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Article 8. Nonconformities

8.1.1. Statement of intent and purpose.

Within the zoning districts established by this chapter, or by amendments that may later be adopted, there exist lots, uses of land, uses of land and buildings, uses of land and structures, and characteristics of buildings, structures and sites which were lawful before the effective date of this chapter's adoption or amendment, but that are now prohibited under the terms of this chapter or due to future amendments, collectively referred to as nonconforming situations. Such nonconforming situations are hereby declared to be incompatible with authorized and permitted uses in the zoning districts involved. It is the intent of the board of commissioners to require the cessation of certain nonconforming situations and to permit others to continue until they are otherwise removed or cease. It is further the intent of the board of commissioners that nonconforming situations not be used as grounds for adding other buildings, structures, or uses of land prohibited by this chapter, and that no such non-conforming building, structure, or use of land be enlarged, expanded, moved, or otherwise altered in a manner that increases the degree of nonconformity, except where expressly authorized in this Zoning Ordinance.

8.1.2. Applicability.

- A. *Applicability.* Nonconforming regulations apply only to those nonconforming situations that were legally authorized when established or that were subsequently approved through procedures in effect at the time the approval was obtained. Additionally, except as provided in Section 8.1.5(B), nonconforming situations must have been maintained continuously and without interruption since the initial existence or subsequent approval of the nonconforming situation. Nonconforming situations which were not authorized when established or have not been continuously maintained over time in accordance with this subsection have no legal right to continue and must terminate as set forth herein.
- B. *Documentation.* An owner or applicant may request from the director of planning a determination of nonconforming status. The owner or applicant must provide documentation sufficient to show that the situation was authorized when established and was continuously maintained over time. Upon receipt of the owner or applicant's evidence, the director of planning will determine if the evidence is satisfactory and, if so, shall issue a written determination that the lot, building, structure and/or use is a legal nonconforming situation. The burden of establishing the nonconforming status of a particular lot, building, structure or use is on the applicant or owner of the property or use.
- C. *Evidence that a nonconforming situation was authorized when established.* Standard evidence that the proposed nonconforming situation was authorized, or legal, when established includes, but is not limited to:
 1. Building or land disturbance permits;
 2. Business licenses;
 3. Adopted zoning ordinances or maps in force at the time of permitting;
 4. Conditions of zoning;
 5. Other appropriate evidence as determined by the director of planning or designee.
- D. *Evidence that a nonconforming situation has been continuously maintained since inception.* Standard evidence that the proposed nonconforming use has been continuously maintained without interruption since inception includes, but is not limited to:
 1. Utility bills;
 2. Tax records;
 3. Business licenses;
 4. Advertisements in dated publications;



5. Insurance policies;
 6. Leases;
 7. Receipts; and
 8. Other appropriate evidence as determined by the director of planning or designee.
- E. *Evidence of discontinuance or abandonment.* When considering whether a nonconforming situation has been continuously maintained without interruption since inception, the director of planning may consider evidence of the following:
1. Failure to maintain regular business hours, typical or normal for the use;
 2. Failure to maintain equipment, supplies or stock-in-trade that would be used for the active operation of the use;
 3. Failure to maintain utilities that would be used for the active operation of the use;
 4. Failure to pay taxes, including but not limited to sales tax, workers' compensation taxes, corporate taxes that would be required for the active operation of the use;
 5. Failure to maintain required local, state or federal licenses or other approvals that would be required for the active operation of the use;
 6. Failure to maintain applicable business license(s); and
 7. Other appropriate evidence as determined by the director of planning.
- F. *Change to a conforming situation.* A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies a site that was previously nonconforming, the nonconforming rights are lost, and a nonconforming situation shall not be re-established.
- G. *Maintenance.* Normal maintenance and repair of nonconforming situations is allowed and does not alter legal conformity status.
- H. *Strengthening and restoring to safe condition.* Nothing in this Article shall prevent the strengthening or restoration to a safe condition of any part of a building or structure declared unsafe by the director of planning, and such strengthening or restoration shall not cause the loss of nonconforming status, provided such strengthening or restoration would not constitute a violation of Section 8.1.15's regulation of reconstruction of damaged or destroyed nonconforming structures.

8.1.3. Legal nonconforming lot.

A lot of record that at the effective date of this Zoning Ordinance does not conform to the applicable minimum road frontage requirement, minimum lot area, or lot width requirements for the zoning district in which it is located may still be used as a building site provided that the height, buffer, setback, and other dimensional requirements of the zoning district in which the lot of record is located are complied with, or a variance therefrom is obtained.

