

**Amend Section 1.13.D**

**Section 1.13 NON-CONFORMING USE OR STRUCTURE**

Any structure or land lawfully used, occupied, or erected as of the effective date of these Regulations which does not conform to the provisions of these Regulations is a legal non-conforming use or structure. Any structure conforming with respect to use, but not with respect to frontage, area, height, parking, loading or setback requirement is termed a legal non-conforming structure, not a legal non-conforming use. Legal conforming uses within a legal non-conforming structure may change as long as the use does not increase the nonconformity of that structure. Legal conforming or legal non-conforming structures within a legal non-conforming use may be repaired, replaced, enlarged or expanded as allowed in Section 1.13.D. Legal conforming uses are those uses allowed within the zone district in compliance with *Chapter 2 Zoning*.

**A. Continuation.** Except as herein provided, the lawful uses of land or structures legally existing as of the effective date of these Regulations may be continued even though said use or structure does not conform to the provisions of these Regulations. Such continuation shall not apply to obsolete and abandoned structures; or obsolete, inoperative, or dismantled machinery, vehicles or implements that are parked, stored or located on any street, road, road right-of-way, easement or required setback.

**B. Discontinuance.** Except for any repair, replacement, enlargement or expansion allowed by Section 1.13.D, if a legal non-conforming use or structure is discontinued or unused for a period of 12 months, it shall be deemed ended and may not be resumed. (See also *Subsection 2.5.B.7.b [Accessory Dwelling Units] Expiration and Exemptions.*)

**C. Enlargement or Alterations.** Except for any repair, replacement, enlargement or expansion allowed by Sections 1.13.D and 1.13.E, no enlargement or exterior alteration of a legal non-conforming use or structure, other than regular periodic maintenance, shall take place. Any enlargement or exterior alteration complying with the Land Use Regulations in effect at the time of enlargement or alteration is allowed to continue as a legal non-conforming use or structure used for a legal conforming use. Once a use or structure is made to conform to the provisions of these Regulations, it may not revert to nonconformance either in part or in whole.

**D. Repair or Replacement of Legal Conforming and Legal Non-conforming Structures within Legal Conforming and Legal Non-conforming Uses.** Except as otherwise provided in these Regulations and in this Section 1.13.D, legal conforming and legal non-conforming structures within an existing legal non-conforming use and legal non-conforming structures within an existing legal conforming use, may be repaired or entirely replaced only in their existing size, footprint, height, and location provided such repair or replacement shall not enlarge or otherwise expand the density, intensity, occupancy, incompatibility of the legal non-conforming use, or increase the impacts on surrounding properties, shall not enlarge or otherwise expand the legal non-conforming structure, and shall be reconstructed within four (4) years of the issuance of the Building Permit. Notwithstanding the foregoing, the following shall not be considered an enlargement or expansion for the purposes of this Section:

**1. Public Health and Safety.** An enlargement or expansion necessary to rectify a hazardous health or safety situation, or to comply with the public health or safety requirements of Teller County or another governmental entity having lawful jurisdiction over the structure.

2. **American with Disabilities Act (ADA).** An enlargement or expansion necessary to comply with the ADA requirements.
3. **Expansion of a Legal Non-conforming Use.** The expansion of a legal non-conforming use within an enlarged legal structure provided the structure enlargement meets one of these exceptions.
4. **Solar Energy.** An enlargement or expansion necessary for the addition of a passive and/or active solar energy device to a legal non-conforming structure or a legal structure containing a legal non-conforming use.
5. **Equipment Maintenance.** An enlargement or expansion necessary for the repair or replacement of outmoded or worn equipment that does not create a hazard or nuisance.
6. **Height.** An increase in height, to a height not to exceed 35 feet, so long as it does not enlarge or otherwise expand the density, intensity, occupancy, incompatibility of the legal non-conforming use, or increase the impacts on surrounding properties.

**E. Administrative Review Use Permits.** The following enlargement or expansion of a legal non-conforming use or structure will require an Administrative Review Use Permit:

**1. Minor Expansion.** Expansion or enlargement of existing structures or construction of new structures that do not increase either the intensity of use, the total building footprint on the property by more than 20% from the ECP baseline, impact the impervious area of the parcel or initiate the requirement for rezoning. Development can be phased up to the maximum limit of expansion of 20% and shall be documented on an Existing Conditions Plan (ECP) that will be provided with the first submittal for a minor expansion under this provision. The ECP will establish a baseline of existing intensity of use and building footprint on the property and will include a legal description, site plan and written description that records the extent of development and activities on the property for the preceding 5-year period. Any permitted minor expansion under this Section shall be confined to the existing building envelope on the property, the extent of which will be agreed between the Applicant and the Teller County Planning Director as defined on the ECP and as depicted on the site plan.

