

ARTICLE K – NONCONFORMITIES

Section 156.K.001, Purpose and Applicability

- A. **Generally.** This Article sets out equitable rules for the continuing use, occupation, and conversion of nonconformities. A nonconformity occurs when existing development within the City may become affected by the application of new regulations. This change may cause existing uses, structures, lots, signs, and site improvements to not strictly comply with this Zoning Ordinance, even though they complied with the regulations in effect at the time they were permitted and constructed.
- B. **Purpose.** The purpose of this Article is to:
 1. *No Expansion.* Ensure that nonconforming uses do not expand;
 2. *Protection.* Protect conforming uses from nuisances that may be associated with nonconformities;
 3. *Encourage Conformance.* Encourage property owners of nonconformities to alter a nonconforming use, structure, lot, sign, or site improvement into one that complies with the standards of this Zoning Ordinance;
 4. *Elimination.* Eliminate substantially damaged or abandoned nonconformities whose degrees of incompatibility with adjacent lands uses are high; and
 5. *Balance.* Balance the City's objective to eliminate nonconformities with a landowner's right to maintain and make use of a nonconformity.
- C. **Applicability.** The regulations of this Article govern uses, structures, lots, signs, and site improvements that came into existence legally but that do not conform to one or more requirements of this Zoning Ordinance. These are referred to as nonconformities. Nonconformities are permitted to continue without immediate retrofit or removal until significant site or land use changes are proposed.
- D. **Major and Minor Nonconforming Uses and Structures.** Nonconforming uses and structures are classified as major or minor, as follows:
 1. *Major.* Major nonconforming uses or structures are those that the Zoning Administrator finds have the following characteristics to such an extent that they should, over time, be eliminated:
 - a. Generation of nuisances;
 - b. Incompatibility with adjacent properties;
 - c. Incompatibility with the Comprehensive Plan; or
 - d. Generation of substantiated criminal complaints.
 2. *Minor.* Minor nonconforming uses or structures are those not classified as major nonconformities.
 3. *Conversion.* Refer to Section 156.K.007, *Conversion of Nonconformities*, for provisions related to changing a minor nonconformity to a conforming use or structure.

Section 156.K.002, Nonconforming Uses

- A. **Generally.** A nonconforming use is a use of land that was lawfully established (e.g., it was allowed and issued a permit, if a permit was required at the time the use was established) on a parcel or lot before the effective date of this Zoning Ordinance, that is no longer allowed after the effective date of this Zoning Ordinance. Amendments to this Zoning Ordinance may also create nonconforming uses. The following uses are nonconforming uses:
 1. "Limited Uses" as listed in the Use Table established in Section 156.C.003, *Use Table*, but were lawfully established without a limited use permit. For these uses, the nonconforming use status may be removed by obtaining a limited use permit set out in Subsec. 156.J.004.9, *Limited Use Permits*;
 2. Uses that do not meet the requirements of Article C, *Use Standards*; and
 3. Uses that were lawfully established within a floodplain or floodway, but are no longer permitted in the floodplain or floodway.

B. **Classifications of Nonconforming Uses.** There are two types of nonconforming uses: major nonconforming uses and minor nonconforming uses. The classification of the nonconforming use affects whether or not it can be converted to a conforming use.

1. *Major Nonconforming Uses.*

- a. *Discontinuance.* Discontinuance of a major nonconforming use for a period of six consecutive months constitutes abandonment of the use, regardless of the owner's intent. A major nonconforming use shall not be re-established on the property after it is abandoned unless the City Council approves a Zone Change in accordance with Subsec. [156.J.003.2](#) that makes the prior use conforming.
- b. *Expansion, Enlargement, or Increases.* A major nonconforming use shall not be expanded, enlarged, extended, increased, or moved to occupy an area of land or building that was not used or occupied on the effective date of this Zoning Ordinance or any amendment that made the use nonconforming.
- c. *Structures.* No structures containing a major nonconforming use shall be enlarged unless the major nonconforming use is permanently discontinued.

