

ARTICLE 8. NONCONFORMITIES

8.1 PURPOSE

This article establishes regulations that govern uses, structures, lots, signs, and other current circumstances that came into being lawfully but that do not conform to one or more requirements of this Code.

8.2 NONCONFORMITIES REGULATED

This article addresses the following types of situations, all of which are collectively referred to as "nonconformities."

8.2.1 Nonconforming Uses

- A. Uses that were legally established but which no longer comply with the regulations that apply within the zoning district in which the use is located are referred to as "nonconforming uses." The "regulations" referred to herein shall mean the regulations set forth in Article 4 (Zoning Districts), Article 5 (Use Regulations), and Sections 6.2 (Intensity of Use, Lot Dimension, Lot Coverage, and Setbacks) and 6.3 (Height of Structures) of Article 6 (Development Standards) of this Code, except as otherwise excepted by this Article.
- B. A use that was legally established without a conditional use permit shall be deemed to have a conditional use permit and shall not be deemed nonconforming solely because a conditional use permit is now required for the use by this Code

8.2.2 Nonconforming Structures

- A. General Rule. Buildings and structures, not including signs, that were legally established but which no longer comply with the dimensional or other standards that apply within the zoning district in which the building or structure is located are referred to as "nonconforming structures."
- B. Limited Exception for Fences. Any fence or wall that was erected or installed prior to September 15, 1995, that did not comply with the zoning ordinance in effect at the time it was erected or installed shall be deemed a nonconforming structure for purposes of location in the application of this Article's provisions.

8.2.3 Nonconforming Lighting Systems

All existing lighting systems legally installed and operative before the date of adoption shall be considered legal nonconforming systems. Nonconforming lighting may be continued, but the lighting shall not be changed to any other nonconforming lighting, structurally altered, altered in any way that increases its degree of nonconformance, or expanded or extended in scope.

8.2.4 Nonconforming Lots

Lots of record that were legally established but which no longer comply with the dimensional standards that apply within the zoning district in which the lot is located is referred to as "nonconforming lots."

8.2.5 Nonconforming Signs

Signs that were legally established but which no longer comply with the sign regulations of §6.17 of this Code are referred to as "nonconforming signs."

8.3 PRIOR NONCONFORMITIES CONTINUE

Any nonconformity created under application of the previous land development regulations of the City shall continue to be nonconformity under this Code and shall be subject to the provisions of this article.

8.4 POLICIES

8.4.1 General Policy

It is the City's general policy to allow uses, structures, signs, and lots that came into existence legally and in conformance with then-applicable requirements, but that do not conform to all of the applicable requirements of this Code, to continue to exist and be put to productive use, while bringing as many aspects of the use, structure, sign, or lot into conformance with this Code as is reasonably practicable, all subject to the limitations of this article. The limitations of this article are intended to recognize the interests of the property owner in continuing to use the property but to control the expansion of the nonconformity and to control re-establishment of abandoned nonconforming uses and limit re-establishment of buildings and structures that have been substantially destroyed.

8.4.2 Authority to Continue

Nonconformities shall be allowed to continue in accordance with the regulations of this article.

8.4.3 Determination of Nonconformity Status

The burden of establishing that nonconformity lawfully exists shall be on the owner, not the City. See §8.11 below.

8.4.4 Change of Tenancy or Ownership

Changes of tenancy, ownership, or management of an existing nonconformity shall be permitted, and in such cases the nonconforming situation shall continue to be subject to the standards of this article.

8.5 REPAIRS AND MAINTENANCE

8.5.1 General Rule

Repairs and normal maintenance, as defined in Article 10, required to keep nonconforming uses, structures, and signs in a safe condition shall be permitted. All repair and normal maintenance shall be subject to this Article's limitations regarding expansion and enlargement of the structure or use.

