

*City of*

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**BEATRICE**

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*Nebraska*

**ZONING ORDINANCE**

**ARTICLE TWELVE  
NONCONFORMING DEVELOPMENT**

**LAST UPDATED – SEPTEMBER 2014**

# ARTICLE TWELVE – NONCONFORMING DEVELOPMENT

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## 1201 Purpose

Article Twelve shall be known as the Nonconforming Development Regulations. The purposes of these regulations are:

- A. To allow for reasonable use of legally created lots of record which do not meet current minimum requirements for their respective zoning districts.
- B. To provide for reasonable use of legally constructed structures which do not meet current side development regulations for their respective zoning districts.
- C. To allow for the reasonable continuation of legally established uses which do not meet current use regulations for their respective zoning districts.
- D. To limit the continuation and provide for the gradual replacement of nonconforming uses.

## 1202 Regulations Additive

Regulations for nonconforming uses are in addition to regulations for nonconforming structures. In the event of a conflict, the most restrictive regulation shall apply.

## 1203 Nonconforming Lots

### A. Pre-Existing Lots of Record

#### 1. Single Lots

Nonconforming lots of record existing at the time of the adoption of this Ordinance shall be exempt, unless otherwise provided, from the minimum lot area and lot width requirements of each zoning district. Such lots may be developed with any use allowed by the regulations for the district and must comply with all other site development regulations set forth by the Zoning Ordinance. Any variance of yard requirements or other site development regulations shall be granted only through action of the Board of Adjustment, pursuant to the requirements of Article Thirteen.

#### 2. Adjacent Lots in Single Ownership

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record on the effective date of this Ordinance, and if all or part of the lots do not meet the minimum lot area and lot width requirements in their respective zoning districts, the land involved shall be considered to be an undivided parcel for the purposes of this Ordinance. No portion of such parcel shall be used or sold in a manner that diminishes

compliance with the minimum lot area and lot width requirements, nor shall any division of any parcel be made which creates lots which do not comply with such requirements.

## **B. Reductions Due to Public Acquisition**

If a portion of a legally existing lot in any district is acquired for public use, the remainder of this lot shall be considered a conforming lot.

## **1204 Nonconforming Structures**

These regulations apply to buildings and structures which were constructed legally under regulations in effect before the effective date of this Ordinance.

### **A. Continuation**

A lawful nonconforming structure existing on the effective date of this Ordinance may be continued, repaired, maintained, or altered, subject to the provisions of this Section.

### **B. Additions or Enlargements to Nonconforming Structures**

1. A lawful nonconforming structure may be added to or enlarged if the addition satisfies one or more of the following conditions:
  - (a) The enlargement or addition, when considered independently of the existing building, complies with all applicable setback, height, off-street parking, and landscaping requirements.
  - (b) The nonconforming building and impervious surface coverages on the site are not increased and the building, after the addition, conforms to height and off-street parking regulations applicable to its zoning district.
  - (c) The addition projects no further into a required side yard setback than the existing building; the length of the side wall of the addition is the smaller of 25 feet or 50 percent of the length of the existing nonconforming side wall; and the enlarged building complies with building and impervious coverage, front and rear yard setbacks, and height regulations applicable to its zoning district.
2. No permitted addition to a nonconforming structure may place a wall within ten feet of a window of an adjacent pre-existing residential structure.
3. Nonconforming buildings shall be limited to one addition or enlargement pursuant to these regulations.

### **C. Moving of Nonconforming Structures**

A lawful nonconforming building or structure shall not be moved in whole or in part to another location on its lot unless every part of the structure conforms to all site development regulations applicable to its zoning district.

#### **D. Repair of Nonconforming Structures**

A lawful nonconforming building damaged by fire, explosion, storm or other calamity, except flood damages, may be repaired and reconstructed provided there is no increase in the degree of nonconformity, provided that such repair begins within a period of six months from the date of the damage. Repair and reconstruction within the designated floodplain shall be in conformance with Floodplain development regulations.

#### **E. Conversion of a Conforming Building**

A conforming building shall not be changed in any way that will result in a nonconforming development.

#### **F. Applicability of Landscaping and Screening Regulations**

A pre-existing structure, building, or development shall be exempt from Article Eight, Landscaping and Screening Regulations. However, any expansion of such structure, building, or development or any adjacent new development onto property that is or becomes vacant on or after the effective date of this Ordinance shall be subject to Article Eight.

### **1205 Nonconforming Uses**

#### **A. Continuation of Nonconforming Uses**

Any nonconforming use lawfully existing on the effective date of this Ordinance may continue, subject to the limitations of this Section.

