

ARTICLE 6

NONCONFORMITIES - EAGLE COUNTY

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NONCONFORMITIES

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ARTICLE 6**NONCONFORMITIES****SECTION 6-100. PURPOSE AND INTENT**

Within the provisions established by these Land Use Regulations, there exist uses of land, structures and lots that were lawfully established before these Land Use Regulations were adopted or amended, that now do not conform to the standards of the Land Use Regulations. The purpose and intent of this Article is to regulate and limit the continued existence of those uses, structures and lots that do not conform to the provisions of these Land Use Regulations or any amendments thereto.

It is the intent of these Land Use Regulations to permit these nonconformities to continue, until they are removed, but not to encourage their survival except under the limited circumstances established in this Article. It is further the intent of these Land Use Regulations that changes in nonconformities shall not be permitted. The provisions of this Article are designed to curtail substantial investment in nonconformities to preserve the integrity of these Land Use Regulations and the Master Plan.

SECTION 6-110. NONCONFORMING USES AND STRUCTURES

- A. Continuation.** Nonconforming uses and structures may continue in accordance with the provisions of this Section.
- B. Normal Maintenance or Repair.** Normal maintenance or repair of nonconforming structures and structures in which nonconforming uses of land are located may be performed in any period of twelve (12) consecutive months, to an extent not exceeding fifteen (15) percent of the actual value of the structure, as determined by the most recent County Tax Assessor's roles, provided that the area of the structure existing after the date it became nonconforming shall not be increased, except pursuant to the standards of this Section.
- C. Enlargement or Expansion.**
- 1. Nonconforming Use.** A nonconforming use shall not be enlarged or expanded in area occupied, except a nonconforming use may be enlarged in any area of the same structure in which it is located if no structural alteration of the structure is proposed or made for the purpose of the enlargement or expansion.
 - 2. Nonconforming Structure.** A nonconforming structure shall not be extended by an enlargement or expansion that increases its nonconformity, but may be extended or altered in a manner that does not change or that decreases its nonconformity.
 - 3. Solar Energy Device.** The addition of a solar energy device to a nonconforming use or a nonconforming structure shall not be considered a structural alteration.
- D. Relocation.** A nonconforming structure or a structure housing a nonconforming use shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless it shall thereafter conform to the provisions of the Zoning District into which it is moved.

- E. Change in Use.** A nonconforming use shall not be changed to any other use, unless any new or additional use conforms to the provisions of these Land Use Regulations for the zone district in which the use is located.
- F. Discontinuance or Abandonment.** If a nonconforming use is discontinued or abandoned for a period of more than twelve (12) consecutive months, whether or not the equipment or furniture are removed, then such use may not be re-established or resumed, and any subsequent use shall conform to the provisions specified by these Land Use Regulations. When government action can be documented as the reason for discontinuance or abandonment, the time of delay by government shall not be calculated for purposes of this Section.
- G. Unsafe because of Maintenance.** If a nonconforming structure or portion thereof or a structure containing a nonconforming use becomes physically unsafe or unlawful due to the lack of repairs or maintenance, and is declared by the Building Inspector to be an unsafe structure, it shall thereafter be rebuilt and repaired in conformance with the standards of these Land Use Regulations and the Building Code.
- H. Damage of Structure.** If a nonconforming structure or a structure housing a nonconforming use is damaged or destroyed by any means to an extent of more than fifty (50) percent of the actual value of the structure immediately prior to the damage (as determined by the most recent County Tax Assessor's role), it shall not be restored or repaired, except in conformance with the provisions of these Land Use Regulations, and all rights of a nonconformity are terminated. If a structure is damaged by less than fifty (50) percent of its actual value (as determined by the most recent County Tax Assessor's role), it may be repaired and reconstructed and used as before the time of damage, provided such repair and reconstruction is substantially completed within twelve (12) months of the date of damage.
- I. Use is Acquired by Tax Delinquency.** If Eagle County acquires title to any land by reason of tax delinquency upon which a nonconforming use is located, and the land is not redeemed as provided by law, the use on the land shall comply with the provisions of these Land Use Regulations, and any amendments thereto.
- J. Conforming Use in a Nonconforming Structure.** Conforming uses within a nonconforming structure may change as long as the use does not increase the nonconformity of that structure. Uses must be allowable pursuant to Article 3, Zone Districts. (am 03/12/02)