Intensity of use is defined in Section 12 of these Land Use Regulations and the measures that define intensity of use on any given property will be determined by the Teller County Planning Director. Intensity of use is a measure of activity level and is generally described as increasing or decreasing. The Nature of use is defined as the type of use including what the property is being used for. The nature of the use will be in written narrative form and must accompany the ECP. It shall conform to the written description pursuant to that in Chapter 8, Section 8.2. B.1. Contemplated uses may be listed but will not be authorized by this Administrative Review process but will instead require the Special Review Use Permit Process. A change in the nature of use or exceeding a threshold in the intensity of use, the level of which will be determined by the Planning Director, will mandate the use of the Special Review Use Permit Process.

The site plan requirements of Section 7.4 and the requirements of Chapter 4 Infrastructure, Chapter 5 Site Development, and Chapter 6 Critical Areas of these Regulations shall be limited to the area impacted by the proposed replacement of structures or new construction less than 20% from that defined in the ECP, as determined by the Teller County Planning Director. In all other respects, the minor expansion application must be consistent with the requirements of these Land Use Regulations. Additionally, proposed minor development will be confined to the building envelope depicted on the site plan submitted with the ECP. Contemplated development or

improvements outside of the established building envelope will mandate the use of the Special Review Use Permit Process.

**F. Special Review Use Permits.** Except for any repair, replacement, enlargement or expansion allowed by Section 1.13.D and 1.13.E above, approval of (or amendment to) a Special Review Use Permit shall be required. Changes to the nature or character of a use as established in the initial ECP as defined in Section 1.13.E above will also require approval of a Special Review Use Permit.

**G. Variances.** Except for any repair, replacement, enlargement or expansion to a non-conforming structure allowed by Section 1.13.D and 1.13.E above or for any other existing legal structure nonconformities that may exist on the lot, a variance approval shall be required.

### **Revised definitions in Chapter 12.**

**INTENSITY OF USE:** The level of activity existing or anticipated for any use of a given lot, parcel or tract of land. Measures of the level of activity may include, but are not limited to, vehicular trip generation, the percentage of change in impervious area, existing/required infrastructure, number of beds for overnight guests/patients, number of animal boarding spaces, number of clients, building capacity, output/sales, number of parking spaces, or storage capacity.

**NATURE OF USE:** The specific use categories allowed within the zone district either as a use by right or by conditional or special use permit, for any given lot, parcel or tract of land and the manner in which those uses are operated. Existing CUP and SUP holders shall apply for and obtain an amendment pursuant to their permit, prior to changing the nature of use of their property. For Administrative Review Use Permits, any change in the nature of use will trigger the process for a CUP or SUP.

### **Existing Conditions Plan (ECP) Checklist**

#### **1.13. F**

**Existing Conditions Plan Submittal Requirements.** If a property has an existing Conditional Use Permit it will not be permitted to use the Administrative Review Process. CUP holders who propose a change in intensity or nature of use, or contemplated activity that is outside the range and scope of that contained in their current permit, will use the Special Review Use Permit Process, obtaining an SUP and extinguishing the CUP. An Existing Conditions Plan for the purposes of this Section and for use for Administrative review, must include the information listed below. In addition to the requirements outlined in TC LUR 3.2, *Minimum contents for Applications*, the following shall be submitted to fulfill the Existing Conditions Plan requirement under Section 1.13.E of the Teller County Land Use Regulations:

(1) **Legal Description** of Property

(2) **Site Plan.** A plan shall be provided that illustrates the information required in Table 7-1.

(3) **Written Description.** A written description shall be provided that includes the following information:

(a) The date when the facility opened.

(b) The nature of the uses, activities, services and programs provided at the facility over the previous 5-year period.

- (c) The number, type and details of residential buildings and the maximum occupancy of each and, where appropriate, distinguishing between visitor and staff accommodation, temporary and permanent occupation, and identifying seasonal variations.
- (d) Delete this para as it is combined above
- (e) Details of any day-use of the facilities, including an assessment of maximum occupancy.
- (f) Details of how the facility will be operated.
- (g) The primary means of access to the facility and evidence of any required access permits or easements.
- (h) The typical pattern of vehicular activity to and from the site, including visitors, staff, and deliveries, and average vehicle occupancy.
- (i) The number of parking spaces available to visitors and staff and the surface finish of the parking area (e.g. paved, gravel, field).
- (j) Description of utility services and providers for the facility.
- (k) Percentage of impervious area in existence at the time of ECP baseline establishment
- (l) Zoning at the time of ECP baseline establishment