

# Box Elder County Land Use Management & Development Code

## Article 2: Administration and Enforcement

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### Chapter 2-3 – Nonconformities

Box Elder Zoning Ordinance adopted October 2007

#### Sections.

- 2-3-010. Purpose.
- 2-3-020. Scope.
- 2-3-030. Definitions.
- 2-3-040. Change in Nonconforming Status.
- 2-3-050. Nonconforming Use.
- 2-3-060. Noncomplying structure.
- 2-3-070. Nonconforming Lot.
- 2-3-080. Other Nonconformity.
- 2-3-090. Nonconformity Created By Public Action.
- 2-3-100. Abandonment.
- 2-3-110. Determination of Nonconforming Status.
- 2-3-120. Nonconformities Detrimental to Health and Safety.
- 2-3-130. Extension of Time for Recovery of Investment.
- 2-3-140. Billboards Exempt.
- 2-3-150. Appeal.

#### **2-3-010. Purpose.**

The purpose of this Chapter is to establish regulations governing legally established uses, structures, lots, and other circumstances that do not conform to applicable requirements of this Code. The intent of this Chapter is to control expansion of nonconforming conditions while recognizing the interests of affected property owners.

#### **2-3-020. Scope.**

The provisions of this Chapter shall apply to any use, structure, lot, or other circumstance governed by this Code which legally existed before the current zoning designation of the land where the circumstance is located and because of subsequent zoning changes does not conform with applicable requirements of this Code.

- A. Continuation.** Any nonconforming use, noncomplying structure, nonconforming lot, or other nonconformity may be continued only to the extent it was lawfully created, and as provided in this Chapter.

# Box Elder County Land Use Management & Development Code

## Article 2: Administration and Enforcement

---

- B. Illegal Nonconformities.** Any nonconforming use, noncomplying structure, nonconforming lot, or other nonconformity not authorized under a previously existing zoning ordinance, or which was illegal under such ordinance, shall remain unauthorized and illegal unless expressly authorized or permitted by the provisions of this Code.

### **2-3-030. Definitions.**

Certain words and phrases in this Chapter are defined in Chapter 1-3 of this Code.

### **2-3-040. Change in Nonconforming Status.**

A nonconforming use, noncomplying structure, nonconforming lot, or other nonconformity may not be changed except in conformance with the provisions of this Code or as authorized by the Planning Commission. To the extent any nonconforming use, noncomplying structure, nonconforming lot, or other nonconformity becomes conforming, it shall not be changed back to the previously existing nonconforming condition.

### **2-3-050. Nonconforming Use.**

- A. Continuation.** A nonconforming use of a conforming structure, or noncomplying structure legally existing when such use became prohibited, may be continued by the present or a future property owner. A vacant noncomplying structure may be occupied by a use for which the noncomplying structure was designed or intended if so occupied within a period of six (6) months after the use becomes nonconforming.
- B. Expansion within a Conforming Building.** A nonconforming use existing within a portion of a conforming building may be expanded to include the entire floor area of such building provided such expansion:
1. Does not include any structural alteration to the building;
  2. Creates no noise, odor, or vibration; and
  3. Otherwise conforms to the requirements of this Code.
- C. Nonconforming Use of Open Land.** A nonconforming use of open land may be continued provided such nonconforming use shall not be expanded or modified in any manner, except in conformity with the requirements of this Code or as may be required by law.
- D. Expansion of Outdoor Nonconforming Use.** A nonconforming use of a lot where the principal use is not enclosed within a building, such as a salvage yard or a motor vehicle sales lot, shall not be expanded or modified except in conformity with the requirements of this Code or as may be required by law.

