

## 2.10 Nonconformities.

### A. Intent and Application. The intent of this Section 2.10 is:

1. To allow for reasonable use of legally created lots of record that do not meet current minimum requirements for their respective zoning districts.
2. To provide for reasonable use of legally constructed structures that do not meet current site development regulations for their respective zoning districts.
3. To allow for the reasonable continuation of legally established uses that do not meet current use regulations for their respective zoning districts.
4. To limit the continuation and provide for the gradual replacement of nonconforming uses.

These regulations apply to “grandfathered” lots, buildings, structures, and uses that were constructed legally under regulations in effect before the effective date of this Ordinance. Regulations for nonconforming uses are in addition to regulations for nonconforming structures. In the event of a conflict, the most restrictive regulation shall apply.

### B. Nonconformities Generally.

1. Within the districts established on the effective date of the first Jackson County Zoning Ordinance on May 6, 1976, or amendments that have been adopted and may later be adopted, there exist lots, structures and uses of land which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Ordinance or future amendment. Such nonconformities shall hereafter be considered lawful nonconformities.
2. To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the 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 diligently carried on. “Actual building construction” is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner, except that where demolition or removal of an existing building, such demolition or removal shall be deemed to be actual building construction, provided that work shall be diligently carried on until completion of the building involved.
3. Ordinary repairs, minor alterations, and maintenance may be carried out on land, structures or buildings nonconforming as to use or bulk, provided that no alterations shall be made that would add to the size, area, or degree of nonconformity.
4. Nothing in this ordinance shall be deemed to prevent the strengthening of or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety upon order of such official.

### C. Nonconformity Created By Change in Law or Boundary. Whenever a use, lot, or structure becomes nonconforming due to a change in this Zoning Ordinance or the zoning district boundaries, such use, lot, or structure may be continued in conformance with this Zoning Ordinance.

- D. Governmental Acquisition of a Portion of Lot.** Governmental acquisition of a portion of a lot for a public purpose that results in a reduction in lot frontage, lot setbacks, and/or lot area below that is required in its zoning district or by applicable development standards, shall not render the lot or structure nonconforming.
- E. Effect on Nonconformities Illegal Under Prior Law.** Nothing in this Zoning Ordinance shall be interpreted as authorization for, or approval of, the continuance of a use, lot, or structure which was in violation of zoning regulations in effect immediately prior to the effective date hereof or was otherwise illegal. Landowners shall bear the burden of proof to show that a lot, use of land, structure, use of structure, or characteristic of use of land that is nonconforming on the effective date of this Zoning Ordinance was lawfully established on the subject property. Conformity or nonconformity is assigned to the land, not to the landowner.
- F. Nonconforming Lots of Record.**
- 1. Pre-Existing Lots of Record.** A nonconforming lot of record evidenced by lawful plat and/or deed filed in the office of the Dubuque County Recorder, and existing at the time of the adoption of this Zoning Ordinance shall be exempt, unless otherwise provided, from the minimum lot area and lot frontage requirements of its zoning district. Such lot may be developed with any use allowed by the regulations for its zoning district, and such use shall comply with all other site development regulations set forth by this Zoning Ordinance, and applicable life safety and building codes of the County.
  - 2. Single Lot in Single Ownership.** In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single pre-existing lot of record at the effective date of adoption or amendment of this Ordinance provided, however, that the sewage disposal system and water supply shall first be approved by the County Health Department. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width or both, that are generally applicable in the district, provided that the setback dimensions and other requirements, not involving area or width or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance for setback requirements shall be obtained only through by the Zoning Administrator in accordance with Section 3.10. of this Ordinance or action of the Board of Adjustment in accordance with Section 4.6. of this Ordinance.
  - 3. Adjacent Lots in Single Ownership.** Where two (2) or more adjacent pre-existing lots of record are in common ownership and are of such size as to together constitute at least one (1) conforming “zoning lot” in its zoning district, such lots or portions thereof shall be joined, developed, and used for the purpose of forming an effective and conforming zoning lot or lots.
  - 4. Change of Lot Lines.** Boundary lines of a pre-existing lot of record may be relocated, re-platted, or recombined to meet the minimum lot area and/or lot frontage requirements of its zoning district, provided the action is in accordance with Jackson County Subdivision Ordinance and does not create a nonconforming lot.
- G. Nonconforming Uses.**

