty percent (50%) replacement value limitation. Attached stoops, porches and decks located within the required front, side or rear yard setback may be replaced in its original location but may not be enlarged in size and height.

- B. **Repairs And Maintenance:** A nonconforming structure occupied by either a conforming or legal nonconforming use may be repaired and maintained, and if it is declared to be unsafe by a Regional Building Official, it may be strengthened or restored to a safe condition. However, the cost of repairs and maintenance shall not exceed fifty percent (50%) of the replacement cost of the entire structure, and there shall be no increase in the degree of nonconformity.
- C. **Additions And Enlargement Of Structures:**
1. A legal nonconforming structure occupied by a conforming use may not be added to, enlarged, or structurally altered unless such addition, enlargement or structural alteration conforms to all regulations and site development standards of the zone in which it is located including, but not limited to, square footage per dwelling unit, maximum lot coverage, setbacks, parking and landscaping.
 2. A legal nonconforming structure occupied by a legal nonconforming use may not be added to, enlarged, or structurally altered.
- D. **Damage Or Destruction To A Structure:** When a legal nonconforming structure is damaged by fire or other causes to the extent that the cost of restoration exceeds fifty percent (50%) of the replacement cost of the use of land or the entire structure, the nonconforming structure must be removed.
- E. **Conversion Of Conforming Structure:** A conforming structure shall not be changed in any way that will result in a nonconforming development. (Ord. 80-131; Ord. 91-30; Ord. 94-107; Ord. 01-42; Ord. 06-19; Ord. 09-76; Ord. 09-80; Ord. 12-73)

7.5.1205: NONCONFORMING LOTS:

- A. **Lot Of Record:** A lot of record is a parcel of land in the City, the deed of which was recorded in the public records of El Paso County, Colorado, on or before February 13, 1951, or a parcel of land subsequently annexed to the City which was: 1) a platted lot meeting the applicable subdivision requirements of El Paso County, 2) a legal nonconforming lot in El Paso County, 3) a parcel of land that was legally exempted by El Paso County from platting requirements, which

has become nonconforming because it does not meet the required minimum area or minimum width may be developed with any permitted use allowed in the zone district in which it is located, or 4) a parcel of land in El Paso County created before September 1, 1972. The development must comply with all other site development regulations set forth by this Zoning Code, except as noted in subsection B of this section. No such lot may be reduced so that the lot area or width is smaller than required by this Zoning Code.

- B. **Side Building Setbacks For Narrow Lots:** When a lot of record is under separate ownership, located in a residential zone, and narrower than the minimum lot width, the following reduction of the side building setback may be allowed. For each foot by which the lot of record is narrower than the minimum lot width requirement of the zone in which it is located, one and one-half inches (1¹/₂") may be deducted from the required least width of any side setback and three inches (3") from the sum of the least widths of both side setbacks for buildings which do not exceed two (2) stories in height; however, a side setback may not be narrower at any point than ten feet (10') in an R zone, five feet (5') in an R-1 9000 zone, four feet (4') in R-1 6000 zones, and three feet (3') in R-2, R-4 and R-5 zones.
- C. **Lots Rendered Nonconforming By Public Acquisition:** Lots rendered nonconforming by public acquisition of right of way or for other purposes because the lots no longer meet the required minimum area or minimum width may be developed for any permitted use allowed in the zone district in which it is located. When the public acquisition results in the reduction of or elimination of existing landscaping or parking spaces, the owner of the property shall not be required to replace the removed landscaping or parking spaces. (Ord. 80-131; Ord. 91-30; Ord. 94-107; Ord. 01-42; Ord. 12-73; Ord. 17-2)

7.5.1206: NONCONFORMING LANDSCAPING AND PARKING:

- A. **Purpose And Intent:** Within the districts created by the adoption of this Zoning Code or by the adoption of amendments thereto, there may exist developments of land with parking areas and landscaping which were legal prior to the adoption or amendment of this Zoning Code, but

under which the terms of this Zoning Code, or its amendments, are now prohibited, restricted or regulated. It is the intent of this part to permit these nonconformities of parking or landscaping to continue until they are voluntarily removed or brought into compliance in conjunction with a proposed change in the development.

