

Article 8

Non-Conforming Uses, Buildings and Lots

8.01 Scope of Provisions: The provisions of this Section shall apply to all nonconforming uses, lands, and structures. A nonconforming land use or structure is one which existed lawfully whether by variation or otherwise, on the date this Zoning Ordinance or any amendment thereto became effective, and which fails to conform to one or more of the applicable regulations of the Zoning Ordinance or such amendment thereto.

Such nonconformities may be incompatible with and detrimental to permitted land uses and structures in the zoning districts in which they are situated; they inhibit present and future development of nearby properties; and they confer upon their owners and users a position of unfair advantage.

It is the intent of this Article to permit pre-existing, lawful nonconforming uses and buildings to continue only until they are discontinued, removed or made to conform through rezoning or Special Use Permit, except as otherwise permitted herein, and not to encourage their survival or allow their renewal once they have been discontinued or removed. It is further the intent of this Article that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district, except as otherwise specifically permitted herein.

For the purpose of these regulations, uses which exist as the consequence of an active, unexpired Special Use Permit granted by the DeKalb County Board shall be considered conforming uses, subject to the terms, conditions or restrictions set forth in the County ordinance which approved said Special Use Permit, and subject to the rules for Special Uses set forth in Article 9 of this Ordinance.

8.02 Authority to Continue Nonconformities: Any nonconforming building, structure or use which existed lawfully at the time of the adoption of this Ordinance and which remains nonconforming, and any such building, structure or use which shall become nonconforming upon the adoption of this Ordinance or of any subsequent amendment thereto, may be continued subject to the regulations of this Article.

8.03 Nonconforming Uses:

A. Existence: A use of land, buildings or structures shall be considered nonconforming if such use is not included in the list of permitted uses in the zoning district in which said land, building or structure is located. A nonconforming use shall not be deemed to have existed on the date this Zoning Ordinance or any amendment thereto became effective unless it was being used on a continuous basis and to its fullest extent on such date. In cases of doubt, and on specific questions raised, whether a nonconforming use exists shall be a question of fact and shall be decided by the Board after notice, a public hearing, and receipt of a report and recommendation of the Hearing Officer.

B. Expansion:

1. No nonconforming use shall be expanded, extended or enlarged, either by addition to the land on which the use is located or addition to the buildings and structures associated with said nonconforming use, except where such expansion would decrease the nonconformity of the use.

2. Exception for Residential and Church Uses:

a. A nonconforming residential or church use, where such nonconformity was created by government action and not action(s) of the current or previous property owner(s), may be enlarged, expanded, extended or altered only on the piece of property on which it is currently located and in compliance with the applicable bulk regulations of the zoning district in which it is located, provided, however, that if such use can be made conforming by approval of a Special Use Permit, such expansion shall only be permitted following approval of a Special Use Permit by the County Board in accordance with the regulations for special uses set forth in this Ordinance.

- b. A nonconforming residential or church use, where such nonconformity was created by action(s) of the current or previous property owner(s) and not by government action shall not be enlarged, expanded, extended or altered.
- C. Damage:
 - 1. A building or structure containing a nonconforming use, where such nonconformity was created by action of the government and not by action(s) of the current or previous property owner(s), which is damaged by any means and to any extent where the cost of repair exceeds 50% or more of the value of the building or structure prior to the damage, as determined by the Zoning Administrator, shall not be reconstructed except to accommodate a conforming use.
 - 2. A building or structure containing a nonconforming use, where such nonconformity was created by action(s) of the current or previous property owner(s) and not by government action, which is damaged by any means and to any extent, shall not be reconstructed except to accommodate a conforming use.
 - 3. Exception for Residential and Church Uses:
 - a. A building or structure containing a nonconforming residential or church use, where such nonconformity was created by government action and not action(s) of the current or previous property owner(s), which is damaged to any extent and by any means may be rebuilt, provided an application for a building permit is submitted within 180 days from damage date.
 - b. A building or structure containing a nonconforming residential or church use, where such nonconformity was created by action(s) of the current or previous property owner(s) and not by government action, which is damaged to any extent where the cost of repair exceeds 50% or more of the value of the building or structure prior to the damage, as determined by the Zoning Administrator, shall not be reconstructed except to accommodate a conforming use.
- D. Discontinuation -- If a nonconforming use of a parcel, lot, building or structure ceases for any reason for a period of one year, except where government action causes such cessation, the subsequent use of such parcel, lot, building or structure shall conform to the regulations and provisions set by this Ordinance for the district in which such parcel, lot or building is located. If the one-year discontinuation period is interrupted by the reestablishment of such nonconforming use, such reestablishment must be for no less than thirty (30) continuous days in order for such parcel, lot, building or structure to be excepted from this provision.