8.5.2 Limited Exception for Fences

- A. Notwithstanding subsection 8.5.1 above, non-conforming fences may be repaired through substantial reconstruction, which may equal or exceed 50 percent of the market value of the fence at the start of work, provided the fence is reconstructed in the same location as the prior existing fence and provided there is no change in type of fence (for example, solid to solid, percentage of open to open) or the height of the fence except to comply with this Code.
- B. Reconstruction of a nonconforming fence shall not increase the degree of nonconformity or create a new nonconformity and shall be completed within 60 days of removal of the original fence. See §8.7.1, "Enlargement of Nonconforming Structures," below.
- C. A nonconforming fence shall not be reconstructed in any way that will violate safety provisions of this Code, such as the requirement for a clear sight-visibility triangle area, or prohibitions on construction in a floodplain or a public right-of-way.

8.5.3 Compliance Required if Non-Repair Results in Safety Hazard

If a nonconforming structure, or a portion of a structure devoted to a nonconforming use, becomes physically unsafe or unlawful due to a lack of repairs and maintenance and it is declared by an authorized official, as designated by the City Manager, to be unsafe or unlawful by reason of physical condition, it shall thereafter be restored, rebuilt, or repaired only in conformity with the regulations of the zoning district in which it is located.

8.6 NONCONFORMING USES

Nonconforming uses are hereby declared incompatible with the principal permitted uses in the zoning districts involved. Nonconforming uses shall be subject to the following standards:

8.6.1 Enlargement and Expansion

- A. Structure Enlargement. Except as allowed by subsection D below, a structure devoted to a nonconforming use shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered except to change the use of the structure to a use permitted in the zoning district in which the structure is located.

- B. Expansion of Nonconforming Uses. Except as allowed by subsection D below:
1. A nonconforming use may be enlarged, expanded, or extended to occupy any interior parts of the building housing such use that were designed or arranged for such use at the time the use was legally established.
 2. A nonconforming use shall not be extended to any land or portion of property outside of any building that was not used for the nonconforming use at the time the use was legally established.
 3. No additional accessory use, building, or structure shall be established on the site of a nonconforming use.
- C. Additional Signs or Uses. In connection with a nonconforming use, the following shall be prohibited:
1. The attachment on the building or premises of additional signs intended to be seen from off the premises, and
 2. The addition of other uses that are prohibited in the zoning district involved.
- D. CC-District Exemption for Expansion of Buildings Containing Non-Conforming Commercial & Industrial Uses.
1. Intent. In order to facilitate the physical expansion of the base building square footage of existing commercial and industrial uses in all CC sub-districts, this provision allows a limited exemption from restrictions on the expansion of existing businesses.
 2. Building Expansions of 25% or Less. Subject to subsection D.3 below, the following development standards shall not apply, provided the expansion of a non-conforming structure containing a non-conforming use is 25% or less, either in one expansion or a cumulation of expansions over time:
 - a. Right-of-way dedications;
 - b. Public improvements, including sidewalk and roadway requirements; and
 - c. Provision of landscape buffers or screening.
 3. Exemptions for Expansions of Greater Than 2,500 Square Feet. An expansion of a non-conforming structure greater than 2,500 square feet shall qualify for the exemption in subsection D.2 above only if the Community Development Director finds that the expansion will not cause an increase in vehicular traffic requiring traffic and roadway improvements to public streets.
 4. Measurement. The base building square footage figure for determining degree of expansion shall be the gross floor area as of October 7, 1993. Expansion may be to an existing building or may be the addition of new buildings.

5. Building Expansions of More Than 25%. Any building expansion of more than 25% shall meet all applicable development standards and regulations.

E. Exemptions for Existing Service Stations. Where more than two service stations exist within 660 feet of two arterial streets, they shall not be considered as a non-conforming use.

8.6.2 Discontinuance and Abandonment

A. Minor Nonconforming Uses. Should the use, for any reason, cease to operate or exist for a period of 30 days or more (except where government action causes such cessation), the subsequent use of the property shall conform to the regulations and provisions set by this Code for the zoning district in which such property is located.

