TITLE 6
ELMORE COUNTY
ZONING and DEVELOPMENT ORDINANCE

CHAPTER 9 – NON CONFORMING PROPERTY, USE OR STRUCTURE, AND GRANDFATHER RIGHTS

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Section 6-9-1: Purpose:

The purpose of this ordinance is to allow any nonconforming property, use, or structure that lawfully existed prior to the effective date of this ordinance to continue until they are removed, but not to encourage their continuation. It is further the intent of this ordinance that nonconforming uses shall not expand or extend the nonconforming aspect of the property, use, or structure, unless approved subject to the regulations of this ordinance.

Section 6-9-2: Applicability:

A. These regulations shall apply to any lawfully existing nonconforming property, use, or structure in Elmore County, except: In the event that a property, use, or structure that was deemed nonconforming under past zoning regulations now complies with the standards of this ordinance, such property, use, or structure shall be deemed conforming.

B. These regulations shall apply to properties that were not created in accordance with the regulations of this ordinance (an illegal division of property) and that were of record in the Elmore County recorder's office prior to December 31, 2003, the boundaries of which shall not have changed except by governmental action as specified in this ordinance.

   1. A property shall be deemed conforming and shall be eligible for building permits if it meets the dimensional standards for the base zone in which it is now located.

2. A property shall be deemed lawfully nonconforming and shall be eligible for building permits if it meets one of the following standards:

    a. The property establishes grandfather rights as defined by this ordinance and the property met the dimensional standards for the applicable base zone at the time it was created.

    b. A dwelling, as herein defined, was constructed or placed on a foundation prior to January 1, 1994, and still remains on the property.

Section 6-9-3: Nonconforming Property:

A. A nonconforming property for the purpose of this ordinance shall be a property that has not established legal grandfather rights or a legal nonconforming use as defined by this ordinance.

B. A lawful nonconforming property for the purpose of this ordinance shall be a property that has established legal grandfather rights or a legal nonconforming use as defined by this Chapter.

C. A lawfully nonconforming use may continue as long as the use remains lawful and is not expanded or extended unless otherwise approved subject to the regulations of this ordinance

D. To remain lawful a legal nonconforming property shall not be further diminished in size.

E. Any property reduced by governmental action that reduces an existing conforming parcel below the required property size shall be deemed as a legal nonconforming property for the purpose of development. To be deemed a conforming property, the owner or applicant shall submit documents to the Administrator proving the following:

    1. The property was in compliance with the minimum property size requirement of the applicable zoning district prior to the decrease in property size; and

    2. The decrease in property size was caused by acquisition through prescription, purchase, or other means by the applicable highway district, Idaho Transportation Department, or other local, state, or federal agency.

Section 6-9-4: Nonconforming Use:

A. A nonconforming property for the purpose of this ordinance shall be a property that has not established legal grandfather rights or a legal nonconforming use as defined by this ordinance.

B. A lawfully nonconforming use for the purpose of this ordinance shall be a property that has established legal grandfather rights or a legal nonconforming use as defined by this ordinance

C. A lawfully nonconforming use may continue as long as the use remains lawful and is not expanded or extended unless otherwise approved subject to the regulations of this ordinance.

D. For the purposes of this ordinance, the term "expanded or extended" shall include, but not be limited to: increased hours; increased services or programs; increased number of residential dwellings; interior renovations or structural additions that increase the occupant load of the structure dedicated to the nonconforming use (see Elmore County building code as set forth in this ordinance); any new structures accessory to the nonconforming use; expansion or replacement of the structure (or portions thereof) dedicated to the nonconforming use; anything beyond regular maintenance and minor repairs; (as required by the Elmore County building code as set forth in this ordinance) and any action that extends the duration of the nonconforming use.

E. If a nonconforming use has ceased for twelve (12) consecutive months or has been replaced with a conforming use, the nonconforming use shall be deemed abandoned and shall not be reestablished.

F. A nonconforming use or a structure housing a nonconforming use that is damaged more than sixty (60%) percent of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this ordinance upon reconstruction. If the damage to the nonconforming use or structure housing the nonconforming use is sixty (60%) percent or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming use commences within twelve (12) months of the event.

G. A nonconforming use housed within a structure(s) listed on the National Register of Historic Places shall be exempt from the regulations of this section.

Section 6-9-5: Nonconforming Structure:

A. A nonconforming structure may continue as long as the use remains lawful and is not expanded or extended, unless otherwise approved subject to the regulations of this ordinance.

B. A nonconforming structure may be enlarged or modified, provided that the additions or modifications to the structure conform to the requirements of this ordinance.

C. A nonconforming structure that is damaged more than sixty (60%) percent of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this ordinance upon restoration or reconstruction. If the damage to the nonconforming structure is sixty (60%) percent or less of the current assessed taxable value, the structure may be restored or reconstructed, provided that restoration or reconstruction commences within twelve (12) months of the event.

D. Nonconforming structures listed on the national register of historic places shall be exempt from the regulations of this section.

Section 6-9-6: Violations:

Properties, uses, or structures that were in violation of previous land use regulations and that remain a violation under this ordinance shall be considered continuing violations.

