

CHAPTER THREE

ZONING

3.8 NONCONFORMING USES/STRUCTURES/SITES

B. Nonconforming Structures and Sites.

1. **Continuation.** A lawful structure or parcel of land existing as of the effective date of this Code that is nonconforming due solely to failure to meet the bulk requirements or performance standards and criteria of the underlying zone may be used for any purposes permitted in the zone so long as the use is in conformance with the provisions of this Section.
2. **Maintenance and Restoration.** In any continuous twelve (12) month period, interior and exterior remodeling of nonconforming structures that requires a building permit shall require correction of existing on-site nonconforming parking, landscaping and screening/buffering in accordance with this Section. The cost of the remodeling shall be as shown on the approved building permit application and the current fair market value of the existing structure shall be based on improvement value as determined by the Mesa County Assessor or an appraisal performed by a certified general appraiser licensed to do business in the State of Colorado utilizing the "cost" approach. This appraisal shall be performed at the applicant's expense.
 - a. Remodeling projects that cost twenty-five percent (25%) or less of the current fair market value of the structure shall not require any correction to existing nonconforming parking, landscaping or screening/buffering other than what may be required by Fire and Building Codes.
 - b. Remodeling projects that cost more than twenty-five percent (25%), but less than seventy-five percent (75%) of the current fair market value of the structure shall require a corresponding percentage increase in compliance with the parking, landscaping and screening/buffering requirements of this Code until the site achieves one hundred percent (100%) compliance. [For example, if a site has only twenty (20) of thirty (30) required parking spaces and the cost of the remodeling is thirty percent (30%) of the value of the building, then thirty percent (30%) of the required parking shall be provided, or nine (9) spaces.]
 - c. Remodeling projects that cost seventy-six percent (76%) or greater of the current fair market value of the structure shall require one hundred percent (100%) compliance with the parking, landscaping and screening/buffering requirements of this Code.
 - d. When five (5) or less additional parking spaces are needed due to a remodeling project, no additional parking shall be required.

- e. Properties that are physically constrained from complying with these provisions shall comply to the maximum extent practicable as determined by the Director.
3. **Expansion.** In any continuous five-year period, additions to structures on nonconforming sites shall require correction of existing on-site nonconforming parking, landscaping and screening/buffering.
- a. Complete redevelopment or expansions which would result in a thirty-five percent (35%) or greater increase of the gross square footage of the existing structure(s) require the entire property to meet all of the landscaping and screening/buffering requirements of this Code. The same requirements also shall apply to the addition of new or increased areas for outdoor operations/storage/display, including expansions of existing parking lots.
 - b. Expansions which would result in less than a thirty-five percent (35%) increase of the gross square footage of the existing structure(s) shall require a corresponding percentage increase in compliance for landscaping and screening/buffering requirements of this Code until the site achieves one hundred percent (100%) compliance. The same requirements also shall apply to the addition of new or increased areas for outdoor operations/storage. [For example, if the addition is twenty-five percent (25%) of the size of the existing building and the site contains only fifty percent (50%) of the required landscaping, twenty-five percent (25%) of the required landscaping for the entire site must be provided, thereby bringing the site to seventy-five percent (75%) of the total required. Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping.]
 - c. Expansions that necessitate an increase in the number of parking spaces shall be required to provide one hundred percent (100%) of the required parking spaces for the use in accordance with this Code. The additional parking area shall comply with all associated landscaping and drainage requirements of this Code.
 - d. For purposes of Section 3.8.B, the conversion of nonconforming commercial and/or residential structures and sites to condominiums shall be treated as an expansion of the nonconforming structure/site, requiring that the site be brought into compliance with all parking, lighting, and landscaping requirements of this Code.
4. **Change of Use.**
- a. Changes of use that necessitate an increase in the number of parking spaces shall be required to provide one hundred percent (100%) of the required parking spaces for the use in accordance with this Code. The additional parking area shall comply with all

- associated landscaping and drainage requirements of this Code.
- b. Other nonstructural use, such as a new display, storage or operation lot, requires the entire lot or parcel meet all of the parking, landscaping and screening/buffering requirements of this Code.
5. **Destruction.** A nonconforming structure which is damaged to fifty percent (50%) or less of its fair market value, based on a market appraisal performed by a certified appraiser, may be restored within the existing footprint provided that: all portions of the structure being restored are not and were not on or over a property line; all construction is in compliance with current construction codes, such as the Fire and Building Codes; a building permit is obtained within six (6) months from the date of the damage; and the Certificate of Occupancy (or other final inspection) is issued within one (1) year of the issuance of the building permit. If damage exceeds fifty percent (50%) or more, restoration or improvement shall not be permitted unless the restoration results in a structure and site conforming to all applicable requirements of this Code.
 6. **Nonconforming Lots.** A parcel of land with an area less than prescribed in the applicable zone may be used for any purpose permitted in the zone if:
 - a. The owner is able to demonstrate to the satisfaction of the Director that the parcel was lawful at the time it was created;
 - b. No reasonable alternative exists to make the nonconforming lot conforming, such as the addition of adjoining land under the property owner's control; and
 - c. The use meets all other regulations prescribed for the zone prior to occupancy or use.
 7. **Time Extensions.** The Zoning Board of Appeals may permit one (1) extension of up to twelve (12) additional months to the time periods for abandonment, obtaining a building permit and/or completing construction, provided the applicant can demonstrate circumstances out of his control have prevented a good faith attempt to reestablish or rebuild the nonconforming use and/or structure. Such circumstances may include the health of the applicant, court proceedings, failure to reach an insurance settlement, acts of God, or similar hardships.
 8. **Signs.** This Section shall not apply to nonconforming signs (see Sign Regulations Section 4.2).
 9. **Variance.** The Zoning Board of Appeals may vary the provisions of this Section. Application and processing shall be in accordance with the provisions of Section 2.16.
 10. **Evidence of Status.** Evidence of the status of a nonconforming use or site shall be supplied by the owner of the property upon request of the Director.