

ARTICLE IX. NONCONFORMING USES AND STRUCTURES***Sec. 59-631. Nonconforming uses.**(a) *Definition.*

(1) A nonconforming use shall be any use which:

- a. On November 8, 1956, was lawfully operated in accordance with the provisions of any prior zoning ordinance, but which use is not a use by right, as established by this chapter, in the district in which the use is located; or
- b. On or after November 8, 1956, was lawfully operated in accordance with the provisions of this chapter, but which use, by reason of amendment to this chapter, is not a use by right in the district in which the use is located; provided, however, an existing use classified as a conditional use and located in any zone district shall not be classified as a nonconforming use; or

(Ord. No. 583-94, eff. 8-5-94)

- c. Is an enumerated use by right, use by special review or a conditional use for the district in which the use is located, but which use does not comply with the provisions of this chapter related to:

1. Permitted home occupations; or
2. Separation of certain uses established for the district in which the use is located (except for separation requirements relating to liquor stores and drugstores licensed to sell package liquors, which shall be subject to paragraph (a)(4) of this section); or

(Ord. No. 350-97, eff. 8-31-97)

3. The nonreducible spacing requirement as provided in all distance requirements of section 59-283, except requirement D5.

- (2) A use by right, use by special review, or conditional use otherwise in accordance with the provisions of this chapter shall not be deemed a nonconforming use for a failure to comply with the provisions of this chapter relating to permitted signs, off-street parking requirements, off-street loading requirements, limitations on external effects of uses, or the reducible spacing requirement as provided in distance requirement D5 of section 59-283.

- (3) The status of a residential care use shall be determined in accordance with the provisions of section 59-82, residential care uses.

(Ord. No. 22-91, eff. 1-11-91; Ord. No. 384-93, eff. 5-28-93)

***Editor's note**—Ord. No. 03-361, § 6, adopted May 23, 2003, renumbered article VIII as article IX.

Case law annotation—Existence of nonconforming uses in residential district does not defeat zoning ordinance. Grandfathering of existing uses does not invalidate the zoning ordinance. *Frankel v. Denver*, 147 Colo. 373, 363 P. 2d 1063 (1961).

- (4) The separation requirement for liquor stores and drugstores licensed to sell package liquors shall not convert into a nonconforming use any liquor store or drugstore licensed to sell package liquors which is located within one thousand (1,000) feet of another such business and exists as of the effective date (August 31, 1997) of the separation requirement, or any liquor store or drugstore licensed to sell package liquors which is located within one thousand (1,000) feet of a community corrections facility and exists as of the effective date (July 31, 2000) of the separation requirement. The separation requirement shall be prospective only and shall have no effect on the right of the pre-existing business to continue upon the renewal or transfer of the liquor license nor on the right of the pre-existing business to expand its floor area (except as controlled or restricted under other provisions of the zoning ordinance and the Colorado Liquor Code). However, an application for a new liquor license at a location where a liquor license was revoked or not renewed shall be regarded as a new use subject to the separation requirements.

(Ord. No. 350-97, eff. 8-31-97; Ord. No. 513, eff. 7-7-00)

(b) *Continuance of nonconforming uses.* Upon performance of and compliance with the following conditions and requirements and subject to the provisions relating to termination hereinafter set forth, any nonconforming use may be continued in operation on the same land area and on the same floor area in a structure which was occupied by the nonconforming use on the date the use first became a nonconforming use and the land area and the floor area in a structure shall not be increased. Unless a nonconforming use is changed as hereinafter permitted, the continuance authorized hereunder shall not be construed to permit increase in the number of dwelling units, a reduction of the ratio of land area to the number of dwelling units or any change whatsoever in any aspect of and feature of or in the character of the nonconforming use.

- (1) *Compliance with limitations on external effects of uses.* Every nonconforming use shall be made to comply forthwith with the limitations on external effects of uses established for the district in which such use is located.
- (2) *Zone lot for structures.* Whenever a nonconforming use or uses is operated in a structure, a separate ground area, herein called the zone lot, shall be designated, provided and continuously maintained for the structure containing the nonconforming use or uses. Each zone lot shall have at least one (1) front line. Upon application to and approval by the department of zoning administration, the boundaries and area of a designated zone lot may be amended if full compliance with all requirements of this chapter can be maintained.
- (3) *Maintenance of off-street parking and loading space.* All off-street parking and loading space operated by, in connection with or accessory to a nonconforming use, shall be maintained in accordance with all specifications for maintenance of off-street parking space as established herein by article VI of this chapter.

