

Chapter

20.08

Nonconforming Lots, Sites, Structures and Uses

City of Bloomington
Unified Development
Ordinance

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20.08.010 Intent

Upon adoption of this Unified Development Ordinance and Official Zoning Map, some previously lawful lots, sites, structures, and land uses may no longer conform to the regulations herein. For this reason, *Chapter 20.08: Nonconforming Lots, Sites, Structures and Uses* specifies the rules, policies, and regulations that apply to these lots, sites, structures, and land uses referred to as lawfully nonconforming.

20.08.020 General

Any lot, site, structure, or land use which does not conform with one or more provisions of this Unified Development Ordinance, but which lawfully existed upon the effective date of the provisions of *Title 20: Unified Development Ordinance* with which the lot, structure or use does not conform, shall be a lawful nonconforming lot, site, use, or structure within the meaning of *Chapter 20.08: Nonconforming Lots, Sites, Structures and Uses*. A lawful nonconforming lot, site, use, or structure may continue except as provided in *Chapter 20.08: Nonconforming Lots, Sites, Structures and Uses* and in *Section 20.01.120: Uses Rendered Nonconforming* and *Section 20.01.130: Buildings, Structures and Lots Rendered Nonconforming*.

20.08.030 Residential Occupancy

A nonconforming use involving occupancy of a dwelling unit in a single-family residential district by four (4) or five (5) adults who are not all related to each other will be a lawful nonconforming use that may continue only as provided in *Section 20.08.030*. Where such a use is classified as a lawful nonconforming use under *Section 20.08.030; Residential Occupancy*, the use shall not be subject to termination through cessation or abandonment except as follows: the right to continue such a lawful nonconforming use may be terminated by the owner's execution and proper recording in the chain of title, in a form acceptable to the staff, of an express, voluntary, permanent and irrevocable waiver and relinquishment of such right.

- (a) A nonconforming use involving occupancy of a dwelling unit in a single-family residential district by four (4) or five (5) adults who are not all related to each other, which was duly registered on or before October 1, 1985, in accordance with Ordinance 85-15, shall be deemed a lawful nonconforming use which may be continued under this Unified Development Ordinance, without further registration.
- (b) A nonconforming use involving occupancy of a dwelling unit in a single-family residential district by four (4) or five (5) adults who are not all related to each other, which was duly registered on or before November 1, 1995, in accordance with Ordinance 95-21, shall be deemed a lawful nonconforming use which may be continued under this Unified Development Ordinance, without further registration.

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- (c) Where a lawfully existing dwelling unit was lawfully occupied by four (4) or five (5) adults who were not all related to each other on the effective date of this Unified Development Ordinance, but becomes nonconforming under *Title 20: Unified Development Ordinance* because of being so occupied, the property owner may register such property as a lawful nonconforming use, and if properly and timely registered, such use will be a lawful nonconforming use which may be continued under this Unified Development Ordinance without further registration. Forms for such registration shall be available in the Planning and Transportation Department and must be completed by the property owner or agent and filed in the Planning and Transportation Department within one hundred eighty (180) days of the effective date of this Unified Development Ordinance.
- (1) For existing structures, the use to be vested pursuant to this provision shall be the use lawfully in effect as of the effective date of this Unified Development Ordinance or the predominant lawful use for the preceding five (5) years, whichever is greater.
 - (2) A nonconforming use involving a dwelling unit intended to be constructed for occupancy by four (4) or five (5) adults who are not all related to each other exists from the time a complete application, conforming to all applicable regulations in effect at the time of application, has been filed for a Building Permit with the Monroe County Building Department, provided the property owner's intention to accommodate said four (4) or five (5) adults is stated in writing, and the property is registered pursuant to this *Subsection 20.08.030(c)*, within one hundred eighty (180) days of the effective date of this Unified Development Ordinance; provided further that the property was lawfully eligible for occupancy by four (4) or five (5) adults not all related to each other prior to the effective date of this Unified Development Ordinance; and provided further that the Building Permit application was filed prior to the effective date of this Unified Development Ordinance, unless otherwise provided by *Section 20.01.210: Effect of Change in the Law after Filing of Complete Application* of this Unified Development Ordinance. However, in the event that said application or permit expires or is suspended or revoked as provided in the Bloomington Municipal Code or other applicable regulation of the City or Monroe County, any new permit application may be subject to the regulations in this Unified Development Ordinance, subject to *Section 20.01.210: Effect of Change in the Law after Filing of Complete Application* of this Unified Development Ordinance.
- (d) The provisions of *Section 20.08.040: Certificate of Nonconforming Use* shall apply to all lawful nonconforming uses governed by *Subsection 20.08.030(a)*, *Subsection 20.08.030(b)* or *Subsection 20.08.030(c)*.

