

### Chapter 17.100

#### NONCONFORMING STRUCTURES, LOTS AND USES

Sections:

- 17.100.010 Title.
- 17.100.020 Application.
- 17.100.030 Purpose.
- 17.100.040 Authority.
- 17.100.050 ~~Continuance of nonconforming structures and uses~~ General.
- 17.100.060 Nonconforming lots.
- 17.100.070 Nonconforming uses ~~and developments~~.
- 17.100.080 Nonconforming structures ~~and developments~~.
- ~~17.100.090 Abatement of nonconforming structures and uses.~~
- 17.100.100 Amortization and abatement of nonconforming signs.

**17.100.010 Title.**

This chapter shall be called “Nonconforming Structures, Lots and Uses.” (Ord. 1857 § 2 (Exh. B), 2018).

**17.100.020 Application.**

This chapter shall apply to buildings, structures, lots, developments, and uses which become nonconforming as a result of the application of this title to them, or from classification or reclassification of the property under this title, or any subsequent amendments thereto. This chapter must be read along with chapter 14.15 BMC, Critical Area Regulations, and the more restrictive requirements shall apply. (Ord. 1857 § 2 (Exh. B), 2018).

**17.100.030 Purpose.**

Over time the adoption and amendment of regulations has resulted in lots, uses, structures, and developments which were lawful when established but would be prohibited or restricted by the regulations currently in effect. The purpose of this chapter is to permit the continuation and maintenance of nonconforming lots, uses, structures, and developments, but generally prohibit their expansion, modification, or reconstruction except in limited circumstances. (Ord. 1857 § 2 (Exh. B), 2018).

**17.100.040 Authority.**

This chapter is adopted pursuant to the authority set forth in chapters 35A.63, 36.70A, 36.70B, and 36.70C RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

**17.100.050 General.**

This chapter shall apply to all nonconforming structures, lots, and uses except as follows:

- A. Hazardous Material Storage. Nothing in this Chapter shall be construed as allowing the expansion of any nonconforming hazardous material storage.
- B. Flood Hazards. The provisions of this chapter (17.100 BMC) shall not apply to structures or developments that are nonconforming with respect to the floodplain management regulations in Title BMC. Such structures and developments shall be subject to the substantial damage and substantial improvement provisions of Title 14 BMC.
- C. Permit Conditions. Nothing in this Chapter shall be construed to waive or modify conditions of approval attached to development permit.
- E. Uniform Codes. Nothing in this chapter shall be construed as an exemption from compliance with Title 15 BMC or the uniform codes adopted under Title 15 BMC.

F. In all cases modifications, modifications, when authorized, shall comply with currently applicable regulations to the maximum extent possible.

**17.100.060 Nonconforming lots.**

A. If any parcel of land with a minimum lot size or lot dimension which is less than that prescribed for by the zone in which such parcel is located was subdivided into lots according to a plat of record on or before the effective date of this title, or any subsequent amendments to this title, then the fact that the parcel of land does not meet the minimum lot size or lot dimension requirements as set forth in this title shall not prohibit the property from being utilized; provided, that all other regulations prescribed for that district by this title are complied with, except as provided for in chapter 17.70 BMC.

B. When explicitly required by the Burlington Municipal Code, aAdjacent undeveloped lots in common ownership which do not meet current requirements for area or dimension shall be considered a single combined lot of record if the combination would have the effect of remedying or minimizing the extent of the nonconformity. (Ord. 1857 § 2 (Exh. B), 2018).

**17.100.070 Nonconforming uses and developments.**

Legally established nonconforming uses and developments may be maintained and repaired, and changes of tenancy or ownership may occur except as follows:

- A. If a nonconforming use or development is discontinued for more than 180 days any subsequent use or development of the property or building shall fully comply with all applicable zoning and development regulations.
- B. Nonconforming uses and developments shall not be intensified or enlarged.
- C. Nonconforming uses and developments shall not be expanded or extended to occupy a greater area of land, and shall not be moved or relocated to occupy a different area of land unless the expansion or relocation fully complies with all applicable zoning and development regulations.

