

“Let it Be”

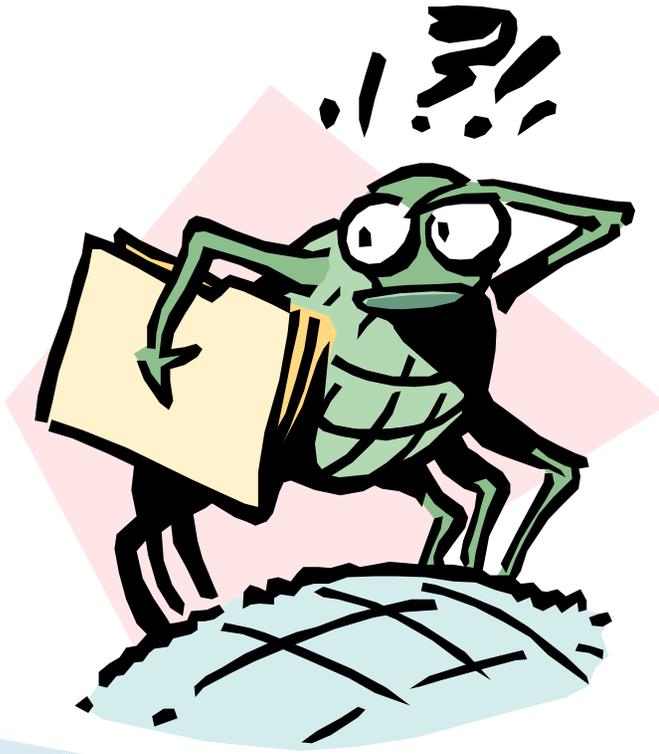
-- Rethinking Non-Conformities

**Rocky Mountain Land Use Institute
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David A. Theriaque, Esquire
www.Theriaquelaw.com



Is there a need for two
categories of
nonconformities?



New Approach

- ▶ **Detrimental Nonconformity** - presumed to be harmful to the abutting properties, the surrounding neighborhood, or the community as a whole.
- ▶ **Benign Nonconformity** - local government has determined this category is not harmful to the abutting properties or surrounding neighborhood, but is contrary to the public welfare in some way.



Examples of Detrimental Nonconformities

- ▶ Industrial use in a residential neighborhood
- ▶ Lack of on-site parking
- ▶ Light pollution

Regulatory goal: Terminate the Nonconformity.



Examples of Benign Nonconformities

- Lack of Landscaping
- Too few parking spaces
- Minimal Deviations from dimensional standards
- A change in the list of permissible or conditional uses



The distinction between these two categories is that the designation of benign nonconformities render the regulations more meaningful for property owners and easier to administer by the local government.



Regulating Benign Nonconformities

The distinguishing characteristic of the benign nonconformity is that the type and degree of nonconformity are not considered harmful or unsafe by the local government, with the result that elimination or reduction of the nonconformity is not the goal.



Just as a variance is a process to authorize a deviation from development standards, recognition of a benign nonconformity authorizes a deviation from development standards *and* does not require elimination of the nonconformity.



Example of Regulations

Purpose

It is the intent of the City to:

1. Establish two (2) types of nonconformities: benign and detrimental;
2. Allow continuation of nonconformities until such nonconformities are abandoned;
3. Allow change of use of specified nonconformities;
4. Allow modifications to specified nonconformities; and
5. Eliminate or reduce detrimental nonconformities.



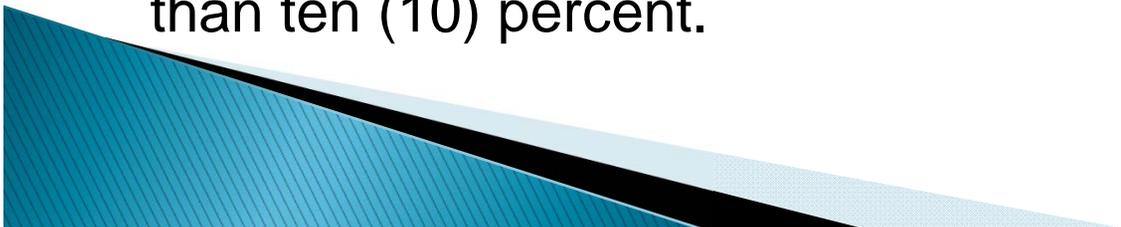
Benign nonconformities

A benign nonconformity exists when the degree of nonconformity does not result in a harmful or unsafe condition. A negative impact on public safety or health is not expected to occur due to the continuation or modification of a benign nonconformity.

The following situations shall be considered benign nonconformities:

An encroachment into a required setback of less than ten (10) percent.

A lot area which is less than the minimum required by not more than ten (10) percent.



