



**Planning and Zoning Commission Staff Report  
Zoning Text Amendment, ZOA-PH2017-15**

Hearing Date: May 18, 2017

Development Services Department

<p><b>Applicant:</b> Canyon County</p> <p><b>Staff:</b> Patricia Nilsson, 454-6634 <a href="mailto:pnilsson@canyonco.org">pnilsson@canyonco.org</a></p> <p><b>Comprehensive Plan:</b> 2020 CC Comprehensive Plan</p> <p><b>Notification:</b></p> <ul style="list-style-type: none"> <li>• April 14, 2017 – Agency</li> <li>• May 11, 2016 – Public Service Announcement</li> <li>• May 2, 2017– Legal Publication</li> </ul> <p><b>Exhibits:</b></p> <ol style="list-style-type: none"> <li>1. FCO's</li> <li>2. Ordinance</li> </ol>	<p><b>Request</b></p> <p>Canyon County is requesting the Planning and Zoning Commission review a proposed ordinance as shown in Exhibit 2. The purpose of the amendment is to add necessary definitions of aliquot and nonconforming property, and to provide density when additional right-of-way is dedicated for future arterial public roads. The record consists of this staff report and exhibits and all materials within file ZOA-PH2017-15.</p> <p>The ordinance is summarized as follows:</p> <p>AN ORDINANCE AMENDING CANYON COUNTY CODE, CHAPTER 7, SECTION 07-02-03 TO ADD A DEFINITION OF ALIQUOT, TO MODIFY THE DEFINITION OF ORIGINAL PARCEL AND TO ADD A DEFINITION OF NONCONFORMING PROPERTY; TO AMEND SECTION 07-10-21(2) TO ADD A NOTE TO TABLE 2 PROVIDING FOR A CALCULATION OF LOTS IN CASES WHERE PUBLIC DEDICATIONS ARE MADE WHEN SUBDIVIDING PROPERTY AND TO PROVIDE A DECREASE OF UP TO 15% OF THE REQUIRED AVERAGE MINIMUM LOT SIZE WHEN PUBLIC DEDICATIONS ARE PROVIDED WHEN SUBDIVIDING OR THROUGH AN ADMINISTRATIVE LAND DIVISION; AND TO DELETE SECTION 07-01 AND REPLACE IT WITH STANDARDS FOR THE REGULATION OF NONCONFORMING PROPERTIES, STRUCTURES AND USES.</p> <p>Analysis: Staff comments can be found in italics below each section of the proposed ordinance.</p> <p><b>SECTION 1: 07-02-03: DEFINITIONS ENUMERATED:</b>  <u>ALIQUOT: The length of one side of a quarter-quarter section (<sup>1</sup>/<sub>16</sub>).</u>  <u>The one-sixteenth (<sup>1</sup>/<sub>16</sub>) section contains forty (40) acres, more or less.</u></p>
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NONCONFORMING USE: A use, structure, or parcel of land that lawfully existed prior to the effective date of this chapter, but that does not now conform to the land use restrictions for the district in which it is located.

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*Staff comment: The ordinance needed a definition of a nonconforming property as it has specific characteristics different from those of a structure or a use. We use the term aliquot in the definition of parcel but felt it necessary to include a definition.*

**SECTION 2: 07-10-21(2) Minimum Parcel Or Lot Size:**

TABLE 2

MINIMUM PARCEL OR LOT SIZE

	<b>Minimum Lot Size</b>	<b>Minimum Lot Width</b>
Agricultural zone A	40 acres or in accordance with the administrative land division requirements of article 18 of this chapter.	60'
Residential zone R-R	Average minimum lot size of 2 acres for a residential lot. <sup>3</sup>	60'
Residential zone R-1	Average minimum lot size of 1 acre for a residential lot <sup>1, 2</sup>	60'
Residential zone R-2	Average minimum lot size of 1/2 acre for a residential lot <sup>1, 2</sup>	60'
Commercial and industrial zones C-1, C-2, M-1, and M-2	No minimum lot size	80' <sup>2</sup>

Notes:

1. For parcels within the area of city impact with central sewer and/or water services, the parcel or lot size may be reduced to 12,000 square feet.
2. There is no minimum lot width requirement for parcels or platted lots containing or intended for noninhabited structures.
3. Where a property owner dedicates land for public use or right-of-way for future arterial roadways, the total number of lots that can be created on a property through subdivision is calculated by the total parcel size prior to platting divided by the average minimum lot size. The resulting lots, and residential lots created through an administrative land division in 07-18-01(1), may reduce the average minimum lot size by no more than 15%.

