

Zoning Nonconformities

San Mateo County Zoning Regulations

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CHAPTER 4. ZONING NONCONFORMITIES

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SECTION 6130. PURPOSE. The purpose of this Chapter is to regulate zoning nonconformities, which are defined as any legal parcel, use, building, structure or other situation that does not conform with the current zoning regulations. The general intent of this Chapter is to (1) allow residential zoning nonconformities to continue, and (2) phase out non-residential zoning nonconformities. This approach implements General Plan policy to maintain and preserve the existing housing stock and existing residential areas.

SECTION 6131. APPLICATION.

1. The provisions of this Chapter shall apply to all zoning nonconformities.
2. When multiple zoning nonconformities occur, all provisions related to each nonconformity shall apply.
3. Where provisions of this Chapter conflict with each other, the most limiting provision shall take precedence.

SECTION 6132. DEFINITIONS.

1. **Abandoned.** The voluntary termination of a land use or use of a building or structure for a period of at least 18 months. The inability to operate through no fault or intent of the owner, e.g., unsuccessful attempts to sell/lease property or litigation constraints, shall not be considered voluntary termination or constitute abandonment.
2. **Demolished.** The state of a structure after it has been voluntarily torn down, razed or otherwise completely eliminated. Demolition of a building or structure that has been destroyed shall not be considered “demolished.”
3. **Destroyed.** The state when reconstruction, repair or replacement of a building or structure, required because of an act of nature or other event unintended by the property owner, e.g., fire or earthquake, amounts to 50% or more of its value, as

determined by the most current Building Valuation Data published by the International Conference of Building Officials.

4. Enlarged. The state of a land use or structure after it has been expanded to cover more land area, consume more air space, or increase its intensity on the site.
5. Improved Parcel. Any parcel developed with a building or structure to serve the principal use of the parcel, e.g., a parcel in a residential district developed with a dwelling.
6. Legal Building or Structure. A building or structure either (1) constructed in accordance with a building permit issued by the County, (2) constructed prior to the date that the County began issuing building permits, or (3) legalized through an official County action.
7. Legal Land Use. A land use either (1) established in accordance with the applicable County zoning requirements at the time the use was established, (2) established prior to the date of the County's zoning authority, or (3) legalized through an official County action.
8. Legal Parcel. A parcel created by (1) a subdivision approved by the County, (2) a land division which was exempt from subdivision regulations, (3) a land division predating the County's authority over subdivision, July 20, 1945, provided the parcel in question has subsequently remained intact, (4) recording of a Certificate of Compliance or a Conditional Certificate of Compliance, or (5) other means but subsequently developed with a building or structure to serve the principal use of the parcel, for which a valid building permit was issued.
9. Major Repair, Remodel or Upgrade. Any combination of activities intended to repair, rehabilitate, upgrade or otherwise extend the usable life of an existing structure that amounts to 50% or more of the structure's value, as determined by the most current Building Valuation Data published by the International Conference of Building Officials.
10. Minor Repair, Remodel or Upgrade. Any combination of activities intended to repair, rehabilitate, upgrade or otherwise extend the usable life of an existing structure that does not exceed 50% of the structure's value, as determined by the most current Building Valuation Data published by the International Conference of Building Officials.
11. Non-Conforming Parcel. Any legal parcel with an area, width and/or frontage that does not conform with the minimum building site area, width or frontage required by the zoning regulations currently in effect, i.e., a substandard parcel.

12. Non-Conforming Structure. Any legal building or structure that does not conform with the development standards required by the zoning regulations currently in effect including, but not limited to, density (number of dwelling units per parcel area), setback, height, floor area, daylight plane, and lot coverage requirements.
13. Non-Conforming Use. Any legal land use that does not conform with the uses permitted by the zoning regulations currently in effect. A non-conforming use includes the area devoted to the use, the structure(s) housing the use, and all use related activities.
14. Non-Conforming Situation. Any zoning nonconformity that is not a non-conforming parcel, non-conforming use or non-conforming structure. Examples include non-conforming parking, landscaping, or signs.
15. Principal Use. The primary or predominant use of any parcel.
16. Residential Use. One-family dwellings, two-family dwellings, multiple-family dwellings, second dwelling units, and residential accessory uses, buildings or structures.
17. Unimproved Parcel. Any parcel that is not developed with a building or structure to serve the principal use of the parcel, e.g., a parcel in a residential district not developed with a dwelling unit.
18. Zoning Nonconformity. Any legal parcel, use, building, structure, or other situation that does not conform with the zoning regulations currently in effect.
19. Zoning or Building Code Regulations Currently in Effect. Those regulations in effect at the time when final approval is given to an entitlement under this Chapter. Final approval does not occur until all administrative appeals are exhausted.

