

Fannin County | Lake Zoning Regulations Section 3: Land Use Regulations

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3.06. Nonconforming Uses and Structures

A. Intent of Provisions

1. Existence of Nonconformities

- a. The purpose of this Section **3.06 Nonconforming Uses and Structures** is to establish provisions for the allowance and potential alteration of existing uses, lots and/or structures that do not conform to currently applicable **Lake Zoning Regulations**, but which were either built before the **Lake Zoning Regulations** were adopted or where in conformance with standards in place at the time of their inception, and have been rendered nonconforming due to a change in the applicable standards and regulations.
- b. **Nonconformities** occur in three (3) general categories, or combination thereof.
 - i. **Nonconforming Uses**. For example, a nonconforming use can be a use that is not currently allowed in a zoning district.
 - ii. **Nonconforming Structures**. For example, a nonconforming structure can be nonconforming as to setback, yard, or height lot area or dimension requirement.
 - iii. **Nonconforming Lots**. For example, a nonconforming lot can be nonconforming as to lot area or dimension requirement.

2. Limit Incompatibility

It is the intent of this section to limit **Nonconformities**.

3. Structures Built Before Adoption of the **Lake Zoning Regulations**.

It is the intent of this section to allow existing structures that were in existence before the adoption of the **Lake Zoning Regulations** to be allowed to **be replaced or expanded provided any new expansion conforms with depth, width and setback requirements**.

4. Lots Existing Before Adoption of the **Lake Zoning Regulations**.

It is the intent of this section to allow existing lots of less than three (3) acres that were in existence before the adoption of the Lake Zoning Regulations to be built on provided new structures conforms at a minimum to the depth, width and setback requirements for low density single residential zoning districts.

B. Establishment of Legal Nonconforming Status

1. Legal Nonconformities

Legal Nonconformities include the following:

Those uses, structures, or lots which in whole or part do not conform to current zoning standards, but were legally established prior to the date of adoption of these **Lake Zoning Regulations**, at which time they were in conformance with applicable standards. Such uses,

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structures, or lots may be maintained or potentially altered subject to the provisions of this Section **3.06 Nonconforming Uses and Structures**.

2. Illegal Nonconforming Status

Those uses, structures, or lots, other than residential accessory buildings, which in whole or part are not in conformance with current zoning standards and were not in conformance with applicable standards at the time of their inception are not considered nonconforming, but are considered illegal uses, structures, or lots and shall not be approved for any alteration or expansion, and shall undertake necessary remedial measures to reach conformance with current standards, or be discontinued.

3. Time of Adoption

Any use, platted lot, and/or structure is a lawful use at the time of the adoption of any amendment to these **Lake Zoning Regulations** but by such amendment is placed in a district wherein such use, platted lot, and/or structure is not otherwise permitted shall be deemed legal nonconforming.

C. Burden of Demonstration

The burden of establishing that any nonconformity is a legal nonconformity as defined in this section shall be borne by the owner or proponent of such nonconformity.

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D. Abandonment of Use of Property

1. A **Nonconforming Use**, when abandoned, shall not be resumed and any further use shall be in conformity with the provisions of these **Lake Zoning Regulations**.
2. Any **Nonconforming Use** that does not involve a permanent type of structure or operation and that is moved from the premises shall be considered to have been abandoned.
3. A **Nonconforming Use** right shall be considered abandoned and surrendered, forfeited, and lost when evidence presented to the **Commissioners Court** indicates that a structure designed or arranged for a **Nonconforming Use** has ceased to be used in a bona fide manner as a **Nonconforming Use** for a period of six consecutive calendar months. For purposes of calculating the six-month period, a use is abandoned upon the occurrence of the **first earliest** of any of the following events:
 - a. On the date when the use of land is physically vacated;
 - b. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
 - c. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
 - d. On the date a final reading of water and/or power meters is made by the applicable utility provider(s).
4. Abandonment of a **Nonconforming Use** does not require intent.
5. An abandoned use shall not be instituted on that parcel or other parcel in any district that does not permit the abandoned use.
6. Prohibited Expansion or Reoccupation
A **Nonconforming Use** shall not be expanded or increased as of the adoption date of these **Lake Zoning Regulations**, except as provided in **3.06.F Expansion of Nonconforming Uses and Structures**.
7. Single Family Residential Uses
 - a. Conforming single family residential uses on platted lots approved prior to the **Lake Zoning Regulations** adoption date, which may now be nonconforming due to stricter standards, shall be deemed in conformance with these **Lake Zoning Regulations** as long as the use of the lot is allowed in the respective district.

