

## ARTICLE 37

# Nonconforming Use

### **SECTION 3.37.000 Nonconforming Use**

Except as is hereinafter provided in this ordinance, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this ordinance or at the time of a change in the official zoning maps may be continued although such use does not conform with the provisions of this ordinance.

### **SECTION 3.37.050 Change in Nonconforming Use**

A nonconforming use may be changed only insofar as it applies to the zone in which it is located. Once changed to a conforming use no building or land shall be permitted to revert to a nonconforming use.

### **SECTION 3.37.100 Increase of Nonconforming Use**

A nonconforming use shall not be increased, except that permission to extend the use to any portion of a building or lot which portion was arranged or designed for such nonconforming use at the time of the passage of this ordinance may be granted subject to the provisions of §2.060.1 of this ordinance.

### **SECTION 3.37.150 Vested Right**

Nothing contained in this ordinance shall require any change in the plans, construction, alteration, or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this ordinance, provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two (2) years from the time construction was commenced.

### **SECTION 3.37.250 Discontinuance of Nonconforming Use**

When a nonconforming use of a structure or property is discontinued for a period in excess of one (1) year, the structure or property shall not thereafter be used except in conformance with the zone in which it is located.

### **SECTION 3.37.300 Unlawful Use not a Nonconforming Use**

No unlawful use of property existing at the time of passage of this ordinance shall be deemed a nonconforming use, except as provided in ORS 215.130.

**SECTION 3.37.350 Restoration of Nonconforming Building or Structure**

1. A nonconforming building or structure which is damaged by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building or structure or part thereof, which existed at the time of such partial destruction may be resumed, provided that the restoration is commenced within a period of one (1) year and is diligently prosecuted to completion.
2. The restoration or reconstruction of a nonconforming building or structure may not increase the floor area or create a greater nonconformance than existed at the time of damage or destruction.
3. The restoration or replacement of a nonconforming use in a landslide hazard area, as provided in ORS 195, shall be subject to mitigation measures and site development standards to reduce the risk of future property damage and loss of life.

**SECTION 3.37.400 Conveyance of Nonconforming Use**

Nothing in this ordinance shall be construed to limit the sale, transfer, other conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer, or other conveyance does not otherwise violate the provisions of this ordinance.

**SECTION 3.37.450 Restoration of Conforming Use on Nonconforming Lot**

Nothing in this ordinance shall be construed to prevent the reconstruction or replacement of a preexisting building or structure conforming as to use on a nonconforming lot, so long as such lot did not become nonconforming in violation of the provisions of this ordinance.

**SECTION 3.37.500 Alterations, Repairs or Verification**

Alterations, repairs or verification of a nonconforming use may be permitted subject to the provisions of §3.37.560 and §2.060.1 of this ordinance and consistent with the intent of ORS 215.130(5)-(8). Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. The County shall not condition an approval under this section when the alteration is necessary to comply with State or local health or safety requirements, or to maintain in good repair the existing structures associated with the use.

**SECTION 3.37.550 Process**

Any proposal for the alteration, repair or restoration of a nonconforming use shall be considered subject to the provisions of §2.060.1 of this ordinance.

**SECTION 3.37.560 Criteria for Decision**

When evaluating a proposal under this article, the following criteria shall apply:

1. The change in the use will be of no greater adverse impact to the neighborhood;
2. The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood; and
3. Other provisions of this ordinance, such as property development standards, are met.

**SECTION 3.37.570 Conditions of Approval**

In order to assure compatibility of the proposed development with the surrounding area, any of the following conditions may be imposed as conditions of approval:

1. Special yards and spaces.
2. Fences and walls.
3. Special parking and/or loading provisions.
4. Street dedication and improvements or bonds in lieu of improvements.
5. Control of points of vehicular ingress and egress.
6. Special provisions for signs.
7. Landscaping and maintenance of grounds.
8. Control of noise, vibration, odors, or other similar nuisances.
9. Limitation of time for certain activities.
10. A time period in which a proposed use shall be developed.
11. A limit of total duration of use.

