

Article 20 Nonconformities

Section 20.1 Intent

In the County, there exists uses, structures and combinations of such which were lawful before the adoption of these ordinances or amendments thereto, but which would be prohibited, regulated or restricted under the terms of these ordinances or amendments thereto. It is the intent of this section to permit them to continue with restrictions until they are removed or destroyed, but not to encourage their survival. It is further the intent of these ordinances that such nonconformities shall not be enlarged, expanded or intensified, nor shall they be used as grounds for adding other structures. Changes in nonconformities other than their discontinuance shall be discouraged. Article 20 is modified as provided in Section 10.6 for structures, lots, and uses within the Family Heritage Overlay District. The Family Heritage Overlay District currently exists only in District 19.

Section 20.2 Rules Applicable to Nonconformities

20.2.1 Incompatibility and enlargement. Nonconforming uses are declared by these ordinances to be incompatible with permitted uses within the districts involved. A nonconforming use of a structure or a nonconforming use of a structure and land or water in combination, shall not be extended, enlarged or intensified except in conformance with these ordinances. No nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendments of the zoning ordinances. Replacement of nonconforming structures shall be prohibited.

20.2.2 Work in progress. To avoid undue hardship, nothing in these ordinances shall require a change in plans, construction or designed use of buildings on which a building permit has been properly issued prior to the adoption of these ordinances or amendments thereto. If actual construction has not begun under a permit properly issued before the adoption of these ordinances or amendments thereto, within six (6) months of the date of issuance of the permit, said permit shall become invalid and shall not be renewed except in conformity with the ordinances.

20.2.3 Nonconforming use of open land. Where open land is being used for a nonconforming use, such nonconforming use shall not be extended or enlarged either on the same or adjoining property.

20.2.4 Nonconforming use of buildings. Except as otherwise provided herein, the lawful use of a building existing at the effective date of these ordinances or amendments thereto may be continued although such use does not conform to the provisions contained herein.

20.2.5 *Discontinuance of nonconforming use.* No building or portion thereof, used in whole or in part, for a nonconforming use which is abandoned for more than one (1) calendar year or 365 consecutive days, shall be used except in conformity with these ordinances. The intent to abandon shall be presumed from the cessation of business or the removal of equipment, goods, structures or other aspects of such nonconforming use of the property.

20.2.6 *Destruction, repair or alteration of nonconforming use or structure.* Except as provided in Section 10.6.5(c):

(a) No building or structure which has been damaged, repaired or altered by any means to an extent of more than fifty percent (50%) of the fair market value of the building or structure immediately prior to damage, repair or alteration, shall be restored except in conformance with these ordinances, and all rights as a nonconforming use or structure are then terminated.

(b) If a building is damaged, repaired or altered by less than fifty percent (50%), such damage may be repaired to the size and use as before the time of damage, repair or alteration provided that such repair or reconstruction is complete within one (1) calendar year or 365 consecutive days of the date of such damage.

(c) Historic nonconforming structures or a nonconforming portion of an historic structure over 50 years old may be considered a valid nonconforming structure upon the determination of the Baldwin County Historical Development Commission that said structure is historic in nature and the respective Board of Adjustment confirms the valid nonconforming status. A valid nonconforming status shall permit reconstruction, repair, or alteration irrespective of the fifty percent (50%) rule as given in *Section 20.2.6(a)*.

(d) Upon the determination by the Planning Director that a structure is potentially damaged, being repaired or altered by more than fifty percent (50%) of the fair market value, the following method shall be employed to make a final determination:

1. An appraisal by a licensed appraiser shall be submitted to the Planning and Zoning Department.
2. A licensed contractor shall perform a cost estimate for repairs to the structure and submit it to the Planning and Zoning Department.
3. The Planning Director shall prepare a report with the appraisal and cost estimate and submit it to the Baldwin County Planning and Zoning Commission for a final determination.

4. The Baldwin County Planning and Zoning Commission shall make a determination or may request additional information as deemed appropriate to make a final determination.

5. Nothing herein shall be construed to excuse any owner, occupant or contractor from compliance with building codes, zoning ordinances or any other health or safety requirements imposed by local, state or federal laws, or ordinances in effect at the time of the repair or rebuilding.

6. The applicant shall be responsible for all costs associated with a determination.

20.2.7 Nonconforming lots. A nonconforming lot or parcel is a lot or parcel which fails to meet the dimensional requirements (i.e. minimum lot area, width, frontage etc.) of the zoning ordinances, but was lawfully created according to Alabama State Law and was a lot of record prior to the effective date of the zoning ordinances or any amendments thereto and has been determined to be vested.

(a) Any nonconforming lot or parcel may be used as a building site.

(b) A nonconforming lot or parcel must comply with permitted uses and other standards as described in the zoning ordinances.

20.2.8 Subdivision of lots. No portion of a lot shall be sold or subdivided in a manner which does not comply with the lot width and area requirements established by the zoning ordinances. A nonconforming lot may be increased in size even if such increase does not allow the lot to meet the minimum lot width and lot area requirements established by the zoning ordinances. Furthermore, the adjoining lot or lots, from which the land is removed to create the increase to the subject lot, shall not become nonconforming or does not increase in nonconformity.

20.2.9 Special treatment due to these ordinances or other government action. Should a government agency obtain, after the effective date of this amendment, a portion of a conforming lot for public purposes and thereby create a nonconforming lot, it may be possible to erect or construct, on said lot, the principal and accessory structures otherwise authorized provided that all other requirements of these ordinances are met.

20.2.10 Repairs and maintenance. Except as provided in Section 10.6.5(d), on any nonconforming structure or portion of a nonconforming structure or any structure containing a nonconforming use, work may be done on ordinary repairs, only to replace or repair, provided that the cubic content of the structure shall not be increased. Ordinary repairs may include painting, roofing, siding, re-paving of

access roads and parking/loading areas, replacement of landscape elements and other like activities.

20.2.11 *Nonconforming structures unsafe due to lack of maintenance.* Any portion of a nonconforming structure that becomes physically unsafe or unlawful due to lack of repairs and maintenance, and which is declared unsafe or unlawful by a duly authorized county official, but which the owner wishes to repair, restore or rebuild, must be repaired, restored or rebuilt in conformance with the provisions of this chapter.

20.2.12 *Nonconforming accessory uses and structures.*

(a) No nonconforming accessory use or structure shall continue after the principal use or structure is terminated by abandonment, damage or destruction unless such accessory use or accessory structure is made to conform to the standards for the zoning district in which it is located.

(b) Any nonconforming accessory use or accessory structure shall be brought into conformity with these ordinances whenever a substantial improvement to, addition to or change in principal use or structure on the property is proposed or approved.

(c) Any part of a nonconforming accessory use or accessory structure which is destroyed to an extent of more than fifty percent (50%) of the fair market value of the building or structure immediately prior to damage, shall not be restored except in conformity with these ordinances, and all rights as a nonconforming use or structure are then terminated.

(d) No additional structure which does not conform to the requirements of these ordinances shall be erected in connection with a nonconforming use of land.

20.2.13 *Illegal uses and structures prohibited.* All of the foregoing provisions relating to nonconforming uses and structures shall apply to all nonconforming uses or structures existing or created on the effective date of these ordinances and to all uses and structures which become nonconforming by reason of any amendment thereof. The provisions shall not apply, however, to any use established, or structures erected or expanded, in violation regardless of the time of establishment or erection.