

Chapter 24.50

NONCONFORMING USES, STRUCTURES AND LOTS

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24.50.010 Nonconforming uses, structures, and lots – Purpose.

The purpose of this chapter is to establish provisions governing the development and redevelopment of existing uses, structures and lots affected by critical areas that do not conform to this title. Other requirements in the Thurston County Code and/or state/federal law may also apply that further restrict development of nonconforming uses, structures, and lots.

24.50.020 Nonconforming uses, structures, and lots – Alteration or expansion of legally established nonconforming structures – General rules.

Alteration or expansion of legally established nonconforming structures or uses, including structures or uses that do not require a permit, is allowed subject to all of the following:

- A. Maintenance. All legally established, nonconforming structures can be maintained (e.g., painting and repairs);
- B. Alteration. Legally established nonconforming structures may be altered within their existing building footprint. Additionally, attached decks, porches, and patios may be altered in their existing footprint, excluding the addition of permanent roof structures. If applicable, also see chapter 24.20 TCC regarding limitations in frequently flooded areas. Legally established, attached nonconforming decks, porches, or patios shall not be enclosed for use as livable space, unless the deck, porch, or patio is already covered by an existing permanent roof structure as determined by the approval authority;
- C. Expansion of conforming portions of a legally established nonconforming structure. If only a portion of the structure is nonconforming (e.g. lies within an important habitat area),

expansion of the conforming portion of the structure is permitted provided the expansion does not extend into the critical area or associated buffer; and

- D. Vertical additions. Expansion of the established nonconforming portion of the structure is prohibited, except for vertical additions consistent with applicable height regulations in the zoning district. Additions shall not be cantilevered to extend beyond the existing structure's footprint (outside wall at the foundation) into a critical area or associated buffer. Vertical additions to legally established portions of a nonconforming structure are only allowed within marine bluff or landslide hazard areas, or their buffers, if a geological assessment demonstrates that it will not negatively impact slope stability.
- E. Cantilevered alterations, expansions or additions to nonconforming portions of structures shall not extend beyond the existing building footprint into the critical area or its associated buffer.

24.50.025 Nonconforming uses, structures, and lots – Expansion of impervious surfaces in riparian areas and pond buffers.

The approval authority may allow up to a five hundred (500) square foot expansion of impervious surface, including an existing structure's footprint, within a riparian habitat area or pond buffer if it is determined that:

- A. All new impervious surfaces, which include structures, will be sited at a distance that is greater than or equal to the original structure(s) setback from the water body;
- B. The expansion would occur at least one hundred feet from a Type "S" or "F" stream and Type "N" stream draining to a Type "S" or "F" stream or marine waters;
- C. The area proposed for the expansion was lawfully developed prior to [the effective date of this ordinance] or, if not, the unlawful development was not caused by the present landowner or did not occur within the past seven years;
- D. If the riparian habitat area or pond buffer on the site between the water body and the primary structure has been degraded, the degraded area, or a portion of the degraded area equal to the size of the expansion, whichever is less, will be restored with native vegetation. The degraded area chosen must be the area nearest the most sensitive habitat as determined by the approval authority;
- E. The expansion, coupled with any proposed mitigation, would be at least as effective in protecting all of the riparian habitat or pond buffer's functions as under current conditions;
- F. The proposed expansion would be consistent with the Shoreline Master Program for the Thurston Region, as amended, the impervious surface limits in the applicable zoning district, and other applicable provisions of this title;
- G. The applicant provides a performance surety consistent with chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration;

- H. No previous expansion has been allowed pursuant to this subsection; and
- I. The applicant will record a document with the subject property's title indicating that no further expansion of the structure's footprint or impervious surface is allowed within the riparian habitat area or pond buffer on the property.

24.50.030 Nonconforming uses, structures, and lots – Alteration, expansion, repair, and maintenance – Frequently flooded areas.

Repair, maintenance, alteration, or expansion of a lawfully established nonconforming structure in frequently flooded areas shall only be allowed in the 100-year flood plain, channel migration hazard area, or a high groundwater hazard area no development zone (NDZ) when consistent with all of the following:

- A. Alteration within existing footprint. Alteration, repair, and maintenance of a legally established nonconforming structure are allowed within the existing building footprint (outside wall at the foundation) including attached decks, porches, and patios. However, within the floodway, repair, maintenance, alteration, expansion or improvements to a structure shall not increase the ground floor area, and the cost of repairs shall not exceed fifty percent of the structure's market value as determined by an accredited appraisal or the Assessor's valuation, at the owner's option. The value shall be determined based on the value of the structure either before the repair, maintenance, alteration, or expansion is started, or if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary or safety codes or to structures identified as historic buildings is not subject to the value limit above. The cumulative value of all past known alterations, repairs, and expansions conducted on or after *[the effective date of this ordinance]* shall be included when determining the cost of a proposed project;
- B. Vertical addition. Expansion of the nonconforming portion of a structure (i.e., the portion of the structure in the critical area) is prohibited with the exception of vertical additions consistent with applicable height regulations in the zoning district and the value limits specified in subsection "A" of this section. However, such additions shall not be cantilevered to extend beyond the existing structure's footprint into a flood or channel migration hazard area;
- C. Enclosing decks, porches, and patios. Enclosing legally established nonconforming decks, porches, or patios for use as livable space is not permitted, unless the deck, porch, or patio is already covered by an existing, permitted, permanent roof structure, as determined by the approval authority consistent with the value limits specified in subsection "A" of this section; and
- D. Expansion of conforming portions of the structure. If only a portion of the structure is nonconforming, expansion of the conforming portion of the structure is permitted provided the expansion does not extend into the critical area consistent with chapter 14.38 TCC.

