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## **CHAPTER 9: NON-CONFORMITIES**

### **9-10: GENERAL**

There are lots or parcels, uses, and structures within the zone districts established by this Land Use Code that were lawfully established prior to the adoption of this Land Use Code, that are in violation of the standards of this Land Use Code. The standards in this chapter regulate and limit the continued existence of non-conforming uses and structures. It is the intent of this chapter to permit these non-conformities to continue when in compliance with the following provisions.

### **9-20: SUBSTANDARD SIZE LOTS OR PARCELS**

#### **9-20-10: GENERAL**

A single family dwelling unit is a permitted use on any legally created lot or parcel made substandard as to size by the imposition of the initial adoption of the Pitkin County Zoning Resolution of 1955, or the adoption of any relevant amendment thereto subject to compliance with this Land Use Code. Land uses and structures that are accessory to the single family dwelling are permitted. Other uses may be permitted subject to underlying zoning.

#### **9-20-20: CUMULATING OF SUBSTANDARD SIZE LOTS OR PARCELS**

- (a) "Common ownership" of contiguous substandard size lots or parcels shall cumulate with the exception that:
- (1) Lots or parcels in subdivisions approved and signed by the Board of County Commissioners shall not merge regardless of their size, unless the owner has consented, and
  - (2) Pursuant to C.R.S. 30-28-139, on and after October 1, 2003, lots for which the owner has not consented to merger shall not merge regardless of their size.
  - (3) All mergers of contiguous substandard size lots shall follow the procedure set forth in Sec. 2-40-90.
- (b) The aggregate area of the lots or parcels shall be considered as one (1) lot or parcel regardless of diverse times of acquisition by the common owner and whether or not the property was acquired before adoption of this regulation.
- (c) If a roadway in public fee ownership that was in place prior to June 2, 1975 provides access to contiguous substandard size lots and separates such lots, the lots shall not cumulate unless the owner has consented.

**9-20-30: SEPARATION OF PLATTED SUBSTANDARD SIZE LOTS**

The Planning Commission may permit the separation of legally platted substandard size lots or parcels that have not been approved by the Board of County Commissioners and that have cumulated pursuant to Sec. 9-20-20, subject to compliance with all of the standards in this section. In the case of multiple, cumulated substandard size lots, the County may limit the number of lots that may be separated and require lot lines to be reconfigured. Where substandard size lots are separated pursuant to this Sec. 9-20-30, and the original substandard would have qualified for a GMQS exemption pursuant to Sec. 6-30 because of the date of their creation, the resulting separated lots shall retain an exemption pursuant to Sec. 6-30 equal to, but not greater than, the exemption that applied to the original lots.

- (a) The lots must be located in a legally platted subdivision.
- (b) The subdivision plat must have been legally recorded with the County Clerk in compliance with all subdivision laws in effect at the time of recording.
- (c) The Commission shall approve, deny, or limit the separation of cumulated substandard size lots based upon consideration of the criteria.
  - (1) The number of substandard lots developed in the area and the effect of separate development on the character of the neighborhood;
  - (2) The extent to which the lots comply with existing subdivision standards;
  - (3) The effect of separate development on available utilities, roads and other public services;
  - (4) Any physical limitations of the lots;
  - (5) The configuration of the lots as it affects their suitability for separate development;
  - (6) The degree of economic loss to the owner if separate development permission is not granted;
  - (7) The history of acquisition including a consideration of the purposes of the purchase and whether or not the lots were involuntarily acquired; and
  - (8) The historical use of the lots.

**9-30: NON-CONFORMING USES**

**9-30-10: AUTHORITY TO CONTINUE**

Legal non-conforming uses of land or structures may continue in accordance with the provisions of this Chapter 9.

**9-30-20: NORMAL MAINTENANCE AND REPAIR**

Normal maintenance and repair to permit continuation of non-conforming uses may be performed.

**9-30-30: EXPANSION**

Non-conforming uses shall not be expanded except pursuant to the standards in this Sec. 9-30. This prohibition shall be construed so as to prevent (a) occupancy of additional lands or (b) the enlargement of non-conforming uses by additions to the area of the structure in which such non-conforming uses are located.

**9-30-40: RELOCATION**

A non-conforming use may not be moved to another location on or off the parcel of land on which it is located, unless the use will then conform to the limitations of the zone district into which it is moved and receives necessary development approvals.

**9-30-50: CHANGE IN USE**

A non-conforming use shall not be changed to any other use unless the new use conforms to the provisions of the zone district in which it is located and receives necessary development approvals.