**SECTION 3.37.580 Validation of an Unlawful Unit of Land**

A unit of land that was not lawfully established at the time it was sold or transferred may be validated, or a building permit may be authorized, under the provisions of this section and as provided in ORS Chapter 92.

1. Validation of Unlawful Units of Land:

- a. Validation by potential compliance under prior laws: The Director may approve an application to validate a unit of land that was initially created in violation of this ordinance (i.e. by a sale or transfer that did not comply with the applicable standards for creation of a parcel), if the unit of land:
  - i. Is not a lawfully established unit of land as defined in ORS 92.010; and
  - ii. Could have complied with the applicable criteria for a land division in effect when the unit of land was initially sold or transferred.
  - iii. If the above two provisions are met, the property owner may submit a land partition application to initiate the validation process. A partition application under this section is not subject to the minimum lot or parcel size requirements of ORS 215.780, but is subject to the provisions of Section 2.060.1 or 2.060.2 as appropriate. The subject unit of land shall be deemed validated upon preliminary approval of the partition application. The validated unit of land shall become a lawfully established parcel for the purpose of sale or transfer only if:
    - a) The owner or applicant receives final approval of the partition plat, and
    - b) The plat is recorded at the County Clerks Office no later than 90 days after the validation date (date of preliminary approval).
  - iv. A request for development authorization on the newly established lawful parcel is subject to the laws and rules in effect when the request is made.
- b. Validation by prior permit issuance: Notwithstanding subsection 1.a. of this section, the Director may approve an application to validate a unit of land that was initially created in violation of this ordinance, if the County approved a permit authorizing construction or placement of a dwelling or other building on the subject unit of land after it was sold or transferred in violation of this ordinance (but not after January 1, 2007).
  - i. If a permit was issued as described in subsection 1.b. above, the property owner may submit a land partition application to initiate the validation process. A partition application under this section is not subject to the minimum lot or parcel size requirements of ORS 215.780, but is subject to the provisions

of Section 2.060.1 or 2.060.2 as appropriate. The subject unit of land shall be deemed validated upon preliminary approval of the partition application. The validated unit of land shall become a lawfully established parcel for the purpose of sale or transfer only if:

- a) The owner or applicant receives final approval of the partition plat, and
  - b) The plat is recorded at the County Clerks Office no later than 90 days after the validation date (date of preliminary approval).
- ii. A request for development authorization on the newly established lawful parcel is subject to the laws and rules in effect when the request is made.
  - iii. If the County approved a permit authorizing construction or placement of a dwelling on the subject unit of land after it was sold or transferred in violation of this ordinance, and the dwelling is located in the TR, FF or AW zone, it qualifies for replacement under Section 3.2.050.
- c. The County shall not approve an application to validate a unit of land under the standards in this subsection if the unit of land was initially sold or transferred in violation of this ordinance after January 1, 2007.

## 2. Issuance of Building Permits for Unlawful Units of Land:

- a. The Director may approve an application under Sections 2.060.1 or 2.060.2 of this ordinance, or authorize development approval, for the continued use of an existing dwelling or other building on a unit of land that was not lawfully established if:
  - i. The dwelling or other building was lawfully established prior to January 1, 2007, and
  - ii. The approved permit or development authorization does not change or intensify the use of the dwelling or other building.

### **SECTION 3.37.600 General Exceptions to Minimum Property Size Requirements**

If a lot of record or contiguous units of land existing in a single ownership were created in compliance with all applicable laws and ordinances in effect at the time of their creation and have an area or dimension which does not meet the property size requirements of the zone in which the property is located, such lots or units may be occupied by a use permitted in the zone.

