

17.06.250 - Non-Conforming Uses, Structures, and Lots.

A. Purpose

The purpose of this section is to provide for those circumstances, uses, and lots which would not be consistent with regulations of this chapter but which enjoy rights of privilege based on their previous legal existence. The objective of this chapter is to set the terms by which all nonconforming uses, structures, lots, and signs will ultimately be brought into compliance with the terms of this chapter as it is adopted and amended while retaining rights and privileges arising from previous legal existence.

B. Determination of Nonconforming Status

1. Where there is doubt regarding the legal non-conforming status of structures, uses of structures, uses of land, lot size, or signs, documentation shall be submitted to Planning Department staff to establish legal non-conforming status through a Certificate of Zoning Compliance (CZC) a Type II decision (ICC 17.03.230 & Chapter 16.19 ICC), subject to the standards of this section.
 - a. The fee for the CZC shall be waived if the CZC application is submitted with a building or land use permit application where the permit would result in a structure or sign coming into conformance with this chapter.
 - b. The fee for the CZC shall be waived for all applications within the NMUGA until January 1, 2020.
2. A legally established lot, use, or structure that does not conform to the requirements of this chapter as amended shall be deemed an existing legal lot, use, or structure through a CZC and may be continued, transferred or conveyed and/or used as if conforming.
3. For existing legal lots, use, or structure the Planning Director may incorporate in any CZC issuance such conditions regarding land use standards for minimum tract or parcel size, site coverage, building height, screening, and other site development standards as are required to allow continued non-conforming use of the lot while ensuring such use is compatible with the character of surrounding permitted uses. Any variation in building height shall be based upon the factors set forth in ICC 17.03.210.
4. The burden of establishing that any lot, use, or structure lawfully existed as of the effective date or subsequent amendment of this chapter shall, in all cases, rest with the owner and not with the county.
5. All uses, structures, lots, and signs established illegally and not in conformance with the provisions of this chapter are illegal and shall be brought into conformance with the provisions of this chapter. Such uses, structures, lots, and signs shall not be approved for any alteration or expansion until and unless actions are taken to reach conformance with the current standards and requirements of this chapter.

C. Non-Conforming Uses.

It is the intent of this chapter to regulate non-conforming uses because they have been found to be incompatible with the permitted uses set forth in Freeland Subarea Plan. However, nothing herein contained shall be construed as prohibiting the change in tenancy, ownership, or management of a non-conforming use provided such change is otherwise lawful.

1. Continuance. A non-conforming use may be continued if:
 - a. The use was lawful at the time it was established; and
 - b. The use is not discontinued for a period of three (3) years after the non-conformity was established; and
 - c. The use is not enlarged in scope or size.
2. Standards Applicable to Legal Non-Conforming Uses. The County will determine the zoning district that allows the non-conforming use that is most similar to the zoning district in which the non-conforming

use is located and apply the standards of that district, if any apply (see ICC 17.06.110-130 & ICC 17.06.210 and 220).

3. Discontinuance.
 - a. Any non-conforming use of land that has been abandoned for a period of three (3) years or more is conclusively deemed discontinued, abandoned and/or terminated, and shall lose its non-conforming rights and shall not be reestablished. Any future uses shall be in compliance with the current use regulations of the district in which it exists.
 - b. All non-conforming uses not conducted in structures (i.e. outside uses) shall be discontinued within three (3) years of the date the adoption of this chapter or its amendments.
 - c. Any part of a building, structure, facility, or land occupied by a non-conforming use that is changed to or replaced by a use conforming to the provisions of this chapter shall not thereafter be used or occupied by a non-conforming use.
4. Additions or expansions.
 - a. Additions or expansions of non-conforming uses are prohibited except where 1) a CZC has been issued for the non-conforming use and 2) where the addition or expansion is required to meet legal requirements, or to upgrade to a new technology for an existing use, to keep a legal non-conforming business in operation (i.e. new storage tanks to meet legal environmental protection requirements, etc.).
 - b. Additions to a structure with a CZC issued for a non-conforming use are allowed if addition meets the standards of ICC 17.06.250.D, but the non-conforming use cannot occupy the new addition (no expansion of non-conforming uses).

D. Non-Conforming Structures.

1. Repairs and Alterations.
 - a. A non-conforming structure may be altered, if:
 - (i) Alterations to the structure do not increase the non-conformity;
 - (ii) Alterations are necessary to meet county or state requirements or to bring the structure into conformity with this chapter; or
 - (iii) Alterations meet the existing requirements of the zoning district in which the structure is located.
 - b. Repairs necessary and incidental to meeting requirements of law regarding building safety and environmental protection, including but not limited to the International Building Code, International Residential Code, or International Fire Code, may be performed on a building or structure even if such repairs do not meet the requirements of the district in which the building is located.
 - c. Repairs and permitted alterations. A CZC is required per ICC 17.06.250.B for repairs and permitted alterations to a non-conforming structure; the application fee shall be waived for a CZC obtained for such repairs & alterations.
2. Building additions and remodels.
 - a. For building additions and remodels and associated site improvements, two thresholds have been established to guide how the standards of this chapter are applied to such projects. See Table 17.06.250.D.2a. for a description of the thresholds and the applicable standards. The primary intent is to ensure an addition does not increase the non-conformity in relation to the setbacks and building heights.

