

ARTICLE 7
Nonconformities

SECTION 7-100. Purpose.

Any lawful use of land, or structure, existing at the date of passage of this Ordinance or subsequent amendments thereto, and located in a zoning district in which it would not be permitted as a new use, building or structure under the terms of this Ordinance, is declared to be a legal nonconformance. It is the intent of this Ordinance to permit these nonconformances to continue until terminated either by voluntary act or by catastrophic event; or as otherwise provided herein, and to encourage their conversion to conformance where possible.

SECTION 7-200. Nonconforming recorded lot.

- A. Definition: A nonconforming recorded lot is a tract of land, designated on a duly recorded subdivision plat or by a duly recorded deed which indicates the establishment of the parcel prior to the adoption of this Ordinance; or by other lawful means; which has less than the minimum lot area, width or other dimension prescribed for the particular zone in which it is located and which met the lot area, width and other dimensions for the zone in which it was located at the time of such recording, but was made nonconforming by a subsequent amendment to this Ordinance.
- B. Nonconforming recorded lot regulations: A nonconforming recorded lot shall be subject to the following regulations:
1. In residential zoning districts:
 - a. A nonconforming recorded lot may be used for a single-family dwelling in the E, RE, R-1, R-2, R-3A, R-3B and W Zoning Districts, or a two-family dwelling, in the R-3A and R-3B Zoning Districts, provided that the lot meets the regulations of (i) through (vii) of this Section 7-200B-1a.
 - (i) Bulk requirements: The bulk requirements provided in Article 3 of this Ordinance shall be met for all nonconforming recorded lots.
 - (ii) Rear setback: The rear setback shall not be less than required in the zoning district in which the lot is located.
 - (iii) Front setback: The front setback shall not be less than 1) 70% of the required front yard as listed in Article 3 of this Ordinance; or 2) where the established dwellings on the same side of a block, or measuring a total distance of 400 feet from the lot in question, whichever is less, have an average setback that is 10 feet greater or less than the required setback, the setback for the lot in question shall be the average of the established dwellings. **[Amended 1-18-2011 by Ord. No. 6641; 8-2-2016 by Ord. No. 7247]**
 - (iv) Yard abutting a street setback: The yard abutting a street setback shall not be less than 1) 70% of the required yard abutting street as listed in Article 3 of this Ordinance; or 2) where the established dwellings on the same side of a block, or measuring a total distance of 400 feet from the lot in question, whichever is less, have an average setback that is 10 feet greater

or less than the required setback, the setback for the lot in question shall be the average of the established dwellings. (Requirement also applies to yard abutting street.) **[Amended 1-18-2011 by Ord. No. 6641; 3-1-2016 by Ord. No. 7200; 12-11-2017 by Ord. No. 7419]**

- (v) Interior side setback: The interior side setback shall not be less than 70% of the required yard as listed in Article 3 of this Ordinance. For lots within previously platted subdivisions with recorded plats, the interior side setback shall be equal to the interior side setback listed on the plat.
 - (vi) Lot width: The lot width shall not be less than 70% of the required yard as listed in Article 3 of this Ordinance.
 - (vii) Lot area: The lot area shall not be less than 70% of the required yard as listed in Article 3 of this Ordinance.
- b. When two or more recorded lots which cannot meet the requirements of (i) through (vii) above; or when one lot which meets and one which does not meet the requirements of (i) through (vii) above are contiguous and are held in one ownership, they shall be considered as one zoning lot for the permitted use. When a single-family or two-family structure has been built over the common lot line between two or more nonconforming lots, demolition, destruction by catastrophic event, or moving of such structure may not be interpreted to create two or more buildable lots, even if the requirements of (i) through (vii) above are met.
 - c. Subdivision of lots created as a result of the provision above, shall require a variation from this section. Additionally, a plat of subdivision meeting the requirements of Article 5, Subdivision Standards, is required to document the lots. Newly subdivided lots would not have the reduced setbacks for nonconforming recorded lots, unless a zoning variation is requested and granted. All current requirements would apply.
2. In nonresidential zoning districts: A nonconforming recorded lot may be used for any principal use and accessory use permitted in the zoning district in which it is located, provided that the lot meets the following regulations:
- a. Interior side setback: Each interior side setback required for a nonconforming recorded lot shall be determined by multiplying the actual width of the lot by the setback required in the zoning district in which it is located, then divided by the minimum lot width required in the zoning district in which the lot is located. However, a side setback greater than the requirement in the zoning district in which it is located is not required.
 - b. Front setback: The front setback shall not be less than required in the zoning district in which the lot is located.
 - c. Rear setback, height limitations, coverage and floor area ratio: A nonconforming recorded lot shall comply with the same rear setback, height limitations, coverage and floor area ratio as specified for the zoning district in which it is located.

- d. Buildable width on corner lots: On a nonconforming recorded corner lot, the buildable width shall be at least equal to 22 feet, plus one foot for each two feet that the width of the lot exceeds 24 feet, less the area required for the interior minimum yard.
- C. Construction, repair and alteration: Construction of new buildings or repair of existing buildings, that are being used for permitted uses but are located on nonconforming recorded lots, shall be permitted. If any building is damaged or destroyed, it can be rebuilt for its original development, or a new building can be constructed for any permitted use to the extent permitted in this article.

