



Article 6: Nonconformities

Division 6.100 Nonconformities

Sec. 6.101 Nonconformities

A. **Types.** There are five types of nonconformities within this Ordinance.

1. **Nonconforming Uses.** Uses that are not listed in Tables 2.201A and 2.201B as permitted, limited uses, or conditional uses in the district in which they are located are nonconforming unless a conditional use has been granted according to the standards of Division 6.300, *Mitigation of Nonconforming Uses*.
2. **Nonconforming Buildings or Structures.** Buildings or structures are nonconforming if they fail to meet the floor area, density, setback, bufferyard, height, parking, or bulk requirements of this Ordinance.
3. **Nonconforming Lots.** A lot not held in common with any other lot that does not meet the area or other dimensional standards of this Ordinance is nonconforming. Lots held in common, but which do not meet lot area or dimensional standards, are curable nonconformities. Where a land owner owns several nonconforming lots that abut, they must be combined to create conforming lots, or lots that are more conforming with respect to the deficiency that creates the nonconforming status. If the consolidation of lots does not make the parcel more conforming in any respect, then the consolidation is not required.
4. **Nonconforming Signs.** Signs that do not comply with the applicable standards of Article 9 are nonconforming.
5. **Nonconforming Floodplain Location.** A building or use that is nonconforming due to its location or elevation within the floodplain or floodway.

B. **Legal Nonconformity and Illegality Distinguished.** A use, building, structure, sign or lot that was in conformance with all laws in place at that time it was built or created is a "legal nonconformity." Any other nonconforming use, structure, sign, or lot is illegal and a nuisance.

C. **Special Rule for Agricultural, Industrial, and Manufacturing Uses.** This Ordinance cannot prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use on the basis of nonconformity unless the use is abandoned.

Sec. 6.102 Major and Minor Nonconformities

A. **Major nonconformities.** Major nonconformities are those for which the nonconformity is a nuisance *per se*, or which represent such incompatibility for adjacent uses and/or the



Comprehensive Plan that they should be eliminated. The following shall be considered major nonconformities:

1. Mobile homes in districts zoned SE, SR, NC, and U.
2. Residential uses in districts zoned BP and I.

B. **Minor nonconformities.** All nonconforming uses not classified as major nonconformities.

Sec. 6.103 Nonconforming Buildings or Uses In The Floodplain

Existing buildings or uses in the floodplain that do not conform to the standards of [Article 5, Environmental Protection](#) regarding floodplains and floodways are nonconforming. Such uses or structures can be damaged, and the County may incur substantial costs should damage occur. Therefore, elimination of the nonconformity or correction of violations are priorities. The following standards apply:

- A. **Damaged Buildings.** Where a building or use in the *floodplain* is damaged in an amount equal to or greater than 50 percent of its assessed value, the structure cannot be rebuilt and the use shall be discontinued. The County will work with Federal and other local agencies to assist in relocation.
- B. **Building Permits.** When a building permit is requested, it shall be granted only if the work includes elevating or flood proofing the building as provided in [Division 4.500, Additional Resource Standards](#).

Division 6.200 General Regulations

Sec. 6.201 Change or Conversion of Land Use or Signage

- A. **Land Use.** A *nonconforming use* shall not be changed to any other nonconforming use unless mitigated in accordance with [Division 6.300, Mitigation of Nonconforming Uses](#).
- B. **Signage.** No nonconforming sign may be replaced with another nonconforming sign.

Sec. 6.202 Abandonment or Discontinuance

- A. **Presumption of Abandonment.** If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned; provided that neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use.
- B. **Future Use.** If the property is shown to be abandoned, then any future use of the land, buildings or structures must conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.

**Sec. 6.203 Abandonment of Telecommunications Towers**

Commentary: If the future abandonment of commercial communications towers is not perceived to be a significant issue in Jefferson County, this provision can be removed.

A. When Removal Required.

1. Defective or unsafe commercial wireless telecommunication towers and *antennas* or *wireless telecommunication facilities* are to be repaired or removed within six months at the owner's or operator's expense. If the facilities are not operated for a continuous period of 24 months, they shall be considered *abandoned* and must be removed within 90 days of their official determination as abandoned. If not removed, the County may remove all towers, antennas, or facilities at the expense of the owner or operator.
2. The owner or occupant of property within the County shall not permit, leave, or cause to be left on said property any wireless telecommunication facility that has been abandoned. The provider shall remove its facility within 90 days of the official date by which the facility was deemed abandoned. If the facility is not removed within the required time, the facility shall be deemed to be abandoned, and the County shall have authority to enter the premises and remove the abandoned facilities. All costs of removal shall be collected from the owner or occupant in the manner provided for summary abatement of nuisances. This requirement shall apply to co-located facilities unless the co-location agreement provides for the removal of abandoned facilities by the tower operator.

B. Continuation of Nonconforming Use.

1. Preexisting telecommunication facilities that do not comply with the regulations of this Ordinance may continue. Routine maintenance and replacement of antennas shall be permitted on such facilities. Any work that would add to the height of the structure or alter its supports or structure shall require a *conditional use* permit. Existing towers that are damaged or destroyed in an amount equal to or greater than 30 percent of their value, as determined by the County, must comply with this subsection. Tower expansions or replacements require compliance with the requirements of this subsection.
2. An existing tower may be replaced, repaired, rebuilt, and/or expanded to accommodate co-located antennas or facilities or to upgrade the facilities to current engineering, technological, or communications standards by obtaining a conditional use permit.