**9-30-60: ABANDONMENT OR DISCONTINUANCE**

Where a non-conforming use of land or non-conforming use of structure is discontinued or abandoned for twelve (12) consecutive months, then such use may not be re-established or resumed, and any subsequent use must conform to the provisions of this Land Use Code.

**9-30-70: DESTRUCTION OR DEMOLITION**

Any non-conforming use that is demolished or destroyed through any manner not willfully accomplished by the owner may be restored as of right, regardless of the extent of demolition or destruction, subject to compliance with the standards in Sec 9-50.

**9-30-80: ACCESSORY USES**

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Non-conforming accessory uses shall be discontinued after the principal use has terminated, unless the accessory use thereafter conforms as a principal or accessory use to the zone district standards for the zone in which it is located.

### **9-40: NON-CONFORMING STRUCTURES**

#### **9-40-10: AUTHORITY TO CONTINUE**

A non-conforming structure devoted to a use permitted in the zone district in which it is located may be continued in accordance with the provisions of this Chapter 9.

#### **9-40-20: NORMAL MAINTENANCE AND REPAIR**

Normal maintenance or repair to permit continuation of non-conforming structures may be performed.

#### **9-40-30: EXTENSIONS**

(a) General

Except in the VC and VR zone districts, a non-conforming structure shall not be extended by an enlargement or expansion that increases the non-conformity. A non-conforming structure may be extended or altered in a manner that does not change or that decreases the non-conformity, except pursuant to Sec. 9-50.

(b) VC and VR Zone Districts

In the VC and VR zone districts, a non-conforming structure shall not be extended by an enlargement or expansion that increases the non-conformity, except pursuant to Sec. 9-60. A non-conforming structure may be extended or altered in a manner that does not increase the non-conformity.

#### **9-40-40: RELOCATION**

A non-conforming structure shall not be moved unless, after the move, it will conform to the standards and requirements of the zone district in which it is located.

#### **9-40-50: UNSAFE STRUCTURE**

(a) General

Any portion of a non-conforming structure that becomes physically unsafe or unlawful due to lack of repairs and maintenance, and that is declared unsafe or unlawful by the Chief Building Official or Fire Marshal, but that an owner wishes to restore, repair or rebuild, shall only be restored, repaired, or rebuilt subject to compliance with the following standards:

(1) If the property is located in any zone district other than the VC or VR zone district, the restoration, repair, or rebuilding shall comply with the standards in Sec. 9-50.

(2) If the property is located in the VC or VR zone district, the restoration, repair, or rebuilding shall comply with the standards in Sec. 9-60.

#### **9-40-60: DESTRUCTION OR DEMOLITION**

A non-conforming structure that is demolished or destroyed to any extent may be restored as of right regardless of the extent of demolition or destruction pursuant to the standards in Secs. 9-50 or 9-60, whichever is applicable.

#### **9-40-70: ACCESSORY STRUCTURES**

Non-conforming accessory structures shall be removed after the principal structure has been destroyed or demolished unless the accessory structure thereafter shall conform to the standards of the zone district in which it is located.

#### **9-50: REPAIRS, RESTORATION, RECONSTRUCTION, REPLACEMENT, REMODEL, ADDITIONS AND ALTERATIONS TO NON-CONFORMING STRUCTURES OUTSIDE THE VC AND VR ZONE DISTRICTS**

##### **9-50-10: GENERAL**

Any legally created non-conforming structure may be restored, repaired, replaced, remodeled, or added to subject to compliance with the standards in this section.

##### **9-50-20: RESTORATION WITHOUT SIGNIFICANT CHANGES**

A non-conforming structure may be restored without significant changes subject to the compliance with the standards in this section.

###### **(a) Building Permit**

A building permit for reconstruction must be issued within two (2) years of the date of demolition or destruction, whichever occurs first. The Board may approve an extension to the deadline if a development application is submitted and approved according to the procedures and conditions outlined in Secs. 2-20-20 and 2-30-20.

###### **(b) Conformance with Old Building or Use**

The proposed building restoration must conform in terms of use, number of dwelling units, configuration and area and bulk to the building that was partly or fully demolished by the owner or that was destroyed. The restoration may include

insignificant modifications to the original design if the Community Development Director finds that such modifications are necessary to allow the use or structure to meet basic life, health, and safety standards of the adopted building code.