| Table 17.06.250.D.2.a. - Building addition requirements. | | |
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| Cumulative change ⁽¹⁾ | What is subject to new code | Applicable standards |
| Less than 50% and ≤ 4,000 sq ft ⁽²⁾ | Only the addition/remodel and any related site improvements | All building standards that do not involve repositioning the building or reconfiguring the site development |
| ≥50% or ≥4,000 sq ft ⁽²⁾ (Whichever is less) | All portions of the development | All |
| <p>(1) Total change of footprint proposed shall be considered the cumulative (sum) of the current addition and any addition completed in the prior 5 years, excepting all permits issued prior to the effective date of this Chapter.</p> <p>(2) Building additions and remodels greater than 4,000 sq ft must bring all portions of the development into compliance with all standards of this code even if the percentage is less than 50% of the total square feet of the development.</p> | | |

- b. Building additions in the Business Village zoning district shall comply with the following standards. The primary intent is allow incremental growth while ensuring an addition does not increase the nonconformity in relation to the setbacks, so that additions add to the pedestrian character of the district.
 - (i) Front addition. Any addition to the front of the building must meet the build-to requirements.
 - (ii) Rear addition. Rear additions are permitted.
 - (iii) Side additions. Side additions are not permitted unless the addition meets the build-to requirements, if applicable. If no build-to requirements apply, side additions are permitted.
- 3. New buildings where existing building remains in place.
 - a. New buildings and associated improvements must comply with applicable block frontage, site planning, and building design elements.
 - c. New buildings in the Business Village zoning district shall comply with the following standards. The primary intent is allow incremental growth while ensuring that new buildings add to the pedestrian character of the district.
 - (i) New building, at front. All new buildings must be placed in the build-to zone until the build-to zone percentage for the lot has been met (see ICC 17.06.120A). Properties in the Business Village district with septic fields in the front of the building are exempt from this standard until such time as sewer is available.
 - (ii) New building at side or rear. New buildings are not permitted in the side or rear until the site has met the required build-to percentage or if the new building meets the build-to requirements. If no build-to requirements apply, new buildings are allowed at the side or rear of the existing building.
- 4. Design Alternatives for new buildings and building additions.
 - a. The Planning Director may approve an alternative site layout, setbacks, and/or screening standards to accommodate the requirements of the septic field if the location of the septic field is constrained. This design alternative expires when septic is available to serve the parcel.
 - b. In the Business Village district, the Planning Director may approve the use of Pedestrian-Oriented Open Space (PED) in the build-to area in lieu of the building addition meeting the build-to line and

percentages if the PED connects the sidewalk to the front of the building (no parking, etc., between the PED and the building). This design alternative may also be utilized for lots an existing non-conforming structure in the Medium Density district where the building placement will not meet the maximum building setback.

5. Restoration of Damage.

- a. A non-conforming structure damaged by fire or other hazard may only be restored up to the current maximum height allowed in the district and within the building's existing footprint, per ICC 17.03.230.G, and restoration begins within three years of the date the damage occurred.
- b. If fifty percent or more of the length of a fence or screening on one side of a lot is damaged by any cause and requires replacement or repair, the entire fence must be brought into compliance with the current requirements for fences and screening, ICC 17.06.540.

E. Non-Conforming Lots.

1. Any permitted use authorized by this chapter shall be permitted where a CZC has been issued for a legal non-conforming lot provided that the lot complies with all sections of this chapter other than tract or parcel size or conditions imposed pursuant to ICC 17.06.250.B and other pertinent chapters of the Island County Code and state law.
2. Adjustment of boundary lines for a lot with an issued CZC as a legal non-conforming lot, to make it more useable and more in conformance, is encouraged and may be made pursuant to Chapter 16.06 ICC.
3. Where two or more adjacent lots are nonconforming due to parcel size, and the lots of record are under common ownership, they are deemed consolidated into one lot for the purpose of site plan review. For that single combined lot to be subdivided, all lots created shall conform to current area and setback regulations for the district in which they are located and to all applicable critical area regulations.
4. To be legally buildable, a lot must be in compliance with the rules and regulations of the county Public Health department requirements for septic (until sewer is available for the lot), Chapter 8 ICC. Where there is a conflict between the provisions of this section and those rules of the county health district, the more restrictive rules shall apply.
5. New construction on any lot must meet all setbacks, height, and other construction requirements for the zoning district in which the non-conforming lot is located.
6. A lot line adjustment shall be required prior to issuance of a development permit when:
 - a. A non-conforming and conforming lot are adjacent, under common ownership, and a lot line adjustment will result in legal lots in conformance with area, building setbacks, and critical area regulations; or
 - b. One lot of two or more adjacent lots under common ownership would be buildable only with a critical areas regulation reasonable use determination per ICC XXX and a lot line adjustment would result in legal and conforming lots that do not require such determination.