Sec. 6.204 Alternation, Enlargement, or Extension**A. Repairs and Alterations.**

1. Normal maintenance of a nonconforming building or structure, or of a conforming building or structure containing a nonconforming use, is permitted, including necessary non-structural repairs and incidental *alterations* which do not extend or intensify the nonconforming use or the life of the nonconforming structure.



2. No structural alteration shall be made in any structure containing a nonconforming use, except in the following situations:
 - a. The alteration is required by law;
 - b. The alteration will result in eliminating the nonconforming use or structure; or
 - c. A *building* that is located in a residential district and which contains residential nonconforming uses may be *altered* in any way to improve livability, provided no structural alteration shall be made which would increase the number of dwelling units or the bulk of the building.
- B. Nonconforming Use.**
1. No structure containing a *major nonconforming use* shall be enlarged.
 2. No nonconforming use may be enlarged or extended in such a way as to occupy any required usable open space, *landscaped surface ratio*, or any land beyond the boundaries of the property or lot as it existed on the effective date of this Ordinance. Nor shall it be expanded to displace any conforming uses in the same building or on the same parcel.
- C. Nonconforming Lot.** A lot which is nonconforming with respect to area, lot width, or frontage may be built upon if:
1. The use is permitted in that district;
 2. The lot has street frontage; and
 3. All yards or height standards shall be complied with, except that the Zoning Administrator may authorize a reduction in yards of up to 10 percent of the minimum. Less than 10 percent may be ordered if the Zoning Administrator finds that the building would be larger than could be built on a conforming lot.
- D. Nonconforming Building or Structure.** Nonconforming buildings or structures shall not be *altered* or expanded in any manner unless building coverage and floor area remain within the limits permitted by this Ordinance. Further, no expansion shall increase the degree of nonconformity. For example, if a building is set back five feet from a property line and the Ordinance requires eight feet, then no portion of an addition could come closer to the property line than the minimum required eight feet.

Division 6.300 Mitigation of Nonconforming Uses

Sec. 6.301 Purpose

Many nonconforming uses have existed for a period of time, some of which may have only recently become nonconforming. In some instances, a nonconforming use is an integral part of a neighborhood's character and function. One of the purposes of zoning regulations is to protect neighborhoods. Therefore, if the community is comfortable with a particular use or structure, the classification "nonconformity" and restriction on investment may not be what the community desires. Under such conditions, the use may be mitigated and made conforming to remove any stigma that might be associated with the designation as a nonconformity. The provisions of this Division establish procedures for bringing a nonconformity into conformance.

**Sec. 6.302 Procedure**

An owner of a major or minor nonconforming use, building, or structure may apply to the *Board of Adjustment* for a *conditional use* permit for mitigation. This procedure does not apply to nonconforming lots other than those permitted under Section 6.304, *Criteria for Approval*. Use of the NC District is intended to eliminate nonconforming lots in established villages or clusters of development.

Sec. 6.303 Adaptive Reuse

See Section 5.306, *Adaptive Reuse*.

Sec. 6.304 Criteria for Approval

In addition to the criteria for *approval* of a *conditional use* permit, the *applicant* shall meet the following requirements:

- A. **Integration.** The use, as conducted and managed, shall have minimal nonconformities and be integrated into the neighborhood's function. Evaluation criteria include:
 1. The neighborhood residents regularly patronize or are employed at said use (for nonresidential uses).
 2. Management practices eliminate nuisances such as noise, light, waste materials, congested on-street parking, or similar conflicts.
 3. A history of complaints is justification for denying the conditional use permit unless the conditions of such will eliminate the nuisances.
 4. The use has been maintained in good condition or its classification as a nonconformity represents a disincentive for such maintenance.
- B. **Conditions.** The Board of Adjustment shall review the conditional use permit application and recommend, in writing, any conditions relative to the expansion of *bufferyards*, landscaping, or other site design provisions. The review may also contain use limitations necessary to address any concerns that, as a conforming use, it may become a nuisance.
- C. **Incorporation of Nonconformities.** The Board of Adjustment shall list all the property's nonconforming conditions and incorporate them into the conditional use permit as permitted conditions.
- D. **Findings.** The Board of Adjustment shall determine that the use is generally integrated into the neighborhood and has minimal adverse impacts. Upon that finding, the Board may attach conditions, as it deems necessary, to protect the health, safety, and general welfare of the public and surrounding property owners. Such conditions may relate to the lot, *buildings*, structures, or operation of the use.

Sec. 6.305 Effect

Upon granting a conditional use permit and compliance with any conditions placed on it, the Zoning Ordinance shall have a notation placed on the Official *Zoning Map* stating that the property has a conditional use permit and the application case number and date thereof. Granting a conditional use permit makes the use, building, or structure conform to the specifics of the conditional *approval*, thereby eliminating the nonconformity.



Commentary: Notation of conditional uses, or any other parcel-specific actions, on a zoning map will not be possible until the land parcel map can be made public and can be included in the County's GIS zoning map parcel coverage. This is a standard practice in other U.S. counties and cities.