8.1.4. Legal nonconforming single-family lots: lot merger requirements.

- A. In any zoning district in which single-family dwelling units are allowed, a single-family dwelling unit and allowed accessory structures may be erected on any single nonconforming lot of record so long as such single nonconforming lot of record is not in common ownership with any other contiguous lot or lots. A property owner shall not be permitted to erect a structure on a nonconforming lot of record if he could have used his contiguous land to avoid the nonconformity.
- B. Two (2) or more contiguous lots of record that are held in common ownership on the effective date of this section or come into common ownership after the effective date of this section shall be governed by this subsection (B) or subsection (C). If any contiguous lots of record held in common ownership do not



meet the requirements established in this Code for street frontage, access requirements, lot width or lot size, then all of the contiguous lots of record held in common ownership shall be considered to be an undivided lot for the purpose of compliance with the provisions of this Code. No portion of the resulting undivided lot shall then be considered a separate lot, a nonconforming lot of record or used or conveyed in a manner which is not in compliance with the existing street frontage, access, lot width or lot area requirements established by this Code and/or any amendments thereto. No division of any hereby merged nonconforming lots of record held in common ownership shall be made which creates a substandard lot. If two (2) or more contiguous nonconforming lots of record are in common ownership and, as merged, the property is compliant for development with a single-family dwelling without violating the provisions of this Code, then none of the former nonconforming lots of record may be considered nonconforming and authorized for single-family development. A property owner shall not be permitted to create a nonconforming lot of record if he could have used his contiguous lots to avoid the nonconformity.

- C. Two (2) or more nonconforming contiguous lots of record that are held in common ownership as of the effective date of this section, or that come into common ownership after the effective date of this section shall be governed by the requirements of subsection (B) unless the owner obtains a variance from the DeKalb County Zoning Board of appeals pursuant to the provisions and the criteria set forth in Article 7.
- D. Whenever a variance from the strict application of subsection (B) is sought with respect to properties located within a historic district as defined in chapter 13.5 of this Code, the variance applicant shall first obtain a certificate of appropriateness from the historic preservation commission finding that the proposed variance allowing the subject lot to retain its legal nonconforming status will not have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district. In approving such a certificate of appropriateness, the historic preservation commission may include a finding that merger of lots pursuant to the strict application of subsection (B) would have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district.

8.1.5. Nonconforming use.

A legal use in existence on the effective date of this Zoning Ordinance or any amendment thereto may be continued even though such use does not conform with the use provisions of the zoning district in which said use is located, except as otherwise provided in this section.

- A. *Change of use.* A nonconforming use shall not be changed to another nonconforming use. A change in tenancy or ownership shall not constitute termination or abandonment of the nonconforming use, provided that the use itself remains unchanged and is continuously maintained.
- B. *Discontinuance or abandonment.* A nonconforming use shall not be re-established after discontinuance or abandonment for six (6) consecutive months, unless the cessation of the nonconforming use is a direct result of governmental action impeding access to the property. Vacancy or non-use of a building for six (6) continuous months, regardless of the intent of the owner or tenant, shall constitute discontinuance or abandonment under this subsection.
- C. A nonconforming use of land shall not be enlarged, expanded, moved, or otherwise altered in any manner that increases the degree of nonconformity.

8.1.6. Nonconforming structures.

- A. A legal structure in existence on the effective date of this Zoning Ordinance or any amendment thereto that could not presently be built under the provisions of this chapter because of restrictions on building area, lot coverage, height, minimum yard setbacks, or other characteristics of the structure or its location on the lot shall be deemed a legal non-conforming structure subject to this Article 8.
- B. No legal nonconforming structure shall be enlarged, or structurally altered, in a way that increases its degree of nonconformity, except as expressly permitted in this Article 8.



- C. Alteration of legal nonconforming structures occupied by permitted, conforming uses may be allowed for improvement or modification, provided that the structure may not be enlarged and the alterations must either comply with this chapter or result in a reduction in site or structure nonconformity. See also Section 8.1.16.

8.1.7. Landscaping and screening requirements for new or additional parking, service or storage areas.

New or additional automobile parking, service, or storage areas may be added to a legal nonconforming structure or site that contains a conforming use, provided that all required landscaping, lighting, and screening requirements are met in the new or additional parking, service or storage area.

8.1.8. Nonconforming parking.

On an existing structure, no new permitted use may be substituted, nor shall an existing permitted use be expanded unless the requirements for off-street parking and loading shall be met for the proposed use and for any expansion, unless a variance is granted, pursuant to Article 7.

8.1.9. Prior nonconformities.

The adoption of this chapter shall not extend the six (6) month time period of discontinuance or abandonment set forth in Section 8.1.5(B) for a legal nonconforming use that was nonconforming prior to the time this chapter was adopted.

