

12 Nonconformities

12.1 General

12.1.1 Scope

The regulations of this chapter govern uses, structures, lots, signs and other situations that came into existence legally but that do not conform to one or more requirements of this Land Development Code.

12.1.2 Intent

In order to encourage redevelopment consistent with this Land Development Code and provide property owners with reasonable use of their land, it is the general policy of the city to allow uses, structures, signs and lots that came into existence legally in conformance with the applicable requirements to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with existing regulations as is reasonably possible. This chapter establishes regulations governing uses, structures and lots that were lawfully established but that do not conform to one or more requirements of this Land Development Code.

A situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this chapter merely by the repeal of the prior ordinance or regulation.

The regulations are further intended to:

- (1) recognize the interests of property owners in continuing to use their property;
- (2) promote reuse and rehabilitation of existing buildings; and
- (3) place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

12.1.3 Authority to Continue

Any lawful nonconformity that legally existed as of the effective date of this Land Development Code or that becomes nonconforming upon the adoption of any amendment to this Land Development Code may be continued in accordance with the provisions of this chapter. If such use is discontinued for a period of one hundred and eighty days, such nonconformity shall be deemed to have been abandoned and shall not be continued in the future except in conformance with the provisions of this Land Development Code.

12.1.4 Determination of Nonconformity Status

The burden of establishing that a nonconformity is a legal nonconformity shall, in all cases be solely upon the owner of such nonconformity.

12.1.5 Repairs and Maintenance

Incidental repairs and normal maintenance of nonconformities shall be permitted unless such repairs are otherwise expressly prohibited by this Land Development Code. For the purpose of this provision, repair or replacement of non-load bearing walls, fixtures, wiring or plumbing shall be considered incidental repairs if the total value of the repairs in any 12-month period does not exceed 50 percent of the current replacement value of the structure.

Nothing in this chapter shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official. When improvements are made to restore the property to a safe condition, the cost of such repairs or alterations shall not be included in the 50% noted in the preceding paragraph.

12.1.6 Change of Tenancy or Ownership

The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

12.1.7 Cost Estimates

In making determinations regarding replacement value, the Planning Director shall use the Dodge Reports, Marshall Swift, or their successors, as a basic reference.

12.2 Nonconforming Uses

12.2.1 Definition

A nonconforming use is a use that was legally established but which is no longer allowed by the use regulations of the zoning district in which it is located. A use that was legally established without a Special Use Permit shall not be deemed nonconforming solely because a Special Use Permit is now required for the subject use. Enlargement, replacement or modification of the subject use resulting in an expansion of more than 500 square feet of building area, the expansion of the site to include additional property or the addition of more than 20 parking stalls shall require approval of a Special Use Permit, just as if it were a new special use application.

12.2.2 Expansion

A nonconforming use shall not be enlarged or expanded unless one of the following conditions exists:

- (1) such expansion eliminates or reduces the nonconforming aspects of the situation;
- (2) the expansion is into a part of a building or other structure that was lawfully and manifestly designed or arranged for such use; or
- (3) the expansion is for a living space addition to a single dwelling unit.

Expansion for the sole purpose of providing off-street parking shall not be considered expansion of a nonconforming use.

12.2.3 Change of Use

A nonconforming use may not be changed to any use other than a use allowed in the zoning district in which it is located except as provided in this section. A nonconforming use can be changed to another similar or less intense nonconforming use with the approval of the Planning Commission. The Planning Commission shall find that the new use is no more intensive in character than the original nonconforming use. Such changes shall be treated in the same manner as special uses.

12.2.4 Relocation

A nonconforming use shall not be relocated in whole or in part to another location on the lot or parcel unless the movement or relocation eliminates or decreases the extent of nonconformity.