20.08.040 Certificate of Nonconforming Use

In order to protect the lawful nonconforming status of a nonconforming use, a person who owns or operates a nonconforming use other than a use described in *Section 20.08.030: Residential Occupancy* may request a Certificate of Nonconforming Use from the staff on a form available in the Planning and Transportation Department. The applicant shall demonstrate that the use is a lawful nonconforming use prior to the issuance of the certificate.

20.08.050 Changes in Use Restricted

- (a) A lawful nonconforming use, including a lawful nonconforming use involving occupancy by four (4) or five (5) adults, shall not be intensified, expanded, enlarged, extended or relocated to another portion of the lot or another part of the structure, nor may any structure containing or associated with such use be expanded, enlarged, extended, relocated, or altered so as to create additional bedrooms or other habitable space.
- (b) A lawful nonconforming use may be changed to any conforming use, subject to compliance with all development standards and other requirements of this Unified Development Ordinance, but shall not be changed to another nonconforming use.
- (c) No building or structure shall be constructed in connection with an existing lawful nonconforming use.

20.08.060 Nonconforming Lots, Sites, and Structures

A lawfully nonconforming lot, site, or structure may continue in its existing condition unless and until full or limited compliance with the development standards of this UDO is required as set forth in the following provisions. Provided, however, *Section 20.08.060; Nonconforming Lots, Sites and Structures* shall not require compliance with minimum lot area and minimum lot width standards. Such cases shall be governed by *Section 20.08.150: Nonconforming Lots of Record*. Provided, further, no increase in the degree of nonconformity with any development standard is permitted except as expressly provided herein.

- (a) **Nonconforming Sites; Full Compliance:** A lawful nonconforming site shall be brought into compliance with all applicable sections of this Unified Development Ordinance with any application for new building construction or in connection with demolition of existing and construction of new buildings.
- (b) **Nonconforming Sites and Structures; Limited Compliance, Nonresidential Uses:** A lawful nonconforming site or structure, where any use is nonresidential, shall be brought into compliance with current development standards to the extent required by *Subsection 20.08.060(a): Nonconforming Sites; Full Compliance* whenever the following occurs upon the site: any change in use, expansion, enlargement, or relocation of any use; reestablishment of a prior conforming use that has been discontinued for a period of twelve (12) months or longer; or addition to any building of more than ten percent (10%) of the gross floor area.
 - (1) **Structure Setback/Height:** Existing structures shall not be subject to current setback or height standards and shall remain lawful nonconforming unless completely demolished and replaced, in which case *Subsection 20.08.060(a): Nonconforming Sites; Full Compliance* shall apply.
 - (2) **Parking Setback/Impervious Surface Coverage:** If a site can be brought closer to compliance with required setbacks or impervious surface coverage standards through the removal of excess parking above the maximum number of permitted spaces, then such setbacks or impervious surface coverage standards shall be met with the removal of paved and gravel covered areas and the addition of vegetation. If all setbacks cannot be achieved through the removal of such paved and gravel covered areas, priority shall be given to the front setback.
 - (3) **Parking:** Any change in use or reestablishment of an abandoned conforming use must meet parking requirements of *Chapter 20.05; §PK: Parking Standards*. Any expansion, enlargement, or relocation of an existing conforming use, or addition to any building of more than ten percent (10%) of the gross floor area may not increase the degree of nonconformity regarding the required number of parking spaces.
 - (4) **Paving:** Any substandard parking surfaces shall be brought into compliance with *Chapter 20.05; §PK: Parking Standards*.
 - (5) **Striping:** All parking areas must be striped in accordance with *Chapter 20.05; §PK: Parking Standards*.
 - (6) **Handicap Parking:** All required handicap parking spaces must be installed in accordance with *Chapter 20.05; §PK: Parking Standards*. If no additional room for parking is available, the number of parking spaces provided may be decreased enough to provide adequate handicap accessible aisles.
 - (7) **Bike Parking:** All required bicycle parking must be installed per *Chapter 20.05; §AT: Alternative Transportation Standards*.
 - (8) **Landscaping:** If full compliance with *Chapter 20.05; §LA: Landscaping Standards* cannot be achieved due to lack of adequate planting area, all yard areas must be landscaped to the maximum practicable density with a priority given to shade tree installation.
 - (9) **Pedestrian Facilities:** Any street frontage without existing pedestrian facilities shall be required to install pedestrian facilities per *Chapter 20.05; §AT: Alternative Transportation Standards*. If substandard pedestrian facilities exist, new facilities shall not be required if existing facilities are in functional condition.
 - (10) **Handicap Ramps:** Any existing sidewalks that do not have adequate handicap ramps shall install required ramps per *Chapter 20.05; §AT: Alternative Transportation Standards*.
 - (11) **Signage:** All signage must be brought into compliance with *Chapter 20.05; §SI: Sign Standards* to the extent practicable, although freestanding signs may utilize existing setbacks where the sign is not located within a restricted vision clearance area.
 - (12) **Dumpster Enclosures:** All outdoor waste collection facilities must be brought into compliance with *Chapter 20.05; §OT: Outdoor Storage Standards*.