*Staff comment: Footnote 3 is added to provide for additional density when land for future arterial roadways is dedicated. This happens during the platting of a subdivision. Since the time of the original notice, staff is recommending a further change as noted in red text above. There are examples in the county where developments occur in advance of the funding and construction of future arterial roadways. These are not rights-of-way being used by the development but that for future roadways that serve a wider area. This provision provides relief on the minimum parcel size for up to 15% of the lots in the plat. Staff believes this helps share the burden between the developer and the public by setting aside lands for future arterials that will benefit the general public.*

SECTION 3:

~~07-11-01: PURPOSE:~~

~~The purpose of this article is to allow a nonconforming use to continue until it is removed, but not to encourage its survival. The right to continue a nonconforming use is one which attaches to the land. A nonconforming use does not extinguish when the property is transferred to a new owner.~~

~~07-11-03: MAINTENANCE AND REPAIR:~~

~~Maintenance and repair necessary or desirable to keep a nonconforming use in a safe and healthy condition, including construction of accesses as required by the Americans with disabilities act, is permitted.~~

~~07-11-05: EXPANSION/EXTENSION:~~

~~Expanding or extending a nonconforming use is prohibited. An expanded or extended use conducted in violation of this chapter invalidates the existing nonconforming use and the owner loses the right to continue the nonconforming use and the owner's nonconforming use must immediately cease. For the purpose of these regulations, the terms "expanded" or "extended" shall include, but not be limited to:~~

- ~~(1) Increased hours;~~

~~(2) Increased services or programs;~~

~~(3) Increased number of residential dwellings;~~

~~(4) Interior renovations or structural addition that increase the occupant load of the structure dedicated to the nonconforming use;~~

~~(5) Any new structures accessory to the nonconforming use;~~

~~(6) Expansion of the structure (or portions thereof) dedicated to the nonconforming use;~~

~~(7) Anything beyond regular maintenance and minor repairs required by the Canyon County building code;~~

~~(8) Any action that extends the duration of the nonconforming use; and~~

~~(9) Change of use to another nonconforming use or similar use.~~

**07-11-07: SINGLE-FAMILY DETACHED DWELLINGS:**

~~Any single-family detached dwelling that is in existence shall be considered legal conforming. Subject to complying with all other current, local or state development standards, legal conforming status shall authorize alterations, extensions/additions, and replacement of the single-family detached dwelling.~~

**07-11-09: ABANDONMENT:**

~~(1) Voluntary Abandonment: If a nonconforming use of improvements has ceased for more than ten (10) consecutive years, the nonconforming use shall be deemed abandoned and not allowed. A property owner may voluntarily abandon a use by filing an affidavit of abandonment and withdrawn use with DSD.~~

~~(2) Request For Declaration Of Intent To Continue:~~

~~A. Notwithstanding the provisions of subsection (1) of this section, if a nonconforming use of improvements has ceased for one year or longer, the county may request in writing that the owner declare in writing within twenty eight (28) days his intentions with regard to the use.~~

~~B. If the owner elects to continue with the right to conduct the nonconforming use on the property, he must:~~

~~1. Within twenty eight (28) days of his receipt of the request of the county, notify the county in writing of his intention to continue the nonconforming use;~~

~~2. Within one week of the written intention to DSD, notice shall be posted on all external boundaries of the site for not less than two (2) weeks stating the intention to continue the nonconforming use. Proof of posting shall be submitted to DSD within two (2) days of the posting of the property.~~

~~3. Within one week of the written intention to DSD, a notice shall be published once in a newspaper of general circulation in the county of the intent to continue the nonconforming use. Proof of publication shall be submitted to DSD upon publication of the notice.~~

~~C. The right to continue the nonconforming use shall continue until it is deemed abandoned pursuant to subsection (1) of this section.~~

#### ~~07-11-11: RESTORING A DAMAGED NONCONFORMING USE:~~

~~Where a nonconforming improvement, or a conforming improvement housing a nonconforming use, is damaged by fire, collapse, explosion, or other similar involuntary events, the nonconforming use may be recommenced or the building housing the nonconforming use may be replaced or repaired, provided that all of the following conditions are met and the commencement or reconstruction does not expand or extend the original use:~~

~~(1) A building permit for replacement or repair is issued within twelve (12) months of the date of the damaging event. Expansion and extension is prohibited.~~

~~A. Damage Of More Than Fifty Percent: A nonconforming use or a structure housing a nonconforming use that is damaged more than fifty percent (50%) of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with all current applicable ordinances, including, but not limited to, section [07-10-29](#) of this chapter and [chapter 6](#), "Building Regulations", of this code.~~

~~B. Damage Of Fifty Percent Or Less: If the damage to the nonconforming use or structure housing the nonconforming use is fifty percent (50%) or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming use commences within eighteen (18) months of the catastrophic event. The damaged portion may be rebuilt or repaired to its predamaged standards;~~

~~(2) The owner recommences the nonconforming use or reconstruction and diligently acts to restore the nonconforming improvement or use;~~

~~(3) The replacement or repaired improvement does not have a nonconforming feature that the original nonconforming building did not have;~~

~~(4) The replacement or repaired improvement does not exceed the size of the original building square footage;~~

~~(5) The replacement or repaired improvement, if possible, will be situated to meet minimum setbacks required by the zoning ordinance; and~~

(6) The replacement or repaired improvement is located as close as possible to the original location.

