

DIVISION 10.

NONCONFORMING STRUCTURES AND USES

Sec. 35-160. Purpose and Intent.

Within the districts established by this Article, or amendments that may later be adopted, there exists lots, structures, and uses of land and structures, which were lawful prior to the adoption, revision, or amendment of this Article, or previously adopted County ordinances, but which would be prohibited, regulated, or restricted under the terms of this Article or future amendment. It is the intent of this Article to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Article, subject to only very limited exceptions as specified to prevent nonconforming uses and structures from being enlarged, expanded or extended, or being used as grounds for adding other structures or uses prohibited elsewhere in the same district.

(Amended by Ord. 4227, 6/18/96)

Sec. 35-161. Nonconforming Use of Land, Buildings and Structures.

(Amended by Ord. 4067, 8/18/92; Ord. 4227, 6/18/96)

A nonconforming use may be continued subject to the following regulations, so long as such use remains otherwise lawful.

1. Structural Change. Except as otherwise provided in this Article, including seismic retrofitting as defined in Sec. 35-58 and in accordance with Sec. 35-169.2.1.m., no existing building or structure devoted to a nonconforming use under this Article shall be enlarged, extended, reconstructed, moved, or structurally altered unless such use is changed to a use permitted in the district in which it is located. No building or structure accessory to a nonconforming use under this Article shall be erected, enlarged, or extended unless such building or structure is also accessory to a conforming use. *(Amended by Ord. 4318, 6/23/98)*

2. Extension or Expansion. A nonconforming use may be extended throughout an existing building provided no structural alterations except those required by law or ordinance (i.e., building code regulations) are made therein. No nonconforming use shall be extended to occupy any land outside such building. No existing nonconforming use of land outside buildings, or involving no buildings, shall be enlarged, increased, or extended to occupy a greater area of land than was occupied at the time the use became nonconforming, or moved to any portion of the lot not occupied by such nonconforming use at such time.
3. Change of Use. A nonconforming use may only be changed to a conforming use.
4. Discontinuance. If a nonconforming use is abandoned, any future use shall comply with the provisions of the district in which the use is located. Proof of discontinuation of a nonconforming use for twelve (12) consecutive months shall be prima facie evidence that the nonconforming use has been abandoned.
5. Damage. The purpose of this Section is to identify the standards for allowing the continuation of a nonconforming use in a building, structure, or other development that is damaged or destroyed by fire, flood, earthquake or other natural disaster.
 - a. Non-Residential Uses
 - 1) Where buildings, structures, or other development dedicated to a non-residential nonconforming use are damaged by fire, flood, earthquake, or other natural disaster to an extent of seventy-five (75) percent or more of replacement cost at the time of damage, as determined by the Planning and Development Department, the nonconforming use shall be discontinued and the damaged building, structure, or other development thereafter used in accordance with regulations of the district in which it is located unless the Zoning Administrator finds that the adverse impact upon the neighborhood would be less than the hardship which would be suffered by the owner of the building, structure, or other development should restoration of the nonconforming use be denied.

- 2) Where damage caused by fire, flood, earthquake, or other natural disaster is to an extent of less than seventy-five (75) percent at the time of damage, such building, structure, or other developments may be restored to the same or lesser size and in the same general footprint location, provided however that restoration shall commence within twenty-four (24) months of the time of damage and be diligently carried to completion, and the nonconforming use may be resumed and continued as before, or on a lesser scale, but shall not be enlarged or intensified.
- b. Residential Uses. Where buildings or structures dedicated to nonconforming residential dwelling uses (i.e., single and multi-family units, second residential units, residential uses in the SR-M or SR-H Zone District), except in industrial zones, are damaged or destroyed by fire, flood, earthquake, or other natural disaster, such structures may be reconstructed to the same or lesser size and in the same general footprint location provided that reconstruction shall commence within twenty-four (24) months of the time of damage and be diligently carried to completion. The nonconforming residential dwelling use may be resumed and continued as before, or on a lesser scale, but shall not be enlarged, expanded, or intensified (e.g., increase in gross floor area, increase in the number of bedrooms). If the building or structure dedicated to a nonconforming residential dwelling use is located in an industrial zone the damage standards of Section 35-161.5.a. shall apply.
- c. The restoration or reconstruction of a building, structure, or other development dedicated to a nonconforming use that is damaged or destroyed by fire, flood, earthquake or other natural disaster shall be exempt from the permit requirements of this Article only if the building, structure, or other development complies with the provisions of this Section and if the building, structure, or other development conforms to the specifications documented to exist prior to the damage or destruction as determined by the

Planning and Development Department. If the Planning and Development Department determines that the exterior design or specifications are proposed to be changed or the footprint of the building or structure is relocated, the restored or replaced structure, shall be subject to the provisions of Section 35-184., Board of Architectural Review, if otherwise subject to such review (e.g., the site is within the D-Design Control Overlay District). If the building, structure, or other development is proposed to be altered from the original specifications, as determined by the Planning and Development Department, the restoration or reconstruction shall be subject to all applicable permit requirements of this Article.