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- (13) *Lighting*: All lighting shall be brought into compliance with *Chapter 20.05; §LG: Lighting Standards*.
- (14) *Entrances and Drives*: All entrances and drives shall be brought into compliance with *Chapter 20.05; §ED; Entrance and Drive Standards*, with the exception of driveway location requirements.
- (c) Nonconforming Sites and Structures; Minor Additions, Nonresidential Uses: A lawful nonconforming site or structure shall be brought into compliance with current development standards to the extent required by *Subsection 20.08.060(c): Nonconforming Sites and Structures; Minor Additions, Nonresidential Uses* when an addition to any primary building of less than ten percent (10%) of the gross floor area or construction of an accessory structure of less than 840 square feet occurs.
- (1) *Impervious Surface Coverage*: Such additions or accessory structures may not increase the degree of nonconformity regarding the required maximum impervious surface coverage.
- (2) *Parking*: Such additions or accessory structures may not increase the degree of nonconformity regarding the required number of parking spaces.
- (d) Nonconforming Sites and Structures; Limited Compliance, Multifamily Uses: A lawful nonconforming site or structure, where the principal use is multifamily residential, shall be brought into compliance with current development standards to the extent required by *Subsection 20.08.060(d): Nonconforming Sites and Structures; Limited Compliance, Multifamily Uses* whenever the following occurs upon the site: any addition to an existing building, any change of use, or any expansion, enlargement, or relocation of any use, which shall include but not be limited to addition of bedrooms or units:
- (1) *Structure Setback/Height*: Existing structures shall not be subject to current setback standards and shall remain lawful nonconforming unless completely demolished and replaced, in which case *Subsection 20.08.060(a): Nonconforming Sites: Full Compliance* shall apply.
- (2) *Parking Setback/Impervious Surface Coverage*: If a site can be brought closer to compliance with required setbacks or impervious surface coverage standards through the removal of excess parking above the maximum number of permitted spaces, then such setbacks or impervious surface coverage standards shall be met with the removal of paved and gravel covered areas and the addition of vegetation. If all setbacks cannot be achieved through the removal of such paved and gravel covered areas, priority shall be given to the front setback.
- (3) *Parking*: The degree of nonconformity regarding the required number of parking spaces shall not be increased.
- (4) *Paving*: Any substandard parking surfaces shall be brought into compliance with *Chapter 20.05; §PK: Parking Standards*.
- (5) *Striping*: All parking areas must be striped in accordance with *Chapter 20.05; §PK: Parking Standards*.
- (6) *Bike Parking*: All required bicycle parking must be installed per *Chapter 20.05; §AT: Alternative Transportation Standards*.
- (7) *Landscaping*: If full compliance with *Chapter 20.05; §LA: Landscaping Standards* cannot be achieved due to lack of adequate planting area, all yard areas must be landscaped to the maximum practicable density with a priority given to shade tree installation.
- (8) *Pedestrian Facilities*: Any street frontage without existing pedestrian facilities shall be required to install pedestrian facilities per *Chapter 20.05; §AT: Alternative Transportation Standards*. If substandard pedestrian facilities exist, new facilities shall not be required if existing facilities are in functional condition.
- (9) *Handicap Ramps*: Any existing sidewalks that do not have adequate handicap ramps shall install required ramps per *Chapter 20.05; §AT: Alternative Transportation Standards*.
- (10) *Signage*: All signage must be brought into compliance with *Chapter 20.05; §SI: Sign Standards* to the extent practicable, although freestanding signs may utilize existing setbacks where the sign is not located within a restricted vision clearance area.
- (11) *Dumpster Enclosures*: All outdoor waste collection facilities must be brought into compliance with *Chapter 20.05; §OT: Outdoor Storage Standards*.
- (12) *Lighting*: All lighting shall be brought into compliance with *Chapter 20.05; §LG: Lighting Standards*.
- (13) *Accessory Structures*: Construction of an accessory structure of less than 580 square feet shall be permitted within compliance with this section, provided that the accessory structure does not increase the degree of nonconformity regarding required maximum impervious surface coverage or required number of parking