The purpose of this article is to allow a nonconforming use to continue until it is removed, but not to encourage its survival. The right to continue a nonconforming use is one which attaches to the land. A nonconforming use does not extinguish when the property is transferred to a new owner.

**07-11-03: MAINTENANCE AND REPAIR:**

Maintenance and repair necessary or desirable to keep a nonconforming use in a safe and healthy condition, including construction of accesses as required by the Americans with disabilities act, is permitted.

**07-11-05: EXPANSION/EXTENSION:**

Expanding or extending a nonconforming use is prohibited. An expanded or extended use conducted in violation of this chapter invalidates the existing nonconforming use and the owner loses the right to continue the nonconforming use and the owner's nonconforming use must immediately cease. For the purpose of these regulations, the terms "expanded" or "extended" shall include, but not be limited to:

(1) Increased hours;

(2) Increased services or programs;

(3) Increased number of residential dwellings;

(4) Interior renovations or structural addition that increase the occupant load of the structure dedicated to the nonconforming use;

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(6) Expansion of the structure (or portions thereof) dedicated to the nonconforming use;

(7) Anything beyond regular maintenance and minor repairs required by the Canyon County building code;

(8) Any action that extends the duration of the nonconforming use; and

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**07-11-07: SINGLE FAMILY DETACHED DWELLINGS:**

Any single-family detached dwelling that is in existence shall be considered legal conforming. Subject to complying with all other current, local or state development standards, legal conforming status shall authorize alterations, extensions/additions, and replacement of the single-family detached dwelling.

**07-11-09: ABANDONMENT:**

(1) Voluntary Abandonment: If a nonconforming use of improvements has ceased for more than ten (10) consecutive years, the nonconforming use shall be deemed abandoned and not allowed. A property owner may voluntarily abandon a use by filing an affidavit of abandonment and withdrawn use with DSD.

**(2) Request For Declaration Of Intent To Continue:**

A. Notwithstanding the provisions of subsection (1) of this section, if a nonconforming use of improvements has ceased for one year or longer, the county may request in writing that the owner declare in writing within twenty eight (28) days his intentions with regard to the use.

B. If the owner elects to continue with the right to conduct the nonconforming use on the property, he must:

1. Within twenty eight (28) days of his receipt of the request of the county, notify the county in writing of his intention to continue the nonconforming use;

2. Within one week of the written intention to DSD, notice shall be posted on all external boundaries of the site for not less than two (2) weeks stating the intention to continue the nonconforming use. Proof of posting shall be submitted to DSD within two (2) days of the posting of the property.

3. Within one week of the written intention to DSD, a notice shall be published once in a newspaper of general circulation in the county of the intent to continue the nonconforming use. Proof of publication shall be submitted to DSD upon publication of the notice.

C. The right to continue the nonconforming use shall continue until it is deemed abandoned pursuant to subsection (1) of this section.

**07-11-11: RESTORING A DAMAGED NONCONFORMING USE:**

Where a nonconforming improvement, or a conforming improvement housing a nonconforming use, is damaged by fire, collapse, explosion, or other similar involuntary events, the nonconforming use may be recommenced or the building housing the nonconforming use may be replaced or repaired, provided that all of the following conditions are met and the commencement or reconstruction does not expand or extend the original use.

(1) A building permit for replacement or repair is issued within twelve (12) months of the date of the damaging event. Expansion and extension is prohibited.

A. ~~Damage Of More Than Fifty Percent: A nonconforming use or a structure housing a nonconforming use that is damaged more than fifty percent (50%) of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with all current applicable ordinances, including, but not limited to, section 07-10-29 of this chapter and chapter 6, "Building Regulations", of this code.~~

B. ~~Damage Of Fifty Percent Or Less: If the damage to the nonconforming use or structure housing the nonconforming use is fifty percent (50%) or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming use commences within eighteen (18) months of the catastrophic event. The damaged portion may be rebuilt or repaired to its predamaged standards;~~

(2) ~~The owner recommences the nonconforming use or reconstruction and diligently acts to restore the nonconforming improvement or use;~~

(3) ~~The replacement or repaired improvement does not have a nonconforming feature that the original nonconforming building did not have;~~

(4) ~~The replacement or repaired improvement does not exceed the size of the original building square footage;~~

(5) ~~The replacement or repaired improvement, if possible, will be situated to meet minimum setbacks required by the zoning ordinance; and~~

(6) ~~The replacement or repaired improvement is located as close as possible to the original location.~~

07-11-01: PURPOSE:

The purpose of this article is to allow any nonconforming property, use, or structure that was lawfully existing prior to the effective date of this title to continue until they are removed, but not to encourage their continuation. It is further the intent of this article that nonconforming uses shall not expand or extend the nonconforming aspect of the property, use, or structure, unless approved subject to the regulations of this title.