(c) *Changing nonconforming uses:*

- (1) *To a conforming use.* Any nonconforming use may be changed to a use conforming with the regulations herein established for the district in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not thereafter be changed back to a nonconforming use.
- (2) *To another nonconforming use.* The following, and no other, nonconforming uses may be changed to another nonconforming use as hereinafter set forth; provided, however, that the use to which changed shall remain subject to all and the same limitations imposed on the use existing prior to the change.
 - a. A nonconforming use which is an enumerated use by right in only one (1) or more of the residential districts and which nonconforming use is located in one (1) of the residential districts which is more restricted than the particular residential district in which the nonconforming use is an enumerated use by right, may be changed to any use which is an enumerated use by right, in any one (1) of the residential districts which is more restricted than the particular residential district in which the nonconforming use is an enumerated use by right.
 - b. A nonconforming use which is an enumerated use by right in any business or industrial district and which nonconforming use is located in any residential district, may be changed to any use which is an enumerated use by right for the B-1 district or for any residential district.
 - c. A nonconforming use which is an enumerated use by right in only the B-2, B-A-2, B-3, B-A-3, B-4, B-A-4, B-5, B-5-T, B-7 or B-8 districts, and which nonconforming use is located in any residential district, may be changed to any use which is an enumerated use by right for the B-2 district.
(Ord. No. 439-07, § 23, eff. 8-20-07)
 - d. A nonconforming use which is an enumerated use by right in only one (1) or more of the business districts and which nonconforming use is located in one (1) of the business districts which is more restricted than the particular business district in which the nonconforming use is an enumerated use by right, may be changed to any use which is an enumerated use by right in any one (1) of the business districts which is more restricted than the particular business district in which the nonconforming use is a use by right.
 - e. A nonconforming use which is an enumerated use by right in only the I-2 district and which nonconforming use is located in any residential or business district, may be changed to any use which is an enumerated use by right in the I-1 district.
 - f. A nonconforming use which is an enumerated use by right in any business district and which nonconforming use is located in an I-0 or I-1 district, may be changed to any use which is an enumerated use by right for the B-2 or B-3 districts.
 - g. [Ord. No. 384-93, eff. 5-28-93, repealed the provisions relative to nonconforming use in a floodplain district]

(2.5) *To a temporary use.* Changing a nonconforming use to a temporary use properly permitted under the provisions of sections 59-81 or 59-86 shall not terminate the nonconforming use.

(Ord. No. 472, § 2, eff. 9-14-07)

(3) *Limitations on changing nonconforming uses:*

- a. All changing of a nonconforming use hereunder shall be limited by and shall be in accordance with the regulations herein established for limitations on external effects of uses in the district in which the nonconforming use is located or the district in which the nonconforming use would be located in the absence of the F prefix.
- b. All changing of a nonconforming use hereunder shall be limited by and shall be in accordance with the regulations herein established for accessory uses, home occupations, permitted signs, off-street parking requirements and off-street loading requirements in the district imposing the greatest restrictions and in which the nonconforming use is a use by right.
- c. A nonconforming use located in the RS-4, R-0, R-1, R-2, R-2-A or R-2-B districts shall not be enlarged, expanded or changed through the reduction of the ratio of land area to the number of dwelling units below the ratio existing on the effective date of this chapter unless after such enlargement, expansion or change the ratio equals or exceeds the following:

<i>District</i>	<i>Minimum Number of Square Feet of Land for Each Dwelling Unit</i>
R-0	6,000
R-1	6,000
R-2, R-2-B	3,000
R-2-A	2,000
RS-4	12,000

(Ord. No. 1024-02, § 29, eff. 12-20-02)

- d. The number of dwelling units in a nonconforming use located in any business district, any industrial district or the O-1 district shall not be increased over or exceed the number of dwelling units existing in the nonconforming use on the effective date of this chapter.
- e. For every nonconforming use changed hereunder there shall be supplied the amount of off-street parking and off-street loading space that would be required by this chapter if the nonconforming use were a use by right.

(d) *Termination of nonconforming uses:*

- (1) *By abandonment.* Abandonment of a nonconforming use shall terminate immediately the right to operate such use.

