

Article 20. Nonconformities

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20.1 PURPOSE

The purpose of this Article is to provide for the regulation of nonconforming uses, structures and lots, and to specify those circumstances and conditions under which nonconforming structures and uses must be eliminated.

20.2 GENERAL STANDARDS OF APPLICABILITY

A. Authority to Continue

Any use, structure or lot that existed as a lawful nonconformity at the time of the adoption of this Code, and any use, structure or lot that has been made nonconforming because of the terms of this Code or its subsequent amendments, may continue subject to the provisions of this Article so long as it remains otherwise lawful. A structure or use that is illegal at the time of the adoption of this Code, remains illegal if it does not conform with each and every requirement of this Code.

B. Burden on Property Owner to Establish Legality

In all cases, the burden of establishing the legality of a nonconformity under the provisions of this Code is upon the property owner of the nonconforming use, structure or lot.

C. Safety Regulations

The City may permit an expansion to a nonconforming use, in accordance with Section 20.3.D.2 below, or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare and safety. All police power regulations enacted to promote public health, welfare and safety including, but not limited to, all building, fire and health codes, apply to nonconforming structures.

D. Exceptions to Nonconformity Regulations

1. The City shall regulate the repair, replacement, maintenance, improvement or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and to avoid an increase in flood damage potential or increase the degree of obstruction to flood flows in the floodway.
2. The nonconformity provisions of this Article do not prohibit the City from enforcing an ordinance that applies to nonconforming adult uses (adult bookstores, adult theaters or similar adult use businesses). The City may enact, amend or enforce an ordinance providing for the elimination or

termination of adult uses (adult bookstores, adult theaters or similar adult use businesses) by amortization, even if such use was lawful at the time of its inception.

20.3 NONCONFORMING USE

A. Definition of Nonconforming Use

A nonconforming use is the use of land or structures that, as of the effective date of this Code, or amendment thereto, are used for purposes that are not permitted in the zoning district in which they are located. Uses that were specifically authorized as a conditional use are not considered nonconforming uses even if the use is no longer permitted within that zoning district. Such use will be considered a conditional use.

B. Ordinary Repairs and Maintenance

Normal repair, replacement, restoration, maintenance or improvement may be performed on any structure that is devoted in whole or in part to a nonconforming use, provided it will not create any new nonconformity or increase the bulk or density of the nonconforming use.

C. Structural Alterations

Structural alterations to a structure containing a nonconforming use are permitted so long as they do not create any new nonconformity or increase the bulk or density of the nonconforming use. In addition, the following exceptions apply:

1. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.
2. When the alteration is for the purpose of bringing the use into conformity.

D. Expansion of Use

1. Unless a nonconforming use is granted a special exceptions permit per Article 4.17 of the Land Development Code, a nonconforming use of land or a structure may not be expanded. An expansion of a nonconforming use to any land area or structure not currently occupied by such nonconforming use or to any portion of the floor area that was not occupied by such nonconforming use is prohibited.
2. In certain cases, nonconforming uses may be permitted to expand where it can be shown that such action will not be harmful and will be beneficial to the surrounding properties, the neighborhood and the community. An exception, granted by ordinance, may be issued for an existing nonconforming use by the Zoning Board of Appeals only where the applicant demonstrates that the proposed activity will comply with all of the following criteria.

a. Standards for Approval

- i. The use occurs entirely within an existing site.
- ii. The use is not detrimental or injurious to other uses permitted within the district.

- iii. The use is appropriate and consistent with the general welfare of the community and the enjoyment of adjacent property.
- iv. The off-street parking is adequate to serve the use.
- v. The use is in substantial agreement with the Comprehensive Plan.
- vi. Hardship would result if the use were not allowed to expand.
- vii. Rezoning the property would result in “spot zoning” or zoning inappropriate to surrounding land uses.
- viii. The minimum zoning standards applicable to the zoning in which the nonconforming use is located apply.

b. Eligibility

Only the following nonconforming uses are eligible:

- i. Single-family, two-family, multi-family and townhouse residential, lodging house, fraternity or sorority house, residential facility or temporary shelter facility located in a commercial district.
- ii. Any commercial use in an industrial district.
- iii. Uses permitted in the I-1 District, except for solid waste handling facilities, located in a C-5 District.
- iv. General, medical and dental office uses in residential districts.
- v. Music, art, photographic, and interior decorating studios in all residential districts and the C-1 District.
- vi. Private schools for dance, music, physical sciences and similar disciplines located in all residential districts and the C-1 District.
- vii. Any residential use in an industrial district.

E. Change of Use

Unless a nonconforming use is granted a special exceptions permit per Article 4.17 of the Land Development Code, a nonconforming use must not be changed to any use, other than one permitted within the zoning district in which it is located. When such a nonconforming use has been changed, in whole or in part, to a conforming use, the whole or part which has been made to conform may not be changed back to a nonconforming use. A change of use is deemed to occur when an existing nonconforming use has been terminated and another use has commenced. Any change in use in violation of this Code is deemed an abandonment of the previously existing lawful nonconforming use.

F. Discontinuation or Abandonment

If a nonconforming use or occupancy is discontinued for a continuous period of one (1) year, such nonconformity or occupancy is deemed to be abandoned and may not be reestablished or resumed regardless of the intent to resume or to continue the use. Any subsequent use of such land or structure must conform to all regulations of the zoning district in which such land or structure is located. The period of such discontinuance caused by government action, acts of god, or other acts without any contributing fault by the user, must not be included in calculating the length of discontinuance for this section.