6. Limited Exception for Certain Nonconforming Residential Uses. Notwithstanding the foregoing, the County finds that a need exists to conserve, preserve, and rehabilitate certain existing nonconforming residential units despite the fact that such units do not conform to all current terms of this Article. Therefore, existing buildings devoted to a legal nonconforming residential use may be enlarged, extended, reconstructed, moved, and/or structurally altered, subject to the following criteria:
 - a. The site is within a zone district which allows residential use as a permitted use requiring only a Coastal Development Permit.
 - b. On any legal lot, only one existing building devoted to a legal nonconforming residential use may be enlarged, extended, reconstructed, moved, and or structurally altered.
 - c. No enlargements shall result in a total gross floor area devoted to a nonconforming use over 1200 square feet and no enlargements shall be allowed to any building which has a current legal nonconforming residential gross floor area of 1200 or more square feet.
 - d. No new construction, reconstruction, or relocation shall exceed the building height of, or protrude higher than the highest point of, the existing building used for a legal nonconforming residential use.

- e. The building or structure used for a legal nonconforming residential use shall comply with all currently applicable building, electrical, plumbing, fire and mechanical codes, and shall not compromise the adequate performance of any existing water system or liquid waste disposal (septic) system, as determined to the satisfaction of the County Environmental Health Department.
- f. Any structural enlargement or relocation shall comply with all setback, height, lot coverage, parking, and other requirements of the zone district in which such structure is located.

7. Limited Exception Determinations for Certain Nonconforming Industrial Uses. Notwithstanding the foregoing, the County finds that the need may exist to improve the safety or reduce the environmental effects of certain nonconforming industrial uses by allowing minor changes that could result in minor enlargements, extensions, expansions or structural alterations (e.g., installation of emergency back-up generator for fire protection equipment, modifications to emergency shutdown system) to buildings or structures dedicated to such nonconforming uses, despite the fact that they do not conform to all current provisions of this Article. Therefore, an improvement comprising of minor enlargements, extensions, expansions or structural alterations of a building or structure dedicated to an industrial, public works, or energy-related nonconforming use may be allowed, subject to the following process and findings:

a. Process

- 1) No permits shall be issued for development, including grading, unless and until a Limited Exception Determination by the Planning Commission is first granted for the proposed improvement. Where no discretionary permit has previously been issued for the existing nonconforming industrial use, appropriate non-discretionary permits may be issued after a Limited Exception Determination has been granted. Where a discretionary permit has been previously issued, changes to that permit may be made pursuant to the provisions of

this Article and the appropriate non-discretionary permits may be issued after a Limited Exception Determination has been granted. The Limited Exception Determination is appealable to the Board of Supervisors pursuant to Sec. 35-182.3..

- 2) Unless otherwise specifically waived by the Planning and Development Director, ten (10) copies of the following information shall be submitted:
 - a. description of project objectives;
 - b. project description, including construction requirements (schedule, equipment, labor, parking), physical changes to existing facilities, and any changes to facility operations or ancillary operations (truck trips, hazardous materials storage, etc.) as a result of the improvement;
 - c. map showing contiguous properties, including Assessor Parcel Numbers and property owners' names;
 - d. site plan to scale showing all existing and proposed facilities on the site. The new components, modifications to existing equipment, and any components to be removed shall be highlighted;
 - e. design specifications for any new components;
 - f. estimated expenditures for the improvement, including materials, labor, and equipment;
 - g. photographs of the site showing the area where the improvement is proposed;
 - h. identification of any increase in utility use or demand as a result of the improvement (water, electricity, natural gas);
 - i. written justification and such data, report(s), and documentation that demonstrate and verify the improvement's public health and safety benefit or environmental benefit. In all cases, the burden of proof shall

be on the applicant to provide evidence verifying the public health and safety or environmental benefit.

j. Any other supplemental data or information requested by the Planning and Development Department.

3) The Planning and Development Department shall distribute the material to the appropriate County Departments for a 30-day application completeness review.

