

TABLE OF CONTENTS

TITLE 9

Land Use Code

Chapter 10 Nonconformance Standards

9-10-1 Purpose and Scope

9-10-2 Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures and Lots

9-10-3 Changes to Nonstandard Buildings, Structures and Lots and Nonconforming Uses

TITLE 9

Land Use Code

Chapter 10 Nonconformance Standards¹

9-10-1. Purpose and Scope.

Adoption of land use controls and changes in zoning have created nonconforming uses, nonstandard buildings and nonstandard lots. The purpose of this chapter is to allow these nonconforming uses and nonstandard buildings to be changed and upgraded without requiring their elimination, if the change would not substantially adversely affect the surrounding area and if the change would not increase the degree of nonconformity of the use. Additionally, this chapter sets standards that allow the development of nonstandard lots.

9-10-2. Continuation or Restoration of Nonconforming Uses and Nonstandard Buildings, Structures and Lots.

Nonconforming uses and nonstandard buildings and lots in existence on the effective date of the ordinance which first made them nonconforming may continue to exist subject to the following:

- (a) One-Year Expiration for Nonconforming Uses: A nonconforming use, except for a use that is nonconforming only because it fails to meet the required off street parking standards in sections 9-9-6, "Parking Standards," and 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, that has been discontinued for at least one year shall not be resumed or replaced by another nonconforming use as allowed under subsection 9-2-15(f), B.R.C. 1981, unless an extension of time is requested in writing prior to the expiration of the one-year period. The approving authority will grant such a request for an extension upon finding that an undue hardship would result if such extension were not granted.
- (b) Damage by Fire, Flood, Wind or Other Calamity or Act of God and Unsafe Buildings: A nonstandard building or structure, a building or structure that contains a nonconforming use or a building or structure on a nonstandard lot, that has been damaged by fire, flood, wind or other calamity or act of God may be restored to its original condition, or any building declared unsafe under the building code or any other applicable safety or health code, may be restored to a safe condition, provided that such work is consistent with the requirements of section 9-3-3, "Regulations Governing The Floodplain," B.R.C. 1981, started within twelve months of such event, and completed within twenty-four months of the date on which the restoration commenced.
- (c) Replacement of Nonstandard Architectural Building Features: Those nonstandard architectural features of a building that otherwise violate the setback standards set forth in section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, except for architectural features that encroach into public rights-of-way or easements or cross property boundaries, may be replaced if:
 - (1) Reconstruction is commenced within twelve months of removal and completed within twenty-four months of the date on which the restoration is commenced;
 - (2) The exterior materials and architectural style of the replacement match that of the original feature; and
 - (3) The replacement does not result in the creation of additional building coverage or floor area.

For the purposes of this subsection, *architectural feature* means eaves, unenclosed porches, bay windows, awnings and entry vestibules.

- (d) Drive-Thru Facilities: A drive-thru facility that was established prior to July 31, 1986, on a property not abutting Canyon Boulevard in the DT zoning districts, and has not expired pursuant to subsection (a) of this section, shall be considered a nonconforming use, and may:

¹ Adopted by Ordinance No. 7476.

- (1) Be renovated or remodeled, by improvements the cumulative total of which increases the structure's fair market value by no more than twenty-five percent of the Boulder County Assessor's actual value of the structure, without meeting the criteria for drive-thru uses in subsection 9-6-9(c), B.R.C. 1981;
- (2) Be renovated or remodeled by improvements the cumulative total of which increases the facility's structure's fair market value by more than twenty-five percent of the Boulder County Assessor's actual value of the structure; or be relocated on site if the development meets the criteria for drive-thru uses in subsection 9-6-9(c), B.R.C. 1981; or
- (3) Be relocated off site or expanded on site, subject to the conditional use requirements for drive-thru uses. For the purposes of this paragraph, *expanded* means creation of an additional drive-thru bay, lane or teller window.

Ordinance Nos. 5930 (1997); 6046 (1999); 7522 (2007); 7699 (2009)

9-10-3. Changes to Nonstandard Buildings, Structures and Lots and Nonconforming Uses.

Changes to nonstandard buildings, structures or nonstandard lots and nonconforming uses shall comply with the following requirements:

(a) Nonstandard Buildings and Structures:

- (1) Criteria: The city manager will grant a request for a building modification for a nonstandard building or structure if such modification meets the following requirements:
 - (A) The proposed modification complies with all of the applicable requirements of chapters 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," 9-9, "Development Standards," B.R.C. 1981, and sections 9-6-2 through 9-6-9, B.R.C. 1981, dealing with specific use standards and criteria; and
 - (B) The coverage of the nonstandard building or structure, as modified, is no greater than the coverage allowed in the underlying zoning district.
- (2) Maintaining a Nonstandard Setback: If a foundation and the exterior walls above it that encroaches into a required setback are removed and replaced, such foundation and wall shall be reconstructed in compliance with chapter 9-7, "Form and Bulk Standards," B.R.C. 1981. As part of any activity requiring a building permit, in order to maintain a nonstandard setback, at a minimum, the applicant shall:
 - (A) Retain the exterior wall and the existing foundation that it rests upon. The exterior wall shall, at a minimum, retain studs and retain either the inner or exterior sheathing of the exterior wall. Interior sheathing includes, without limitation, plaster, dry wall or paneling; or
 - (B) Retain the exterior wall studs and the fully framed and sheathed roof above for that portion of the building within the required setback.
- (3) Variance Required: A request for a modification to a nonstandard building or structure that is not in conformance with the provisions of chapter 9-7, "Form and Bulk Standards," B.R.C. 1981, may be granted only if a variance is granted pursuant to section 9-2-3, "Variances and Interpretations," B.R.C. 1981.
- (4) No Nonstandard Changes to Standard Buildings or Structures: If a nonstandard building or structure has been modified so as to be in conformance with the provisions of title 9, "Land Use Regulation," B.R.C. 1981, any future modifications to the building or structure shall be in conformance with the provisions of this title.
- (5) No Addition Over Fifty-Five Feet: Nothing in this section shall be construed to permit the expansion of the height of a building or structure, any part of which exceeds the maximum height imposed by section 9-7-5, "Building Height," B.R.C. 1981. The provisions of section 9-7-5, "Building Height," B.R.C. 1981, and section 9-2-14, "Site Review," B.R.C. 1981, supersede the provisions of this section.