Section 6-9-7: Grandfather Rights/Legal Nonconforming:

A. Grandfather Rights/Legal Nonconforming: Grandfather Rights and/or lawful nonconforming structures and use shall be established by providing legal and factual documentation to establish such uses or as otherwise defined or required by this ordinance.

Section 6-9-8: Establishing Grandfather Rights/Legal Nonconforming:

A. Grandfather Rights: A legal nonconforming use may be established upon application through Growth and Development subject to review and verification of legal and factual documentation submitted by the applicant.

    1. Grandfather rights and legal nonconforming uses or structures shall be established through two different forms of legal and factual documentation.

B. Legal and factual documentation accepted for establishment of grandfather rights:

    1. Licenses such as beer, liquor, retail, or professional occupation showing dates of use; or

    2. Rental property receipts showing dates of use, directories, utility bills, etc.; or

    3. Business receipts showing types of service or goods provided, dated phone directories, Polk's Directory, etc.; or

    4. Statements from utilities, such as power, water, or gas, which indicate date and type of use, i.e. commercial, multi-family residential, etc.; or

5. Notarized affidavits from neighbors or persons of fact who have observed the nonconforming use over the required time period.

C. Procedures: The individual requesting approval of a grandfather rights/legal nonconforming use or structure shall submit the appropriate application and fee to the Director for review with the required legal and factual documentation.

1. The Director shall review and verifying the legal and factual documentation submitted.

2. The Director shall approve or deny the application within thirty (30) calendar days of deeming the application complete.

3. Upon deeming the application complete, the Director shall notify the applicant that their application has been deemed complete a written decision shall be made within thirty (30) calendar days.

4. The Director, upon rendering a decision shall notify the applicant of such decision and shall submit the findings and conclusions in writing to the applicant. The written approval findings and decision shall include:

    a. The specific use(s) or structure(s) that received approval.

    b. All approved use(s) or structure(s) shall be precisely documented to include, but not be limited, to the current dimensions of all nonconforming structures, specific approved use, hours of operation, and any other specific detail required to document the established grandfather right as this right shall not be expanded upon without specific approval as defined in this ordinance.

    c. When appropriate, the Director shall take photographs to further document the grandfather/legal nonconforming use(s) or structure(s). These photographs (digital photographs are acceptable) shall be maintained with the record and/or shall be inserted into the body of the approval letter.

5. The applicant or any affected person may appeal the decision of the Director within ten (10) calendar days of the date of the approval or denial in accordance with this ordinance.

D. If nonuse of a nonconforming use continues for a period of one (1) year or longer, the County may, by written request, require that the owner declare his intention with respect to the continued nonuse of the nonconforming use in writing within twenty-eight (28) calendar days of receipt of the request. If the owner elects to continue the nonuse, the owner shall notify the County in writing of their intention and shall post the property with notice of his intent to continue the nonuse of the nonconforming

use. The owner shall also publish notice of their intent to continue the nonuse in a newspaper of general circulation in the County. If the property owner complies with the requirements of this section, their right to use the nonconforming use in the future shall continue, notwithstanding any change in the zoning of the property.

E. The property owner may voluntarily elect to withdraw the nonconforming use by filing with the Clerk of the County, as the case may be, an affidavit of withdrawn use. If the property is proposed for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.

F. For purposes of this section "designed purpose" means the use for which the improvements were originally intended, designed and approved pursuant to any applicable Elmore County Ordinances.

G. The provisions of this section shall not be construed to prohibit Elmore County from passing or enforcing any other law or ordinance for the protection of the public health, safety and welfare.

Section 6-9-9: Expansion or Extension of a Grandfather Right/Nonconforming Use or Structure:

A. Process:

1. An application and fees shall be submitted to the Director on forms provided by the Growth and Development Department.

2. The Director shall apply the standard listed in subsection B and C of this section and the findings listed in subsection D of this section to review the expansion or extension of a nonconforming use or structure.

B. Standard Nonconforming Property:

1. The nonconforming property shall not be further diminished in size.

2. Any property reduced by governmental action that reduces an existing conforming parcel below the required property size shall be deemed as a lawful nonconforming property for the purpose of development provided the owner or applicant applies for Grandfather Rights and is approved, and submits documents to the director proving the following:

   a. The property was in compliance with the minimum property size requirement of the applicable zoning district prior to the decrease in property size; and

b. The decrease in property size was caused by acquisition through prescription, purchase, or other means by a Highway District, Idaho Transportation Department, or other local, state, or federal agency.

C. Required Findings: In order to grant an expansion or extension of a nonconforming use or structure, the Director shall make the following findings:

1. Allowing the expansion or extension of the nonconforming use or structure shall not conflict with the applicable Comprehensive Plan; and

4. The expansion or extension of the nonconforming use or structure shall not be detrimental to the public health, safety, and welfare; and

3. The approval of an expansion or extension for a nonconforming property does not exceed more than thirty (30%) percent of the original nonconforming footprint.

4. The approval of an expansion or extension for a nonconforming property does not further diminish the property in size.