

DEFINITIONS (move to Article 27-1800, Measurements and Definitions)**Abandon/Abandoned**

The cessation of a use or structure for a specified period of time as evidenced through discontinuance, non-operation, vacation of the structure or property, or lapse of business license. Casual, intermittent, temporary, or illegal use of land or buildings shall not be construed to establish or continue a nonconformity subject to abandonment. Neither the existence of fixtures or equipment, nor the continued payment of rent, mortgage, or utilities shall evidence a continuing use.

Conforming

A structure, use, or site feature that, when originally constructed, was in full compliance with all applicable zoning regulations.

Nonconforming

Nonconforming Lot: A lot that was lawful prior to the adoption, revision, or amendment of this Zoning Code, but that fails by reason of such adoption, revision, or amendment, to conform with the present lot requirements for the zone district in which the lot is located.

Nonconforming Structure: A structure or building that was lawful prior to the adoption, revision, or amendment of this Zoning Code, but which fails by reason of such adoption, revision, or amendment, to conform to the present requirements for a conforming or compliant structure in the zone district in which such structure or building is located. See Compliant Structure in Section 27-1506.

Nonconforming Use: A use or activity that was lawful prior to the adoption, revision, or amendment of this Zoning Code, but which by reason of such adoption, revision, or amendment, is no longer permitted in the zone district in which such use or activity is located.

Nonconforming Site Characteristic (was “use of land”): A site characteristic that was lawful prior to the adoption, revision, or amendment of this Zoning Code, but that fails by reason of such adoption, revision, or amendment, to conform with the present location or dimension requirements for the zone district in which the lot is located.

Site Characteristic

An aspect of a site that is regulated by this Zoning Code but is not a structure, use, or lot. Site features include site elements such as landscaping, parking, access location, and uses not located in a structure, such as wind or solar energy systems.

SECTION 27-1501 PURPOSE**A. PURPOSE**

1. Changes to the zoning code can impact the status of legal, existing uses, lots, structures, and site features. 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 expediently 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 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 features that become nonconforming as a result of adoption, revision, or amendment to this Zoning Code.
2. The effective date for these regulations is _____, ____, 2020 for any property that was located within the limits of the City of Billings on or before that date.
3. Any permit application or development approval that had been accepted by the City as a complete application as of _____, ____, 2020 shall be subject to the provisions of Section 27-107, Transitional Regulations.

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 Building Official 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 by subsection C. above. Structural alterations may be permitted when necessary to adapt a nonconforming building to new technologies or equipment pertaining to uses housed in such building. 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 Sections 27-16xx.

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 [adoption date], 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 six 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 one year 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 a structure specific to a use or structure and land in combination specific to a use, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction. The operation of a noncompliant 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.
- (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 state or City 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 27-1804:

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.

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 16xx, Administrative Relief, or Section 27-16xx, 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 or 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 considered to be 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 area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot, with area below the requirements stated in this Zoning Code 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.