1. Nothing in this ordinance shall be interpreted to limit the conveyance of such lots or contiguous units of land, provided that such holdings are sold as a single ownership.
2. Nothing in this ordinance shall be deemed to prohibit construction of conforming uses on such lots or units or the sale of such lots or units within subdivisions or land partitionings approved prior to the adoption of this ordinance, subject to other requirements of this ordinance.
3. For such lots or units designated as agricultural in the Comprehensive Plan, siting of farm related dwellings shall be appropriate for the continuation of existing commercial agricultural enterprise in the area.

### **SECTION 3.37.650 General Exception for Approved Subdivision**

Nothing in this ordinance shall be deemed to prohibit construction of conforming uses on nonconforming lots or the sale of said lots within subdivisions or land partitionings approved prior to the adoption of this ordinance, subject to other requirements of this ordinance.

### **SECTION 3.37.660 Exemption for Certain Surface Mining Operations**

A surface mining use that has continued pursuant to Section 3.37.000 shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

1. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and
2. The surface mining use was not inactive for a period of 12 consecutive years or more. The word "inactive" means that no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

### **SECTION 3.37.700 Sale or Transfer of Land to an Adjacent Owner (See Also 4.140)**

The purpose of this section is to allow the sale or transfer of a part of a parcel of land to an immediately adjacent property owner where the resulting transaction is consistent with the Comprehensive Plan.

1. Designated Development Areas

The sale or transfer of land to an adjacent owner which involves designated nonresource (development) areas shall be permitted provided the following provisions can be met:

- a. The transaction does not result in the creation of a new substandard lot.
- b. All parcels involved in the transaction are legally created lots unless the transaction is necessary to establish parcels consistent with the lot size requirements of the zone.
- c. The sale or transfer is made between adjacent owners of residentially zoned lands, or commercially zoned lands, or industrially zoned lands, except that land zoned for development may adjust with resource designated land subject to the following conditions:
  - (1) No subsequent land division shall be allowed along the zone line separating resource from non-resource land;
  - (2) No new parcels shall be created;
  - (3) Permits to establish new residential, commercial or industrial uses shall not be issued on the resource portion of the parcel enlarged to include both resource and non-resource land; and,
  - (4) The resource portion of the parcel enlarged to include both resource and non-resource land shall be less than 10 acres.
- d. The transfer in ownership of the affected property would promote the intent of the Comprehensive Plan for the area and would neither create conflicts with adjacent properties nor inhibit their appropriate use or development.

## 2. Designated Resource Areas

The sale or transfer of land to an adjacent owner in designated resource areas shall be permitted provided the following provisions can be met:

- a. For zoning designations except TR (Timberland Resource), the transaction does not result in the creation of a substandard lot except where in conformance with the provisions of Article 44 of this ordinance.
- b. In the TR (Timberland Resource) designation, divisions of land for the purpose of exchanges and transfers between forest owners for the purpose of consolidating existing private or public land holdings is exempt from partitioning review.
- c. No additional parcels or building sites are created.

- d. All parcels involved in the transaction are legally created lots unless the transaction is necessary to establish parcels consistent with the lot size requirements of the zone.
- e. The transfer in ownership of the affected property would promote the intent of the Comprehensive Plan for the area and would neither create conflicts with adjacent properties nor inhibit their appropriate use or development.

3. Nonconforming Lot of Record

Transfer of land to an adjacent landowner, resulting in a reduction in size of a nonconforming lot of record, as defined by these regulations, may only be allowed when a portion of such lot of record conforms to the following criteria:

- a. The subject property and the adjacent parcel proposed for enlargement are legally created lots of record.
- b. Provision is made to ensure adequate sanitation facilities can be provided to the remaining parcel.
- c. The transfer in ownership of the affected property would promote the intent of the Comprehensive Plan for the area and would neither create conflicts with adjacent properties nor inhibit their appropriate use or development.
- d. The transfer is consistent with the provisions of Subsection 1. or 2. of this section.