1. **Continuance.** Any lawful nonconforming use of a lot or a structure may be continued, repaired, maintained, altered, or extended within a structure, subject to the provisions of this Ordinance.
2. **Extension within Structure.** Any lawful nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building. No existing structure devoted to such use shall be enlarged or extended.
3. **Relocation.** A lawful nonconforming use shall not be moved in whole or in part to any other portion of the lot, r parcel, or “zoning lot” on which it was located at the effective date of adoption or amendment of this Ordinance.
4. **Discontinuance of Use.** When a lawful nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for one (1) year, the structure thereafter shall not be used except in conformity with the regulations of the district in which it is located. However, where it can be established that a delay in reoccupying a property has been caused by governmental and/or court action, that is clearly beyond control of the property owner, the Zoning Administrator may extend the time period to retain nonconforming status to two (2) years.
5. **Conversion.** If no structural alterations are made, any lawful nonconforming use of a structure, or structure and premises in combination may be changed to another lawful nonconforming use of the same or more restricted classification, or an equal or lesser intensity, with approval of the Zoning Administrator. Whenever a lawful nonconforming use is superseded by an allowed use, such nonconforming use may not thereafter be resumed.
6. **Reconstruction for Nonresidential Use.** When a structure housing a lawful nonconforming nonresidential use is damaged by fire, explosion, act of God, or other calamity to an extent of more than seventy five percent (75%) of its fair market value, such structure may be reconstructed to house only uses that conform to its zoning district in which it is located, except that lawful nonconforming residential uses housed in such structure may be resumed. An otherwise conforming structure containing a nonconforming nonresidential use damaged to the extent less than seventy percent (75%) of its fair market value may be reconstructed to its location, size, and external dimensions that existed at the time of damage provided that the nonconforming use as it existed prior to the damage is not increased or enlarged. Reconstruction must begin within one hundred eighty (180) days and be diligently pursued to its completion, or the use will be deemed discontinued, abandoned, or vacated.
7. **Reconstruction for Residential Use.** When a lawful nonconforming structure used solely for residential uses is damaged by fire, explosion, act of God, or other calamity, to an extent of more than seventy five percent (75%) of fair market value, such structure may be reconstructed to its location, size, and external dimensions that existed at the time of damage. Reconstruction must begin within one hundred eighty (180) days and be diligently pursued to its completion, or the use will be deemed discontinued, abandoned, or vacated.

8. **Use Requiring a Conditional Use Permit.** A lawful pre-existing use that requires a conditional use permit in its zoning district shall be presumed to have the appropriate permit and shall be considered a conforming use subject to the provisions of Subsection 2.10.I. of this Ordinance.
9. **Accessory Uses.** Accessory uses shall be discontinued when the nonconforming use of such principal use or structure is discontinued, unless such accessory use conforms to all the regulations of its zoning district.
10. **Junk Yards.** Any lawful nonconforming junk yards as herein defined shall be discontinued, removed or relocated to an M-2 General Industrial District within five (5) years after the passage of this Ordinance.

#### H. Nonconforming Structures.

1. **Continuance.** A lawful nonconforming structure existing on the effective date of adoption or amendment of this Ordinance may be continued, repaired, or altered subject to the provisions of this Ordinance, so long as it remains otherwise lawful and is not enlarged or altered in a way which increases its nonconformity. No reconstruction or replacement of nonconforming structures is permitted which would deviate further from provisions of this Ordinance than did the original structure. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
2. **Repair and Alteration.** Repairs and nonstructural alterations may be made to a lawful nonconforming structure for ordinary maintenance provided that its nonconformity is not increased. Alterations conducted by order of the County to comply with building or life safety code provisions shall be permitted. A lawful nonconforming structure or portion thereof may be altered to reduce its nonconformity or to bring it into conformity.
3. **Relocation.** A lawful nonconforming structure shall not be relocated 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.
4. **Reconstruction of Nonresidential Structure.** When a lawful nonconforming nonresidential structure is damaged by fire, explosion, act of God, or other calamity, to an extent of more than seventy five percent (75%) of its fair market value, such structure may be reconstructed to its location, size, and external dimensions that existed at the time of damage only in conformance with the requirements of its zoning district.
5. **Reconstruction of Residential Structure.** When a lawful nonconforming structure used solely for residential uses is damaged by fire, explosion, act of God, or other calamity, to an extent of more than seventy five percent (75%) of fair market value, such structure may be reconstructed to its location, size, and external dimensions that existed at the time of damage. Reconstruction must begin within one hundred eighty (180) days and be diligently pursued to its completion, or the use will be deemed discontinued, abandoned, or vacated.
6. **Structure Requiring a Conditional Use Permit.** A lawful pre-existing structure that requires a conditional use permit in its zoning district shall be presumed to have the appropriate permit

