

Chapter 25

NONCONFORMING SITUATIONS

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25.01 Statement of Intent

The intent of this chapter is to provide for the regulation of nonconforming buildings, structures, lots and components of uses, and to specify those circumstances and conditions under which those nonconforming buildings, structures, lots and components of uses shall be permitted to continue. It is also necessary and consistent that those nonconforming buildings, structures, lots and components of use, which adversely affect the orderly development and value of other property in the district not be permitted to continue unless restricted. Furthermore, this chapter does not authorize nonconforming status to those special uses whose time limits have expired.

25.02 Definitions

Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

1. "Cost." The total cost of alteration or repair shall mean the fair market value of the materials, services and labor necessary to accomplish such renovation, repair or restoration. No person may seek to avoid the intent of this chapter by doing such work incrementally.

2. "Dimensional Nonconformity." A nonconforming situation that occurs when the height, size or minimum floor area of a structure, or the relationship between an existing building or buildings and the other buildings or lot lines, does not conform to the regulations applicable to the zoning district in which the property is located.
3. "Effective Date of This Ordinance." Whenever this chapter refers to the effective date of this ordinance, the reference shall be deemed to include the effective date of any amendments to this ordinance if the amendment, rather than this ordinance (as originally adopted), creates a nonconforming situation.
4. "Nonconforming Lot." A platted lot existing on the effective date of this ordinance that does not meet the minimum width, depth and area requirement of the zoning district in which the lot is located and is not subject to a prior variance or exception.
5. "Nonconforming Structure." A situation that occurs when, on the effective date of this ordinance, an existing structure or improvement, i.e. parking and landscaping, or the use of an existing structure or improvement no longer conforms to one (1) or more of the regulations applicable to the zoning district in which the structure or improvement is located.

F. "Nonconforming Project." Any structure, development or undertaking that is incomplete on the effective date of this ordinance, and would be inconsistent with one (1) or more of the regulations applicable to the zoning district in which it is located if completed as proposed or planned.

G. "Nonconforming Sign." A sign that, on the effective date of this ordinance, does not conform to one (1) or more of the regulations set forth in Chapter 27.

H. "Nonconforming Use." A situation that occurs when property is used legally for a purpose and then, in any manner, prohibited or made unlawful by the use regulations applicable to the zoning district in which the property is located. The term also refers to the activity that constitutes the use made of the property.

I. "Nonconforming Site Improvement." A situation that occurs when, on the effective date of this ordinance, an existing site improvement on a lot, including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping, no longer conforms to one (1) or more of the regulations of this ordinance applicable to the property.

J. "Nonconforming Situation." A situation that occurs when, on the effective date of this ordinance, an existing lot, structure or improvement, i.e. parking and landscaping, or the use of an existing lot, structure or improvement no longer conforms to one (1) or more

of the regulations applicable to the zoning district in which the lot, structure or improvement is located.

K. "Structural Value." The present-day cost of replacing the structure or improvement.

25.03 Continuation of Nonconforming Situations and Completion of Nonconforming Projects

A. Unless otherwise specifically provided in this chapter and subject to the restrictions and qualifications set forth in this Chapter, Sections 25.03 through Section 25.12, nonconforming situations that were otherwise lawful on the effective date of this ordinance may be continued.

B. Nonconforming projects may be completed only in accordance with the provisions of Section 25.12 of this chapter.

C. The burden shall be on the landowner or developer to establish entitlement to continuation of nonconforming situations or completion of nonconforming projects.

25.04 Nonconforming Lots

A. This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. A substantial structure shall include any structure in excess of eight hundred (800) square feet in floor area which was constructed for a principal use permitted in the zoning district at the time of construction. A change in use of a developed nonconforming lot may be accomplished only in accordance with Section 25.07 of this chapter.

B. Where a nonconforming lot does not conform to the lot area or dimensions applicable to that zoning district, said lot may be used for any permitted use in that specific zoning district provided all other requirements and regulations are met.