4) Upon determination of application completeness, the Planning and Development Department shall conduct an assessment of the public health and safety and/or environmental benefits of the application and shall conduct environmental review. Information from such benefit assessment or the environmental review shall be included for use to support the Planning Commission's action on a Limited Exception Determination.

b. Limited Exception Determination Findings. A Limited Exception Determination for an improvement that results in the minor enlargement, extension, expansion or structural alteration to a building or structure dedicated to an industrial, public works, or energy-related nonconforming use may be granted provided that the following findings are made by the Planning Commission at a noticed public hearing:

1) The improvement has a demonstrable public health and safety, or environmental benefit (e.g., would reduce the risk of a hazardous material spill or reduce air emissions).

2) The improvement does not result in any new un-mitigated significant environmental impacts.

3) The improvement does not result in an increase in the overall intensity of use beyond the existing permitted use (e.g., output/throughput per day) or, for facilities where no permits exist, would not increase the overall intensity of use beyond the current operating limits.

- 4) The improvement does not extend or expand the existing developed industrial site boundary within a parcel.
 - 5) The improvement does not result in an expansion or extension of life of the nonconforming use due to increased capacity of the structure dedicated to the nonconforming use, or from increased access to a resource, or from an opportunity to increase recovery of an existing resource. Any extension in the life of the nonconforming use affected by the improvement results solely from improved operational efficiency and is incidental to the primary purpose of improving public health and safety or providing an environmental benefit.
 - 6) The improvement does not allow for processing of "new production" as defined Section 35-154.
 - 7) If prior Limited Exception Determinations have been made for the same nonconforming use under this section, the successive Limited Exception Determinations cumulatively provide a public health and safety or environmental benefit.
8. **Parking.** If a use is nonconforming with existing parking standards, the building or structure devoted to such use may be altered but the use may not be intensified, extended, or expanded in a manner that would increase the required number of parking spaces pursuant to Division 6, Parking, unless a) the use is brought into conformance with the requirements of Division 6, Parking, or b) a modification to the parking requirements has been approved.

Sec.35-162. Nonconforming Buildings and Structures.

(Amended by Ord. 4227, 6/18/96)

If a building or structure is conforming as to use but nonconforming as to setbacks, height, lot coverage, or other requirements concerning the building or structure, such structure may remain so long as it is otherwise lawful, subject to the following regulations.

1. **Structural Change, Extension, or Expansion.** A nonconforming building or structure may be enlarged, extended, moved, or structurally altered provided that

any such extension, enlargement, etc., complies with the setback, height, lot coverage, and other requirements of this Article. Seismic retrofits, as defined in Section 35-58 and pursuant to Section 35.169.2.1.m., are permitted throughout the conforming and nonconforming portions of the structure or building. No living quarters may be extended into an accessory building located in the required front, side, or rear yards by such addition or enlargement. *(Amended by Ord. 4318, 6/23/98)*

2. **Damage.** The purpose of this section is to identify the standards for allowing the restoration or reconstruction of a nonconforming structure that is damaged by fire, flood, earthquake or other natural disaster.
 - a. Except for single family residential buildings or structures, where a nonconforming building or structure is damaged by fire, flood, earthquake, or other natural disaster to an extent of seventy-five (75) percent or more of the replacement cost at the time of damage, as determined by the Planning and Development Department, such structure may not be reconstructed unless the Zoning Administrator finds that the adverse impact upon the neighborhood would be less than the hardship which would be suffered by the owner of the structure should reconstruction of the nonconforming structure be denied.
 - b. Where damage to a nonconforming, non-single family residential building or structure is to an extent of less than seventy-five (75) percent of the replacement cost at the time of damage, as determined by the Planning and Development Department, such structure may be restored to the same or lesser size in the same general footprint location.
 - c. If a nonconforming single family residential building or structure is damaged or destroyed by fire, flood, earthquake, or other natural disaster, such building or structure may be reconstructed to the same or lesser size in the same general footprint location.
 - d. Notwithstanding the above, additional provisions, identified in Section 35-214 of Division 15 (Montecito Community Plan Overlay District), exist for

parcels identified within the MON Overlay zone which, in the case of conflict, shall take precedence over this Section.

- e. The restoration permitted above shall commence within twenty-four (24) months of the time of damage and be diligently carried to completion. If the restoration of such building or structure does not commence within twenty-four (24) months it shall not be restored except in conformity with the applicable zone district regulations and other provisions of this Article.
- f. The restoration of a nonconforming building or structure that is damaged by fire, flood, earthquake or other natural disaster shall be exempt from the permit requirements of this Article only if the building or structure complies with the provisions of this Section and if the building or structure conforms to the specifications documented to exist prior to the damage as determined by the Planning and Development Department. If the Planning and Development Department determines that the exterior design or specifications are proposed to be changed or the footprint of the building or structure is relocated, the restored structure shall be subject to the provisions of Section 35-184., Board of Architectural Review., if otherwise subject to such review (e.g., the site is within the D-Design Control Overlay District). If the building or structure is proposed to be altered from the original specifications, the restoration shall be subject to all applicable permit requirements of this Article. *(Amended by Ord. 4318, 6/23/98)*

Sec. 35-163. Construction in Progress.