A use, lot, building, or structure that was previously legally nonconforming shall become conforming if, as a result of amendments to this chapter, such use, lot, building, or structure complies with the requirements of this chapter.

8.1.10. Nonconforming signs.

See Chapter 21, Signs for provisions regarding nonconforming signs.

8.1.11. Nonconformities caused by government action.

If a property is required by a federal, state or local government to provide right-of-way or easements that cause an existing structure to have non-conforming yards or setbacks, the property and structure shall be deemed to be legal nonconforming, and, from that time forward, the owner may not expand any existing building in a way to increase the degree of nonconformity or to build new structures that are nonconforming.

8.1.12. Rezoning that results in nonconforming structures.

For structures or lots that become nonconforming due to rezoning, the structure or lot shall be considered legal nonconforming, subject to the requirements of this Article.

8.1.13. Nonconforming uses requiring a special administrative permit or special land use permit.

No use, building or structure that was authorized as of right prior to the effective date of this chapter but would require a special administrative permit or special land use permit upon the effective date of this chapter, shall be enlarged, expanded, moved, or otherwise altered in any manner except after application for and approval of the required special administrative permit or special land use permit. Normal repair and maintenance of legal nonconforming buildings and structures is authorized without the need for special permits. If the use of a legal non-conforming building or structure is discontinued for a continuous period of six (6) months, it may not be reestablished unless such discontinuance was a direct result of governmental action as provided by section 8.1.11.

8.1.14. Buildings and structures where construction has begun.

To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designated use of any legal nonconforming building or structure for which land disturbance or building permits were lawfully applied for or issued, or for which preliminary or final subdivision plats were



lawfully submitted, prior to the effective date of this chapter or amendment thereto, provided: (i) any application on which reliance is placed for the existence of nonconforming rights must have been complete as that term is defined in Article 9; (ii) such permit or approval has not by its own terms expired; and (iii) actual building construction is carried on pursuant to said permit or approval and limited to and in strict accordance with said permit or approval. Notwithstanding any other provisions to the contrary, no renewals or extensions of such permit or approval shall be authorized.

8.1.15. Reconstruction of damaged or destroyed nonconforming structures.

A legal nonconforming building or structure that has been damaged by fire, flood or other natural cause to an extent that the estimated cost of reconstruction does not exceed sixty (60) percent of its fair market value according to the DeKalb County Tax Assessor's valuation for the tax year in which the damage occurred, as determined by the director of planning, may be reconstructed and used as it was prior to being damaged if a complete permit application is submitted for said re-construction within two (2) years of the date of the damage and the work progresses continuously upon issuance of the permit therefor. If said building or structure has been determined by the director of planning to have been damaged to an extent that the estimated cost of reconstruction exceeds sixty (60) percent of its fair market value according to the DeKalb County Tax Assessor's valuation for the tax year in which the damage occurred, then any repair, reconstruction or new construction shall conform to the then existing requirements of the zoning district in which said building or structure is located.

8.1.16. Expansion, redevelopment or improvement of legal nonconforming buildings, structures and/or sites.

- A. *Major redevelopment.* Expansion, alteration or redevelopment of a legal nonconforming building or structure to an extent that the estimated cost of the expansion, alteration or redevelopment exceeds sixty (60) percent of its fair market value prior to expansion, alteration or redevelopment according to the DeKalb County Tax Assessor's valuation of the improvements for the tax year in which the first permit for expansion, alteration or redevelopment is applied for shall require the entire building or structure to conform to DeKalb County codes in every respect, except as approved by variance or special administrative permit as applicable.
- B. *Minor redevelopment.* Expansion, alteration or redevelopment of a legal nonconforming building or structure to an extent that the estimated cost of the expansion, alteration or redevelopment is no greater than sixty (60) percent of its fair market value prior to expansion, alteration or redevelopment according to the DeKalb County Tax Assessor's valuation of the improvements for the tax year in which the first permit for expansion, alteration or redevelopment is applied for shall require the portion of the building or structure comprising the expansion, alteration or redevelopment to conform to all DeKalb County codes that are relevant to the nature of the expansion, alteration or redevelopment.
- C. Proposed improvements to access, parking, landscaping, pedestrian systems, lighting, utilities, and stormwater facilities, shall conform in every respect, except as approved by variance or special administrative permit as applicable.
- D. Notwithstanding subsections A, B, and C above, no building or structure on property on which a nonconforming use is located shall be expanded, altered, or redeveloped in any way.

8.1.17. Prior variances, special exceptions, and special permits authorized.

Variances and special permits lawfully authorized and granted prior to the effective date of this Zoning Ordinance shall continue in effect, provided the terms and conditions of said authorization are followed.