and shall be considered a conforming structure subject to the provisions of Subsection 2.10.I. of this Ordinance.

7. **Accessory Structures.** Accessory structures shall be discontinued when the nonconforming use of such principal use or structure is discontinued, unless such accessory structure conforms to all the regulations of its zoning district.
- I. **Uses and Structures Under Conditional Use Provision.** A lawful pre-existing use or structure that requires a conditional use permit in its zoning district shall be presumed to have the appropriate permit and shall be considered a conforming use or structure subject to the following provisions:
  1. **Continuance.** Such use or structure may be continued but shall not be expanded or enlarged to increase the building area or area of land occupied or used, nor shall any such use or structure be altered, expanded or enlarged to increase its capacity, height, number of units, number of animals, volume of traffic, volume of waste created or intensity of use.
  2. **Discontinuance.** If such use ceases for a period of one (1) year, or cannot meet the tests for reconstruction in Subsection 2.10.G. of this Ordinance, the use may not be resumed until a conditional use permit has been granted by the Board of Adjustment.
  3. **Reconstruction.** If such structure cannot meet the tests for reconstruction in Subsection 2.10.H. of this Ordinance, the structure may not be reconstructed until a conditional use permit has been granted by the Board of Adjustment. For the purposes of this paragraph, further removal of materials from a lot or parcel owned or leased for the purpose of extraction of raw materials on the effective date of this Ordinance shall not constitute expansion or enlargement provided that the extraction site meets the setbacks specified as special requirements for that use or, if such setbacks are already exceeded, that setback distances do not decrease; further, periods of up to four (4) years without extraction or processing activity shall not be considered a lapse of use.
  4. **Conversion.** If no structural alterations are made, such use of a structure, or structure and premises in combination may be changed to another lawful nonconforming use of the same or more restricted classification, or an equal or lesser intensity, with approval of the Zoning Administrator.
- J. **Nonconforming Signs.** Except as may be hereinafter specified, no sign shall be erected, placed, maintained, converted, enlarged, reconstructed, or structurally altered which does comply with all the regulations established by this Section.
  1. **Maintenance and Repair.** Signs erected prior to the effective date of this Ordinance may be maintained and repaired subject to the requirements of Subsection 2.9.G. of this Ordinance.
  2. **Items not considered normal maintenance and repair.** Changes made to the location, size, height, or bulk of the sign or addition of illumination are not considered normal maintenance and repair and shall require that a nonconforming sign be brought into conformance with all requirements of this Ordinance.

- 3. Continuing Nonconformance.** A lawful nonconforming sign may be continued so long as it remains otherwise lawful, subject to the following provisions:

  - a. No such sign may be enlarged or altered in a way which increases its nonconformity.
  - b. Should such a sign be destroyed by any means to an extent of sixty percent (60%) or more of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Section 2.10 and Subsection 2.9.G. of this Ordinance.
- 4. Removal.** The Zoning Administrator shall have the authority to revoke any permit which has been granted when the Zoning Administrator has determined that the sign authorized by the permit has been constructed or maintained in violation of the permit. Written notice shall be given to the owner of the illegal sign and/or the owner of the property on which the sign is located. The notice shall state the reasons and grounds for removal, specifying the deficiencies or defects in such sign, and the violations charged; such notice shall specify what repairs, if any, will make the sign conform to the requirements of this Section 2.10, and specify that the sign be removed or made to conform with the requirements of this Section 2.10 and Subsection 2.9.G. of this Ordinance within thirty (30) days.