#### **B. Enlargement of Nonconforming Uses**

A building or structure housing a lawful nonconforming use may not be added to or enlarged, except as provided below:

1. Single-family residential uses.
2. Multiple-family residential uses, provided that no enlargement or accumulation of enlargements may exceed 25 per cent of its floor area on the effective date of this Ordinance and that any such enlargement requires the approval of the Planning and Zoning Commission, following the procedures for Special Use Permits set forth in Article Thirteen.

#### **C. Abandonment of Nonconforming Use**

1. If any structure or property used as a lawful nonconforming use becomes vacant or unused for a continuous period of one year, any subsequent use must conform to all use regulations applicable to the property's zoning district.
2. Any property on which a nonconforming use is replaced by a conforming use shall thereafter conform to all regulations for the zoning district. Following such replacement, no nonconforming use shall thereafter be resumed or established.

#### **D. Modification or Change of Use**

1. Any nonconforming use may be extended throughout any parts of a building that were clearly designed for such use and were in existence on the effective date of this Ordinance. However, no use shall be expanded to occupy any land or space outside such building or area.
2. A lawful nonconforming use may be changed to another nonconforming use provided that no structural alterations are made, subject to approval by the Planning and Zoning Commission following the Special Use Permit procedures set forth in Article Thirteen. In order to approval such a change of use, the Commission must find that the proposed use is equally or more consistent than the current use with the purposes of the zoning district and the uses lawfully permitted within it. In permitting such change, the Commission may require appropriate conditions and safeguards in accord with the provisions of this Ordinance.

#### **E. Mobile Home Storm Shelters**

1. Notwithstanding these provisions, a storm shelter may be constructed under a nonconforming mobile home located on an individual lot on the effective date of this Ordinance, provided that:
  - (a) Access to the shelter is by an outside entrance.
  - (b) The shelter has no mechanical, electrical, or plumbing fixtures, structures, or appliances other than a light and a floor drain. The shelter shall not exceed the width of the mobile home, eight feet in depth, and ten feet in length.

#### **F. Allowance for Repairs**

Repairs and maintenance of a structure occupied by a nonconforming use may be made, provided that no structural alterations are made, subject to the following conditions:

- (a) Any work must be done during any period of twelve consecutive months.
- (b) The cost of repairs shall not exceed 25 per cent of the current replacement cost of the nonconforming use or its associated structure. Repairs may be made to a structure occupied by a nonconforming residential use. Structural alterations may be made to a structure occupied by a nonconforming residential use.
- (c) If a nonconforming structure or structure containing a nonconforming use becomes physically unsafe or unlawful due to a lack of repairs and is declared as such by any duly authorized official, it shall not thereafter be restored, repaired, or rebuilt except in conformance with the regulations of its zoning district.
- (d) Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition of any building or part thereof declared unsafe by any official charged with protecting the public safety.
- (e) Nothing in this Ordinance shall prevent a nonconforming Type III animal production use from upgrading its operation to reduce odors, improve sanitation, increase insect and rodent control, improve drainage, or make other environmental improvements. Nothing in this Ordinance

shall prevent a nonconforming Type III animal production use from performing alterations or additions to its facilities so long as the total area of confined feeding and holding facilities is not increased.

#### **G. Damage or Destruction of Structures**

1. Should a structure occupied by a lawful nonconforming use be damaged to the extent that the cost of restoration exceeds 50 percent of the replacement cost of the structure, it shall not be restored, rebuilt, or repaired unless it is made to conform with the regulations of the district in which it is located; provided that structures appurtenant to Agricultural Uses in the AG District may be repaired or rebuilt in the case of damage caused by Act of God.
2. Structures occupied by a nonconforming residential use may be repaired or rebuilt in the case of damage caused by forces or conditions beyond the control of the owner of the structure so long as the size of the structure is not increased.

#### **H. Nonconforming Uses and Conditional and Special Use Permits**

A lawful pre-existing use which would require a Special Use Permit in its zoning district shall be presumed to have the appropriate Permit and shall be considered a conforming use. The use shall be subject to the regulations governing lapses or revocation of Permits, set forth in Article Thirteen.

(Ord. No. 94-69, Sec. 5, 4-3-95; Ord. No. 01-09, Sec. 1, 2-19-01)

#### **1206 Used Car Lots: Use of On-Site Buildings**

It shall be lawful without the consent of the City of Beatrice to use an existing building for activities normal to the operations of a used car lot where the building is on real estate on which a used car lot is located.