# Box Elder County Land Use Management & Development Code

## Article 2: Administration and Enforcement

---

### 2-3-060. Noncomplying structure.

- A. **Continuation.** A noncomplying structure may be continued so long as no additions or enlargements are made thereto and no structural alterations are made therein, except as permitted by this section or as may be required by law. If a noncomplying structure is removed from the lot where it was located, each future noncomplying structure on such lot shall conform to the provisions of this Code.
- B. **Maintenance and Repair.** A noncomplying structure may be maintained. Repairs and structural alterations may be made to a noncomplying structure within the existing footprint thereof provided the degree of nonconformity is not increased.
- C. **Enlargement and Expansion.** Any expansion or enlargement of a noncomplying structure that increases the degree of nonconformance is prohibited except as provided in this subsection.
  - 1. The initial determination of whether a proposed expansion increases the degree of nonconformity shall be made by the Zoning Administrator.
  - 2. A structure which is nonconforming as to height, area, or yard requirements may be enlarged upon authorization by the Planning Commission, where the Commission, after notice and a hearing, finds the enlargement to be compatible with adjoining property and not detrimental to the community, as determined by the effect of the enlargement on traffic, value of adjacent and nearby properties, and the availability of adequate public facilities and services.
- E. **Relocation.** If a noncomplying structure is relocated within the County, it shall be placed only in a location where it fully conforms with the requirements of this Code.
- F. **Alteration Where Parking Insufficient.** A building which is conforming except for sufficient automobile parking, as required by this Code, may be altered or enlarged provided additional automobile parking space is supplied to meet the requirements of this Code for the nonconforming portion of the old structure and the alteration or enlargement.
- G. **Restoration.** A noncomplying structure damaged by fire, wind, earthquake, or other calamity may be restored as it existed previously and its use may be continued as long as the noncomplying structure or use had not been previously abandoned, and so long as restoration is started within six (6) months and is diligently pursued to completion.

# Box Elder County Land Use Management & Development Code

## Article 2: Administration and Enforcement

---

### 2-3-070. Nonconforming Lot.

- A. **Continuation.** A nonconforming lot may continue to be occupied and used although it may not conform in every respect with the dimensional requirements of this Code, subject to the provisions of this Chapter.
- B. **New Single Family Dwelling.** A new single family dwelling may be constructed on a legally established lot which is nonconforming as to area, width, or both, provided:
  - 1. The lot was legally nonconforming when the area or width requirements were changed;
  - 2. The use is for the sole purpose of a single family dwelling;
  - 3. There is only one (1) main building on the lot; and
  - 4. The dwelling will conform to all other requirements of this Code, such as lot frontage, yard setbacks, building height, and other applicable requirements, such as street improvements, fire protection, and building codes.
- C. **Lot with Building.** If a nonconforming lot contains a building legally established before the effective date of this Code, then the owner may continue the then-existing use of such building and may expand the building in any way that does not increase the degree of nonconformity. An increase in building size shall not be deemed to increase the degree of nonconformity of the lot unless the building increases any encroachment into a required setback or height. Remodeling of a building within an existing footprint or expansion in compliance with this section shall not require a variance to lot requirements but shall be reviewed by the Zoning Administrator as though the lot conforms to the requirements of this Code.

### 2-3-080. Other Nonconformity.

- A. **Applicability.** This section shall apply to any other nonconformity except nonconforming signs, including, but not limited to, improper fence height or location; lack of buffers or screening; lack of or inadequate landscaping; lack of or inadequate off-street parking; and any other nonconformity not addressed by Sections 2-3-050, 2-3-060, and 2-3-070 of this Chapter.
- B. **Nonconforming Development with Approved Plan.** Nonconforming development that is consistent with an approved site plan or other approval granted before the effective date of this Code shall be deemed in conformance with this Code to the extent it is consistent with the approved plan and to the extent such plan or conditions imposed thereon directly address the specific issue involved in a determination of conformity. Such nonconforming development, other than circumstances enumerated in Sections 2-

# Box Elder County Land Use Management & Development Code

## Article 2: Administration and Enforcement

---

3-050, 2-3-060, and 2-3-070 of this Chapter, shall be brought into conformance upon the occurrence of any one of the following:

1. Any increase of more than thirty (30) percent in floor area or fifty (50) percent of the value of the building or premises; or
2. For a lot located in a commercial or industrial zone, any change that requires the issuance of a new certificate of occupancy.

- C. Time for Compliance.** Because nonconformities addressed in this section involve less investment and are more easily corrected than those addressed in Sections 2-3-050, 2-3-060, and 2-3-070 of this Chapter, the intent of the County is to eliminate such nonconformities as quickly as practicable. The extent of such nonconformities shall not be increased.