B. Major Nonconforming Uses. Should the use, for any reason, cease to operate or exist for a period of 60 consecutive days, or 6 months during any three-year period (except where government action causes such cessation), the subsequent use of the property shall conform to the regulations and provisions set by this Code for the district in which such property is located.

8.6.3 Damage or Destruction

In the event that a structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than 50 percent of its structural replacement value prior to such act of destruction, such structure shall not be restored unless such structure and the use thereof complies with the regulations that apply within the underlying zoning district. The determination of such reduced structural valuation shall be made by the City. When such damage or destruction is 50 percent or less, no repair or restoration shall be made unless a building permit is obtained within 180 days and restoration is actually begun within 1 year after the date of such partial destruction and is diligently pursued to completion.

8.6.4 Change in Use

A nonconforming use may be changed to a new use, provided that the new use is a conforming use or a less intensive or lower-impact nonconforming use than the existing, nonconforming use. The initial determination of whether a proposed use is a conforming use or is a less intense nonconforming use shall be made by the Community Development Director.

8.6.5 Non-Conforming Fast-Food Restaurant Uses—Expansion and Reuse

Fast food restaurants that were a lawful use prior to December 28, 1987 (effective date of Ordinance 2472), and that did not meet the requirements for fast food restaurants set forth in §5.2.13 as of December 28, 1987, shall be considered a Special Non-Conforming Use that may expand or be reused as a fast food restaurant after non-use, provided the applicable provisions of §5.2.13 are met.

8.6.6 Relocation

A nonconforming use shall not be moved in whole or in part to any other portion of such parcel or to another parcel unless the use will be in conformance with the use regulations of the zoning district into which it is moved. This provision shall not apply if the relocation of the nonconforming use is the direct result of an intervening government action.

8.6.7 Accessory Uses

No use that is accessory to a principal nonconforming use shall continue after the principal use ceases to exist.

8.7 NONCONFORMING STRUCTURES

Nonconforming structures shall be subject to the following standards:

8.7.1 Enlargement

Any enlargement, alteration, or expansion of a nonconforming structure that increases the degree of nonconformity shall be prohibited. (For example, a structure that has a 5-foot side setback where the Code now requires a 10-foot side setback cannot be enlarged. Expansions of the structure that comply with applicable dimensional standards or that decrease the degree of nonconformity shall be permitted and shall not require a variance. In addition, existing single-family, detached structures on nonconforming lots of record may be enlarged, expanded, or extended, provided such action does not increase side and rear-lot nonconformance, cause lot non-conformity, or increase the existing structures' height. The initial determination of whether a proposed expansion increases the degree of nonconformity shall be made by the Community Development Director.

8.7.2 Damage or Destruction

In the event that any nonconforming structure is damaged or destroyed, by any means, to the extent of more than 50 percent of its structural replacement value prior to such destruction, such structure shall not be restored except in conformance with the regulations for the zoning district in which it is located. When a structure is damaged to the extent of 50 percent or less, no repairs or restoration shall be made unless a building permit is obtained within 180 days, and restoration is actually begun within 1 year after the date of such partial destruction and is diligently pursued to completion. The determination of such reduced structural valuation shall be made by the City.

8.7.3 Relocation

If a nonconforming structure should, for any reason, be moved from its original location, the relocated structure shall conform to the provisions of the zoning district in which it is located after it is moved.

8.7.4 Floodplain

A structure not in conformity with current floodplain regulations shall be subject to the following conditions:

- A. No such use shall be expanded or enlarged except in conformity with the provisions of this Article. The flood protection elevation, however, shall only be to the base flood elevation.
- B. No structural alteration, addition, or repair to any non-conforming structure over the life of the structure shall exceed fifty (50) percent of the current value of the structure.
- C. If such use is discontinued for twelve (12) consecutive months, any future use of the building and premises shall conform to this Article.
- D. Uses or adjuncts thereof which are nuisances shall not be permitted to continue as non-conforming uses.
- E. Any alteration, addition, or repair to any non-conforming structure permitted pursuant to a Floodplain Development Permit, shall be protected by flood proofing measures pursuant to Section 6.13.4.E of this Code.
- F. A lawful use made non-conforming by the provisions of this Article may be continued without regard to Section 8.7 of this Code.
- G. Conversion of attached enclosed structures, i.e., conversion of attached garage to family room or basement remodeling, shall not be subject to the elevation requirement provided Section 8.7.4.B is not violated.