- (2) *By violation of chapter.* Any one (1) of the following violations of this chapter shall terminate immediately the right to operate a nonconforming use:
- a. Changing a nonconforming use to another nonconforming use except as herein provided and authorized;

- b. Failure to make, within the period herein provided, a nonconforming use comply with the limitations on external effects of uses as established by this chapter or subsequent amendment hereof;
 - c. Increasing the floor area occupied by a nonconforming use without the approval of the board of adjustment for such increase;
 - d. Changing a nonconforming use to an unlawful use.
- (3) *By specific acts of termination.* Any one (1) of the following specific acts of termination shall terminate immediately the right to operate a nonconforming use:
- a. Changing a nonconforming use to a conforming use;
 - b. Changing a nonconforming use to another nonconforming use as herein provided and authorized; provided, however, that the termination shall apply only to the nonconforming use existing prior to any change;
 - c. Vacancy for a period of twelve (12) or more successive calendar months of the structure or that part of a structure occupied by the nonconforming use.
- (4) *By destruction, damage or obsolescence of structure.* The right to operate and maintain any nonconforming use shall terminate and shall cease to exist whenever the structure in which the nonconforming use is operated and maintained:
- a. Is damaged or destroyed, from any cause whatsoever, and the cost of repairing such damage or destruction exceeds fifty (50) percent of the replacement cost of such structure on the date of such damage or destruction; provided, however, that the right to operate and maintain a nonconforming residential use located in a residential district or a nonconforming use located in the Cherry Creek North (CCN) district shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which the use is operated;
(Ord. No. 205-90, eff. 4-13-90; Ord. No. 684-93, eff. 9-17-93)
 - b. Becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the replacement cost of such structure on the date that the proper official of the city determines such structure is obsolete or substandard; provided, however,
 - c. That in determining the replacement cost of any structure, there shall not be included therein the cost of land or any factors other than the structure itself.
- (5) *Voluntary demolition.* Nothing in this subsection (d) shall be deemed to permit the reconstruction or reestablishment of all or any part of a nonconforming use that has been voluntarily demolished, damaged or destroyed.
(Ord. No. 1023-02, § 10, 12-20-02)

(e) *Signs for nonconforming uses.* As accessory to a nonconforming use, no sign shall be erected except in compliance with the following regulations:

- (1) Accessory to a nonconforming use which is a use by right for the R-3 and R-4 districts, but which is located in the RS-4, R-0, R-1, R-2, R-2-A, R-2-B, R-3-X or O-2 districts, signs shall comply with the regulations herein established for permitted signs in the R-3 district.

(Ord. No. 1024-02, § 30, eff. 12-20-02)

- (2) Accessory to a nonconforming use which is a use by right in any business or industrial district, but which is located in any residential district, signs shall comply with the regulations herein established for permitted signs in the B-2 district.
- (3) Accessory to a nonconforming use which is a use by right in a business or industrial district having less restrictive sign standards than the business district in which the use is located, signs shall comply with the regulations herein established for permitted signs in the B-2 district.

(f) *Regulations for specific nonconforming uses:*

- (1) *Automobile repair garage.* Notwithstanding the fence height limitations contained in the individual district regulations, no nonconforming automobile repair garage shall be operated unless the zone lot is enclosed with a solid fence or wall meeting the requirements of section 59-184, limitation L5 (B-4 auto repair garage). The use of the public right-of-way for the parking of vehicles awaiting repair is prohibited. Such fence or wall shall be constructed within eighteen (18) months following the adoption of the ordinance from which this subsection is derived.

(Ord. No. 274-88, eff. 5-17-88)

(Code 1950, § 617.1; Ord. No. 250-80, eff. 5-23-80; Ord. No. 895-03, §§ 65—71, eff. 12-2-03)

Sec. 59-632. Nonconforming structures.

(a) *Definition.* A nonconforming structure shall be any structure which was lawfully erected or altered in conformity with all applicable municipal ordinances but which structure does not comply with all of the provisions of this chapter established for structures in the district in which the structure is located; provided, however, that no structure, otherwise in accordance with the provisions of this chapter or an amendment hereto, shall be rendered or be deemed a nonconforming structure solely for a failure to comply with the provisions of this chapter, or an amendment hereto, relating to permitted signs, off-street parking requirements or off-street loading requirements.