07-11-02: APPLICABILITY:

A. These regulations shall apply to any lawfully existing nonconforming property, use, or structure in Canyon County, except: In the event that a property, use, or structure that was deemed nonconforming under past zoning regulations now complies with the standards of this title, such property, use, or structure shall be deemed conforming.

B. These regulations shall apply to properties that were not created in accord with the regulations of this title (an illegal division of property) and that were of record in the Canyon



County recorder's office prior to September 6, 1979, the boundaries of which shall not have changed except by governmental action.

1. A property shall be deemed conforming and shall be eligible for building permits if it meets the dimensional standards for the base district in which it is now located.

2. A property shall be deemed nonconforming and shall be eligible for building permits if it meets one of the following standards:

a. The property met the dimensional standards for the applicable base district at the time it was created.

b. A dwelling, as herein defined, was constructed or placed on the property prior to September 6, 1979 provided, in the event that the dwelling is subsequently damaged or destroyed by fire, flood, explosion, wind, earthquake, war, riot, calamity or other catastrophic event after September 6, 1979, the property remains eligible for a building permit.

07-11-03: NONCONFORMING PROPERTY:

A. The nonconforming property shall not be further diminished in size.

B. Any property reduced by governmental action that reduces an existing conforming parcel below the required property size shall be deemed as a conforming property for the purpose of development. To be deemed a conforming property, the owner or applicant shall submit documents to the director proving the following:

1. The property was in compliance with the minimum property size requirement of the applicable zoning district prior to the decrease in property size; and

2. The decrease in property size was caused by acquisition through prescription, purchase, or other means by Canyon County, a municipality within Canyon County, a highway district within Canyon County, Idaho Transportation Department, utility company or corporation under the jurisdiction of the Idaho public utilities commission, or other local, state, or federal agency.

07-11-04: NONCONFORMING USE:

A. The nonconforming use may continue as long as the use remains lawful and is not expanded or extended, unless approved subject to the regulations of this title.

B. For the purposes of this article, the term "expanded or extended" shall include, but not be limited to: increased hours; increased services or programs; increased number of residential dwellings; interior renovations or structural additions that increase the occupant load of the structure dedicated to the nonconforming use (see Canyon County building code as set forth in chapter 6 of this code); any new structures accessory to the nonconforming use; expansion or replacement of the structure (or portions thereof) dedicated to the nonconforming use; anything beyond regular maintenance and minor repairs (as required by the Canyon County

building code as set forth in chapter 6 of this code); and any action that extends the duration of the nonconforming use.

C. If a nonconforming use has ceased for ten (10) years or has been replaced with a conforming use, the nonconforming use shall be deemed abandoned and shall not be reestablished. If nonuse or vacancy continues for a period of a year or longer, the county may request resolution of the nonconforming use right according to procedures outlined in Idaho Code section 67-6538(2) as it may be amended or retitled from time to time.

D. A nonconforming use or structure housing a nonconforming use that is damaged more than fifty percent (50%) of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this title upon reconstruction. If the damage to the nonconforming use or structure housing the nonconforming use is fifty percent (50%) or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming use commences within ten (10) years of the event. If nonuse or vacancy continues for a period of a year or longer, the county may request resolution of the nonconforming use right according to procedures outlined in Idaho Code section 67-6538(2) as it may be amended or retitled from time to time.

#### 07-11-05: NONCONFORMING STRUCTURE:

A. Nonconforming structures may be enlarged or modified, provided that the additions or modifications to the structure conform to the requirements of this title.

B. A nonconforming structure that is damaged more than seventy five percent (75%) of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this title upon restoration or reconstruction. If the damage to the nonconforming structure is seventy five percent (75%) or less of the current assessed taxable value, the structure may be restored or reconstructed, provided that restoration or reconstruction commences within twelve (12) months of the event.

#### 07-11-06: VIOLATIONS:

Properties, uses, or structures that were in violation of previous land use regulations and that remain a violation under this title shall be considered continuing violations.