C. When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements cannot be complied with, then the property owner may apply for an administrative exception as provided for in Section 25.14 of this Chapter.

D. Subject to the following sentence, if, on the date this ordinance becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one (1) or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his or her successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within five hundred (500) feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein,

but not to require such combination when that would be out of character with the neighborhood that has previously been developed.

E. The subdivision of any land, lot or parcel which creates a lot area or dimension which does not meet the minimum standards is hereby prohibited.

25.05 Extension or Enlargement of Nonconforming Situations

A. No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

1. An increase in the total amount of space or building area devoted to a nonconforming use; or

2. Greater nonconformity with respect to dimensional restrictions such as building setback requirements, height limitations or density requirements, or other requirements such as parking requirements.

B. Subject to subsection D, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this ordinance, was designed or arranged to accommodate such use. However, except as otherwise provided in Section 25.12, a nonconforming use may not be extended to additional buildings or to land outside the original building.

C. Except as otherwise provided in Section 25.12, a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming; provided, however, a use that involves the removal of natural materials from the land may be expanded to other portions of the lot where the use was established at the time it became nonconforming if ninety (90) percent or more of the earth products had already been removed on the effective date of this ordinance, and where the development and performance standards otherwise applicable to such a use were complied with.

D. The volume, intensity or frequency of use of property where a nonconforming situation exists may be one-time increased up to ten (10) percent and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.

E. Notwithstanding subsection A, any structure used as a single-family dwelling and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of the existing nonconformities with respect

to such matters as setback and parking requirements. This paragraph is subject to the limitations stated in Section 25.07

25.06 Repair, Maintenance and Alterations

A. Repairs, alterations and maintenance of structures and property where nonconforming situations exist may be made provided said repairs, alterations and maintenance conform to the regulations of the district in which said building or structure is located. Repairs and alterations estimated to cost more than fifty (50) percent of the structural value of the structure to be renovated, may not be done. Such structure shall be removed.

B. If a structure located on a lot where a nonconforming situation exists is damaged by fire, explosion, act of God, or the public enemy to an extent that the costs of repair or restoration would not exceed fifty (50) percent of its structural value, then the damaged structure may be repaired or restored only in accordance with a nonconforming situation permit issued by the Planning Commission pursuant to this section.

C. Any repairs or alterations of a structure pursuant to this section which would require the issuance of a nonconforming situation permit, the applicant shall submit information that the cost of the proposed repairs or alterations would not exceed fifty (50) percent of the structural value of the structure.

25.07 Change of Nonconforming Use

A. A change in use of property (where a nonconforming situation exists) may not be made except in accordance with subsection B & C. However, this requirement shall not apply if only a sign permit is needed.

B. If the change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this title can be complied with, permission from the City to make the change must be obtained. Once conformity with this title is achieved, the property may not revert to its nonconforming status.

C. If the change in use is to a principal use that is permissible in the district where the property is located, however the site or development requirements cannot reasonably be complied with, then the change is permissible only if an administrative exception is granted pursuant to Section 25.14 of this Chapter.

25.08 Nonconforming Structures

1. Repairs, alterations and maintenance of structures where nonconforming situations exist may be made provided said repairs, alterations and maintenance conform to the regulations of the district in which said structure is located. Repairs and alterations estimated to cost more than fifty (50) percent of the structural value of the structure to be renovated, may not be done. Such structure shall be removed.

2. If a structure located on a lot where a nonconforming situation exists is damaged by fire, explosion, act of God, or the public enemy to an extent that the costs of repair or restoration would not exceed fifty (50) percent of its structural value, the damaged structure may be repaired or restored in accordance with its nonconforming status.
3. Any repairs or alterations of a non conforming structure pursuant to this section which would require the issuance of a building permit

25.09 Nonconforming Use

A nonconforming use may be allowed to exist as long as the structure supporting the nonconforming use remains and there is not a lapse of more than (9) nine months of the nonconforming use. Once conformity is achieved, the property may not revert to its nonconforming status.