- B. Continuation: Landscaping or parking areas legally existing at the time this Zoning Code became effective which have become nonconforming because they no longer meet current requirements may be continued, except as otherwise provided in this Zoning Code.
- C. Extension: Nonconforming landscaping or parking spaces shall not be enlarged, expanded, extended or increased, except as provided in this Zoning Code.
- D. Proposals Which Require Conformance Or Continuation As Legal Nonconforming:

1. Off Street Parking:

a. Off street parking and maneuvering areas which conform to article 4, part 2 of this chapter shall be provided for a newly constructed building or new use on previously vacant land, for all uses in a building which is enlarged, and for all uses in a building when any use is changed and the newly approved use requires more parking than the previously approved use; however, the areas outlined in article 4, part 2 of this chapter are exempt from these regulations.

Additional off street parking may be required whenever the Manager determines that it is necessary to avoid congestion on public streets and for the general safety and convenience of City residents.

b. The provisions of this section shall not apply to vehicle parking and storage requirements within residential zones as set forth in article 4, part 2 of this chapter. However, driveways constructed prior to the effective date of this Code which do not comply with the standards of article 4, part 2 of this chapter shall be granted all nonconforming rights as set forth within this section.

2. Nonconforming In Terms Of Landscaping: Landscaping is important in improving the overall appearance of the City and increasing the compatibility of different land uses.

It is recognized that conformance with landscaping requirements may have special problems related to the existing improvements and the scale of a proposed change of a project. Landscaping is difficult to install in conjunction with relatively small increments of change in a development project (such as relatively small building additions or changes of use) for the following reasons:

a. The landscaping elements of a development project should be planned in a comprehensive and coordinated manner which is not feasible to implement with relatively small increments of change,

b. Nonconformities related to landscaping are difficult to resolve where the existing improvements limit the potential for a comprehensive landscaping plan to be implemented, and

c. Fragmented ownership in a development project can further reduce the potential for a comprehensive landscaping plan to be implemented with relatively small increments of change.

It is recognized that conformance with landscaping requirements may have special problems related to the existing improvements and the scale of a proposed change of a project.

The existing nonconforming landscaping of a development project is permitted to continue until one of the following changes occurs:

d. Any new construction or addition of building floor area consisting of fifty percent (50%) or more of the existing gross building floor area of the development project on the subject lot, or

e. Any change from a residential use to a nonresidential use (or vice versa) consisting of fifty percent (50%) or more of the existing gross building floor area of the development project on the subject lot.

All required landscaping shall be provided in conjunction with either of the two (2) changes described above. All required landscaping shall be provided in conjunction with any new development of a vacant lot or with the total redevelopment (demolition and new construction) of a lot.

Administrative relief of the requirements of this section may be requested under part 11 of this article. (Ord. 80-131; Ord. 91-30; Ord. 94-107; Ord. 01-42)

7.5.1207: RECLASSIFICATION: The foregoing provisions of this part shall also apply to buildings, structures, use of land or uses which hereafter become nonconforming due to any amendments to this Zoning Code or reclassification of zones under this Zoning Code. (Ord. 91-17; Ord. 91-30; Ord. 94-107; Ord. 01-42)

7.5.1208: NONCONFORMING USES IN AO OVERLAY:

A. Applicability:

1. Nothing in this section shall require any change in any lawfully constructed building, structure or use in existence at the time of adoption or amendment of the AO overlay ordinance to continue its current lawful use, nor shall this section prohibit its reconstruction if partially or completely destroyed.

2. The provisions of this section shall apply to any application for a building permit, certificate of occupancy, zone change, conditional use, development plan, preliminary and final subdivision and mobile home park plan approval.

3. None of the provisions of the AO overlay district shall be construed to prohibit the continuance, expansion or reestablishment under current law of any existing use. Noise level reduction design standards apply only to new structures and/or uses of land and not to structural additions.

4. Mobile homes moved onto existing mobile home spaces are exempt from the requirements of the AO overlay district.

B. Marking And Lighting: Notwithstanding the provision of subsection A of this section, the owner of any nonconforming improvement shall permit the installation, operation, and maintenance of markers and lights as shall be deemed necessary by the Airport Advisory Committee to indicate to the operators of aircraft in the vicinity of the airport the presence of airport or navigational hazards. Markers and lights shall be installed,

operated and maintained at the expense of the City of Colorado Springs.

C. Existing Uses: No approval shall be granted that would allow the establishment or creation of a "hazard to air navigation", as defined in subsection 7.3.506B of this chapter, or permit a nonconforming use, or improvement to be made or become higher, or become a greater hazard to air navigation than it was on the effective date hereof, or than it is when the application for a permit is made. (Ord. 06-89; Ord. 09-70)