SECTION 7-300. Nonconforming uses and structures.

A. Definitions.

1. A nonconforming use is an activity using land or structures or both, legally established prior to the effective date of this chapter or subsequent amendment thereto, which would not be permitted as a new use in the zone in which it is located under the provisions of this Ordinance.
2. A nonconforming structure is one which was legally constructed, prior to the effective date of this Ordinance or subsequent amendments, which would not be permitted as a new structure under the terms of this chapter because such structure is not in conformance with the yards, height, coverage or floor area ratio requirements of the zone in which it is located. A structure located on a nonconforming recorded lot is not classified as a nonconforming structure solely because of insufficient lot area or width, nor shall anything herein be construed to affect those structures previously covered by the regulations for nonconforming lots.

B. Nonconforming use and structure regulations: Any building or structure, containing a nonconforming use or any nonconforming structure, shall be subject to the following regulations:

1. If any building or structure is destroyed by any means to an extent of more than 50% of the replacement value based upon prevailing costs of that portion of the building or structure which is above the average ground elevation, such building or structure shall not be rebuilt or reoccupied for any use except in accordance with the regulations of the zoning district in which it is located. Burden of proof of costs shall be upon the owner.
2. If any building or structure is destroyed by any means to an extent less than 50% of its replacement value based upon prevailing costs, the building may then be restored to its original condition and the occupancy or use of such building may be continued as it existed at the time of said partial destruction. Burden of proof of costs shall be upon the owner.
3. Normal maintenance and repairs shall be permitted.
4. Enlargement or structural alterations of an existing nonconforming building or structure in the appropriate zoning district shall be permitted, provided that the enlargement or alteration does not increase the nonconformity. (Exception: An exterior stairway and landing are permitted to encroach into a setback to meet the

building code requirement, but not more than a four-foot by four-foot landing.)
[Amended 1-18-2011 by Ord. No. 6641]



Commentary

As an example, when an existing one-story building does not meet the required interior side setback, a second story addition is considered as increasing the nonconformity, even though it matches the footprint of the first story, because of the increase in the volume of the nonconformity.

5. Nonconforming uses shall not be changed to any more intensive use than one permitted in the zoning district in which it is located. However, nothing herein shall be construed as prohibiting the construction of a private garage, accessory buildings and structures, as an accessory use to any dwelling unit regardless of the zoning district in which the dwelling is located.
6. Discontinuation of a nonconforming use of land or of a structure for any reason for a period of more than three months shall be considered abandonment of that use. Such use shall not be reestablished, and any subsequent use of the land or structure shall conform to the regulations of the zoning district in which it is located.
7. Industrial uses, which are nonconforming by virtue of being located in a nonindustrial zoning district, shall be subject to the performance standards stated in Article 2, Land Use. Alterations and repairs, as provided in this article, shall be done in a manner conforming to the M Manufacturing Zoning District performance standards. Building enlargements are not permitted. For industries which are not located in a manufacturing zoning district and which fail to comply with the performance standards of the zoning district in which they are located, repairs or alterations shall be made in such a manner as conforming as possible to the industrial performance standards of the zoning district in which the industry is located.
8. If a variation of the nonconformity has been granted, without conditions allowing it to be built, and the structure is destroyed by more than 50%, the structure shall not be rebuilt or reoccupied for any other use except in accordance with the regulations of the zoning district in which it is located.
9. Any changes to a nonconforming parking lot will require conformance with Section 4-200B-1. **[Amended 1-18-2011 by Ord. No. 6641]**

SECTION 7-400. Nonconformities upon annexation. [Added 11-5-2013 by Ord. No. 6970]

- A. Upon annexation of property or lot containing any nonconforming sign, parking area or other development feature, the following requirements of this section of the Ordinance shall apply. For nonconforming uses, signs, parking areas or other development features, upon annexation, an amortization period shall be established by the City Council either through an annexation agreement or within 120 days after annexation.
- B. The following information shall be required from the owner/operator of the nonconformity to establish the amortization period and shall be provided within 60 days from the receipt of written notice from the City requesting such information:

1. Scale drawing or map showing the existing use and all existing structures related to the use; and
 2. Written description of the existing use; and
 3. Detailed, written description of investment in the land, buildings, structures and equipment related to and used in the use, based on most recent County Assessor's records; and
 4. Any other information determined necessary by the City to conduct a comprehensive review of the application.
- C. Upon submittal of all information required above, or refusal to do the same by the owner/operator, the City shall schedule a public hearing on the matter before the Planning and Zoning Commission on the next open agenda. Notice given for the public hearing shall be as provided for in Article 9. The Community Development Director shall cause to have prepared a staff report which shall be presented to the Planning and Zoning Commission. In making a recommendation on an amortization period, the Commission shall consider the staff report and recommendation; all comments received from the owner/operator and the public, and shall consider the following: **[Amended 6-3-2014 by Ord. No. 7034]**
1. Criteria above; and
 2. Unique or special circumstances which may be related to the particular request. The Planning and Zoning Commission recommendation shall be in the form of minutes of the meeting, copies of which shall be furnished to the owner/operator. The details of the established amortization shall be recorded against the property.