Staff Comment: This section was reworded to conform to provisions in other Idaho codes to provide specific standards for a nonconforming property, use or a structure. The current ordinance is silent on what makes a property conforming, yet this is a common issue that arises in determining whether a property is simply nonconforming vs. the result of a division in violation of the ordinance standards.

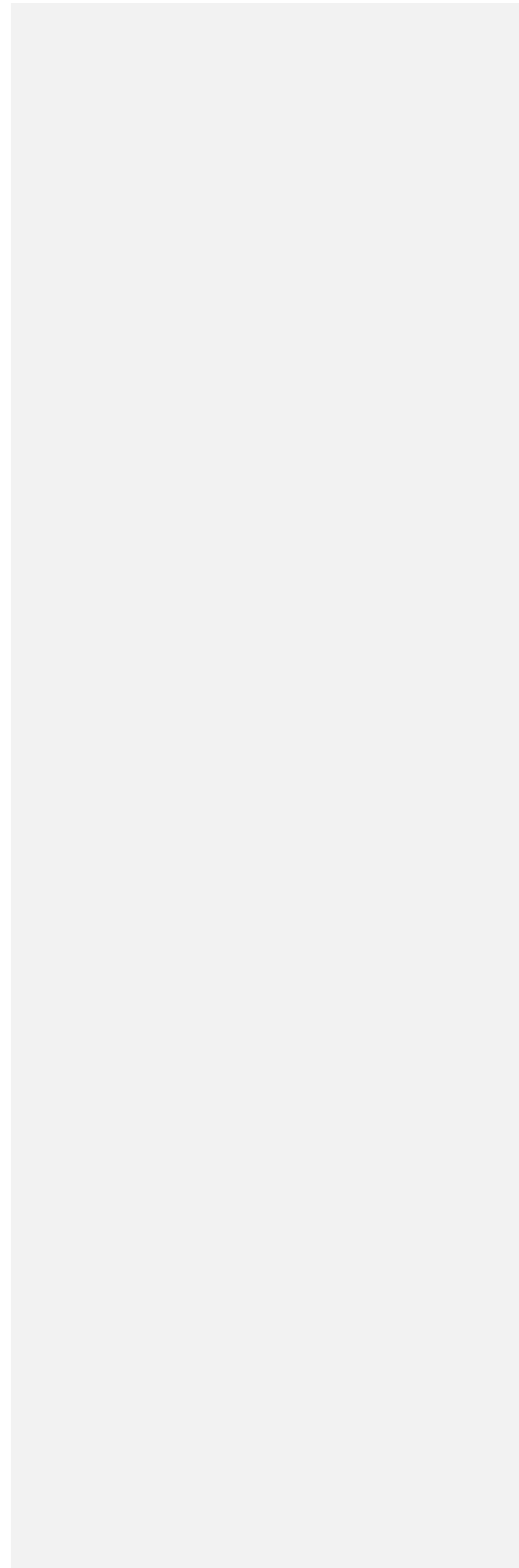
#### Comments

No comments were received from the public or agencies.

#### Recommendation

Staff recommends the Planning and Zoning Commission, upon review of proposed ZOA-PH2017-15 Canyon County Zoning Ordinance Text Amendments, and in consideration of testimony provided at the

public hearing, recommend **approval** of the proposed zoning ordinance amendment to the Board of County Commissioners.





**Canyon County Planning and Zoning Commission**  
**Amendment of Canyon County Zoning Ordinance PH2017-15**

*Development Services Department, May 18, 2017*

**Findings of Fact, Conclusions of Law, and Order**

Amendment of the Canyon County Zoning Ordinance

**Findings of Fact and Conclusion of Law**

1. The public hearing shall be conducted in accordance with CCZO 10-006 Articles 5 and 6, and Idaho Code §676509 and §67-6511.
2. The request is not subject to the regulatory taking analysis provided for by section §67-8003.
3. There is no evidence that would demonstrate that the requested amendments are contrary to the Comprehensive Plan or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction.
4. In accordance with Canyon County Code §07-06-01(4)(A), the Planning and Zoning Commission considered the Comprehensive Plan and other evidence gathered through the public hearing process.

