

# CHAPTER 4: SUPPLEMENTAL REGULATIONS

## ARTICLE 1: NONCONFORMING USES

### **SECTION 4.1.010 NONCONFORMING USES**

Except as is hereinafter provided by this Ordinance, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Ordinance or at the time of a change in the official zoning map may be continued, although such use does not conform with the provisions of this Ordinance.

### **SECTION 4.1.020 CHANGES IN NONCONFORMING USES**

A nonconforming use may be changed only to a use conforming to the zone in which it is located. Once changed to a conforming use no building or land shall be permitted to revert to a nonconforming use.

### **SECTION 4.1.030 INCREASE OF NONCONFORMING USES**

A nonconforming use shall not be increased, except that permission to extend the use to any portion of a building or lot which portion was arranged or designed for such nonconforming use at the time of the passage of this Ordinance may be granted by administrative action subject to the provisions of this Ordinance.

### **SECTION 4.1.040 VESTED RIGHT**

Nothing contained in this Ordinance shall require any change in the plans, construction, alteration, or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this Ordinance, provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two (2) years from the time construction was commenced.

### **SECTION 4.1.050 DISCONTINUANCE OF NONCONFORMING USE**

When a nonconforming use of a structure or property is discontinued for a period in excess of one (1) year, the structure or property shall not thereafter be used except in conformance with the zone in which it is located.

### **SECTION 4.1.060 UNLAWFUL USE NOT A NONCONFORMING USE**

No unlawful use of property existing at the time of passage of this Ordinance shall be deemed a nonconforming use.

**SECTION 4.1.070 RESTORATION OF A NONCONFORMING BUILDING OR STRUCTURE**

- 1) A nonconforming building or structure which is damaged by fire, flood, wind, earthquake, or other calamity or act of God or the public enemy, to an extent that the cost of repair or restoration of the building or structure, conforming to current building codes, would exceed 80% of the market value contained in the records of the Douglas County Assessor, shall be deemed terminated upon the date of such damage or destruction. Cost of repair or restoration, and replacement cost, shall be determined by the Building Official. If the building or structure and use thereof is not terminated, it may be restored and the occupancy or use of such building or structure or part thereof, which existed at the time of such partial destruction may be resumed, provided that the restoration is commenced within a period of one (1) year and is diligently prosecuted to completion.
- 2) The restoration or reconstruction of a nonconforming building or structure may not increase the floor area or create a greater nonconformance than existed at the time of damage or destruction.

**SECTION 4.1.080 CONVEYANCE OF NONCONFORMING USE**

Nothing in this Ordinance shall be construed to limit the sale, transfer, or other conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer, or other conveyance does not otherwise violate the provisions of this Ordinance.

**SECTION 4.1.090 RESTORATION OF CONFORMING USE ON NONCONFORMING LOT**

Nothing in this Ordinance shall be construed to prevent the reconstruction or replacement of a pre-existing building or structure conforming as to use on a nonconforming lot, so long as such lot did not become nonconforming in violation of the provisions of this Ordinance.

**SECTION 4.1.100 SPECIAL STATUS OF DWELLING UNITS**

Notwithstanding the restrictions of any other Section of this Ordinance, all dwellings existing in commercial districts (PO, CBD, C1, C2, C3) and built before the date of this provision (September 24, 2008) are considered conforming to the base district. If any building on said properties is destroyed by acts described in Section 4.1.070 (i.e., not intentionally destroyed), it may be rebuilt to the standards of the MR29 zoning district provided that the number of dwelling units is not increased, subject to the regulation of any applicable Overlay District. A Building Permit for the replacement dwelling must be obtained within 12 months after the date the dwelling unit was destroyed. If said permit expires prior to completion of the replacement dwelling, the special status of the dwelling unit provided by this Section is revoked and only uses allowed by the applicable zoning district will be permitted. If an existing dwelling is converted to a permitted commercial use, the special status granted herein is rescinded and the use of the property must thereafter conform to the requirements of the applicable zoning district. (Ord.3289, 9/08)

**SECTION 4.1.110 APPLICATION FOR ALTERATIONS OR REPAIRS**

Alterations or repairs of a nonconforming use may be permitted to continue the use in a reasonable manner subject to the provisions of Section [5.1.060](#) of this Ordinance. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.

**SECTION 4.1.120 CONDITIONS OF APPROVAL**

In order to assure compatibility of the proposed development with the surrounding area, conditions may be imposed as conditions of approval of alteration or repair of a nonconforming use. Such conditions may include, but are not limited to, the following:

- 1) Special yards and spaces.
- 2) Fences and walls.
- 3) Special parking and/or loading provisions.
- 4) Street dedication and improvements or bonds in lieu of improvements.
- 5) Control of points of vehicular ingress and egress.
- 6) Special provisions for signs.
- 7) Landscaping and the maintenance of grounds.
- 8) Control of noise, vibration, odors, or other similar nuisances.
- 9) Limitation of time for certain activities.
- 10) A time period in which a proposed use shall be developed.
- 11) A limit of total duration of use.
- 12) Transportation improvements to mitigate the impact of increased transportation and to protect transportation facilities.

**SECTION 4.1.130 GENERAL EXCEPTIONS TO LOT SIZE REQUIREMENTS**

If a lot of record or series of contiguous units of land existing in a single ownership were created in compliance with all applicable laws and Ordinances in effect at the time of their creation and have an area or dimension which does not meet the lot size requirements of the zone in which the property is located, the holding(s) may be occupied by a use permitted in the zone subject to other requirements of this Ordinance. Nothing in this Ordinance shall be interpreted to limit the sale, transfer, or other conveyance of any such single lot of record or unit of land. (Ord.3279, 3/08)

**SECTION 4.1.140 GENERAL EXCEPTION FOR APPROVED SUBDIVISION**

Nothing in this Ordinance shall be deemed to prohibit construction of conforming uses on nonconforming lots or the sale of said lots within subdivisions or land partitions

approved prior to the adoption of this Ordinance, subject to other requirements of this Ordinance.