24.50.035 Nonconforming uses, structures, and lots – Intensification.

An intensification of a legally established nonconforming use is permitted provided that it is consistent with all of the following:

- A. The use is contained within the existing or expanded (per this title for nonconforming structures and uses) structure, or an area that has been legally used to accommodate the use;
- B. It is not different in kind from the legally existing nonconforming use; and it would not cause increased harm to the critical area, or increase the risk associated with the hazard, as determined by the approval authority;
- C. Intensification of a legally established nonconforming use shall not exacerbate flood or channel migration hazards, or pose an increased risk of water contamination in the event the site is inundated with flood waters, as determined by the approval authority;
- D. Intensification of legally established nonconforming uses shall not increase the net amount of impervious surface within a critical area and its associated buffer; and
- E. The approval authority may require use of best management practices to avoid potential impacts associated with the more intensive use.

24.50.040 Nonconforming uses, structures, and lots – Destruction and restoration.

Restoration or rebuilding of legally established nonconforming structures and/or related appurtenances damaged or destroyed by accident, fire, explosion, act of God, or public enemy may be allowed pursuant to the applicable requirements of this chapter, and the Shoreline Master Program for the Thurston Region, as amended, provided that:

- A. Restoration or replacement of legally established nonconforming structures and/or related appurtenances shall not be allowed in the floodway;
- B. The structure may be restored or rebuilt in a nonconforming manner to the same extent (e.g. building footprint, impervious surface and square footage) that, but no more than, the pre-existing structure was nonconforming, as determined by the approval authority, unless the nonconforming structure is located in a 100-year floodplain, 100-year channel migration hazard area, or high groundwater flood hazard area NDZ, where restoration or reconstruction of a nonconforming structure is only permitted in accordance with chapter 14.38 TCC. The cumulative value of all past known restorations or replacements conducted on or after *[the effective date of this ordinance]* shall be included when determining the cost of a proposed project;
- C. The building permit application for repair or reconstruction shall be submitted within twenty-four (24) months of the occurrence of damage or destruction;
- D. The building or structure is not voluntarily destroyed; and
- E. If the building or structure is proposed to be relocated from the original building site, then the original building site and other degraded areas immediately adjacent to the building site shall be restored with native vegetation as a condition of the relocation, as required

by the approval authority. Important wildlife habitats and areas regulated by the Shoreline Master Program, as amended, may have additional vegetation requirements.

24.50.050 Nonconforming uses, structures, and lots – Discretionary replacement or relocation of nonconforming structures.

Discretionary replacement of legally established nonconforming structures and/or related appurtenances may be allowed pursuant to the applicable requirements of this chapter, and the Shoreline Master Program for the Thurston Region, as amended, provided that:

- A. Discretionary replacement of legally established nonconforming structures within frequently flooded areas, 100-year channel migration hazard areas, and high groundwater flood hazard area NDZ is prohibited;
- B. There is no alternative outside of the critical area and associated buffer, or there is not minimally sufficient buildable area (not to exceed 5,000 square feet) on the property outside the critical area and associated buffer to accommodate the building/structure, as determined by the approval authority;
- C. The replacement of a nonconforming structure and/or related appurtenances shall be prohibited if located within the shoreline management jurisdiction pursuant to the Shoreline Master Program, as amended;
- D. If there is no alternative location outside of the critical area and associated buffer to accommodate the structure, then replacement/relocation would occur consistent with this section and provisions for the development of existing lots in TCC 24.50.060 and TCC 24.50.065, if applicable;
- E. When possible and practical, driveways, patios, and walkways located within a critical area buffer shall be made of pervious materials and roof top runoff shall be dispersed and directed into bioretention facilities. See Chapter 15.05 TCC for additional requirements. In geologic hazard areas, the approval authority may require stormwater to be treated, tight lined and/or infiltrated, as warranted, to avoid destabilizing a slope or bluff (See TCC 24.15.170); and
- F. If a structure is relocated, the original building site and other degraded habitat immediately adjacent to the original building site shall be restored. The applicant shall submit a restoration plan that employs native trees and vegetation. The applicant shall provide a performance surety consistent with chapter 24.70 TCC to insure that the vegetation used in the restoration project survives or is replaced.

24.50.060 Nonconforming uses, structures, and lots – Development of existing lots – Critical areas excluding frequently flooded areas.