(b) *Continuance and enlargement.* Subject to all limitations of this section, any nonconforming structure may be occupied, operated and maintained in a state of good repair, but no nonconforming structure shall be enlarged or extended unless the enlargement or extension can be, and is, made in compliance with all the provisions of this chapter established for structures in the district in which the nonconforming structure is located. Notwithstanding the regulations stated above, the requirements as to setbacks from side lines may be modified

to permit, subject to the procedure outlined below, an addition to a nonconforming structure located in one (1) of the residential districts and used solely for residential purposes if such nonconforming structure meets the following conditions and subject to the following limitations:

- (1) That the structure was erected prior to the effective date of this chapter;
- (2) That on the date of the application for permits incidental to the construction of said addition, the structure is a nonconforming structure as defined in this chapter;
- (3) That the dimension of the structure which causes the structure to be nonconforming exists for at least one-half of the depth of the structure; that the proposed addition will not exceed the aforesaid dimension in length nor reduce the aforesaid dimensions to less than one-half of the depth of the structure;
- (4) That no wall or roof of the proposed addition to be built within the required side setback area or above the bulk plane starting at the side lot line shall be higher than the existing wall or roof to which it is attached, nor shall such roof be constructed in any other plane than that established by the existing roof.

Procedure: The procedures of section 59-41(b) shall be used to process a request for enlargement of a nonconforming structure as provided in this section 59-632(b).

(Ord. No. 3-84, eff. 1-11-84; Ord. No. 459-06, § 17, eff. 7-21-06)

(b.5) The administrative procedures set forth in subsection (b) for enlargement of nonconforming residential structures shall not be required if the residential structure is located upon a zone lot containing less than three thousand five hundred (3,500) square feet and the side setback area in question is adjacent to an alley. In such a case, the nonconforming residential structure may be expanded in the side setback area without administrative review so long as the structure and any addition thereto meet the requirements of paragraphs 1 through 4 of subsection (b).

(Ord. No. 26-03, § 1, 1-17-03)

(c) *Termination of nonconforming structures:*

- (1) *Accidental damage to structure.* The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure is accidentally damaged in any manner and from any cause whatsoever and the cost of repairing such accidental damage exceeds seventy-five (75) percent of the replacement cost of such structure on the date of such accidental damage.
- (2) *Obsolescence of structure.* The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the replacement cost of such structure on the date that the proper official of the city determines that such structure is obsolete or substandard.

- (3) *Determination of replacement cost.* In determining the replacement cost of any nonconforming structure there shall not be included therein the cost of land or any factors other than the nonconforming structure itself.
- (4) *The right to reconstruct certain structures.* Notwithstanding the provisions of subsections (c)(1), (2) and (3) above, the right to operate and maintain (a) a nonconforming structure containing a residential use or a residential care use located in a residential district, or (b) a nonconforming structure located in the Cherry Creek North (CCN) district, or (c) a structure located in the B-5 OD-2/B-5, OD-3/B-5, OD-4/B-5, B-5-T, OD-2/B-5-T, or OD-4/B-5-T zone districts that became a nonconforming structure as a result of the ordinances from which this provision was derived and the ordinances creating the OD-2, OD-3 and OD-4 overlay districts, or (d) a structure located in the R-3 or R-3-X zone districts that became a nonconforming structure as a result of the ordinances from which this provision was derived and the ordinances creating the OD-6, OD-7 and OD-8 overlay districts, or (e) a residential structure located in the R-O or R-1 zone districts that became a nonconforming structure as a result of the ordinances from which this provision was derived and the ordinances creating the OD-10 overlay district shall not be terminated regardless of the amount of damage, destruction or obsolescence; provided, however, that any such reconstructed nonconforming structures shall not be enlarged and/or extended beyond that which existed previously unless the enlargement and/or extension complies with all the provisions of this chapter.
- (Ord. No. 205-90, eff. 4-13-90; Ord. No. 384-93, eff. 5-28-93; Ord. No. 684-93, eff. 9-17-93; Ord. No. 780-94, eff. 10-14-94; Ord. No. 407-98, eff. 6-26-98; Ord. No. 567-00, eff. 7-21-00; Ord. No. 439-07, § 24, eff. 8-20-07)
- (5) *Voluntary demolition.* Nothing in this subsection (c) shall be deemed to permit the reconstruction or reestablishment of all or any part of a nonconforming structure that has been voluntarily demolished, damaged or destroyed.

(Ord. No. 1023-02, § 11, 12-20-02)

(Code 1950, § 617.2)

Secs. 59-633—59-645. Reserved.