12.2.5 Loss of Legal Nonconformity Status

Abandonment. If a nonconforming use is abandoned, ceases or is discontinued for any reason for a period of more than 180 days, the use shall be considered abandoned. Once abandoned, the use's legal nonconforming status shall be lost and reestablishment of the use shall be prohibited. Evidence of abandonment shall include but not be limited to: cessation or discontinuance of the particular use, disconnection of water service to the property, disconnection of electric service to the property, failure to pay property taxes or failure to maintain the property. Any subsequent use of the property shall comply with the regulations of the zoning district in which it is located.

Single Family Dwellings and Duplexes (TA 11-01, TA 18-01)(TA 23-02). Any nonconforming single-family dwelling or duplex may be altered, repaired, enlarged or replaced, provided that the altered or replaced structure meets the dimensional requirements of the Land Development Code.

12.2.6 Accessory Uses and Structures

No use or structure that is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it complies with all regulations of this Land Development Code.

12.3 Nonconforming Structures

12.3.1 Definition

A nonconforming structure is any building or structure, other than a sign, that was legally established but which no longer complies with the Intensity, Dimensional and Design Standards of Land Development Code. Nonconforming structures may remain, subject to the regulations of this section.

12.3.2 Structural Changes (TA 19-01)

Structural changes, including enlargements, shall be permitted if the structural change does not increase the extent of nonconformity. When a structure is nonconforming because it encroaches into a required setback, this provision shall be interpreted as allowing other portions of the structure to be expanded out to the extent of the existing encroachment, as long as there is no greater reduction of required setbacks. See Figure 12-1.

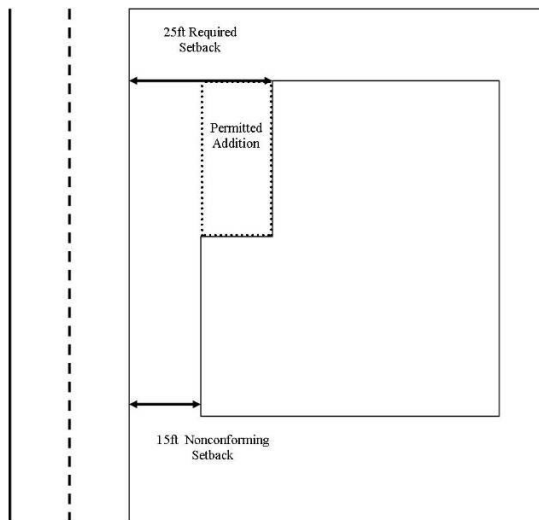


Figure 12-1 – Structural Changes to Nonconforming Structures

12.3.3 Use

A nonconforming structure may be used for any use allowed in the underlying zoning district.

12.3.4 Relocation

A nonconforming structure may be relocated in whole or in part to another location on the subject parcel if the movement or relocation decreases or eliminates the nonconformity.

12.3.5 Loss of Nonconforming Status; Damage or Destruction

If a nonconforming structure is damaged or destroyed to the extent of more than 50 percent of the assessed taxable value of the structure immediately prior to damage, the nonconforming structure shall not be restored unless it is in full compliance with all applicable provisions of this Land Development Code. If a nonconforming structure is damaged by 50 percent or less of its assessed taxable value immediately prior to damage, the structure may be re-established to the extent that it existed before the time of damage, provided that such repairs, restoration or reconstruction are substantially completed within 12 months of the date of such damage.

12.4 Nonconforming Lots

12.4.1 Definition

A nonconforming lot is a tract of land, designated on a duly recorded subdivision plat, or by a duly recorded deed, or by other lawful means, that complied with all applicable lot area, lot width and lot depth standards of the zoning district in which it was located at the time of its creation, but which does not comply with the minimum lot area, lot width or lot depth requirements of the zoning district in which it is now located.

12.4.2 Use of Single Nonconforming Lots

The provisions of this section apply to nonconforming lots:

- In residential zoning districts, single nonconforming lots may be used for detached single-family dwellings and related accessory structures, subject to all other applicable standards of the underlying zoning district.
- In nonresidential zoning districts, single nonconforming lots may be used for uses allowed within the underlying zoning district, subject to all other applicable standards of the underlying zoning district. If the underlying zoning district allows a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable lot area, lot width or other dimensional standards, while others would not, then only the uses or intensities that comply with applicable standards shall be permitted.