spaces.

(14) *Entrances and Drives*: All entrances and drives shall be brought into compliance with *Chapter 20.05; §ED; Entrance and Drive Standards*, with the exception of driveway location requirements.

- (e) Nonconforming Sites and Structures: Limited Compliance, Single-family Uses: A lawful nonconforming site or structure for a single-family use shall not be brought into compliance with current development standards at such time as an addition or modification occurs, except that the addition or modification may not increase the degree of nonconformity regarding maximum impervious surface coverage and parking requirements. Enlargement or modification of an existing driveway shall be subject to *Subsection 20.05.036(g)*. Changes to nonconforming uses and structures containing nonconforming uses involving occupancy of unrelated adults are subject to *Section 20.08.030: Residential Occupancy* and *Section 20.08.040: Certificate of Nonconforming Use*.
- (f) Nonconforming Signs: Practicability of Compliance with Development Standards: In determining the practicability of bringing lawful nonconforming signs into compliance with development standards pursuant to *Subsection 20.08.060(b): Nonconforming Sites and Structures; Limited Compliance, Nonresidential Uses* and *Subsection 20.08.060(d): Nonconforming Sites and Structures; Limited Compliance, Multifamily Uses*, the staff may consider the availability of public funds for any required compensation to any person, and/or whether or not waivers have been provided pursuant to *Subsection 20.05.078(k): Waiver of Right to Damages*.

20.08.070 Lawful Nonconforming Signs

- (a) Notwithstanding any other provision of *Chapter 20.08; Nonconforming Lots, Sites, Structures and Uses* or this Unified Development Ordinance, a lawful nonconforming sign may not be altered, relocated or expanded, which includes any increase in height or area, except as expressly provided in *Section 20.08.070; Lawful Nonconforming Signs*.
- (b) Ordinary maintenance is permitted, and shall include replacement of supports with different materials or design from the previous supports, but shall not include any increase in the dimensions or numbers of supports.
- (c) A lawful nonconforming sign may be relocated only where the sign cannot be left in its existing location as a result of right-of-way acquisition and/or construction, widening or other improvement to any public sidewalk, path, trail, street, road, alley, or other public way or facility, by the City. For purposes of *Section 20.08.070; Lawful Nonconforming Signs*, a sign cannot be left in its existing location where it would be within the new public right-of-way; or would physically obstruct the public improvements; or, where its location would pose a safety hazard, which shall include but not be limited to being within a redefined vision clearance triangle.
- (d) In situations described in *Subsection 20.08.070(c)*, the sign may be relocated upon the same zoning lot as its original location, if the Board or Commission with authority to acquire right-of-way in the particular case declines to seek purchase of full sign rights for permanent removal of the sign.
- (e) A sign that is relocated hereunder shall be brought into compliance with all development standards in its new location to the extent practicable, as determined by the staff, which may consider the factors listed in *Subsection 20.08.060(f): Nonconforming Signs: Practicability of Compliance with Development Standards*, among others, in determining practicability.