**Order**

Based upon the Findings of Fact and Conclusions of Law contained herein, the Planning and Zoning Commission recommends approval of Case #PH2017-15 to the Board of County Commissioners.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

PLANNING AND ZONING COMMISSION  
CANYON COUNTY, IDAHO

\_\_\_\_\_  
Richard Hall, Chairman

State of Idaho )  
SS

County of Canyon County )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2017 before me \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

Notary: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT 1**

ORDINANCE NO. 17-\_\_\_\_\_

AN ORDINANCE AMENDING CANYON COUNTY CODE, CHAPTER 7, SECTION 07-02-03 TO ADD A DEFINITION OF ALIQUOT, TO MODIFY THE DEFINITION OF ORIGINAL PARCEL AND TO ADD A DEFINITION OF NONCONFORMING PROPERTY; TO AMEND SECTION 07-10-21(2) TO ADD A NOTE TO TABLE 2 PROVIDING FOR A CALCULATION OF LOTS IN CASES WHERE PUBLIC DEDICATIONS ARE MADE WHEN SUBDIVIDING PROPERTY AND TO PROVIDE A DECREASE OF UP TO 15% OF THE REQUIRED AVERAGE MINIMUM LOT SIZE WHEN PUBLIC DEDICATIONS ARE PROVIDED WHEN SUBDIVIDING OR THROUGH AN ADMINISTRATIVE LAND DIVISION; AND TO DELETE SECTION 07-01 AND REPLACE IT WITH STANDARDS FOR THE REGULATION OF NONCONFORMING PROPERTIES, STRUCTURES AND USES.

**BE IT ORDAINED** BY THE BOARD OF COMMISSIONERS OF CANYON COUNTY, IDAHO, THAT CANYON COUNTY CODE, CHAPTER 7, BE AMENDED AS FOLLOWS:

**SECTION 1: 07-02-03: DEFINITIONS ENUMERATED:**

ALIQUOT: The length of one side of a quarter-quarter section ( $\frac{1}{16}$ ). The one-sixteenth ( $\frac{1}{16}$ ) section contains forty (40) acres, more or less.

ORIGINAL PARCEL: A parcel of platted or unplatted land as it existed on September 6, 1979 (the effective date of the zoning ordinance 79-008). Including any property boundary adjustments as defined in this chapter and any reduction in area due to creating a parcel for the exclusive use by Canyon County, a municipality within Canyon County, a local highway district, Idaho Transportation Department, utility company or corporation under the jurisdiction of the Idaho Public Utilities Commission, or other local, state, or federal agency.

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**SECTION 2: 07-10-21(2) Minimum Parcel Or Lot Size:**

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**SECTION 3:**

**07-11-01: PURPOSE:**

The purpose of this article is to allow a nonconforming use to continue until it is removed, but not to encourage its survival. The right to continue a nonconforming use is one which attaches to the land. A nonconforming use does not extinguish when the property is transferred to a new owner.

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**EXHIBIT 2**

(1) Increased hours;

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**07-11-07: SINGLE FAMILY DETACHED DWELLINGS:**

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**07-11-09: ABANDONMENT:**

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B. If the owner elects to continue with the right to conduct the nonconforming use on the property, he must:

1. Within twenty eight (28) days of his receipt of the request of the county, notify the county in writing of his intention to continue the nonconforming use;

~~2. Within one week of the written intention to DSD, notice shall be posted on all external boundaries of the site for not less than two (2) weeks stating the intention to continue the nonconforming use. Proof of posting shall be submitted to DSD within two (2) days of the posting of the property.~~

~~3. Within one week of the written intention to DSD, a notice shall be published once in a newspaper of general circulation in the county of the intent to continue the nonconforming use. Proof of publication shall be submitted to DSD upon publication of the notice.~~

~~C. The right to continue the nonconforming use shall continue until it is deemed abandoned pursuant to subsection (1) of this section.~~

**07-11-11: RESTORING A DAMAGED NONCONFORMING USE:**

~~Where a nonconforming improvement, or a conforming improvement housing a nonconforming use, is damaged by fire, collapse, explosion, or other similar involuntary events, the nonconforming use may be recommenced or the building housing the nonconforming use may be replaced or repaired, provided that all of the following conditions are met and the commencement or reconstruction does not expand or extend the original use:~~

~~(1) A building permit for replacement or repair is issued within twelve (12) months of the date of the damaging event. Expansion and extension is prohibited.~~

~~A. Damage Of More Than Fifty Percent: A nonconforming use or a structure housing a nonconforming use that is damaged more than fifty percent (50%) of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with all current applicable ordinances, including, but not limited to, section [07-10-29](#) of this chapter and [chapter 6](#), "Building Regulations", of this code.~~

~~B. Damage Of Fifty Percent Or Less: If the damage to the nonconforming use or structure housing the nonconforming use is fifty percent (50%) or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming use commences within eighteen (18) months of the catastrophic event. The damaged portion may be rebuilt or repaired to its predamaged standards;~~

~~(2) The owner recommences the nonconforming use or reconstruction and diligently acts to restore the nonconforming improvement or use;~~

~~(3) The replacement or repaired improvement does not have a nonconforming feature that the original nonconforming building did not have;~~

~~(4) The replacement or repaired improvement does not exceed the size of the original building square footage;~~

~~(5) The replacement or repaired improvement, if possible, will be situated to meet minimum setbacks required by the zoning ordinance; and~~



(6) The replacement or repaired improvement is located as close as possible to the original location.