**17.100.080 Nonconforming structures.**

A. Maintenance and Repairs. Ordinary maintenance of nonconforming structures, including minor interior and exterior repairs and incidental alterations is permitted. Minor maintenance and repair may include but is not limited to painting, roof repair and replacement, plumbing, wiring, mechanical equipment replacement, and weatherization. Incidental alterations may include construction of nonbearing walls or partitions.

B. Alterations and Expansions. Nonconforming structures may be enlarged or altered under the following circumstances:

- 1. The alteration or expansion does increase the degree of nonconformity; or

**Commented [BJ1]:** BJ - 12-16-2024 - clarification - this is already stated in other codes sections, but non-conforming rights are narrow exception to standard requirements.

**Commented [BJ2]:** BJ - 12-16-2024 - This is not correct. The City has allowed legally established lots to be used regardless of whether they comply with current area and dimension requirements. However, in the future, lot aggregation may be necessary to achieve the goals of a sub-area plan or overlay. Adding this clarification leaves the door open to for such provisions to be added to other code chapters if needed.

**Commented [BJ3]:** BJ - 12-16-2024 - As noted in the application and purpose section, this chapter applies to "developments". In this context developments are typically differentiated from "uses", which are activities that are either allowed or prohibited under the zoning code, from "developments", which includes site improvements such as landscaping, stormwater management, etc. Although the code already applies to developments, this should be clarified to prevent confusion.

**Commented [BJ4]:** BJ - 12-16-2024 - Note: when substantive changes are considered, thresholds should be included to define when a non-conforming "development" must be brought into full compliance with the current code.

Chapter 17.100~~25~~ ~~AMENDMENTS TO~~  
~~COMPREHENSIVE PLAN AND DEVELOPMENT~~  
~~REGULATIONS~~ Nonconforming Structures, Lots, and  
Uses

2. The alternation or expansion is required by law; or
- 3 The alternation involves structural changes necessary to adapt a nonconforming structure to new technologies or equipment and the alternation does not increase the floor area of the structure;
4. When a nonconforming structure is altered or expanded, the alteration or expansion shall, to the maximum extent possible, comply with all applicable zoning and development regulations.

C. **Damage and Replacement.** A nonconforming structure having been damaged or partially destroyed to an extent not exceeding 50 percent of the assessed valuation of such structure as established by the most current Skagit County assessor's tax roll may be restored to its original condition, as authorized by the city's building official, and its immediately preceding or existing use at the time of partial destruction may be continued or resumed. Restoration shall begin within one year and be completed within two years of the date of partial destruction. If restoration is not started within one year, then the reuse and occupancy of the structure shall conform to all the regulations of the zone in which the structure is located.

H. When a building or structure is moved to another location it must then be made to conform to the requirements of the zone to which it is moved, unless specifically allowed elsewhere by this title.

**17.100.100 Amortization and abatement of nonconforming signs.**

Legally established non-conforming signs shall be subject to the following:

A. **Off-Premises Signs.** All off-premises advertising and directional signs that do not comply with the requirements of Chapter 17.95 BMC shall be given an amortization period of 180 days that commences upon notification of the sign owner and/or property owner. Following such notification, the nonconforming sign shall be abated within 180 days. (Ord. 1857 § 2 (Exh. B), 2018).

B. **On-Premises Signs.** On-premises signs that do not fully comply with the requirements Chapter 17.95 BMC shall be brought into compliance with Chapter 17.95 BMC if removed or modified, except for alternations limited to changing the display surface. On-premises signs that do not fully comply with the requirements of Chapter 17.95 BMC shall be brought into compliance with Chapter 17.95 if the use with which the sign is associated is discontinued for a period of 180 days or more.