SECTION 6133. NON-CONFORMING PARCELS.

1. Continuation of Non-Conforming Parcels. A non-conforming parcel may continue as a separate legal parcel, subject to the merger provisions of the County Subdivision Regulations, and compliance with all other provisions of this Chapter.
2. Enlargement of Non-Conforming Parcels. A non-conforming parcel may be enlarged through the addition of contiguous land by lot line adjustment, lot consolidation, merger, or resubdivision, provided that the enlargement does not create nonconformities on adjoining property.

3. Development of Non-Conforming Parcels

a. Development Not Requiring Use Permit

- (1) Unimproved Non-Conforming Parcel. Development of an unimproved non-conforming parcel may occur without the issuance of a use permit when any of the following circumstances ((a), (b), (c), or (d) below) exist:

Required Minimum Parcel Size	Actual Non-Conforming Parcel Size
(a) 5,000 sq. ft. (area)	≥3,500 sq. ft. (area)
(b) 50 ft. (width)	≥35 ft. (width)
(c) >5,000 sq. ft. (area)	≥5,000 sq. ft. (area)
(d) ≥50 ft. (width)	≥50 ft. (width)

Proposed development on the unimproved non-conforming parcel shall conform with the zoning and building code regulations currently in effect.

- (2) Improved Non-Conforming Parcel. Development of an improved non-conforming parcel may occur without requiring the issuance of a use permit provided that the proposed development conforms with the zoning and building code regulations currently in effect.

b. Development Requiring a Use Permit

Notwithstanding the provisions of this subsection b, no use permit may be granted to exceed maximum floor area, height, and parcel coverage for parcels located in the Midcoast.

(1) Unimproved Non-Conforming Parcel

- (a) Development of an unimproved non-conforming parcel shall require the issuance of a use permit when any of the following circumstances ((a), (b), (c), or (d)) exist:

Required Minimum Parcel Size	Actual Non-Conforming Parcel Size
(a) 5,000 sq. ft. (area)	<3,500 sq. ft. (area)
(b) 50 ft. (width)	<35 ft. (width)
(c) >5,000 sq. ft. (area)	<5,000 sq. ft. (area)
(d) ≥50 ft. (width)	<50 ft. (width)

- (b) Proposed development on any unimproved non-conforming parcel that does not conform with the zoning regulations in effect shall require the issuance of a use permit.
- (2) Improved Non-Conforming Parcel. Proposed development on an improved non-conforming parcel, that does not conform with the zoning regulations currently in effect, shall require the issuance of a use permit.
- (3) Use Permit Findings. As required by Section 6503, a use permit for development of a non-conforming parcel may only be issued upon making the following findings:
 - (a) The proposed development is proportioned to the size of the parcel on which it is being built,
 - (b) All opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible,
 - (c) The proposed development is as nearly in conformance with the zoning regulations currently in effect as is reasonably possible,
 - (d) The establishment, maintenance, and/or conducting of the proposed use will not, under the circumstances of the particular case, result in a significant adverse impact to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in the said neighborhood, and
 - (e) Use permit approval does not constitute a granting of special privileges.

SECTION 6134. NON-CONFORMING USES.

1. Continuation of Non-Conforming Uses. A non-conforming use may continue to exist providing all other provisions of this Chapter are met, and the use is not a confined animal use shown to degrade water quality or sensitive habitats. A non-conforming confined animal use shown to degrade water quality and sensitive habitats shall be abated in accordance with the procedure established by the Confined Animal Regulations (San Mateo County Ordinance Code, Division 6, Part 4, Chapter 1).

The Board of Supervisors, upon recommendation by the Planning Commission at a public hearing, can require that any non-conforming use (except residential) be removed or converted to a permitted use within a prescribed period of time, as allowed by law, and upon findings that (1) the non-conforming use is detrimental

to the health, safety or public welfare of the surrounding area, and (2) it degrades the neighborhood character.

