

1206 NONCONFORMING USE

1206.01 STATUS

A nonconforming use may be continued although not in conformity with the regulations for the zoning district in which the use is located. Nonconforming use status applies to the lot(s) or parcel(s) upon which the nonconforming use is located and may not be expanded onto another lot or parcel, except as provided under Subsection 1206.05. A change in ownership of, or a change of operator of, a nonconforming use shall be permitted.

[Amended by Ord. ZDO-230, 9/26/11]

1206.02 DISCONTINUATION OF USE

If a nonconforming use is discontinued for a period of more than 12 consecutive months, the use shall not be resumed unless the resumed use conforms with the requirements of this Ordinance and other regulations applicable at the time of the proposed resumption.

1206.03 RESTORATION OR REPLACEMENT

If a nonconforming use is damaged or destroyed by fire, other casualty, or natural disaster, such use may be restored, replaced, and/or re-established consistent with the nature and extent of the use or structure lawfully established at the time of loss, subject to the following conditions:

- A. Alterations or changes to the nature and extent of the nonconforming use as lawfully established prior to the fire, other casualty, or natural disaster shall not be permitted under Subsection 1206.03, but may be permitted pursuant to Subsection 1206.05.
- B. Physical restoration, replacement, or re-establishment of the nonconforming use shall be lawfully commenced within one year of the occurrence of the damage or destruction. For the purposes of this provision, "lawfully commenced" shall mean the lawful resumption of the nonconforming use and/or the filing of an application for a land use, building, septic, grading, manufactured dwelling or residential trailer placement, plumbing, electrical, or other development permit required by the County or other appropriate permitting agency that is necessary to begin restoration or replacement of the nonconforming use and/or structures.
- C. The nonconforming use status of the use to be restored, replaced, or re-established, and the nature and extent of the nonconforming use, shall be verified pursuant to Subsection 1206.06.

[Amended by Ord. ZDO-230, 9/26/11]

1206.04 MAINTENANCE

Normal maintenance of a nonconforming use necessary to maintain a nonconforming use in good repair is permitted provided there are not significant use or structural alterations as determined by the Planning Director. Normal maintenance may include painting, roofing, siding, interior remodeling, re-paving of access roads and parking/loading areas, replacement of landscaping elements, etc.

1206.05 ALTERATIONS AND CHANGES

- A. Alterations Required by Law: The Planning Director shall permit the alteration of any nonconforming use when necessary to comply with any lawful requirement for alteration of the use or structure, subject to building, plumbing, sanitation, and other specialty code permit requirements in effect at the time the alteration is commenced. The Planning Director shall not impose additional conditions upon the continuation of a nonconforming use when an alteration is required to comply with local or state health or safety requirements, except as provided in Oregon Revised Statutes 215.215 pertaining to the re-establishment of nonfarm uses in an Exclusive Farm Use zoning district.
- B. Alterations Not Required by Law: The Planning Director shall approve an alteration of a nonconforming structure and/or other physical improvements, or a change in the use, pursuant to Subsection 1305.02, if the applicant provides evidence substantiating the following:
1. The alteration in the structure and/or other physical improvements, or change in the use, will, after the imposition of conditions as authorized below, have no greater adverse impact on the neighborhood than the existing use, structure(s), and/or physical improvements; and
 2. The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.06. The verification and alteration/change requests may be combined as a single application.
 3. The Planning Director may impose conditions of approval on any alteration of a nonconforming use, structure(s), or other physical improvements permitted under Subsection 1206.05(B), when deemed necessary to ensure the mitigation of any adverse impacts.

[Amended by Ord. ZDO-230, 9/26/11]

1206.06 VERIFICATION OF A NONCONFORMING USE

- A. The Planning Director may approve a request for verification of nonconforming use status, pursuant to Subsection 1305.02, if the applicant:
1. Proves that the nonconforming use lawfully existed at the time of the adoption of zoning regulations, or a change in zoning regulations, which prohibited or restricted the use; and, the nonconforming use has not been subsequently abandoned or discontinued; or
 2. Proves the existence, continuity, nature, and extent of the nonconforming use for the 10-year period immediately preceding the date of the application. Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance.

[Amended by Ord. ZDO-230, 9/26/11]

1206.07 APPROVAL PERIOD AND TIME EXTENSION

- A. Approval Period: Approval of an alteration of a nonconforming use, pursuant to Subsection 1206.05(B), is valid for a period of four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
1. "Implemented" means all major development permits shall be obtained and maintained for the approved alteration of a nonconforming use, or if no major development permits are required to complete the development contemplated by the approved alteration of a nonconforming use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained.
 - a. A "major development permit" is:
 - i. A building or manufactured dwelling placement permit for a new primary structure that was part of the alteration of a nonconforming use approval; or

- ii. A permit issued by the County Engineering Division for parking lot or road improvements required by the alteration of a nonconforming use approval.

- B. Time Extension: If the approval of an alteration of a nonconforming use is not implemented within the initial approval period established by Subsection 1206.07(A), a two-year time extension may be approved by the Planning Director, pursuant to Subsection 1305.02, and subject to Subsection 1305.05.

[Adopted by Ord. ZDO-230, 9/26/11]

1206.08 VESTED RIGHT DETERMINATION

The Planning Director may approve a request for a vested right determination, pursuant to Subsection 1305.02, if the applicant proves that the requested use was vested under common law.

[Renumbered by Ord. ZDO-230, 9/26/11]