12.4.3 Division of Nonconforming Lots

Where a nonconforming lot of record in single ownership exists and is occupied by more than 1 detached single family dwelling that meets the State Building Code, such lot may be re-subdivided to create a separate lot for each dwelling even though the resulting lots do not meet the lot area or width standards of the underlying zoning district. Before such subdivision is allowed, the Planning Director shall make the following findings:

- (1) Drainage easements and rights of way will be maintained;
- (2) The division does not adversely affect permissible development of adjoining property;
- (3) No additional nonconformities are created;
- (4) The division will maintain or enhance the value of contiguous property; and
- (5) The character of the area is maintained or enhanced.

12.5 Nonconforming Signs

12.5.1 Definition

A nonconforming sign is a sign that was legally established but which no longer complies with the Sign regulations of Chapter 10.

12.5.2 Compliance or Removal – On Premises Signs (*TA 23-02*)

On premises signs shall be replaced with signs conforming to the regulations contained in 10 when removed or repaired if the cost of such repair exceeds 50% of the value of the sign.

A nonconforming sign shall not be reestablished after the use of the property it is located on has been discontinued, regardless of intent, for a period of 180 days.

If a nonconforming sign is blank or advertises a business, service or commodity, accommodation, attraction or other enterprise or activity this is no longer being offered or conducted on the property the sign shall be deemed abandoned and shall be removed or brought into compliance by the sign owner, property owner, or other party having control over such sign within 180 days after the use has ceased operation or the service of commodity has ceased being offered.

12.6 Other Nonconformities

12.6.1 Examples

The types of other nonconformities to which this section applies include but are not necessarily limited to: fence height or location; lack of required buffers or screening; lack of or inadequate landscaping; lack of or inadequate off-street parking or loading spaces; and other nonconformities not involving structural aspects of a building, location of a building on a lot, lot dimensions or land or building use.

12.6.2 Increase prohibited

It shall be the intent of this Land Development Code to encourage the reduction of these other types of non-conformities to the maximum extent feasible as buildings, lots or parking areas are redeveloped or expanded. Parking areas that do not comply with the landscape requirements of this Land Development Code shall be brought into compliance as required Sec. 9.13 when buildings are expanded or redeveloped as provided herein. The extent of such other nonconformities shall not be increased, and no use, building, structure or signs shall be established, expanded, altered, changed or relocated in such a manner to increase the degree of such other nonconformity.

12.6.3 Operational Performance Standards

Uses established prior to the effective date of this ordinance, that are found to violate the operational performance standards contained in Sec. 9.9 shall be required to make reasonable modifications to bring the use of the property into compliance with the standards contained in Sec. 9.9. Such modifications may include, but shall not be limited to, installation of screening, walls or buffering, installation of noise reduction equipment such as mufflers, replacing lighting fixtures or changes in manufacturing process or use of the property that does not unreasonably interfere with the operations of the facility. No violation shall be prosecuted under this code where modifications have been made as part of a good-faith attempt to comply with Sec. 9.9 and which result in measurable reductions in the extent of the violation and the operational performance standards continue to exceed the standards of Sec. 9.9.

Upgrade/Expansion. Prior to issuance of a building permit for any upgrade in equipment or expansion of the facility in violation, the property owner shall certify to the Planning Director that the proposed change will not result in an increase in the nonconformity of the property with respect to the operational performance standards. If the property that has been found in violation of Sec. 9.9 is proposed to be expanded or renovated where such expansion or renovation will increase the taxable value by more than 50 percent over the assessed taxable value, the entire structure or operation shall be brought into compliance with all provisions of Sec. 9.9.

Damaged/Destroyed. If a property that has been found in violation of Sec. 9.9 is damaged or destroyed to the extent of more than 50 percent of the assessed taxable value of the structure immediately prior to damage, the nonconforming structure shall not be restored unless it is in full compliance with all applicable provisions of this Land Development Code.