

## Chapter 504 Nonconforming Parcels, Structures, Uses

### 504.01 Purpose

This chapter is established in recognition of the existence of uses, structures, site improvements and parcels which were lawfully established but which do not currently comply with the provisions of this Ordinance or subsequent amendments of this Ordinance. It is the intent of this Chapter to specify the requirements, circumstances and conditions under which nonconforming uses, structures, site improvements and parcels will be maintained and to encourage actions that bring such nonconformities into conformance with this Ordinance.

### 504.02 Continuance of nonconforming situations

Legal nonconforming situations shall be allowed to continue as long as they remain otherwise lawful, subject to the provisions of this Chapter. Nonconforming situations which were not lawfully in existence on the effective date of this Ordinance shall be prohibited. A change of tenancy, ownership or management of any nonconforming situation shall be allowed, provided there is no change in the nature or character of such nonconforming situation, except as otherwise provided by this Chapter.

### 504.03 Nonconforming Uses

Nonconforming uses are uses of land or structures lawfully in existence prior to the adoption of this Ordinance that are not allowed permitted or conditional uses under this Ordinance in the zoning district in which the use is located (refer to Table 508-1 for permitted and conditional uses). Nonconforming uses shall be allowed to continue only if they comply with all of the following provisions:

- A. **Illegal nonconforming uses shall cease.** Nonconforming uses that were not lawfully in existence prior to the adoption of this Ordinance shall cease, except for businesses of record that meet the provisions of §504.03.B. In no case shall this provision be interpreted to give legal status to the unlawful use for any period, past or future.
- B. **Business of record exemption.** A business that meets all the requirements of §505.11, Rural Business Registration, shall be considered a business of record and shall be considered a legal non-conforming use to the requirements of this Ordinance, except that:
  1. Junkyard/salvage yards are only allowed for those sites that legally existed prior to July 15, 2004 and have now obtained a Conditional Use Permit.
  2. If the business of record is located in a nonconforming structure, it shall meet the requirements of §504.04.
  3. A business of record where the use is not an allowed permitted or conditional use for the zoning district where the business is located (as listed in Table 508-1) may continue as it existed on the effective date of this ordinance; however, the use may not be expanded, enlarged or changed.
- C. **Nonconforming uses restrictions.**
  1. Expansions of the land area or building area occupied by a nonconforming use are prohibited.
  2. A nonconforming use may be changed to lessen the nonconformity of the use. In such cases, the previous non-conforming use shall not be re-established.
  3. Repairs and maintenance of a structure containing or related to a nonconforming use may be permitted subject to §504.04 B.
  4. The nature of a lawfully existing nonconforming use shall not be expanded, enlarged or altered, including any increase in the volume, intensity, duration or frequency of the use.
  5. A change from one nonconforming use to another nonconforming use is prohibited.
  6. A nonconforming use that has been discontinued for a period of twelve (12) consecutive months shall not be reestablished, and any further use shall be in conformity with this Ordinance.
  7. If a structure used for a lawfully existing nonconforming use is destroyed by any cause or means to the extent of fifty percent (50%) or more of its market value, as determined by the

Rice County Assessor and the Building Official, any subsequent use of the land or structure shall be a use conforming to the provisions of this Ordinance.

#### **504.04 Nonconforming Structures**

Nonconforming structures are structures that do not meet the requirements of this Ordinance for permitted uses in the zoning district in which the structure lies.

- A. **Dwelling of record.** For purposes of this Ordinance, a nonconforming single family structure must meet the following provisions to be defined as a dwelling of record:
  1. **In all zoning districts.** To be considered a dwelling of record a nonconforming single family dwelling must meet all of the following requirements:
    - a. Homestead, non-homestead, or seasonal non-homestead taxes were paid on the dwelling in the last year; and
    - b. No portion of the dwelling is located within a shore impact zone, bluff impact zone or floodplain; and
    - c. The dwelling was constructed under a residential building permit issued by Rice County prior to the effective date of this Ordinance, or was constructed before January 1, 1964;
    - d. The dwelling is located on a separately described parcel meeting the minimum parcel size for the district in which it is located.
  2. **More than one dwelling on a single parcel.** Each dwelling, having a permanent foundation, on a single parcel in the A, Agricultural district may be defined as a dwelling of record if it meets the requirements in §504.04 A.1. a., b and c.
- B. **General requirements for nonconforming structures.**
  1. **Maintenance and repair.** A nonconforming structure may be maintained and repaired up to fifty percent (50%) of the current market value of the structure.
  2. **Additions or expansions.** Additions or expansions up to twenty-five percent (25%) of the bulk area of the structure may be made to a nonconforming structure only if the addition meets the following conditions:
    - a. **Increasing nonconformity prohibited.** An addition or expansion shall not increase the degree of nonconformity of the structure, or further infringe upon established setbacks or building restrictions, except that
      - i. Existing structures meeting at least fifty percent (50%) of the required front yard setback may be allowed to expand provided the addition does not encroach further upon existing setbacks and the structure is not located within the shore impact zone, bluff impact zone or in a floodplain.
      - ii. Existing structures not meeting the required side or rear yard setbacks may be allowed to expand provided they do not encroach further upon the existing setbacks and are not located within the shore impact zone, bluff impact zone or in a floodplain.
      - iii. New accessory structures may be built in line with the residential structure at the same existing side yard setback, but no closer than one-half (1/2) the required side yard property line setback.
    - b. **Cannot result in replacement.** The process of adding on to an existing nonconforming structure shall not be used to effectuate replacement of the structure where replacement would not otherwise be allowed under the provisions of this Ordinance.
    - c. **Existing structure in sound condition.** An addition may be made to a nonconforming structure only if the existing structure is in sound condition, as determined by the Rice County Building Official.
    - d. **Existing structure must remain.** No structural part of the existing structure shall be removed once the new construction is completed.