(c) Restoration, Repair, Reconstruction, Replacement, Remodel, and Additions to Legal Non-conforming Structures

A legal non-conforming structure may be expanded, repaired, restored, reconstructed, replaced, or remodeled as long as the activity does not increase the non-conformity. Prohibited enlargement of the non-conformity shall include, but not be limited to: expansion of the gross floor area where the floor area for the zone district has been exceeded and expansion of the structure into the setbacks, including an increase in the mass of the existing structure within the setbacks; expansion of the structure into any other area where the development standards or the building codes prohibit development. Expansion of the structure into the setbacks, including an increase in the mass of the existing structure within the setbacks is prohibited, except in riparian/wetland setbacks, in which height and bulk may be added to an existing residential structure with no change to the existing footprint of the structure, subject to compliance with the following criteria:

(1) A site specific analysis shall be submitted to prove that there is no area on the property that can be used for expansion/development outside of the one hundred (100) foot setback, without encroachment into the following area(s) prohibited from development in Section 7 of the Land Use Code.

- (a) Slope;
- (b) Floodplain
- (c) Geologic Hazard
- (d) Severe Wildfire
- (e) Wildlife Habitat

(2) In the event that no developable area exists outside of the 100 foot riparian/wetland setback, expansion of a structure shall be subject to compliance with the following criteria:

- (a) The Environmental Health/Natural Resources Department finds that the related septic system or other wastewater treatment system may be adequately accommodated without detriment to the wetland/riparian stream habitat:
- (b) No Transferable Development Rights (TDRs) shall be used on site for any purpose;



(c) There shall not be removal of vegetation or other existing visual buffers between the proposed structure and the stream.

(d) Expansion shall be limited to one additional floor directly over the existing footprint of the structure (footprint does not include appurtenant decks) (subject to all applicable Code provisions, including standard maximum height restrictions defined in Table 5-1A, "Dimensional Requirements."); and

(e) Expansion shall be limited to above-grade space only.

Addition of height and bulk shall be subject to approval of a construction management plan by the Pitkin County Planning Engineer, and any other applicable permits.

(3) Notwithstanding paragraphs (1) and (2) above, any residential structure that is legally non-conforming with respect to riparian/wetland setbacks is permitted a one-time total 300 sq. ft. above grade attached expansion without requirement of a demonstration that no developable area exists outside of the 100 foot setback area. This expansion must maintain at least a 50 foot riparian/wetland setback, and there must be demonstration to the satisfaction of the Environmental Health/Natural Resources Department that the expansion can be sited without detriment to the wetland/riparian habitat. A riparian/wetland mitigation plan that outlines improvement and/or restoration of the subject property may be required to be submitted to the Community Development Director for review, approval, and implementation as part of this analysis in order to obtain this exemption.

*Code repealed and reenacted Ord. No. 14-d, 2006 - § 9-50-20 amended (part) [Ord 21-07, 07-24-07](#); [Ord 024-08, 07-23-08](#); [Ord. 002.2013, 01-23-13](#)*

### **9-50-30: RESTORATION OR EXPANSION OF NON-CONFORMING STRUCTURE OR USE WITH SIGNIFICANT CHANGES**

The Board of County Commissioners may permit modifications to a non-conforming structure or use that does not meet the standards of Sec. 9-50-20, subject to compliance with the standards in this section.

(a) Adverse Impacts and County Land Use Policies

The Board of County Commissioners finds that any adverse impacts of the non-conforming use or structure on the neighborhood or the County as a whole and any inconsistencies with County Land Use Policies in Chapter 1 to be tolerable.

(b) Consistency with Master Plans

The structure or use is generally consistent with adopted master plans for the area and adjacent land uses.

(c) Building Code Standards, Hardships or Improvements to Function and Appearance

The applicant demonstrates that the purpose of the development is to:

(1) Meet practical difficulties and hardships that arise from the existing restrictions upon repair, alteration or restoration; or

(2) Improve the function and appearance of the structure.

(d) Development Exactions and Impact Fees

The applicant makes all required dedications to the County in accordance with the standards in Chapter 8 for any additional development that is approved pursuant to this Sec. 9-50-30.

*Code repealed and reenacted Ord. No. 14-d, 2006 - § 9-50-30 amended (part) [Ord. 21-07, 07-24-07](#); [Ord. 024-08, 07-23-08](#); [Ord. 019-09, 06-24-09](#)*

#### **9-50-40: EXPANSION OR REDEVELOPMENT OF NON-CONFORMING CIVIC AND INSTITUTIONAL USES**

Existing, legally-established civic and institutional uses that are non-conforming uses shall be allowed to remain as non-conforming uses and the Board of County Commissioners may permit expansion and redevelopment of such uses by special review, subject to satisfaction of each of the following criteria:

(a) Standards

(1) At the time the use of the property was established such use must have been legally created and in substantial conformance with the land use approvals granting such use (if any); and