SECTION 6-120 NONCONFORMING LOTS OF RECORD

- A. General.** Where a legal lot of record has an area or frontage that does not conform to the standards of these Land Use Regulations, but it was a legal lot of record on January 1, 1999, the effective date of these Land Use Regulations, or was created pursuant to Section 5-295, Conservation Subdivision, such lot or parcel of land may be developed, provided it is not a contiguous lot under common ownership as defined in Section 6-120.B., Contiguous Parcels Under Single Ownership, and the minimum yard standards for the zone district in which it is located are met or a variance from these standards is obtained pursuant to Section 5-260, Variances.
(am 9/27/99) (am 11/07/07)

1. **Uses by Right.** In all instances, and except in the Backcountry (BC) and Resource Preservation (RP) zone districts, and except for a contiguous lot under single ownership, this Section shall be interpreted to allow one (1) single family dwelling unit to be located on a nonconforming legal lot of record, and in the Resource (R) Zone District only, to allow a nonconforming legal lot of record to maintain those agricultural uses that are allowed uses in that zone district. New single family dwelling units shall comply with any and all standards of these Land Use Regulations. *(am. 03/12/02) (am.05/15/07)*
 2. **Additional Uses.** In all zone districts, except for the Fulford Historical (FH), Backcountry (BC) and Resource Preservation (RP) zone districts, this Section shall be interpreted to allow the owner of a nonconforming lot of record to apply, pursuant to Section 5-250, Special Uses, for any other use that is allowed, allowed by limited review, or allowed by special review for any use normally permitted in the applicable underlying zone district (see Table 3-300 Residential, Agricultural, and Resource Zone Districts Use Schedule). All setbacks and zone standards must be adhered to, except that the uses approved by the Board of County Commissioners may be allowed on lots which do not meet minimum lot size for that zone district. in the applicable underlying zone district. *(am. 03/12/02) (am.05/15/07)*
- B. Contiguous Parcels under Single Ownership.** Except as set forth hereunder, two (2) or more contiguous parcels of land under single ownership shall constitute a single lot which cannot be subdivided without the prior approval of Eagle County, as prescribed in these Regulations. *(am.12/13/05)*
1. **Division is a Subdivision.** Except as set forth hereunder, in the event that two (2) or more contiguous lots, previously separately conveyed or described, were acquired under single ownership, regardless of diverse times of acquisition by the single owner, the division of such land into two (2) or more lots, separate interests, interests in common or other division, even if divided along the line(s) of a previously described or conveyed lot(s), shall constitute a subdivision of land. *(am.12/13/05)*
 2. **Limits to Applicability.** *(am.11/08/05)*
 - a. Nothing herein shall be deemed to apply (a) in the Fulford Historical Zone District, or (b) in the Nelson Access Road Community as shown in Appendix D to these Land Use Regulations, or (c) to a lot shown on any recorded subdivision plat if such subdivision has been approved and signed by the Board of County Commissioners, or (d) to a legal lot of record which conformed to the applicable zoning standards at the time the single ownership came into being or, if later, when zoning first applied to the lot (October 19, 1974). This Section 6-120.B. applies only when the single ownership of the contiguous lots existed on, or at any time after, October 19, 1974. *(am 02/20/01)*
 - b. For any merger of parcels of land or lots under the provisions of this Code, which merger is not requested in writing by each owner of an affected parcel, and which merger occurs for the first time on or after October 1, 2003 (the effective date of Senate Bill 03-067 as codified in C.R.S. Section 30-28-139), the following provisions shall govern, as expressly required C.R.S. Section 30-28-139:
 - (1) Prior to the completion of the merger, the County shall send notice of the County's intent to complete the merger to each owner of the affected

parcels by certified mail, at the address shown on the records of the County Assessor. The notice shall also specify that each such owner may request a hearing on the proposed merger pursuant to paragraph (2) immediately below, and shall specify action to be taken by such owner to request such hearing, including, without limitation, the requirement that said owner shall request the hearing no later than 120 days after the date on which the owner receives the notice. The date of the owner's receipt of the notice shall be the date on which the notice arrives at the owner's stated address, which date the County may presume to be three days after the date of the County's mailing of the notice, unless the circumstances known to the County clearly indicate a later receipt date.