8.8 NONCONFORMING SIGNS

All nonconforming signs shall be subject to the following standards:

8.8.1 Enlargements/Alterations

- A. A nonconforming sign may be altered in any way that does not change the size, height, background shape, or location of the sign without bringing the entire sign into conformance, provided that the cost of the alteration is less than 50% of the sign's replacement cost.
- B. Any sign or portion thereof may be altered to change its copy or to decrease its nonconformity.

8.8.2 Damage or Destruction

In the event that any nonconforming sign is damaged or destroyed, by any means, to the extent of more than 50 percent of its replacement cost prior to such destruction, such sign shall not be restored except in conformance with §6.17 (Signs) of this Code. The determination of such reduced valuation shall be made by the City.

8.8.3 Relocation

If a nonconforming sign, for any reason, is removed from its location, such sign shall conform to the provisions of the zoning district in which it is located after it is moved.

8.9 NONCONFORMITIES CREATED BY PUBLIC ACTION

When those site characteristics (lot area, setbacks, etc.) set out in Table 6.2.1 are reduced below the minimum required as a result of land conveyance to a federal, state, or local government for a public purpose but the remaining post-conveyance condition is at least 60percent of the required minimum standard for the zoning district in which it is located, then that lot shall be deemed to be in compliance with the minimum lot size and setback standards of this Code.

8.10 NONCONFORMING LOTS OF RECORD

8.10.1 Single-Family Detached Dwellings on Nonconforming Lots

- A. New Construction Allowed. In any zoning district that permits single-family detached residential uses, a single-family residence and customary accessory buildings may be erected on any single nonconforming lot of record that exists on the effective date of this Code. Such a lot, however, must comply with Section 8.10.2. This provision shall apply even though such lot fails to meet the requirements of the zoning district in which it is located for area, or frontage, or both, provided, however, that the requirements of the zoning district for minimum setback dimensions shall be met unless a variance to said requirements has been granted by the Board of Adjustment.
- B. Enlargements Allowed. Existing single-family detached dwellings located on nonconforming lots of record may be enlarged, expanded, or extended, provided that such action does not increase nonconformities with applicable setbacks nor cause a new area of non-conformity.

8.10.2 Combination of Lots May be Required

Two or more lots, or combinations of lots and portions of lots, shall be considered to be a single, undivided lot or parcel for purposes of this Code, if all of the following factors apply:

- A. The lots or parcels are in single and common ownership and are of record on the effective date of this Code;
- B. The lots or parcels share continuous frontage; and
- C. All or part of the lots or parcels do not meet 60% of the minimum lot area or lot frontage requirements set forth for the zoning district in which they are located (see Article 6).

No portion of such lots or parcels subject to this consolidation provision shall be used in a manner that renders compliance with the zoning district's lot frontage and lot area requirements less feasible.

8.11 CERTIFICATION OF NONCONFORMING STATUS

Owners of nonconforming uses, structures, or signs may request a "Certificate of Legal Nonconforming Status" by filing an application with the Community Development Director in accordance with the "Written Interpretation" procedures of §3.22. The application shall be accompanied by documentation that establishes the approximate date that the use, structure, or sign was established. The Community Development Director shall be authorized to require additional information if deemed necessary to permit an accurate determination. "Certificates of Legal Nonconforming Status" shall not be required. Once issued, a certificate shall run with the land and its status shall not be affected by changes of tenancy, ownership, or management.