

## **12-308 NONCONFORMITIES**

### **12-308-1 General**

### **12-308-2 Nonconforming Uses**

### **12-308-3 Nonconforming Structures**

### **12-308-4 Nonconforming Lots**

## **12-308-1 GENERAL**

### **12-308-1.01 Scope**

The regulations of this Section govern uses, structures, lots, signs and other situations that came into existence legally but that do not conform to one or more requirements of the Zoning Regulations. These are referred to in the Zoning Regulations as "nonconformities." Nonconformities are legal situations and have legal status under the Zoning Regulations.

### **12-308-1.02 General Policy**

To encourage development consistent with the Zoning Regulations and to provide landowners with reasonable use of their land, it is the general policy of the County to allow uses, structures, signs, lots and other situations that came into existence legally, in conformance with then-applicable requirements, to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with these existing Regulations as is reasonably possible. Provided, however that where a previously complying building or structure no longer complies with these Regulations solely because of a governmental taking or acquisition, the failure to comply created by the taking, acquisition, shall not create or constitute a nonconformity.

### **12-308-1.03 Intent**

The regulations of this Section are intended to:

- a. Recognize the interests of landowners in continuing to use their property;
- b. Promote reuse and rehabilitation of existing buildings; and
- c. Place reasonable limits on the expansion and alteration of nonconformities that have the potential to affect adversely surrounding properties or the County as a whole.

### **12-308-1.04 Authority to Continue**

Any nonconformity that existed on the effective date of these Regulations, or any legal use that becomes nonconforming upon the adoption of any amendment to these Regulations, may be continued in accordance with the provisions of this Section.

### **12-308-1.05 Determination of Nonconformity Status**

The burden of proving that a nonconformity exists rests with the subject landowner.

### **12-308-1.06 Change of Tenancy or Ownership**

Nonconformity status runs with the land and is not affected by changes of tenancy, ownership, or management.

## **12-308-2 NONCONFORMING USES**

### **12-308-2.01 Definition**

A nonconforming use is a land use that was legally established, but that is no longer allowed by

the use regulations of the zoning district in which it is located. Nonconforming uses may continue subject to the provisions of this Section.

#### **12-308-2.02 Change or Expansion**

A nonconforming use shall not be changed or expanded except as follows:

- a. Such change is required by law or order;
- b. The use is changed to a use permitted in the district in which it is located;
- c. A nonconforming use may be changed to another similar or less intensive use if reviewed and approved by the Zoning and Codes Director upon a finding that the new use is no more intensive in character than the original nonconforming use.
- d. Authority has been granted by the Board of County Commissioners to expand a nonconforming use

#### **12-308-2.03 Moving**

A nonconforming use may not be moved in whole or in part to another location on the premises unless the movement or relocation eliminates or decreases the extent of nonconformity.

#### **12-308-2.04 Loss of Nonconformity Status**

- a. When a nonconforming use is abandoned, the use's nonconforming status is lost and any subsequent use of the premises shall comply with the regulations of the Zoning District in which it is located. A nonconforming use will be considered abandoned when any of the following occurs:
  - 1) the intent of the owner to discontinue the use is apparent;
  - 2) with respect to any use other than a dwelling, the use has been discontinued for a period of 12 months or more and no concerted effort has been undertaken by the owner to continue the use;
  - 3) the characteristic equipment and furnishings associated with the nonconforming use have been removed from the premises and have not been replaced by similar equipment within 90 days, unless other facts show intention to resume the nonconforming use;
  - 4) the nonconforming use has been replaced by a conforming use; or
- b. When a building or structure housing a nonconforming non-residential use is damaged to the extent of more than 50% of its fair market value, the nonconformity status of the use is considered lost and the use may not be restored.
- c. The nonconformity status of a residential use is not lost when the structure housing it is damaged to any degree. The structure may be rebuilt in compliance with these Regulations and the nonconforming residential use may continue.
  - 1) A building permit must be obtained within 12 months of the time the damage occurred and construction diligently pursued or the nonconforming use will be considered abandoned.