(b) Nonstandard Lots or Parcels:

- (1) Development Requirements: Vacant lots in all residential districts except RR-1 and RR-2 which are smaller than the lot sizes indicated in section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, but larger than one-half of the required zoning district minimum lot size, may be developed with a single-family detached dwelling unit if the building meets the setback requirements of section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981. In RR-1 and RR-2 districts, lots which are smaller than the minimum lot size but larger than one-fourth of the minimum lot size may be developed if the building meets the setback requirements. In all other zoning districts, vacant lots which are below one-half of the required minimum lot size for the zoning district shall not be eligible for construction of principal buildings.
- (2) Maximum Height: The maximum height for a principal building or structure on a nonstandard lot in the RMX-1, RL-1 and RE zoning districts will range from twenty-five feet for a building or structure on a lot which is at or below one-half the minimum lot size of the zoning district up to thirty-five feet for a building or structure on a lot which meets or exceeds the minimum lot size. In RR-1 and RR-2 districts, the maximum height for a principal building or structure on a nonstandard lot shall range from twenty-five feet for a building on a lot which is at or below one-fourth the minimum lot size up to thirty-five feet for a building or structure on a lot which meets or exceeds the minimum lot size. Such lots shall be allowed to have a maximum building or structure height in proportion to the lot area. In the event that an existing building or structure exceeds the height limitations of this paragraph, the applicant shall be permitted to complete a site review to increase the height of the building or structure up to the permitted height in section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981. The permitted heights for the RMX-1, RL-1, RE, RR-1 and RR-2 zoning districts shall be computed as set forth in table 10-1 of this section and as indicated in appendix C, "Height Restrictions for Nonstandard Lots," of this title.

TABLE 10-1 MAXIMUM HEIGHT FORMULAS

<i>Zoning District</i>	<i>Minimum Lot Size (Square Feet)</i>	<i>Formula</i>
RMX-1	6,000	Height = (lot size - 3,000) x .003333 + 25
RL-1	7,000	Height = (lot size - 3,500) x .002857 + 25
RE	15,000	Height = (lot size - 7,500) x .001333 + 25
RR-1; RR-2	30,000	Height = (lot size - 7,500) x .000444 + 25

- (3) Merger of Contiguous Lots: A nonstandard lot or parcel and a contiguous lot cease to be considered separate nonstandard lots if they are held under one ownership under the provisions of subsection 9-9-2(c), B.R.C. 1981.
- (4) Alteration, Repairs or Expansions of Building on Nonstandard Lots: The city manager will grant a request for a building modification of a building on a nonstandard lot if the building modification meets the following standards:
 - (A) The building modification meets the setback requirements of section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, for the district in which it is located;
 - (B) The existing or proposed building coverage does not exceed the area within the setbacks of the underlying zoning district; and
 - (C) The building modification will not result in the expansion of a nonconforming use beyond that amount that is permitted by this chapter.
- (5) Variance Required for Nonstandard Lots: A request for a building modification that increases building coverage for a building on a nonstandard lot that is less than one-half the minimum lot size required by the underlying zoning district, or less than one-fourth the minimum required lot size in RR-1 or RR-2 districts, shall only be granted pursuant to a variance under section 9-2-3, "Variances and Interpretations," B.R.C. 1981.

(c) Nonconforming Uses:

- (1) Nonconforming Changes to Conforming Use Prohibited: No conforming use may be changed to a nonconforming use, notwithstanding the fact that some of the features of the lot or building are nonstandard or the parking is nonconforming.
- (2) Standards for Changes to Nonconforming Uses: The city manager will grant a request for a change of use, which is the replacement of one nonconforming use with another, if the modified or new use does not constitute an expansion of a nonconforming use. Any other change of use that constitutes expansion of a nonconforming use must be reviewed under procedures of section 9-2-15, "Use Review," B.R.C. 1981.
- (3) Nonconforming Only as to Parking: The city manager will grant a request to change a use that is nonconforming only because of an inadequate amount of parking to any conforming use allowed in the underlying zoning district upon a finding that the new use will have an equivalent or less parking requirement than the use being replaced.

Ordinance Nos. 5623 (1994); 5971 (1998); 7079 (2000); 7102 (2000); 7153 (2001); 7535 (2007); 7699 (2009); 7710 (2010)