(Amended by Ord. 4227, 6/18/96)

To avoid undue hardship, nothing in this DIVISION shall be deemed to require a change in the plans, construction or designated use of any building or structure on which actual construction was lawfully begun prior to the effective date of adoption or any amendment of this Article rendering the building or structure or its use nonconforming and upon which actual construction has been carried out diligently. Actual construction is hereby defined as the placing of construction material in permanent position and fastened in a permanent manner.

Sec. 35-164. Termination of Nonconforming Uses.

In addition to the provisions for termination of certain nonconforming uses contained elsewhere in this Division, any nonconforming use or uses of either land or buildings or both may be ordered terminated by the Board of Supervisors after a public hearing as provided hereafter in Sec. 35-166., if one or more of the three following conditions is found to apply to any such nonconforming use or uses.

1. That the condition of the improvements, if any, on the property are such that to require the property to be used only for those uses permitted in the zone where it is located would not impair the constitutional rights of any person; or
2. That the nature of the improvements are such that they can be altered so as to be used in conformity with the uses permitted in the zone in which such property is located without impairing the constitutional rights of any person; or
3. Except in the case of a dedicated cemetery, that the nonconforming use is so exercised as to be detrimental to the public health or safety, or so as to be a nuisance.

Sec. 35-165. Unpermitted Expansion of Nonconforming Uses.

After a public hearing, as provided hereinafter under Sec. 35-166. any expansion of or change in a nonconforming use of buildings or land, or both, not expressly permitted under and strictly in accordance with the terms of this Article and especially this Division, nor required by law, may be ordered terminated by the Board of Supervisors.

Sec. 35-166. Termination Procedure.

1. All nonconforming uses to be terminated under the provisions of this Division may be ordered terminated by the Board of Supervisors upon following the procedure prescribed in this Section. Any disobedience of an order of termination of the Board of Supervisors made pursuant hereto, as well as any continuance of any nonconforming use beyond the express period of time prescribed in this Section shall be deemed a violation of the terms of this Article. Upon recommendation of the Planning Commission, or upon petition by a person or persons affected by a nonconforming use of buildings or land or both, or on its own initiative, the Board

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of Supervisors may set a date for, and call a public hearing to determine whether or not a nonconforming use of land or buildings or both, or an unpermitted expansion of or change in such use should not be ordered terminated. Fifteen (15) days notice of such hearing shall be given by publication once in a newspaper of general circulation in the County of Santa Barbara or in the area where the affected property is located, and by service upon the owner or owners of the land and upon the person operating or maintaining such nonconforming use, if not the owner. Service of such notice shall be either personal or by mail addressed to the last known address of the person to be served. Said notice shall specify the date, time and place of said hearing and shall specify the grounds on which said nonconforming use or changes or expansion thereof is sought to be terminated.

2. All hearings held under this Section by the Board of Supervisors shall be open to the general public, be presided over by the Chairman, vice chairman or acting chairman of the Board of Supervisors, and the proceedings shall be reported by a phonographic reporter. The owner or owners, the party or parties maintaining the nonconforming use, the Board of Supervisors and all other interested persons may be represented by attorneys of their own choosing, may submit written and oral evidence provided that oral evidence shall be taken only on oath or affirmation, may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called him to testify and to rebut the evidence against him. If the person or persons maintaining the said nonconforming use do not testify in their own behalf, they may be called and examined as if under cross-examination.
3. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts. Hearsay evidence may be used for the purpose of supplementing or

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explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

4. The Board of Supervisors shall render its decision in writing, containing findings of fact, within 30 days after the date on which the public hearing was completed and closed. It shall deliver copies by mail or personally to the parties concerned in said hearing. Failure to so render such decision within said 30 days or any extension thereof stipulated to by the parties shall be deemed to permit the continuance of said nonconforming use or said expansion thereof or change thereto, which was the subject of said hearing. The said decision shall, if it ordered said nonconforming use, or change thereto or expansion thereof terminated, specify such time within which the person so maintaining such nonconforming use or change thereto or expansion thereof, shall so terminate as the Board of Supervisors deems reasonable and proper under the circumstances.
5. Hearings may be continued from time to time by the Board of Supervisors.
6. Judicial review of any order of the Board of Supervisors made hereunder may be had by filing a petition for a writ of mandate in accordance with the provisions of the California Code of Civil Procedure.

Sec. 35-167. Reserved For Future Use.

Sec. 35-168. Reserved For Future Use.

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