2. Minor Repair, Remodel or Upgrade of Non-Conforming Uses. Minor repair, remodel or upgrade of a non-conforming use is permitted. Any portion of the use may be replaced as it previously existed on the property.
3. Abandonment of Non-Conforming Uses (Except Residential). If a non-conforming use is abandoned, all subsequent use of the property shall conform with the zoning and building code regulations currently in effect. This provision does not apply to residential uses.
4. Abandonment of Residential Non-Conforming Uses. If a residential non-conforming use is abandoned, it may be reestablished provided that all other provisions of this Chapter are met.
5. Enlargement of Non-Conforming Uses (Except Residential). A non-conforming use may not be enlarged. This provision does not apply to residential uses.
6. Enlargement of Non-Conforming Residential Uses. A non-conforming residential use in a non-residential zoning district, e.g., a residence in an industrial zone, may be enlarged subject to the issuance of a use permit, and provided that the enlargement conforms with the following combining zoning district regulations:

Residential Use	Combining Zoning District Regulations
One Family Residential Inside Coastal Zone Outside	S-17 S-7
Two Family Residential	S-5
Multiple Family Residential	S-3

A non-conforming residential use in a lower density residential zoning district, e.g., a duplex or apartment building in a single-family residential zone, may not be enlarged.

7. Major Repair, Remodel or Upgrade of Non-Conforming Uses (Except Residential). Major repair, remodel or upgrade of a non-conforming use is permitted, providing that the resultant use conforms with the zoning and building code regulations currently in effect. This provision does not apply to residential uses.

8. Major Repair, Remodel or Upgrade of Residential Non-Conforming Uses. Major repair, remodel or upgrade of a residential non-conforming use is permitted. Any portion of the use may be replaced as it previously existed on the property.
9. Destruction, Demolition and Removal of Non-Conforming Uses (Except Residential). If a non-conforming use is destroyed, demolished or removed from the site, it may only be replaced by a use that conforms with the zoning and building code regulations currently in effect. This provision does not apply to non-conforming residential uses.
10. Destruction, Demolition and Removal of Non-Conforming Residential Uses.
 - a. If a non-conforming residential use in a non-residential zoning district, e.g., a residence in an industrial zone, is destroyed, it may be replaced or rebuilt, subject to the issuance of a use permit. Replacement structures shall be located either as they previously existed on the property or in conformance with the following combining zoning district regulations:

Residential Use	Combining Zoning District Regulations
One Family Residential Inside Coastal Zone Outside	S-17 S-7
Two Family Residential	S-5
Multiple Family Residential	S-3

If a non-conforming residential use in a lower density residential zoning district, e.g., a duplex or apartment building in a single-family residential zone, is destroyed, it may only be replaced by a use that conforms with the zoning and building code regulations currently in effect.

- b. If a non-conforming residential use is demolished or removed from the site, it shall only be rebuilt or replaced by a use that conforms with the zoning and building code regulations currently in effect.

SECTION 6135. NON-CONFORMING STRUCTURES.

1. Continuation of Non-Conforming Structures. A non-conforming structure may continue to exist providing all other provisions of this Chapter are met, and the structure is not a confined animal structure shown to degrade water quality or sensitive habitats. A non-conforming confined animal structure shown to degrade water quality and sensitive habitats shall be abated in accordance with

the procedure established by the Confined Animal Regulations (San Mateo County Ordinance Code, Division 6, Part 4, Chapter 1).