A lot width which is less than the minimum required by not more than ten (10) percent.

A building height which is more than the maximum allowed by not more than ten (10) percent.

A front yard setback that fails to comply with the standards in this LDC due to road widening.

Provision of off-street parking that contains up to ten (10) percent fewer spaces than required by this LDC.



Detrimental nonconformities

Any use of land or structure that does not comply with the uses permissible in the applicable zoning district, as set forth in Chapter X, shall be considered to be a detrimental nonconformity.

Any nonconformity of a structure or site that is not identified as a benign nonconformity in Section XYZ shall be considered to be a detrimental nonconformity.



Continuation of Nonconformities

A. A benign or detrimental nonconformity shall be allowed to continue except as follows:

The nonconformity is declared to be unsafe or unlawful.
The nonconformity is declared to be a public nuisance.

B. A detrimental nonconformity which is discontinued for a period of 180 consecutive days shall be considered abandoned.

1. Such nonconformity shall not thereafter be reinstated.
2. Any subsequent occupancy of such nonconformity shall be permissible only when such nonconformity has been brought into compliance with the requirements of this LDC.

3. The removal of buildings, structures, equipment, or other aspects of such nonconforming use; the absence of a water utility service deposit or account; or the absence of a current business tax receipt shall be deemed to be prima facie evidence of the discontinuance of a nonconformity.
 4. If the reason for discontinuance is the documented action by a governmental agency, the time of delay caused by the governmental agency shall not be calculated as part of the period of discontinuance.
- C. A benign nonconformity may be discontinued for any period of time and shall not be considered abandoned.



Change of Use

A. Benign nonconformities

A land use carried out in or on a lot, site, or structure that has been identified as a benign nonconformity may be changed to any use permissible in the zoning district in which it is located. The nonconformities are not required to be modified for compliance with the standards of this LDC.



B. Detrimental nonconformities

The use of a lot, site, or structure identified as a detrimental nonconformity may be changed, provided the following standards are met:

The new use is less intense than the existing use. Intensity shall be determined by impervious surface coverage and either density for residential uses or the floor area ratio for nonresidential uses; or the new use complies with the requirements of this LDC.



Damage and Restoration of Nonconforming Buildings or Structures

Determine whether to treat differently.

Determine threshold amount of damage which requires nonconformity to be brought into compliance.



Expansion or Modification of Benign Nonconformities

- A. A structure which is a benign nonconformity may be modified or expanded, subject to the following standards:
1. Any addition or expansion of the structure shall comply with the standards applicable to the zoning district as set forth in this LDC;
 2. Any addition or expansion of the structure shall not increase the extent of the nonconformity; and
 3. Any addition or expansion of a structure shall comply with all permit requirements as set forth in Section XYZ.



- B. A lot or site which is a benign nonconformity may be modified, subject to the following standards:
1. Any additional structures or site features shall comply with the standards set forth in this LDC;
 2. The addition of structures or site features shall not increase the extent of the nonconformity; and
 3. The addition of structures or site features shall comply with all permit requirements as set forth in Section XYZ.



Expansion or Modification of Detrimental Nonconformities

- A. A structure which is a detrimental nonconformity shall not be expanded.
- B. A structure which is a detrimental nonconformity may be modified, subject to the following standards:
 1. The proposed modification of the structure shall be reviewed by the Board of Adjustment;
 2. Any modification of the structure shall not increase the extent of the nonconformity;
 3. Any modification of the structure shall comply with the standards set forth in this LDC;

4. A modification shall not be permissible when off-street parking and loading required for the modification cannot be provided;
5. When a modification is to allow or accommodate a change of use, the use shall be in compliance with the use requirements of the zoning district as set forth in Chapter X;
6. The modification of the structure shall maintain or improve compatibility of the structure with the neighborhood in which it is located; and
7. Approval of modifications to nonconforming structures shall be conditioned upon the addition or improvement of access, driveways, sidewalks, drainage, and landscaping, in compliance with the requirements of this LDC.



- C. A lot or site which is a detrimental nonconformity may be modified, subject to the following standards:
1. The proposed modification of the lot or site shall be reviewed by the Board of Adjustment;
 2. Additional or modified structures or other site features shall be permissible only where such additions or modifications improve the degree of conformity or provide for the public safety;
 3. The addition or modification of structures or other site features shall not increase the extent of the nonconformity;



4. The addition or modification of structures or other site features shall maintain or improve compatibility of the site with the neighborhood in which it is located; and

5. As a condition of approval of applications to add or modify structures or other site features, the applicant may be required to demonstrate that the site is designed in compliance with the requirements of this LDC with regard to access, sidewalks, drainage, and landscaping.



Thank You For
Your Time
And
Attention