### **12-308-2.05 Registration of Nonconforming Use**

- a. The rights given to those using or owning property involving a nonconforming use to expand or alter that nonconforming use are specifically conditioned on the registration of the nonconforming use with the Director of Zoning and Codes.
- b. For nonconforming uses that are known to the Zoning and Codes Office to be in existence on the Effective Date, the Director shall develop a database of these uses for the tracking of nonconformities.
- c. Landowners of nonconforming uses that are not known to the Zoning and Codes Office to be in existence on the Effective Date shall be required to register their nonconforming use before altering or expanding that use.

### **12-308-3 NONCONFORMING STRUCTURES**

#### **12-308-3.01 Definition**

A nonconforming structure is any building or structure that was legally established, but no longer complies with the dimensional standards listed in these Regulations for the applicable zoning district; provided, however, that where a previously conforming structure no longer conforms with these Regulations solely as a result of a governmental taking or acquisition for public road easement or right-of-way, the dedication of public road easement or right-of-way, or other governmental use, the failure to conform created by the taking or acquisition shall not constitute a nonconformity. Nonconforming structures may remain and may continue to be used, subject to the regulations in this Section.

#### **12-308-3.02 Structural Alterations**

- a. Structural alterations, including enlargements, are permitted if the structural alteration does not increase the extent of nonconformity.
  - 1) A nonconforming structure may be expanded to the extent of the nonconformity in the side and rear yards as long as there is no greater encroachment into a required setback.
  - 2) No expansion is permitted into the required front yard.

#### **12-308-3.03 Use**

A nonconforming structure may be used for any use allowed in the Zoning District.

#### **12-308-3.04 Moving or Relocation**

A nonconforming structure may be moved in whole or in part to another location on the premises only if the movement or relocation decreases or eliminates the nonconformity.

#### **12-308-3.05 Replacement**

##### **a. Non-residential**

When nonconforming structures that house non-residential uses are damaged to the extent of more than 50% of its fair market value the structure shall not be restored except in conformity with the regulations of the zoning district in which it is located.

b. Residential

When a nonconforming structure housing a residential use is damaged to the extent of more than 50% of its fair market value the structure shall be permitted to rebuild in the former location subject to the following provisions:

- 1) The structure may not be located in the Floodway Overlay District.
- 2) A building permit for the restoration is obtained within 12 months of the date of occurrence of the damage, and once issued, construction is diligently pursued.

**12-308-3.06 Repairs and Maintenance**

- a. Incidental repairs and normal maintenance necessary to keep a nonconforming structure in sound condition are permitted unless such repairs are otherwise expressly prohibited by these Zoning Regulations.
- b. Nothing in this Section shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of the County Zoning and Codes Office, the Lawrence-Douglas County Health Department, or other entity.

**12-308-4 NONCONFORMING LOTS**

**12-308-4.01 Definition**

A nonconforming lot is a tract of land, designated on a duly recorded subdivision plat or by a duly recorded deed, or by other lawful means, that was established prior to adoption of the County's first Zoning Regulations or that complied with all applicable area, width and depth standards of the Zoning District in which it was located at the time of its creation, but which does not comply with the minimum area, width and depth requirements of the zoning district in which it is now located. Provided, however, that where a previously complying lot no longer complies with the regulations of these Regulations solely as a result of a governmental taking or acquisition for road easement or right-of-way, easement or other governmental use, the failure to comply created by the taking or acquisition shall not constitute a nonconformity.

**12-308-4.02 Development**

- a. A nonconforming lot may be used for any use allowed in the zoning district.
- b. A nonconforming lot or eligible parcel may be developed to the extent that the development can be accomplished in accordance with the dimensional standards in Section 12-303 and 12-305.
- c. The owner of a nonconforming lot shall not take any voluntary action that will further reduce the lot area. Any such action by the owner may be prosecuted as a violation of these Regulations.
- d. If the actual lot width is inadequate to provide for driveway access to the lot from an improved road, the protection of this Section shall not apply.