

ARTICLE 27-1500 NONCONFORMITIES**SECTION 27-1501 PURPOSE****A. PURPOSE**

1. Changes to the zoning code can impact the status of legal, existing uses, lots, structures, and site characteristics. It is the general policy of the City to allow uses, structures, and lots that came into existence legally to continue to exist and be put to productive use. As these uses and structures change, they should be brought into compliance with applicable regulations as expeditiously as is reasonably possible.
2. This article continues the City's established regulations regarding nonconformities and also establishes an intermediate legal status category for applicability following partial compliance with this Zoning Code.

B. INTENT

These regulations are intended to:

1. Recognize the interests of property owners in continuing to use their property;
2. Promote the reuse and rehabilitation of existing buildings; and
3. Place reasonable limits on the expansion of nonconformities that have the potential to adversely affect surrounding properties, neighborhoods, or the City as a whole.

C. ILLEGAL STATUS AND CODE VIOLATIONS

Nothing in this article shall be interpreted as authorization for or approval of a continuance of the use of a structure or premises in violation of the zoning regulations in effect at the time of the effective date or any amendments of this Zoning Code.

SECTION 27-1502 APPLICABILITY**A. GENERAL APPLICABILITY**

1. The provisions of this article shall apply to buildings, structures, lands, uses, and site characteristics that become nonconforming as a result of adoption, revision, or amendment to this Zoning Code.
2. The effective date for these regulations shall be established by the ordinance enacting the same. This Zoning Code applies to any property that was located within the limits of the City of Billings on or before that date.
3. Any permit application or development application approval that had been accepted by the City as a complete application as of the effective date of this Zoning Code shall be subject to the provisions of Section 27-107, Transitional Provisions.

B. PRE-EXISTING NONCONFORMITY

1. Any legal nonconformity existing as of the effective date of this Zoning Code will also be a legal nonconformity under this Zoning Code, as long as the situation that resulted in the nonconforming status under the previous zoning code continues to exist.
2. If a nonconformity under the previous zoning code becomes conforming because of the adoption of this Zoning Code, then the situation will no longer be a nonconformity.

C. REPAIRS AND MAINTENANCE

Any building or other structure containing a nonconforming use, or any nonconforming structure or portion thereof, declared unsafe by the City may be strengthened or restored to a safe condition.

D. NONCONFORMING SIGNS

Nonconforming signs are addressed in Section 27-1400, Signs.

SECTION 27-1503 NONCONFORMING STRUCTURES**A. CONTINUATION OF NONCONFORMING STATUS**

1. A nonconforming structure may continue to be used in conformance with the zone district where it is located so long as the structure remains lawfully occupied.
2. The structure may not be enlarged or altered in a way which increases its nonconformity unless an enlargement or structural alteration is required by law or allowed by subsection 27-1502.C. above.
 - a. Structural alterations may be permitted when necessary to adapt a nonconforming building to new technologies or equipment pertaining to uses housed in such building.
 - b. Any enlargement greater than 10% of the GFA that is necessary to adapt to new technologies shall be authorized only by a variance, as described in Section 27-1627.
 - c. All structural changes shall be made in compliance with Article 27-1100, Proportionate Compliance.
3. Enlargement or alteration of nonconforming residential structures is permitted as follows:
 - (a) A residential structure that is nonconforming to the applicable zone district façade regulations, as defined in Section 27-1802, may be enlarged or altered in any manner that does not increase the façade non-conformance.
 - (b) A residential structure that is nonconforming to applicable zone district build-to zones may be enlarged or altered in any manner that is compliant with zone district standards.
 - (c) All structural changes shall be made in compliance with Article 27-1100, Proportionate Compliance.

B. ABANDONMENT AND TERMINATION

1. When a nonconforming structure is abandoned for 12 months or more, the nonconforming status shall be considered terminated and the structure shall be brought into compliance with the current Zoning Code prior to any use.
2. Should the structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Zoning Code.
3. If the structure is brought into conformance or compliance with the zone district in which it is located, the structural nonconformity may not be resumed.

4. Should the structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the zone district in which it is located after it is moved.

SECTION 27-1504 NONCONFORMING USES

A. CONTINUATION OF USE

1. Nonconforming uses may be continued so long as the use remains otherwise lawful.
2. Any nonconforming use may be extended throughout any parts of a building designed for such use that existed as of the effective date of this Zoning Code, but no such use shall be extended to occupy any land outside such building.

B. CONTINUATION OF STRUCTURE SPECIFIC TO USE

No existing structure specific to a nonconforming use shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in conjunction with changing to a conforming use.