2. Minor Repair, Remodel or Upgrade of Non-Conforming Structures. Minor repair, remodel or upgrade of a non-conforming structure is permitted. Any portion of the structure may be replaced as it previously existed on the property.
3. Abandonment of Non-Conforming Structures. If a non-conforming structure is abandoned, its use may be reestablished provided all other provisions in this Chapter are met.
4. Enlargement of Non-Conforming Structures. A non-conforming structure may be enlarged provided the enlargement conforms with the zoning regulations currently in effect, i.e., the non-conforming portion of the structure may not be enlarged. A residential structure built to a non-conforming density may be enlarged provided there is no increase the number of housing units.
5. Major Repair, Remodel or Upgrade of Non-Conforming Structures.
 - a. Major repair, remodel or upgrade of a non-conforming structure, where each nonconformity violates the required zoning standard by less than 50%, is permitted. If any non-conforming portion of the structure is proposed to be removed, replacement shall conform with the zoning regulations currently in effect.
 - b. Major repair, remodel or upgrade of a non-conforming structure, where any nonconformity violates the required zoning standard by 50% or more, shall result in the entire structure conforming with the zoning regulations currently in effect.
6. Destruction, Demolition and Removal of Non-Conforming Structures (Except Residential). If a non-conforming structure is destroyed, demolished or removed from the site, it may only be rebuilt to conform with the zoning and building code regulations currently in effect. This provision does not apply to residential non-conforming structures.
7. Destruction, Demolition and Removal of Residential Non-Conforming Structures.
 - a. If a residential non-conforming structure is destroyed, i.e., as a result of an act of nature or other event unintended by the property owner, it may be rebuilt or replaced. Replacement structures shall be limited to the number of housing units that previously existed on the property. Replacement structures shall be located either as they previously existed on the property or in conformance with the zoning regulations currently in effect.

- b. If a residential non-conforming structure is demolished or removed from the site, it shall only be rebuilt or replaced by a structure that conforms with the zoning and building code regulations currently in effect.

SECTION 6136. NON-CONFORMING SITUATIONS.

1. Continuation of Non-Conforming Situations. A non-conforming situation may continue to exist providing all other provisions of this Chapter are met, and the situation is not a confined animal situation shown to degrade water quality or sensitive habitats. A non-conforming confined animal situation shown to degrade water quality and sensitive habitats shall be abated in accordance with the procedure established by the Confined Animal Regulations (San Mateo County Ordinance Code, Division 6, Part 4, Chapter 1).
2. Minor Repair, Remodel or Upgrade of Non-Conforming Situations. Minor repair, remodel or upgrade of a non-conforming situation is permitted.
3. Abandonment of Non-Conforming Situations. If a non-conforming situation is abandoned, it may be reestablished provided all other provisions in this Chapter are met.
4. Enlargement of Non-Conforming Situations. A non-conforming situation may be enlarged provided that the enlargement conforms with the zoning regulations currently in effect, e.g., parking and sign regulations.
5. Major Repair, Remodel or Upgrade of Non-Conforming Situations. Major repairs, remodel or upgrade of a non-conforming situation is permitted, providing that the resultant situation conforms with the zoning and building code regulations currently in effect.
6. Destruction, Demolition and Removal of Non-Conforming Situations. If a non-conforming situation is destroyed, demolished or removed from the site, it shall only be replaced by a situation that conforms with the zoning and building code regulations currently in effect.

SECTION 6137. EXCEPTIONS.

1. The Planning Commission, at a public hearing, may grant a use permit to except any provision in this Chapter which restricts the continuation, enlargement, re-establishment or replacement of a non-conforming use, structure or situation. The use permit shall be processed in accordance with the procedures and requirements of Section 6503.

Notwithstanding the provisions of this subsection 1, no use permit may be granted to exceed maximum floor area, height, and parcel coverage for parcels located in the Midcoast.

2. The Planning Director may grant an administrative exception to any provision of this Chapter when it conflicts with another government mandated requirement.

(Section 6133.3.b - Amended by Ordinance No. 4062 - August 21, 2001)
(Section 6134.1 - Amended by Ordinance No. 4076 - November 6, 2001)
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(Section 6136.1 - Amended by Ordinance No. 4076 - November 6, 2001)
(Section 6136.5 - Added by Ordinance No. 2813 - December 7, 1982)
(Sections 6137 and 6138 - Amended by Ordinance No. 3002 - July 3, 1984)
(Section 6137 - Amended by Ordinance No. 3299 - March 12, 1991)
(Section 6137 - Amended by Ordinance No. 4062 - August 21, 2001)
(Section 6138.1 - Added by Ordinance No. 3322 - April 29, 1991)
(Section 6142 - Added by Ordinance No. 2549 - December 5, 1978)
(Chapter 4 - Repealed by Ordinance No. 3592 - September 20, 1994)
(Chapter 4 - Added by Ordinance No. 3593 - September 20, 1994 - Non-Coastal Areas)
(Chapter 4 - Enacted by Ordinance No. 3672 - September 12, 1995 - Countywide)

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