2. *Minor Nonconforming Uses.*

- a. *Discontinuance.* Discontinuance of a minor nonconforming use for a period of 12 consecutive months constitutes abandonment of the use, regardless of the owner's intent. A minor nonconforming use shall not be re-established on the property after it is abandoned unless the property owner converts the nonconforming use to a conforming use in accordance with Section [156.K.007, Conversion of Nonconformities](#), prior to the end of the 12-month period.
- b. *Expansion and/or Extension.* No minor nonconforming use shall be expanded or extended in such a way as to:
 - i. Occupy any open space or landscaped area that is required by this Zoning Ordinance;
 - ii. Exceed previous cover, intensity, or height limitations of the zoning district in which the use is located;
 - iii. Occupy any land beyond the boundaries of the property as it existed on the effective date of this Zoning Ordinance;
 - iv. Displace any conforming use in the same building or on the same property; or
 - v. Increase the area of floodplain (if present) that is directly impacted by the use.
- c. *Nonconforming Residential Uses.* A nonconforming residential use shall not be expanded in scope or area, except that construction of an attached or free-standing private garage is allowed in accordance with the requirements of this Zoning Ordinance and the district in which the use is located, including, but not limited to:
 - i. Height;
 - ii. Setback;
 - iii. Gross floor area; and
 - iv. Building coverage.

Section 156.K.003, Nonconforming Structures

A. **Generally.** A building or structure is classified as nonconforming if it was lawfully constructed before the effective date of this Zoning Ordinance (or amendment hereto) and does not conform to the height, yard, density, intensity, building scale, or design standards that are applicable to the same type of building or structure in the zoning district in which the building or structure is located. Such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. *Increase in Nonconformity Prohibited.* No such structure may be enlarged or altered in any way which increases its nonconformity.

2. ***Movement of Structure.*** Should any on-site structure, in whole or in part, be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.
3. ***Minimum Floor Area.*** A residential dwelling unit having a lesser floor area at the time of the passage of this Zoning Ordinance than the minimum floor area required for the district in which it is located shall not be construed to be nonconforming.

B. Repairs and Alterations. Routine maintenance, including necessary non-structural repairs, paint, finish, and incidental alterations to a nonconforming structure is allowed without having to bring the nonconformity into compliance.

C. Damage and Reconstruction. If a major or minor nonconforming structure is damaged, partially destroyed, or deemed to be unsafe the structure may be restored to its original dimensions provided that:

1. The original nonconformity is not enlarged, increased, or extended;
2. A Building Permit is obtained for repairs within six months of the date the building was damaged;
3. For a major nonconforming structure, the construction is commenced within six months after obtaining the required Building Permits;
4. For a minor nonconforming structure, the construction is commenced within 12 months after obtaining the required Building Permits;
5. For a major nonconforming structure, the damage or destruction does not exceed 50 percent of the gross floor area (GFA) of a nonconforming structure or 50 percent of the replacement cost of the structure; and
6. For a minor nonconforming structure, the damage or destruction does not exceed 75 percent of the GFA of a nonconforming structure or 75 percent of the replacement cost of the structure.

D. Existing Nonconforming Structures in a Regulated Floodplain or Floodway. It is the intent of the City that no permanent buildings or structures be located or substantially improved in a regulated floodplain or floodway and that existing nonconforming structures shall be removed upon abandonment. As such, a property with an abandoned nonconforming structure in a regulated floodplain or floodway shall not be eligible for any development review approval until the property owner removes the abandoned nonconforming structure.

E. Nonconforming Density. Buildings on lots with nonconforming density may be expanded or extended as may be allowed by this Zoning Ordinance, but such expansions or extensions shall not create additional dwelling units.

Section 156.K.004, Nonconforming Lots

A. Generally. A nonconforming lot is a lot that was lawfully created before the effective date of this Zoning Ordinance or amendments to this Zoning Ordinance that no longer complies with the lot width, lot area, or access requirements of this Zoning Ordinance.