### **2-3-090. Nonconformity Created by Public Action.**

When area or setbacks of a legally created lot are reduced as the result of a conveyance to a federal, state or local government and the remaining area or setback is at least seventy-five (75) percent of the required minimum in the zone where it is located, the lot shall be deemed to be in compliance with the minimum lot size and setback standards of this Code without any need for a variance.

### **2-3-100. Abandonment.**

Any nonconforming use, noncomplying structure, or other nonconformity which is not thus occupied or used for a continuous period of one (1) year shall be deemed abandoned and shall not thereafter be reoccupied or used except in a manner that conforms to the requirements of this Code.

- A. Presumption of Abandonment.** A nonconforming use, noncomplying structure, or other nonconformity shall be presumed abandoned when any of the following occurs:
1. A noncomplying structure or portion thereof occupied by a nonconforming use becomes vacant and remains unoccupied for a continuous period of one (1) year;
  2. The owner has in writing or by public statement indicated an intent to abandon the use, noncomplying structure, or other nonconformity;
  3. The owner has physically changed the noncomplying structure or its permanent equipment in such a way as to indicate a change in use or activity to something other than the nonconforming use;
  4. Noncomplying structure is allowed to deteriorate to a condition that the noncomplying structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the noncomplying structure is uninhabitable and that the noncomplying structure or

# Box Elder County Land Use Management & Development Code

## Article 2: Administration and Enforcement

---

nonconforming use will be lost if the structure is not repaired or restored within six months;

5. The property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use; or
6. The structure has been removed through applicable procedures for the condemnation of unsafe structures.

**B. Overcoming Presumption of Abandonment.** A presumption of abandonment may be rebutted upon evidence presented by the owner showing no intent to abandon the use, structure, or other nonconformity. Such evidence may include proof that during the alleged period of abandonment the owner has done either of the following:

1. Maintained the lot and structure, if any, in accordance with the building code; or
2. Has actively and continuously marketed the lot or structure for sale or lease.

### **2-3-110. Determination of Nonconforming Status.**

In all cases, the property owner shall have the burden of establishing that a nonconforming lot, structure, use, or other nonconformity lawfully exists under this Code.

### **2-3-120. Nonconformities Detrimental to Health and Safety.**

No provision of this Chapter shall be construed to allow continuation of any nonconforming use, structure, or other nonconformity when it is detrimental to public health or safety. The right to continue use of a nonconforming use, noncomplying structure, or other nonconformity shall be subject to the life safety requirements of applicable housing, building, health, and other life safety codes.

### **2-3-130. Extension of Time for Recovery of Investment.**

The Zoning Administrator may suspend any requirement that a nonconforming use, noncomplying structure, nonconforming lot, or other nonconformity come into compliance with the provisions of this Code if the owner of the affected property demonstrates that he has not recovered or amortized the amount of his or her investment in the nonconforming use, nonconforming structure, lot, or other nonconformity.

**A. Written Request for Extension Required.** A request for an extension of time needed to recover an investment in an affected property shall be submitted in writing to the Zoning Administrator.

# Box Elder County Land Use Management & Development Code

## Article 2: Administration and Enforcement

---

**B. Information Required.** The following information shall accompany the request:

1. The amount of the owner's investment in the use, noncomplying structure, lot, or other nonconformity from the time it became nonconforming;
2. The amount of such investment that has been realized to date and an estimate of the amount that will be realized on the date the time limit expires; and
3. Evidence of any lease or purchase obligations undertaken in reliance on any previously issued licenses or permits applying to the use, noncomplying structure, lot, or other nonconformity, including any contingency clauses therein permitting termination of such lease.

### **2-3-140. Billboards Exempt.**

The provisions of this Chapter shall not apply to billboards. Nonconforming billboards shall be terminated in accordance with applicable provisions of *Utah Code Ann. §§ 17-27a-511 and 512, as amended*. In the event such provisions are repealed, nonconforming billboards shall be subject to the provisions of this Chapter.

### **2-3-150. Appeal.**

Any person adversely affected by a final decision of the Zoning Administrator or other official enforcing the provisions of this Chapter may appeal that decision to the Hearing Officer as provided in Section 2-2-180 of this Code.