

## NONCONFORMING USES & STRUCTURES IN UNINCORPORATED BOULDER COUNTY

*By Ann Mygatt  
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You may own a house that has been “grand fathered in” because it was built before the existence of zoning in Boulder County, or at least before many of the zoning laws currently on the books were adopted. Your home or other building on the property may be designated a “nonconforming structure” because has now become out of compliance with the subsequent Land Use Code regulations. **Boulder County Land Use Code [BCLUC] Article 4-1002.** Or you may be using the property in a way that the zoning rules prohibit , rendering it a nonconforming use. BCLUC Art, 4-1003.

It’s important to know this because your property may lose value over time or even become virtually unmarketable because no lender will finance a home that is not in compliance with the building codes, or you may be prevented from upgrading or even maintaining the property. You may live in an “overlay” district, for example, a flood plain or “neighborhood conservation” district.\* Many structures, especially older homes, have become nonconforming over the years because of the avalanche of new regulations adopted by the County in recent years.

**A “nonconforming structure” is any existing structure not in compliance with the zoning district in which it is located. A “nonconforming use” is any existing use not in compliance with the use regulations of the Land Use Code for the zoning district in which it is located. BCLUC Article 4-1000**

The Zoning Code clearly mandates the County’s policy that nonconforming structures and uses should be brought into compliance “as speedily as justice will permit” and that their regulations will be “strictly construed against the continuation or expansion of nonconformity.” [Emphasis added].

No one wants to see people living in truly unsafe conditions, and the intent of such prohibitions may be benign. However, it is in the application of such provisions that the Commissioners with their uncontrolled discretion, have abused the rights of homeowners. You may safe – at least for a while -- if your house is well built, up to date, you don’t need to expand the square footage and it doesn’t burn down or get carried away by flood.

**You may not alter, repair or enlarge the structure in any way that would increase the degree of nonconformity** with respect to Code’s setbacks or height restrictions. This would include any modification that results in an increase in floor area or height. The

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\* A Neighborhood Conservation Overlay District is an area of homes that has adopted specific building requirements (with only a bare majority vote) similar to covenants, that are imposed on the houses located in their area. You would be subject to these rules even if they are imposed after you have purchased your home. A new provision to the Code, no cases have yet turned up challenging this designation.

only exception would be for public health and safety reasons enforced by another governmental entity with jurisdiction, for example a fire district.

**If your house has been damaged or destroyed.** You are allowed to rebuild if your nonconforming house has been damaged or destroyed by fire or flood or some other cause that is out of your control. You may be permitted to rebuild in the original location, keep the same floor area and height without going through Site Plan Review (SPR), but only if you start building within 6 months and complete your project within a year. For practical reasons, this condition may be impossible to meet, and you become subject to the whims and arbitrary decisions of the Boulder County Land Use Department, and ultimately the Board of County Commissioners. They have broad discretion to turn down projects and impair your access to your property.

The County is not the only governmental entity for homeowners building a house to contend with. Other governmental and quasi-governmental districts may have gained concurrent jurisdiction along with the County, and if you are rebuilding or improving your existing home, their regulations must also be complied with: Historic districts, water and sewer districts, fire districts and/or natural landmark designations may have been established since your house was originally built, and these regulations now apply to you. You may find that there are more obstacles to rebuilding your house than you had anticipated. The staff at the Land Use Department has a responsibility to assist homeowners in restoring their homes, but the practical reality is that they often use restrictions in the Code in ways that will restrict construction.

Districts may also have authority to impact your homebuilding, sometimes in ways that are fatal to the success of your project. In situations like this, going through SPR or Limited Impact Special Use Review (LISR -- the more intensive Limited Impact Special Use Review) will inevitably throw you into the briar patch of the Byzantine and tortuous land use process in the Boulder County Land Use Code.

You may need to hire a lawyer, planning consultant or other professional to help you work through it.

### **Non-conforming Structures: Burned Out Victims of the Overland Fire.**

Land use bureaucracy and elected officials often say one thing, and do another: Publicly the County professed to want to help the burned out homeowners of the Overland fire by expediting the approval process, waiving the requirement of SPR and otherwise helping them to avoid the worst part of obtaining a permit to build. An appropriate stand to take in times of distress.

The reality is quite different, however. Homeowners may be subject to regulations of overlying districts such as fire or water districts. Each Fire District has its own set of regulations, and they have the right and the responsibility to impose their conditions on homeowners in their district. They also have a built in method for influencing the building decision process, and can make you spend money you don't have to force you to

meet those conditions of review. For example, the Overland fire victims who lost their houses, the Left Hand Fire District has imposed a burdensome and expensive requirement of indoor sprinkler systems, even in very small houses. Until now, that was an option left up to the Owner, as long as the total square footage of the house did not exceed a certain amount.

**A Non-conforming Use: The El Vado story – Tara & Jim Parks  
Or—No good deed goes unpunished**

Tara Parks only wanted to improve the motel – turned apartment units – which she and her husband Jim had purchased in 1992. Built in the 30's, the El Vado's (located near Sugarloaf Road in Boulder Canyon) nine units were home to a variety of people at an affordable level by Boulder standards – between \$450 & \$750 per unit. The complex was in serious need of updating: old wiring, plumbing, lack of adequate insulation, too low ceilings and leaded paint all needed to be removed and replaced. The improvements would not have added any additional square footage, and would bring the drafty units in compliance with code.

El Vado was considered a nonconforming use as a multifamily dwelling in the mountains, and to make these improvements, the Parks had to undergo a hearing under the LSIR requirement, both arduous & expensive. The Commissioners would need to find that the work would benefit the community in a significant way before they could approve the plan. The Parks were so confident that the Commissioners would approve their plan that they spent \$12,000 in preparation and exhibits for the hearing. The Commissioners justified their perfunctory denial and accused the Parks of an evil intent to gouge the tenants, and finding that a “handful of rental units” did not constitute “a significant socioeconomic need within the county”. Their project would only be approved if the Parks agreed to permanently restrict the deed keeping the rents permanently affordable -- with Boulder County deciding what constituted “affordable”. As a result, the improvements were not authorized, and the structures will not be upgraded and improved, a significant loss for the County, the Parks’ and their tenants.

Likewise, conflicts will occur when Neighborhood Conservation Districts dictate what square footage, lighting and house colors will be permitted for homes in your community. As it is, a bare majority of your neighbors can impose their architectural and design standards on you, even though you have lived in your house for years in the form it is right now. Your house will have become a non-conforming structure, subject to the same limitations on financing and renovation.

**Conclusion: Use Due Diligence Before You Buy.**

You are at the mercy of arbitrary decisions made by the Board of County Commissioners and the Land Use Department. Maybe the most worrisome aspect about living in a nonconforming structure is that the condition of your home will be dependent on the discretion of bureaucrats and elected officials with little or no training in architecture or design. Not only does the BOCC have enormous discretion to impose restrictions on

your home, the cost of appealing an adverse decision is prohibitive, with very little chance for reversal. Most people do not have the stomach for lengthy and costly litigation, and so are stuck with the final decision made by the Commissioners. Finally, and importantly, keep in mind that a lender will be reluctant to finance a home that is a non-conforming structure because of the limitations in improvements and the difficulty in upgrading, improving and remodeling the home.

**LAND USE COALITION**

PO Box 20265

Boulder, CO 80308

[www.landusecoalition.org](http://www.landusecoalition.org)

[contactus@landusecoalition.org](mailto:contactus@landusecoalition.org)