B. Combination of Lots to Increase Conformity.

1. ***Combination.*** Where a property owner owns one or more lots abutting a nonconforming lot of record, the lots shall be combined to create fully conforming lots prior to any other development application submittal for the property. Or, if full conformity is not possible, they shall be combined if the combination will increase the degree of conformity.
2. ***No Combination.*** A property owner is not required to combine lots pursuant to subsection (B)(1), above, if:
 - a. The combination of lots would not address the nonconformity;
 - b. The combination of lots would disrupt the lot pattern of the street, for example, by creating an internal through on a street segment that does not include any other through lots;
 - c. Two or more of the lots are developed with principal buildings, and the combination of lots would require that one or more of the buildings be torn down or the property undergo a zone change in order to comply with this Zoning Ordinance; or
 - d. The combination of lots would result in regularly shaped lots being combined into a single lot with an irregular shape, such as a flag lot.

C. **Construction on Nonconforming Lots of Record.** A nonconforming lot of record that cannot be combined with another lot in accordance with subsection B above may be built upon if, as of the effective date of this Zoning Ordinance:

1. *Permitted Use.* The use is permitted in the zoning district in which the lot is located;
2. *Sufficient Width.* The lot has sufficient width on a public street to provide access that is appropriate for the proposed use; and
3. *Setbacks and Height.* All setbacks and height requirements are met, except that the Zoning Administrator may authorize a reduction of required setbacks of up to 10 percent, in accordance with Subsec. [156.J.004.7, Administrative Adjustment](#), provided that the Zoning Administrator finds that the reduction does not allow a building that would be larger than a building that would be permitted on the minimum conforming lot in the zoning district.

Section 156.K.005, Nonconforming Signs

A. **Generally.** Any permanent sign located within the City limits on the effective date of this Zoning Ordinance that does not conform to the provisions of [Article G, Signs](#), is a nonconforming sign, provided it also meets the following requirements:

1. Authorized by a Sign Permit prior to the effective date of this Zoning Ordinance; or
2. If no sign permit was required under applicable law for the sign in question, the sign:
 - a. Was in all respects in conformity with the applicable law (or there was no applicable law) immediately prior to the effective date; or
 - b. Had legal nonconforming status at such time.

B. **Standards.**

1. *Notification.* If the Zoning Administrator finds a sign to be nonconforming, the Zoning Administrator shall provide written notice to the owner of the sign or the owner of the building to which it is attached.
2. *Registration.* The owner or entity in control of the property on which a nonconforming sign is located shall be required to register such signs with the City, at no fee, and otherwise comply with all requirements of this Zoning Ordinance relating to nonconforming signs.
3. *Damage or Destruction.* If a nonconforming sign is damaged or destroyed by any means and the repair or reconstruction cost, whichever is applicable, equals or exceeds 50 percent of the fair market value of the sign at the time of the damage, it shall be removed or brought into compliance with this Zoning Ordinance.
4. *No Message.* If a nonconforming sign does not display any message for a period of six months, it shall be removed or brought into conformance with this Zoning Ordinance.
5. *Removal.* If a nonconforming sign is removed for any reason, it shall not be replaced unless the replacement sign conforms to this Zoning Ordinance.
6. *Danger.* A nonconforming sign that the Building Official determines to be a danger to public safety due to damage or wear shall be removed and shall not be replaced unless the replacement sign conforms to this Zoning Ordinance.
7. *Removal of Certain Prohibited Signs.* Signs made of materials identified in Section [156.G.003.C, Prohibited Sign Elements](#), and placed in locations identified in Section [156.G.003.D, Prohibited Sign Locations](#), shall be removed within 30 days after the effective date of this Zoning Ordinance.
8. *New Sign Installation.* The installation of any new sign is prohibited on a site while a nonconforming sign remains in use.
9. *Temporary Signs.* Temporary signs that are not in compliance with Section [156.G.006, Temporary Signs](#), shall be removed within 30 days after the effective date of this Zoning Ordinance.