Existing, undeveloped lots with critical areas and their associated buffers, excluding frequently flooded areas, for which a complete application for a short plat, large lot subdivision, or subdivision, as defined in chapter 18.08 TCC, was submitted before *[the effective date of the*

ordinance] and other legally existing lots may be developed as follows with a critical area review permit:

- A. Except for seismic, volcanic, and mine hazard areas, all new construction of structures, facilities, utilities, access driveways and appurtenances shall be located outside of the critical area and the associated buffer unless otherwise permitted in this title;
- B. New development may be permitted on legal lots containing wetlands or buffers, consistent with other applicable provisions of this title.
- C. No new development or construction of structures, facilities, utilities, access driveways and appurtenances shall create a public safety risk, as determined by the approval authority;
- D. Enhancement or restoration (mitigation) of the affected critical area or associated buffer shall be required to offset the impacts of the proposed development, as approved by the approval authority;
- E. If a legal lot has less than 3,500 square feet of buildable area outside of the critical area and its associated buffer, to accommodate the single family residential development including the primary structure, ordinary appurtenances, landscaping, and accessory structures, the approval authority may, with a critical area review permit, allow development to occupy a portion of the critical area buffer to the minimum extent necessary to provide a development site totaling no more than 3,500 square feet provided:
 - 1. The development site shall be located in the outer 50 percent of the standard critical area buffer, except for wetlands and riparian habitat areas, where the development site shall be located in the outer 25 percent of the standard buffer. Development in the critical area and the inner 50 percent of the associated critical area buffer—or inner 75 percent of wetland and riparian area buffers—will require a reasonable use exception;
 - 2. The applicant shall demonstrate that due to physical constraints (e.g., topography, soil conditions, or the site's configuration), another configuration would not allow the development to occur without intrusion or with less intrusion into the critical area or buffer than the proposal;
 - 3. The location and scale of existing development on surrounding properties shall not be the basis for granting or determining the location, scale and impact of a single family use allowed under this section;
 - 4. The encroachment into the critical area buffer shall be consistent with other requirements of this section for development on existing lots, requirements for a critical area review permit, and shall not have an adverse impact on species of concern, as determined by the approval authority;

5. Site development, including clearing, grading, construction of structures, utilities, related appurtenances, and landscaping shall occupy the minimum area necessary to accommodate the use;
 6. Native tree and vegetation removal shall only be permitted to the minimum extent necessary to accommodate the proposed development, and shall not create a public safety risk;
 7. A revegetation plan consistent with this title for disturbed areas shall be submitted with the development application, and shall be completed prior to final occupancy or use;
 8. Landscaping shall not extend more than fifteen feet from the primary structure toward the important habitat or wetland;
 9. Any new structures within a critical area buffer shall be sited to avoid the creation of hazard trees;
 10. The approval authority may establish a construction setback to avoid encroachment into portions of the buffer not authorized for development, consistent with TCC 24.01.030;
 11. The approval authority may authorize use of additional area to the minimum extent necessary in a critical area buffer to accommodate an onsite sewage disposal system or well, consistent with other requirements of this title, only if there is no alternative;
 12. The use of this single-family residential exception shall not be a result of a self-created hardship such as subdividing the property, adjusting a boundary line, or other actions thereby creating the undevelopable conditions after [*the effective date of this title*], or a self-created hardship created under the applicable standards of chapter 17.15 TCC after February 1, 1994; and
- F. All other development or construction of primary structures, accessory structures, and appurtenances in the critical area and associated buffer is prohibited.

24.50.065 Nonconforming uses, structures, and lots – Development of existing lots – Frequently flooded areas.

Existing, undeveloped lots within 100-year channel migration hazard areas, frequently flooded areas and their associated buffers, for which a complete application for a short plat, large lot subdivision, or subdivision, as defined in chapter 18.08 TCC, was submitted before [the effective date of the ordinance] and other legally existing lots may be developed as follows:

- A. All new structures, facilities, utilities and appurtenances shall be located out of the 100-year floodplain and area that falls below the base flood elevation;

- B. All new nonresidential structures, facilities, utilities and appurtenances shall be located out of the high groundwater flood hazard area;
- C. No new construction of structures, facilities, utilities and appurtenances shall create a public safety risk, as determined by the approval authority, and new construction shall be consistent with chapter 14.38 TCC; and
- D. Construction of structures, utilities and appurtenances located in the high groundwater hazard area restricted development zone shall meet the following:
 - 1. All new residential structures shall be constructed to have the lowest floor, materials, and systems susceptible to flood damage, including mechanical support systems, located a minimum of two vertical feet above the base flood elevation;
 - 2. All new non-residential construction shall be elevated a minimum of two vertical feet above the base flood elevation; and
 - 3. Structures shall be located where they are least likely to be flooded.

24.50.070 Nonconforming uses, structures, and lots – Replacement of mobile or manufactured home – Discretionary.

A mobile or manufactured home with nonconforming placement may be replaced with a new or improved manufactured home subject to applicable county regulations. However, if the size of the structure is increased by more than five hundred (500) square feet, it shall conform to TCC 24.50.050. Mobile or manufactured homes may only be increased in size once pursuant to this section.