8.04 Nonconforming Buildings:

- A. Existence: A building or structure shall be considered nonconforming if it does not comply with one or more of the minimum bulk regulations of the zoning district in which it is located.
- B. Expansion:
 - 1. A nonconforming building or structure may be enlarged, expanded, extended or altered only if the nonconformity is removed.
 - 2. Exception for Residential and Church Buildings:
 - a. A nonconforming residential or church building or structure where such nonconformity was created by government action and not action(s) of the current or previous property owner(s), may be expanded, enlarged, extended or altered, provided such activity does not increase a dimensional nonconformity.
 - b. A nonconforming residential or church building or structure, where such nonconformity was created by action(s) of the current or previous property owner(s) and not by government action, may be expanded, enlarged, extended or altered only if the nonconformity is removed.
- C. Damage:
 - 1. A nonconforming building or structure that is damaged by any means and to any extent shall be repaired or replaced only if the nonconformity is removed.

2. Exception for Residential and Church Buildings:
 - a. A nonconforming residential or church building or structure, where such nonconformity was created by government action and not action(s) of the current or previous property owner(s), which is damaged to any extent and by any means, may be repaired or replaced, provided such activity does not increase a dimensional nonconformity and provided an application for a building permit is made within 180 days of the date of damage.
 - b. A nonconforming residential or church building or structure, where such nonconformity was created by action(s) of the current or previous property owner(s) and not by government action, which is damaged to any extent and by any means, may be repaired or replaced only if the nonconformity is removed.

8.05 Nonconforming Lots:

- A. Pre-Existing Nonconforming Lots: A legally-recorded lot which met or exceeded the minimum lot area, lot width, and other dimension requirements of the zoning district in which it was located at the time such lot was recorded or which pre-dates zoning in the County, but which does not now meet the minimum standards of the current zoning district in which it is located, shall be considered a legal nonconforming lot, and shall be subject to the requirements of this Article. Existing buildings and structures on such lots shall be considered legal, nonconforming buildings.
- B. Use of Nonconforming Residential Lots:
 1. Legal nonconforming residential lots as defined above shall be buildable for the originally-intended purpose, provided, however, that all buildings and structures constructed thereon shall meet or exceed the applicable minimum standards of the current zoning district, except minimum lot area, and provided further that no dwelling shall be constructed on a lot, or combination of lots, of less than 22,000 square-feet in area unless authorized through a planned development ordinance.
 2. Further, any lot that was granted residential zoning by adoption of an ordinance of the County Board following a petition by the current or previous property owner(s) to rezone the subject property for residential purposes shall be considered a legal nonconforming lot and shall be buildable for the originally-intended purpose. Development of the property shall comply with the minimum lot area and lot width requirements of the approved zoning district, but otherwise shall comply with all other applicable regulations of the current zoning district.
 3. If a property so zoned is large enough to constitute two or more conforming lots under the originally-approved zoning district, any division of the property shall be in accordance with the County's subdivision regulations. It shall be the responsibility of the current or previous property owner(s) to show proof of the subject property's prior zoning district classification.
- C. Lots Rezoned: Any property zoned Planned Development-Residential (PD-R) as a consequence of the elimination of the zoning district under which it was previously zoned, and any residential lot in a planned development district which does not have specific use and bulk regulations established per a DeKalb County ordinance for said planned development district, shall be subject to the RC-2, Residential District regulations set forth herein for the purpose of future use, development, and bulk regulations.
- D. Illegal Nonconforming Lots: A nonconforming lot where such nonconformity was created subsequent to December of 1997 by action or actions of the current or previous property owner(s) and not by government action(s), is declared an illegal nonconforming lot. New uses, buildings and structures, including those intended for agricultural purposes, and additions to existing uses, buildings and structures, shall not be permitted on such lots, and repair of existing buildings and structures which are damaged by any means, if the cost of such repair exceeds 50% of the value of the building or structure, shall not be permitted.