Section 156.K.006, Nonconforming Site Improvements

- A. **Generally.** A nonconforming site improvement is a development activity on sites improved during the process of development, redevelopment, or improvement. Over time, such development activities will have the effect of removing the majority of nonconforming site improvements in the jurisdiction of this Zoning Ordinance. The following site improvements are nonconforming if there were lawfully established but do not meet the standards of [Article D, Building and Site Design Standards](#):
 - 1. Building exterior material or design;
 - 2. Parking, loading, or stacking areas or driveways;
 - 3. Development landscaping or bufferyards; and
 - 4. Outdoor lighting.
- B. **Nonconforming Driveway.**
 - 1. *Continuance.* Any nonconforming driveway access is permitted to continue as a nonconforming driveway until:
 - a. *Additional Access.* Any additional driveway is constructed for the subject property or for the unified development of which it is a part; or
 - b. *Repaving or Reconstruction.* The driveway requires reconstruction or repaving.
 - 2. *Termination.* If the criteria in Subsection B., *Nonconforming Driveway*, are met, the nonconforming driveway shall no longer be permissible, and the Zoning Administrator shall require driveway access to meet the requirements of this [Article D](#). The Zoning Administrator may block any such nonpermissible driveways after notice is mailed to the property owner of record.
- C. **Other Nonconforming Site Improvements.** No other nonconforming site improvement may be modified except to bring the site improvement into greater compliance with the requirements on [Article D](#).

Section 156.K.007, Conversion of Nonconformities

- A. **Purpose.** The purpose of this Section is to provide standards by which minor nonconforming uses and structures (See [Section 156.K.001, Purpose and Applicability](#)) can be made "conforming" through a public hearing process. In many instances, minor nonconforming uses and structures are integral parts of the City's fabric, that is, its character and function, so their continuing existence promotes the City's policy objective of protecting its neighborhoods. In these instances, the classification "nonconformity" and resulting restriction on investment may not be what the community desires. As such, the use may be made conforming pursuant to this Article in order to remove the potential stigma that may be associated with the "nonconforming" designation.
- B. **Procedure.** An owner of a minor nonconforming use or structure may apply for a Special Use Permit pursuant to Subsec. [156.J.005.1, Special Use Permits](#), which has the effect of making the nonconforming use or structure conforming. The criteria for limited use approval are set out in subsection D below.
- C. **Exclusions.** This procedure does not apply to nonconforming lots, which may be buildable in accordance with the standards for nonconforming lots set out in [Section 156.J.004, Nonconforming Lots](#).
- D. **Criteria for Approval.** A Special Use Permit approval may be granted to make a nonconforming building, structure, or use conforming, if, in addition to the criteria for approval of a limited use permit set out in Subsec. [156.J.005.1, Special Use Permits](#), and Section [156.C.005, Special Use Standards](#), all of the criteria of this Section are satisfied.
 - 1. *Approval Criteria.* The use, as conducted and managed, has minimal nonconformities and has been integrated into the neighborhood's (or zoning district's if it is not in or adjacent to a residential neighborhood) function, as evidenced by the following demonstrations:
 - a. The neighborhood residents regularly patronize or are employed at said use (for nonresidential uses in or abutting residential neighborhoods);
 - b. Management practices eliminate nuisances such as noise, light, waste materials, unreasonably congested on-street parking, or similar conflicts;

- c. There is no material history of complaints about the use (a history of complaints is justification for denying the conditional use permit, unless the conditions of the permit will eliminate the sources of the complaints); or
- d. The use has been maintained in good condition and its classification as a nonconformity would be a disincentive for such maintenance.

2. *Conditions.* The Board of Adjustment (BOA) may impose conditions relative to the expansion of bufferyards, landscaping and landscape areas, or other site design provisions, or other limitations necessary to ensure that, as a conforming use, the use will not become a nuisance. Such conditions may relate to the lot, buildings, structures, or operation of the use.

E. **Effect of Approval.** Uses that comply with the terms of a Special Use Permit issued in accordance with this Section are converted from "legally nonconforming uses" to "conforming uses" by virtue of the issuance of the Permit.

1. *Written Approval.* Special Use Permit approvals shall be provided to the applicant in writing and may be recorded by the applicant at the applicant's expense.