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~~b. Only the lot size, depth, width, and setbacks shall be allowed to be less than the regulations prescribed in the zoning district in which it is located. All other regulations of these **Lake Zoning Regulations** shall be met, or the lot shall be considered nonconforming.~~

8. Existing Platted Lots are Conforming Lots

Any existing vacant lot platted prior to the **Lake Zoning Regulations** adoption date that was legally conforming, shall be deemed a conforming lot.

E. Changing Uses and Nonconforming Rights

1. Nonconforming Use to Conforming Use

Any nonconforming use may be changed to a conforming use, and once such change is made, the use shall not be changed back to a nonconforming use.

2. Nonconforming Use to another Nonconforming Use

A nonconforming use may not be changed to another nonconforming use.

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3. Conforming Use in a Nonconforming Structure

Where a conforming use is located in a Nonconforming Structure, the use may be changed to another conforming use by the process outlined in [3.06.F Expansion of Nonconforming Uses and Structures](#).

F. Expansion of Nonconforming Uses and Structures

An expansion of a Nonconforming Use or Nonconforming Structure is allowed in accordance with the following.

1. Nonconforming Use Expansion in Existing Building

A [Nonconforming Use](#) may be enlarged, increased, or extended within an existing building provided:

- a. No structural alteration may be made on or in the existing building except those required by law to preserve such building in a structurally sound condition.
- b. Work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding fifty percent (50%) of the current replacement value of the building.
- c. The number of dwelling units or rooms in a nonconforming residential use shall not be increased so as to exceed the number of dwelling units or rooms existing at the time said use became a nonconforming use.

2. Nonconforming Use Prohibited from Expansion beyond Existing Building

A [Nonconforming Use](#) within a building shall not be extended to occupy any land outside the building.

3. Off-Street Loading and Parking

A [Nonconforming Use](#) shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the time the land became a [Nonconforming Use](#), except to provide off-street loading or off-street parking space.

4. Residential Lot Exemption

The minimum residential lot areas for the various zoning districts shall be in accordance with their respective districts except that a lot having less area than herein required which was an official Lot of Record prior to the [Lake Zoning Regulations](#) adoption date may be used for a single family dwelling.

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5. Expansion of Nonconforming Structures with Conforming Uses

Buildings or structures that do not conform to the area regulations or development standards in the **Lake Zoning Regulations** but where the uses are deemed conforming shall not increase the gross floor area greater than 100 percent from the date when the building became nonconforming.

G. Restoration of Nonconforming Structures

1. Total or Partial Destruction

If a **Nonconforming Structure** is destroyed by fire, the elements, or other natural catastrophic event, it may be rebuilt, ~~but the existing square footage or function of the Nonconforming Structure cannot be expanded for two (2) years.~~ The construction must comply with the zoning regulations in effect at the time the structure was permitted. The construction must commence within 12 months of the date of destruction. The failure of the owner to start such reconstruction within 12 months shall forfeit the owner's right to restore or reconstruct the structure except in conformance with the **Lake Zoning Regulations**.

2. If the owner of a **Nonconforming Structure** has a **Nonconforming Use** and fails to begin reconstruction of the destroyed structure within 12 months of the date of destruction, then the Nonconforming Structure and Nonconforming Use shall be deemed to be discontinued or abandoned.