The purpose of this article is to allow a nonconforming use to continue until it is removed, but not to encourage its survival. The right to continue a nonconforming use is one which attaches to the land. A nonconforming use does not extinguish when the property is transferred to a new owner.

**07-11-03: MAINTENANCE AND REPAIR:**

Maintenance and repair necessary or desirable to keep a nonconforming use in a safe and healthy condition, including construction of accesses as required by the Americans with disabilities act, is permitted.

**07-11-05: EXPANSION/EXTENSION:**

Expanding or extending a nonconforming use is prohibited. An expanded or extended use conducted in violation of this chapter invalidates the existing nonconforming use and the owner loses the right to continue the nonconforming use and the owner's nonconforming use must immediately cease. For the purpose of these regulations, the terms "expanded" or "extended" shall include, but not be limited to:

- (1) Increased hours;
- (2) Increased services or programs;
- (3) Increased number of residential dwellings;
- (4) Interior renovations or structural addition that increase the occupant load of the structure dedicated to the nonconforming use;
- (5) Any new structures accessory to the nonconforming use;
- (6) Expansion of the structure (or portions thereof) dedicated to the nonconforming use;
- (7) Anything beyond regular maintenance and minor repairs required by the Canyon County building code;
- (8) Any action that extends the duration of the nonconforming use; and
- (9) Change of use to another nonconforming use or similar use.

**07-11-07: SINGLE FAMILY DETACHED DWELLINGS:**

Any single family detached dwelling that is in existence shall be considered legal conforming. Subject to complying with all other current, local or state development standards, legal conforming status shall authorize alterations, extensions/additions, and replacement of the single family detached dwelling.

07-11-09: ABANDONMENT:

(1) Voluntary Abandonment: If a nonconforming use of improvements has ceased for more than ten (10) consecutive years, the nonconforming use shall be deemed abandoned and not allowed. A property owner may voluntarily abandon a use by filing an affidavit of abandonment and withdrawn use with DSD.

(2) Request For Declaration Of Intent To Continue:

A. Notwithstanding the provisions of subsection (1) of this section, if a nonconforming use of improvements has ceased for one year or longer, the county may request in writing that the owner declare in writing within twenty eight (28) days his intentions with regard to the use.

B. If the owner elects to continue with the right to conduct the nonconforming use on the property, he must:

1. Within twenty eight (28) days of his receipt of the request of the county, notify the county in writing of his intention to continue the nonconforming use;

2. Within one week of the written intention to DSD, notice shall be posted on all external boundaries of the site for not less than two (2) weeks stating the intention to continue the nonconforming use. Proof of posting shall be submitted to DSD within two (2) days of the posting of the property.

3. Within one week of the written intention to DSD, a notice shall be published once in a newspaper of general circulation in the county of the intent to continue the nonconforming use. Proof of publication shall be submitted to DSD upon publication of the notice.

C. The right to continue the nonconforming use shall continue until it is deemed abandoned pursuant to subsection (1) of this section.

07-11-11: RESTORING A DAMAGED NONCONFORMING USE:

Where a nonconforming improvement, or a conforming improvement housing a nonconforming use, is damaged by fire, collapse, explosion, or other similar involuntary events, the nonconforming use may be recommenced or the building housing the nonconforming use may be replaced or repaired, provided that all of the following conditions are met and the commencement or reconstruction does not expand or extend the original use.

(1) A building permit for replacement or repair is issued within twelve (12) months of the date of the damaging event. Expansion and extension is prohibited.

A. Damage Of More Than Fifty Percent: A nonconforming use or a structure housing a nonconforming use that is damaged more than fifty percent (50%) of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with all current applicable ordinances, including, but not limited to, section 07-10-29 of this chapter and chapter 6, "Building Regulations", of this code.

B. Damage Of Fifty Percent Or Less: If the damage to the nonconforming use or structure housing the nonconforming use is fifty percent (50%) or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming use commences within eighteen (18) months of the catastrophic event. The damaged portion may be rebuilt or repaired to its predamaged standards;

(2) The owner recommences the nonconforming use or reconstruction and diligently acts to restore the nonconforming improvement or use;

(3) The replacement or repaired improvement does not have a nonconforming feature that the original nonconforming building did not have;

(4) The replacement or repaired improvement does not exceed the size of the original building square footage;

(5) The replacement or repaired improvement, if possible, will be situated to meet minimum setbacks required by the zoning ordinance; and

(6) The replacement or repaired improvement is located as close as possible to the original location.

