

CHAPTER 5

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5.1 NON-CONFORMING USES AND STRUCTURES.

(1) Except as provided in this section, a non conforming use or structure may be continued. A non conforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension. The addition of a solar energy device to a building is not a structural alteration.

(2) The Town Council may provide in any land use ordinance or amendment for:

- (a) the restoration, reconstruction, extension, alteration, expansion, or substitution of non conforming uses upon the terms and conditions set forth in the land use ordinance;
- (b) The termination of all non conforming uses except billboards by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the non conforming use, if any; and
- (c) the termination of a billboard that is a non conforming use in compliance with Utah Code Annotated §1 O-9a-51 2 and §1 O-9a-51 3.

5.2 MAINTENANCE PERMITTED.

(1) A nonconforming building or structure may be maintained.

5.3 REPAIRS AND ALTERATIONS.

(1) Repairs and structural alterations may be made to a nonconforming building or to a building housing a non-conforming use.

5.4 ADDITIONS, ENLARGEMENTS, AND MOVING.

(1) A building or structure occupied by a nonconforming use and a building or structure nonconforming as to height, area, or yard requirements shall not be added to or enlarged in any manner or moved to another location on the lot except as provided by Subsection 2 hereof:

(2) A building or structure occupied by a nonconforming use or a building or structure nonconforming as to height, area or yard regulations may be added to or enlarged or moved to a new location on the lot upon issuance of a permit authorized by the Planning Commission, provided it shall find:

(a) The addition, enlargement of, or moving of the building will be in harmony with one or more of the purposes of this Ordinance.

(b) That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure.

5.5 ALTERATION WHERE PARKING IS INSUFFICIENT.

(1) A building or structure lacking sufficient automobile parking space as required by this Ordinance, may be altered or enlarged provided additional automobile parking space is supplied to fully meet the requirements of this Ordinance.

5.6 RESTORATION OF DAMAGED BUILDINGS.

(1) A nonconforming building or structure or the nonconforming use of a structure which is involuntarily destroyed in whole or part due to fire or other calamity may be restored and the occupancy or use of such building, structure, or part thereof, which existed at the time of the damage or destruction may be continued or resumed, provided that such restoration is started within a period of one year and is diligently pursued to completion and provided such structure or use has not been abandoned.

5.7 ABANDONMENT OF NONCONFORMING USE.

(1) A building or structure or portion thereof, that is associated with a nonconforming use, is presumed to have been abandoned under the following conditions and shall not thereafter be occupied except by a use which conforms to the use regulations of the Zoning District in which it is located. Abandonment shall be presumed to have occurred if:

(a) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the Town of Rush Valley regarding an extension of the nonconforming use;

(b) the use has been discontinued for a minimum of one year; or

(c) the primary structure associated with the nonconforming use remains vacant for a period of one year.

(2) The property owner may rebut the presumption of abandonment under Subsection (1), and the property owner shall have the burden of establishing that any claimed abandonment under Subsection (1) has not in fact occurred.

(3) The Planning Commission may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period of one year.

(4) The Town of Rush Valley may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months or the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.

5.8 CONTINUATION OF USE.

(1) The occupancy of a building or structure by a non-conforming use, existing at the time this Ordinance or any amendment thereto became effective, may be continued.

5.9 OCCUPATION WITHIN ONE YEAR.

(1) A vacant building or structure may be occupied by a use for which the building or structure was designed or intended, if so occupied within a period of one year after the use became nonconforming.

5.10 CHANGE OF USE.

(1) The nonconforming use of a building or structure may not be changed except to a conforming use permitted or conditional in the Zoning District where it is located; but where such change is made, the use shall not thereafter be changed back to a nonconforming use.

5.11 EXPANSION PERMITTED.

(1) A nonconforming use may be extended to include the entire floor area of the existing building in which it is conducted at the time the use became nonconforming.

5.12 NONCONFORMING USE OF LAND.

(1) The nonconforming use of land, existing at the time this Ordinance became effective, may be continued, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or on adjoining property, and provided that if such nonconforming use of land, or any portion thereof, is abandoned or changed for a period of one year or more, any future use of such land shall be in conformity with the provisions of this Ordinance.

5.13 BILLBOARDS.

(1) The Town of Rush Valley may only require termination of a billboard and associated property rights through gift, purchase, agreement, exchange, or eminent domain. A termination through gift, purchase, agreement or exchange requires the voluntary consent of the billboard owner.

(2) The Town of Rush Valley is considered to have initiated the acquisition of a billboard structure by eminent domain if the Town prevents a billboard owner from;

(a) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged by casualty, an act of God, or vandalism; or

(b) except as provided in Subsection (3) relocating or rebuilding a billboard structure, or taking other measures, to correct a mistake in the placement or erection of a billboard for which the Town has issued a permit, if the proposed relocation, rebuilding, or other measure is consistent with the intent of that permit.

(3) The Town's denial of a billboard owner's request to relocate or rebuild a billboard structure, or to take other measures, in order to correct a mistake in the placement or erection of a billboard does not constitute the initiation of acquisition by eminent domain under Subsection (2) if the mistake in placement or erection of the billboard is determined by clear and convincing evidence to have resulted from an intentionally false or misleading statement by the billboard applicant in the application and regarding the placement or erection of the billboard.

(4) Notwithstanding Subsections (1) and (2) the Town may remove a billboard without providing compensation if the Planning Commission determines by clear and convincing evidence that the applicant for a permit intentionally made a false or misleading statement in the applicants application regarding the placement or erection of the billboard or by substantial evidence that the billboard is structurally unsafe, is in an unreasonable state of repair or has been abandoned for at least 12 months. If the Planning Commission intends to remove a billboard under the foregoing criteria it shall notify the owner in writing that the owner's billboard meets one or more of the specified conditions listed in this subsection and the owner fails to remedy the condition or conditions within 90 days following the billboard owner's receipt of written notice or within 10 business days if the condition forming the basis of the Town's intention to remove the billboard is that it is structurally unsafe (or a longer period if necessary because of a natural disaster), following the billboard owner's receipt of written notice and following the expiration of the applicable period and after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the municipality finds:

(a) by clear and convincing evidence, that the applicant for a permit intentionally made a false or misleading statement in the application regarding the placement or erection of the billboard; or

(b) by substantial evidence that the billboard is structurally unsafe, is in an unreasonable state of repair, or has been abandoned for at least 12 months.

(5) The Town of Rush Valley will not allow a nonconforming billboard to be rebuilt or replaced by anyone other than its owner or the owner acting through its contractors.

(6) A permit issued, extended, or renewed by a municipality for a billboard remains valid for a period of 180 days after a required state permit is issued for the billboard if:

the billboard requires a state permit and an application for the state permit is filed within 30 days after the Town issues, extends, or renews a permit for the billboard.