20.08.080 Changes to Nonconforming Structures in Regulated Floodplains

Any structure or use located in a regulated floodplain shall be governed by the general regulations of *Chapter 20.08; Nonconforming Lots, Sites, Structures and Uses* to the extent that nonconformance is related to requirements other than those governing regulated floodplains. To the extent that nonconformance is related to the regulations of the regulated floodplains, modifications to a lawful nonconforming structure are allowed only on a one-time basis and only where:

- (a) A permit is issued by the Department of Natural Resources for such modifications; and
- (b) Such modifications may not increase the value of the structure, excluding the value of land, by more than forty percent (40%) of its pre-improvement market value unless such structure is brought into compliance.

20.08.090 Reestablishment Prohibited

A lawful nonconforming use which has been abandoned, including a use involving occupancy by four (4) or five (5)

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adults which has been voluntarily waived and relinquished pursuant to *Section 20.08.030: Residential Occupancy*, shall not be resumed or replaced by another nonconforming use.

20.08.100 Abandonment of a Nonconforming Use

- (a) **Residential Occupancy:** Where the lawful nonconforming use is habitation of a dwelling by four (4) or five (5) adults, and where such nonconforming use was registered under the provisions of *Section 20.08.030: Residential Occupancy* of this Unified Development Ordinance, such use shall be permanent and not subject to cessation by abandonment except by voluntary waiver and relinquishment in accordance with *Section 20.08.030: Residential Occupancy*.
- (b) **Other Nonconforming Uses:** A lawful nonconforming use shall be deemed abandoned when the nonconforming use has been replaced by a conforming use or when the nonconforming use has ceased and has not been resumed for a continuous period of six (6) months, or when the furnishings have been removed and not replaced for a continuous period of six (6) months.

20.08.110 Restoration and Repairs

A lawful nonconforming structure, or a structure containing a lawful nonconforming use, may be restored when the conditions enumerated below have been met regardless of other regulations in this Unified Development Ordinance. Replacement, restoration, and repairs must conform to building code and other applicable regulations set forth by the Bloomington Municipal Code.

20.08.120 Structure Damaged or Destroyed

A lawful nonconforming structure or a structure which contains or is associated with a lawful nonconforming use, which has been partly or completely destroyed or removed by accidental cause, including Acts of God, may be replaced, provided the owner or agent makes application for a Building Permit within six (6) months of the date of destruction or removal. The replacement structure must be placed on the footprint of the old structure, may not be higher than the old structure, and shall be substantially the same architecture and constructed of similar materials, unless any deviation would bring the structure or use into or closer to compliance with the regulations of this Unified Development Ordinance, to the extent possible and to the extent permitted by building code or other applicable regulation.

20.08.130 Repair

Nothing in *Section 20.08.130: Repair* shall be interpreted to prevent normal maintenance and repair of lawful nonconforming structures or structures which contain or are associated with lawful nonconforming uses. Normal maintenance and repair does not include the razing of walls to the foundation and rebuilding, nor does it include altering a structure which contains a lawful nonconforming use in any way which results in additional bedrooms or other habitable space. Minor changes to a lawfully nonconforming sign shall be permitted only where necessary in order to keep the sign in good and safe repair and operating condition; such changes may include replacement of supports with different materials or design, but shall not include any enlargement to the dimensions of such supports or any increase in the number of such supports.

20.08.140 Replacement in a Floodplain

A lawful nonconforming structure or any structure which contains a lawful nonconforming use which has been partly or completely destroyed or removed by accidental cause, including Acts of God, may be replaced, provided the elevation of the lowest floor, including the basement floor, must be at least two (2) feet above the regulatory flood elevation; all necessary permits must be obtained from the Department of Natural Resources and all other applicable requirements of State law are met; and that application for a Building Permit must be made within six (6) months of the date of destruction or removal.

20.08.150 Nonconforming Lots of Record

All lots legally established and recorded prior to the effective date of the Unified Development Ordinance or its subsequent amendments that do not meet the lot area and lot width standards of this Unified Development Ordinance shall be deemed a substandard lot, otherwise known as a lawful nonconforming lot of record. A lawful nonconforming lot of record may be used and developed or redeveloped without compliance with the lot area and lot width standards of this Unified Development Ordinance as long as all use restrictions and other development standards of this Unified Development Ordinance are met.