07-11-01: PURPOSE:

The purpose of this article is to allow any nonconforming property, use, or structure that was lawfully existing prior to the effective date of this title to continue until they are removed, but not to encourage their continuation. It is further the intent of this article that nonconforming uses shall not expand or extend the nonconforming aspect of the property, use, or structure, unless approved subject to the regulations of this title.

07-11-02: APPLICABILITY:

A. These regulations shall apply to any lawfully existing nonconforming property, use, or structure in Canyon County, except: In the event that a property, use, or structure that was deemed nonconforming under past zoning regulations now complies with the standards of this title, such property, use, or structure shall be deemed conforming.

B. These regulations shall apply to properties that were not created in accord with the regulations of this title (an illegal division of property) and that were of record in the Canyon County recorder's office prior to September 6, 1979, the boundaries of which shall not have changed except by governmental action.

1. A property shall be deemed conforming and shall be eligible for building permits if it meets the dimensional standards for the base district in which it is now located.

2. A property shall be deemed nonconforming and shall be eligible for building permits if it meets one of the following standards:

a. The property met the dimensional standards for the applicable base district at the time it was created.

b. A dwelling, as herein defined, was constructed or placed on the property prior to September 9, 1979 provided, in the event that the dwelling is subsequently damaged or destroyed by fire, flood, explosion, wind, earthquake, war, riot, calamity or other catastrophic event September 9, 1976, the property remains eligible for a building permit.

07-11-03: NONCONFORMING PROPERTY:

A. The nonconforming property shall not be further diminished in size.

B. Any property reduced by governmental action that reduces an existing conforming parcel below the required property size shall be deemed as a conforming property for the purpose of development. To be deemed a conforming property, the owner or applicant shall submit documents to the director proving the following:

1. The property was in compliance with the minimum property size requirement of the applicable zoning district prior to the decrease in property size; and

2. The decrease in property size was caused by acquisition through prescription, purchase, or other means by Canyon County, a municipality within Canyon County, a highway district within Canyon County, Idaho Transportation Department, utility company or corporation under the jurisdiction of the Idaho public utilities commission, or other local, state, or federal agency.

07-11-04: NONCONFORMING USE:

A. The nonconforming use may continue as long as the use remains lawful and is not expanded or extended, unless approved subject to the regulations of this title.

B. For the purposes of this article, the term "expanded or extended" shall include, but not be limited to: increased hours; increased services or programs; increased number of residential dwellings; interior renovations or structural additions that increase the occupant load of the structure dedicated to the nonconforming use (see Canyon County building code as set forth in chapter 6 of this code); any new structures accessory to the nonconforming use; expansion or replacement of the structure (or portions thereof) dedicated to the nonconforming use; anything beyond regular maintenance and minor repairs (as required by the Canyon County building code as set forth in chapter 6 of this code); and any action that extends the duration of the nonconforming use.

C. If a nonconforming use has ceased for ten (10) years or has been replaced with a conforming use, the nonconforming use shall be deemed abandoned and shall not be reestablished. If nonuse or vacancy continues for a period of a year or longer, the county may request resolution of the nonconforming use right according to procedures outlined in Idaho Code section 67-6538(2) as it may be amended or retitled from time to time.

D. A nonconforming use or structure housing a nonconforming use that is damaged more than fifty percent (50%) of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this title upon reconstruction. If the damage to the nonconforming use or structure housing the nonconforming use is fifty percent (50%) or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming

use commences within ten (10) years of the event. If nonuse or vacancy continues for a period of a year or longer, the county may request resolution of the nonconforming use right according to procedures outlined in Idaho Code section 67-6538(2) as it may be amended or retitled from time to time.

07-11-05: NONCONFORMING STRUCTURE:

A. Nonconforming structures may be enlarged or modified, provided that the additions or modifications to the structure conform to the requirements of this title.

B. A nonconforming structure that is damaged more than seventy five percent (75%) of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this title upon restoration or reconstruction. If the damage to the nonconforming structure is seventy five percent (75%) or less of the current assessed taxable value, the structure may be restored or reconstructed, provided that restoration or reconstruction commences within twelve (12) months of the event.

07-11-06: VIOLATIONS:

Properties, uses, or structures that were in violation of previous land use regulations and that remain a violation under this title shall be considered continuing violations.

**SECTION 4. EFFECTIVE DATE**

This ordinance shall be in full force and effect upon publication.

ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2017.

**BOARD OF COUNTY COMMISSIONERS  
CANYON COUNTY, IDAHO**

	Yes	No	Did Not Vote
_____ Tom Dale, Chairman	_____	_____	_____
_____ Commissioner Pam White	_____	_____	_____
_____ Commissioner Steve Rule	_____	_____	_____

Attest: Chris Yamamoto, Clerk

By: \_\_\_\_\_

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