C. DISCONTINUANCE

1. Compliance with Code
 - (a) When a nonconforming use is replaced with a conforming use, the nonconforming use is considered terminated and may not be resumed.
 - (b) Any structure specific to the use, or structures and land in combination specific to the use, in or on which a nonconforming use is replaced by a permitted use shall be brought into compliance with the zone district in which the structure(s) is located and the nonconforming use may not be resumed.
2. Abandonment
 - (a) When a nonconforming use is abandoned for 12 months or more it shall be considered terminated.
 - (b) When a nonconforming use of a structure specific to a use, or structures and land in combination specific to a use, is abandoned for 12 months or more, the structure, or structures and premises in combination, shall be brought into conformance with the applicable zone district regulations and the nonconforming use may not be resumed.
3. Demolition, Destruction, or Obsolescence
 - (a) Where nonconforming use status applies to: (1) a structure specific to a use (such as a gas station), or (2) structure and land in combination specific to a use, (such as an automobile dealership) removal or destruction of the structure shall presumptively eliminate the nonconforming status of the land and reconstruction shall be done in compliance with this Zoning Code.
 1. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost of the at time of destruction.
 2. The operation of a nonconforming residential use located in an N1-4, NX1-3, or RMH district shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which

the use is operated.

3. The operation of a nonconforming non-residential structure specific to a use or structure and land in combination specific to a use shall be terminated unless the property owner seeks Special Review approval (See Section 27-1623) to reestablish the destroyed structure or structure and land within six months of the date of the event(s) that caused the destruction. In addition to the decision criteria in Section 27-1623.D, the zoning commission and city council shall also consider:
 - a. Whether changes, over time, to the surrounding area or neighborhood make reestablishment of the structure and use or structure, land and use detrimental to nearby residents or property values;
 - b. Whether the use and specific structure or use, specific structure and land became nonconforming because of the actions of the property owner; or
 - c. Whether the use and structure or use, structure and land were subject to distance requirements ("separated use") from other uses ("protected uses") and became non-conforming only when a protected use in a structure specific to that use (such as a religious assembly in its own building) or structure and land specific to that use (such as a primary school) were established within the distance restricted area after the documented establishment of the separated use.
- (b) Obsolete or Substandard Non-Residential Structure: The right to operate and maintain any nonconforming use shall terminate and shall cease to exist whenever the non-residential structure in which the use is operated and maintained becomes obsolete or substandard under any applicable city, state or federal code and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds 50 percent of the replacement cost of such structure on the date that the building official determines such structure is obsolete or substandard; provided, however, that in determining the replacement cost of any structure, there shall not be included therein the cost of land or any factors other than the structure itself.

SECTION 27-1505 NONCONFORMING SITE CHARACTERISTICS

A. GENERAL

The following provisions apply to nonconforming site characteristics as identified in Section 27-1803:

1. The nonconforming site characteristic shall not be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption.

2. The nonconforming site characteristic shall not be moved in whole or in part to any other portion of the lot or parcel occupied by the use at the effective date of adoption.
3. The existence of nonconforming site characteristics do not render an otherwise conforming structure or use on the site nonconforming. When changes are made to a conforming structure or use on a site with nonconforming site characteristics, the site characteristics may need to be brought into compliance as required in Article 27-1100

B. MANUFACTURED HOME

Within a period of one year or less from its removal from a lot of record, a manufactured home used for residential purposes which is a legal nonconforming use of land may be replaced by another manufactured home for residential purposes, so long as the new home is not more than 50% larger in GFA than the manufactured home that it replaced and can be placed on the lot in compliance with the applicable zone district standards.

SECTION 27-1506 COMPLIANT SINGLE UNIT RESIDENTIAL LOTS

- A. A single unit dwelling and customary accessory buildings may be erected on any vacant single lot of record as of the effective date of this Zoning Ordinance in an N1-4, NX1-3 or RMH district as follows:
1. The lot must be in separate ownership and not of contiguous frontage with other lots in the same ownership.
 2. This provision shall apply even though such lot fails to meet the applicable requirements for lot width or area, as applicable, provided the setback dimensions, lot coverage, and other requirements not involving lot width or area of the lot shall conform to the regulations of the district in which such lot is located.
 3. Either Section 1614, Administrative Relief, or Section 27-1627, Variance may be used to make requests for adjustments to area and yard requirements
- B. If two or more vacant lots or combinations of lots and portions of lots with contiguous frontage in single ownership of record exist at the time of adoption, and if all or part of the lots do not meet the requirements for lot area as established by this ordinance, the land involved shall be treated as an undivided parcel for the purpose of this ordinance, and no portion of the parcel shall be used or sold which does not meet lot applicable area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot, with area below the applicable zone district requirements unless the lot is created for utility or dedication purposes and is at least 50% smaller than the minimum lot size permitted in the zone district.