(2) The proposal for expansion of the non-conforming use or re-development of structures associated with the non-conforming use shall be consistent with neighborhood master plans. The proposal shall not change the character of the immediately adjacent neighborhood and shall not, except as otherwise permitted in this Section, increase the impacts of the use on either the surrounding neighborhood or the master plan area; and

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(3) The applicant has demonstrated that the expansion or re-development is the minimum expansion or re-development necessary to sustain the operation; and

(4) In no event shall there be:

(a) Any increase in the floor area of more than a cumulative total of 20% of the existing built floor area of the non-conforming use on the property (20% shall be assessed against built, rather than approved, but as of yet un-built floor area;) and

(b) Any change in the existing developed use of the property, except that accessory uses may be approved that do not create impacts to the immediately surrounding neighborhood in addition to any impacts created by the existing developed use. For purposes of this subparagraph, one residential unit for an on-site caretaker or property manager (which may include a Caretaker Unit("CDU")) shall not be considered a change in use; and

(c) Any increase in the number of free market residential dwelling units on the property; and

(d) Any increase in traffic impacts to the public roads serving the property that are not satisfactorily mitigated.

(5) The applicant shall prepare a site-specific master plan for the property, which shall be subject to approval by the Board after the plan has first been reviewed by P&Z and a recommendation from the P&Z has been received. The master plan shall include plans for the entire property and shall address, at a minimum, the short-term and long-term plans for the following: proposed revisions to the site layout; architectural renderings, including buildings and other structures and landscaping; volume parking limitations (including mitigation of visual impacts) and traffic mitigation; employee limitation; the daily, monthly, yearly and special event volume of activity on the property; accessory uses and structures, if any; agricultural uses and structures, if any; permanent limitations on future development; and other items deemed relevant and requested by the County. All new development shall comply with Development Standards and criteria in Chapter 7 of the Land Use Code.

(b) Additional Review Guidelines.

(1) The standards and criteria set forth in this section shall be applied to the actual development on the property as of January 1, 2006, but in no event may the development exceed the floor area permitted under prior approvals.

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(2) If the development has been undertaken on two or more properties that are not contiguous to each other, then the standards and criteria of this section shall be applied separately to each such property through an individual site impact analysis.

### (c) Reversion to Underlying Zoning

(1) If the existing, legally established non-conforming civic and institutional use ceases operation for any consecutive 12 month period, all uses and structures must immediately be brought in to conformance with the underlying zone district regulations. If cessation of operation is due to demolition or destruction through any manner not willfully accomplished by the owner, uses/structures may be restored as of right pursuant to Section 9-30-70 of the Land Use Code,

(2) If the property associated with the use and/or the use is transferred or conveyed to different ownership at any time, the use(s) and structures shall remain entirely unchanged and in compliance with special review and master plan approvals. In the event that change in ownership results in change to the use(s) and/or structure(s), all special review and master plan approvals relating to the non-conforming use shall expire, and all uses and structures must immediately be brought into conformance with the underlying zone district regulations.

*(Code repealed and reenacted by Ord. 014-D-2006, 07-05-08; § 9-50-40 added [Ord. 023-07, 08-28-07](#))*

## **9-60: REPLACEMENT, RECONSTRUCTION OR RESTORATION IN THE VC AND VR ZONE DISTRICTS**

### **9-60-10: GENERAL**

Non-conforming structures within the VR and VC zone districts that are existing as of May 13, 2003, may be replaced, reconstructed or restored, subject to compliance with the Historic Preservation Guidelines and the following standards.

### **9-60-20: BUILDING PERMIT MUST BE ISSUED WITHIN TWO YEARS**

A building permit for replacement, reconstruction or restoration must be issued within two (2) years of the date of demolition or destruction, whichever occurs first. The Board may approve an extension to the two (2) year deadline.

**9-60-30: LIMITATION OF FLOOR AREA**

The replacement structure shall be limited to the floor area of the replaced structure, but not the existing footprint, as long as the location complies with the dimensional requirements of the applicable zone district. Within the VC zone district only, an increase in the floor area of an existing hotel/motel/lodge may be permitted by the Board of County Commissioners, subject to the special review process in Sec. 2-40-20.

**9-60-40: LOTS OR PARCELS CREATED THROUGH SUBDIVISION EXEMPTION**

An existing non-conforming structure in the VC or VR zone districts that is located on a lot or parcel created pursuant to the subdivision exemption in Sec. 2-30-30 may only be replaced subject to compliance with all of the dimensional standards in the applicable zone district and the Historic Preservation Guidelines.

**9-60-50: DEVELOPMENT EXACTIONS**

The applicant shall make all required dedications to the County in accordance with the standards in Chapter 8 for any additional development that is approved pursuant to this Sec. 9-60.

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