25.10 Nonconforming Site Improvements

A. On lots with nonconforming site improvements, no additions to, or repairs or alterations of any structure or site improvement may be made without first either bringing the nonconforming site improvements into complete conformity with the regulations applicable to the zoning district or obtaining a nonconforming situation permit. Provided that this section shall not apply to minor repairs and renovations (less than ten [10] percent of the structural value of a structure or site improvements), or repairs or alterations to a structure pursuant to Section 25.06.

B. When an addition to, or repairs or alterations to, any structure or site improvement is proposed on a lot with a nonconforming site improvement, the property owner may request an administrative exception pursuant to Section 25.14 of this Chapter.

25.11 Abandonment and Discontinuance of Nonconforming Situations

A. When a nonconforming use is discontinued for a consecutive period of one hundred eighty (180) days, or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use.

B. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of one hundred eighty (180) days, or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the entity with authority to issue a nonconforming situation permit for the intended use issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. Such permit may be issued if the permit-issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished

without adding additional land to the lot where the nonconforming situation is maintained, or without moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

C. All of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one (1) apartment in a nonconforming apartment building for one hundred eighty (180) days shall not result in a loss of the right to rent the apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

D. When a structure or operation made nonconforming by this ordinance is vacant or discontinued on the effective date of this ordinance, the one hundred eighty (180) day period for purposes of this section begins to run on the effective date of this ordinance.

25.12 Nonconforming Signs

A. Subject to the remaining restrictions of this section, nonconforming signs that were otherwise lawful on the effective date of this ordinance may be continued.

B. No nonconforming sign may be altered in such a manner as to aggravate the nonconforming condition, nor may illumination be added to any nonconforming sign.

C. A nonconforming sign may be altered to bring the sign into complete conformity with this ordinance.

D. Subject to the other provisions of this section, nonconforming signs may be maintained.

E. If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed within thirty (30) days after such abandonment by the sign owner, owner of the property where the sign is located, or other person having control over such sign.

F. If a nonconforming billboard remains blank for a continuous period of one hundred eighty (180) days, that billboard shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this article or be removed by the sign owner or owner of the property where the sign is located, or other person having control over such sign. For purposes of this section, a sign is "blank" if:

1. It advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted; or

2. The advertising message it displays becomes illegible in whole or substantial part; or
3. The advertising copy paid for by a person other than the sign owner or promoting an interest other than the rental of the sign has been removed.

25.13 Appeals

Requests for waivers or variances of nonconforming situations and vested rights shall be considered in accordance with the following procedures:

A. Board of Zoning Appeals decision on an application for a variance may be appealed to district court in accordance with state statutes.

B. Planning Commission decision on an application for a waiver on a planned zoning district may be appealed to the Governing Body by the applicant within thirty (30) days of the decision by the Planning Commission. Otherwise, all decisions of the Planning Commission shall be deemed final.

The Planning Commission and/or Governing Body may require special conditions in the approval of an application for a waiver on a planned zoning district to uphold the intent of the zoning ordinance.

25.14 Administrative Exception

If, in the concurrent opinion of the City Attorney and the City Administrator, the strict application of one or more provisions of the zoning regulations will create a manifest injustice to a property owner and variance or exception relief is not otherwise herein provided, the City Attorney and the City Administrator may jointly issue an administrative exception from said provisions. The administrative exception shall be in writing, dated and signed by both the City Attorney and the City Administrator and filed with the zoning variance case decisions. The City Attorney and the City Administrator may establish conditions for the administrative exception to remain in force.

An administrative exception is solely an equitable remedy, within the complete and absolute discretion of the City Attorney and the City Administrator, and therefore is not subject to administrative, legislative or judicial review.

The fee to request an administrative exception is the same fee amount as the application fee for a zoning variance.