G. Damage or Destruction

1. If a structure and/or property devoted in whole or in part to a nonconforming use is damaged or destroyed to the extent fifty percent (50%) or less of the market value at that time, then the structure and/or property may be repaired, reconstructed or restored and the nonconforming use continued, provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit must be obtained for such rebuilding, restoration, repair or reconstruction within one (1) year of the date of damage or destruction, and construction must be completed within one (1) year of issuance of the building permit. If a building permit is not obtained within one (1) year, then the nonconforming use cannot be continued.
2. If a nonconforming structure and/or property devoted in whole or in part to a nonconforming use is damaged or destroyed to the extent of greater than fifty percent (50%) of its market value at that time and no building permit has been applied for within one-hundred eighty (180) days of when the property is damaged, the nonconformity may not be continued, repaired or replaced. The City may impose reasonable conditions upon a building permit issued under this section in order to mitigate any newly created impact on adjacent property.

20.4 NONCONFORMING STRUCTURES

A. Definition of Nonconforming Structure

Structures which at one time conformed to applicable zoning regulations, but because of subsequent amendments to the Code no longer conform to applicable yard, height, lot coverage or other dimensional or bulk provisions or do not meet other on-site development standards, such as an insufficient number of parking spaces, of this Code, are considered nonconforming structures.

B. Ordinary Repairs and Maintenance

Normal repair, replacement, restoration, maintenance or improvement may be performed on any nonconforming structure. No repairs or reconstruction are permitted that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk or density of the structure in any manner.

C. Structural Alterations

Structural alterations to a structure containing a nonconforming use are permitted so long as they do not create any new nonconformity or increase the degree of any existing nonconformity. In addition, the following exceptions apply:

1. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.
2. When the alteration is for the purpose of bringing about a conforming use.

D. Additions and Enlargements

A structure that is nonconforming with respect to its bulk may not be added to or enlarged.

E. Relocation

A nonconforming structure may not be relocated, in whole or in part, to any other location on the same zoning lot or parcel unless brought into full compliance with this Code. A nonconforming structure may be relocated to another zoning lot or parcel if the structure conforms to all regulations of the zoning district in which it is relocated.

F. Damage or Destruction

1. If a nonconforming structure is damaged or destroyed to the extent of less than fifty percent (50%) of the market value at that time, then the structure and/or property may be repaired, reconstructed or restored and the nonconforming use continued, provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit must be obtained for such rebuilding, restoration, repair or reconstruction within one (1) year of the date of damage or destruction, and construction must be completed within one (1) year of issuance of the building permit.
2. If a nonconforming structure is damaged or destroyed to the extent of greater than fifty percent (50%) of its market value, and no building permit has been applied for within one-hundred eighty (180) days of when the property is damaged, the nonconformity may not be continued, repaired or replaced. The City may impose reasonable conditions upon a building permit issued under this section in order to mitigate any newly created impact on adjacent property.

G. Nonconforming Structures within the Floodplain and/or Floodway

1. No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.
2. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in numbers 3. and 4. below.
3. The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of this Article, Section 12.1, Section F., 2. Floodway District and Section 12.1, Section F., 3. Flood Fringe District of this Code for the new

structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

4. If a substantial improvement occurs, as defined in Article 21 of the Land Development Code, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of this Article, Section 12.1, Section F., 2. Floodway District and Section 12.1, Section F., 3. Flood Fringe District of this Code for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.
5. If any nonconforming use or structure is substantially damaged, as defined in Article 21 of the Land Development Code, it shall not be reconstructed except in conformity with the provisions of the Land Development Code. The applicable provisions for establishing new uses or new structures in this Article, Section 12.1, Section F., 2. Floodway District and Section 12.1, Section F., 3. Flood Fringe District of this Code or Section 12.1, Section F., 4. General Floodplain District of this Code will apply depending upon whether the use or structure is in the Floodway, Flood Fringe, or General Flood Plain District, respectively.

20.5 NONCONFORMING LOTS OF RECORD

This section regulates lots of record which at one time were conforming, but which no longer conform to the lot area requirements of the zoning district in which they are located.

- A. If there are two (2) or more lots of record with contiguous frontage in common ownership, and one (1) or more of the lots does not meet the requirements for lot width or lot area as established by this Code, the land so involved is considered a single undivided zoning lot for the purposes of this Code. If such zoning lot is comprised of existing lots of record that each meet ninety percent (90%) or more of the required lot width or lot area of the district in which they are located, such lots of record may be used, transferred or conveyed, so long as the remaining lots of record within that zoning lot meet ninety percent (90%) or more of the required lot width or lot area.
- B. A use that is permitted within a zoning district is allowed to be erected upon an existing nonconforming lot of record. A single-family dwelling erected on a single nonconforming lot of record must meet all other zoning district bulk requirements. In addition, the regulations of Table 20-1: Single-Family Lot Coverage on Nonconforming Lots of Record apply to nonconforming lots of record under six-thousand (6,000) square feet:

TABLE 20-1: SINGLE-FAMILY LOT COVERAGE ON NONCONFORMING LOTS OF RECORD	
Lot Area	Maximum Lot Coverage
5,760 - 5,999sf	31%
5,520 - 5,759sf	32%
5,280 - 5,519sf	33%
5,040 - 5,279sf	34%
0 - 5,039sf	35%

20.6 NONCONFORMING SIGNS

- A.** Signs existing on the effective date of this Code, or any amendments thereto, that do not conform to the regulations of this Code are deemed nonconforming. Nonconforming signs are subject to the regulations of Section 20.4 (Nonconforming Structures).
- B.** Nonconforming signs may be continued through normal repair, replacement, restoration, maintenance or improvement; no repair or reconstruction may be made that would create any new nonconformity or increase the degree of any previously existing nonconformity including by increasing the number of nonconforming signs, or the nonconforming sign area or height.
- C.** No nonconforming sign can be altered so that the nonconformity is increased or moved to a new location without being brought into compliance with the requirements of this Code.