- (2) Prior to the completion of the merger, where each owner of an affected parcel has timely requested a hearing on the proposed merger satisfying the requirements of paragraph (1), immediately above, a public hearing on said merger shall be held before the Board of County Commissioners. The hearing shall be conducted for the purpose of allowing the Board to discuss with the owner of each affected parcel the Board's reasons for proceeding with the merger, and to give each owner the opportunity to submit any basis provided under law for challenging the merger. In the case of a timely hearing request, the County shall provide notice of the time, place and manner of the hearing to each owner of the affected parcels and shall also publish the notice in a newspaper of general circulation in the County in a manner sufficient to notify the public of the time, place, and nature of said hearing. In order to give each such owner of an affected parcel the opportunity to take whatever remedial action is allowed under the law prior to the hearing before the Board, the County shall not hold the hearing any sooner than 90 days after the date on which the owner received the County's initial mailed notice as provided in paragraph (1), above.
- (3) Where the owner of each affected parcel fails to timely request a hearing on the proposed merger satisfying the requirements of paragraph (1), above, no such hearing is required, and the affected parcels shall be merged in accordance with the requirements of this Subsection B.
- (4) No merger of parcels that is the subject of a hearing pursuant to paragraphs (1) AND (2), above, shall be effective unless (a) the owner of the parcels has given his, her or its consent to the merger of said parcels; and (b) the merger has been approved by a majority of the Board of County Commissioners.
- (5) Nothing in this Subsection B. shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under Article 68 of Title 24, C.R.S., pertaining to vested property rights.

3. **Compliance With Standards Required.** No portion of such a lot shall be used or sold that does not meet the standards of these Regulations, nor shall any division of the lot be made which leaves remaining any lot that does not meet the standards of these Regulations.

4. **Single Ownership.** Single ownership shall refer to the fee owner(s) of the lots in question, and shall mean ownership by the same person(s). In considering the issue of single ownership, consideration shall be given to whether, based on the available facts, any transfer of ownership or execution of contract was not bona fide, but was done for the purpose of evading the requirements of this section.
5. **Effect of Regulation.** This Section 6-120.B. is not intended to and does not make legal any previous illegal subdivision of land.

SECTION 6-130 NONCONFORMITIES CREATED BY EMINENT DOMAIN PROCEEDINGS

- A. **Authority to Gain Certificate of Conformity.** A lot that is rendered or will be rendered nonconforming because of eminent domain proceedings, or by sale under the threat of eminent domain proceedings, shall be considered conforming under the terms of these Regulations through the receipt of a Certificate of Conformity, pursuant to the terms of this Section.
- B. **Procedure.**
 1. **Application.** A Condemner or Condemned may submit an application requesting a Certificate of Conformity to the Planning Director at any time. The application shall contain the materials specified in Section 5-210 D.2., Minimum Contents of Application, including an explanation of why the Certificate of Conformity should be granted, and the following materials:
 - a. **Proof of eminent domain proceeding.** If relevant, proof of the actual or impending eminent domain proceeding;
 - b. **Survey.** A survey of the land subject to the eminent domain proceeding or sold under the threat of an eminent domain proceeding that demonstrates the extent of the condemner's acquisition, and all principal and accessory structures on the land. The survey shall be less than one (1) year old and comply with the laws of the State of Colorado regulating the practice of professional land surveying and the rules of procedure and rules of professional conduct;
 - c. **Site plan.** A site plan of the land subject to the eminent domain proceeding or sold under threat of an eminent domain proceeding at an appropriate scale, showing the location of all structures and improvements on the land; and the extent of the condemner's acquisition; and
 - d. **Proof of Notice.** Proof that notice of the application has been provided to the other party (Condemner or Condemned, whichever is relevant).
 2. **Determination of Sufficiency, Review and Decision.** After receipt of an application requesting a Certificate of Conformity, the Planning Director shall determine whether it is complete within ten (10) working days. If it is determined the application is not complete, notice shall be served on the applicant specifying the deficiencies. The Planning Director shall take no further action on the application unless the deficiencies are remedied. Within twenty (20) working days after the application is determined to be complete, the Planning Director shall review and grant, grant with conditions, or disapprove the application, pursuant to the standards established in Section 6-130.C., Standards.

3. When Eagle County is the condemner (or purchaser in lieu of condemnation), it shall apply for a Certificate of Conformity before or concurrently with the acquisition.
- C. **Standards.** An application requesting a Certificate of Conformity shall be granted if the following standards are met.
1. **Minimization of Business and Severance Damage.** If the condemnation action has not been decided by a court of law, the amount of severance and business damages resulting from the eminent domain proceedings are substantial, and the loss of business damages would be minimized by the issuance of a Certificate of Conformity;
 2. **Site Plan That Minimizes Nonconformities While Ensuring Compatibility.** A site plan can be designed for the land that is consistent with the use requirements of these Land Use Regulations, and minimizes to the greatest degree practicable any nonconformities of parking, loading, landscaping, lot size, and yard requirements; and
 3. **Function Adequately.** The structure or lot can function adequately for its designated land use pursuant to the site plan.