- e. **Encasement prohibited.** The addition, or multiple additions, shall not surround or encase the existing structure.
- 3. **Replacement.** A nonconforming structure may be replaced only if the replacement structure meets the setback requirements and all other provisions of this Ordinance.
- 4. **Sewage treatment.** Expansion of, addition to, or replacement of a nonconforming structure requiring a building permit shall be subject to the requirements of the Rice County Sewage and Wastewater Treatment Ordinance.
- 5. **Interior alteration.** An interior alteration of a nonconforming structure is permissible provided it will not result in increasing the flood damage potential of that structure.
- C. **Destruction of nonconforming structures.** In the event of the destruction of a nonconforming structure, the following standards shall apply for rebuilding:
  - 1. **50% of market value.** A nonconforming structure may not be rebuilt if it is destroyed by any cause to the extent of fifty percent (50%) or more of its estimated market value, excluding land value, as determined by the County Assessor, except that:
    - a. A Dwelling of Record located outside of the floodplain may be replaced if it is destroyed to any extent by fire or natural disaster.
    - b. A Dwelling of Record in the floodplain may be issue a conditional use permit for reconstruction if it is located outside the floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of Chapter 518 of this Ordinance.
  - 2. **Sewage system must be conforming.** Rebuilding, under any circumstance, shall only be permitted where the sewage disposal system is found to be in conformance with the Rice County Sewage and Wastewater Treatment Ordinance.
  - 3. **Must meet setback requirements.** Rebuilding shall be in conformance with the setback requirements of this Ordinance.
- D. **Current Construction.** To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner.

**504.05. Nonconforming Parcels**

Nonconforming parcels of land are parcels that do not meet the minimum lot width, length or area requirements of this Ordinance for permitted uses in the zoning district in which the parcel lies. Nonconforming parcels shall not be built on, except for nonconforming parcels of record meeting the following:

- A. **Parcels of record defined.** For purposes of this Ordinance, an area of land must meet all of the following provisions to be defined as a nonconforming parcel of record:
  - 1. The area of land:
    - a. Is described on a single deed and was legally recorded with the Rice County Recorder on or before August 8, 1975, and has not been changed since; or
    - b. Is described on a single contract for deed that was executed on or before August 8, 1975 and has not been changed since; or
    - c. Is a residual parcel reduced from an area of land described on a single deed that was legally recorded with the Rice County Recorder on or before August 8, 1975, because of a taking or dedication for a public right-of-way or public purpose; or was a correction of a legal description or survey error;
    - d. Was a lot created by platting prior to the adoption of this Ordinance.

2. **One parcel of record per deed.** The entire area of land described in a single deed shall be considered one parcel of record regardless of whether the area is described in several parcels, several lots, sub areas or sub parcels in the deed, and regardless of whether the parcels, lots, sub areas or sub parcels are contiguous or not contiguous.
  3. **Contiguous parcels shall be combined.** If contiguous parcels are parcels of record separately meeting the definition requirements of §504.05A. 1, but are under the same ownership on the date of the adoption of this Ordinance they shall comply with all of the following requirements before a permit may be issued:
    - a. The contiguous parcels shall be considered as a parcel of record only if combined to meet, to the maximum extent possible, the minimum lot width, length and area requirements for the proposed permitted use in the zoning district within which the parcels lie; and legally platted lots in the Shoreland districts shall only be required to combine to meet the minimum lot area required in that district; and
    - b. The separate nonconforming parcels shall not be considered separate parcels of record meeting the definition requirements of this section or for the purpose of §504.05 C; and
    - c. No permit shall be issued unless the contiguous parcels are legally described as a single parcel, and legally recorded as a single parcel with the Rice County Recorder; and
    - d. If one or more of the contiguous parcels is transferred into separate ownership after the date of adoption of this Ordinance the parcels shall not separately be considered a parcel of record.
- B. **Proof of parcel of record.** All applicants for a permit, dimensional variance or conditional use involving a parcel of record must provide the Zoning Administrator with sufficient documentation to establish that the parcel meets the definitional requirements for a parcel of record contained in §504.05 A. If proof is not established, the applicant must meet all requirements of this Ordinance. No application for a land use permit, dimensional variance or conditional use involving an undeveloped parcel of record shall be accepted or considered without such documentation.
- C. **Parcels of record are buildable lots.** Parcels of land that meet the definition of a parcel of record in §504.05 A. above shall be defined as buildable lots even though the parcel may not conform to the minimum lot size or density requirements of this Ordinance, provided however, that all setback requirements and all provisions of the Rice County Sewage and Wastewater Treatment Ordinance are met.
- D. **Parcels that are not parcels of record.** Parcels of land that do not meet the definition of a parcel of record in §504.05 A. above must be enlarged and/or replatted to conform to all the requirements of this Ordinance before being considered a buildable lot. If a parcel of land is created by platting after the date of adoption of this Ordinance it shall conform to all the requirements of this Ordinance before being considered a buildable lot.