- E. Lots Rendered Nonconforming: Any lot, or combination of lots, under common ownership and on one side of a street, the area of which is less than the minimum lot size required by the zoning district in which said lot(s) is located, that is further reduced in area through the sale of any portion of the combined lot area, shall be deemed an illegal, nonconforming lot and shall be subject to the regulations set forth in this Article. However, if the area of a legal or legal, nonconforming lot is decreased below the minimum area required in the applicable zoning district as a result of the dedication of street right-of-way or the acquisition by government of a portion of the lot for right-of-way, development rights shall not be denied.
- 8.06 Repairs and Maintenance:** When a structure is determined to be in violation of any applicable health or safety code by the Building Department or Health Department, under any applicable ordinance of the County, and the cost of placing the structure in condition to satisfy the standards under such ordinance shall exceed fifty percent (50%) of the reconstruction cost of the entire structure, such nonconforming structure shall not be restored for the purpose of continuing a nonconforming use. None of the restrictions contained in this Section shall limit the authority of the County Board or its designee to grant relief for reconstruction of a nonconforming structure.
- 8.07 Change of Tenancy or Ownership:** Provided there is no change in the nature or character, extent or intensity of a nonconforming use, building or structure, other than signage, there may be a change of tenancy, ownership, or management of an existing nonconforming use, building or structure.
- 8.08 Completion of Pending Construction and Building Permits:** To avoid undue hardships, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Nothing herein contained shall require any change in the site plan or designated use of a building for which a building permit had been heretofore issued, or plans or final subdivision plats which have been approved by the County at the time of the passage of this Ordinance or amendment provided that actual construction is begun within one-hundred eighty (180) days of such permit issuance of approval thereto.
- 8.09 Special Uses:** Any use existing at the time of adoption or amendment to this Ordinance and which is permitted as a special use in the zoning district in which it is located under the terms of this Ordinance or amendment, but which does not have an active, approved Special Use Permit, shall be deemed a legal nonconforming use in such district. Expansions or additions to the land area, buildings or structures, or new buildings or structures associated with the use, shall only be permitted following approval of a Special Use Permit by the County Board in accordance with the requirements for special uses set forth in this Ordinance. Further, any special use specifically approved by the County Board shall remain valid and in effect even if the underlying zoning district is changed as a consequence of the adoption of this Ordinance. Such special uses shall be subject to the regulations for special uses set forth herein and in the County Board ordinance approving such Special Use.
- 8.10 Joint Use of Buildings, Structures, or Land:** Where a nonconforming use exists, and a conforming use is proposed, the nonconforming use must cease upon initiation of the conforming use. No joint use of either buildings, structures, and or land shall be permitted.
- 8.11 Variations:** Variations may be granted by the County Board from any provision of this Article, following a public hearing before the Hearing Officer in accordance with the requirements of Sections 10.01.B, 10.01.C. and 10.01.E. of this Ordinance. The existence of any present nonconformity anywhere in the County shall not itself be considered grounds for the issuance of a variation or rezoning for other property.