

ARTICLE 800
NONCONFORMING SITUATIONS

801: Continuation of Nonconforming Situations:

801.1: Nonconforming situations that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in Subsections 802 through 805 of this Section.

802: Nonconforming Lots

802.1: When a nonconforming lot can be used in conformity with all of the regulations (other than the area or width requirements) applicable to the district in which the lot is located, such a use may be made as of right. Otherwise, the nonconforming lot may be used only in accordance with a Special Use Permit issued by the City Council. The Council shall issue such a permit if it finds that

- A. the proposed use is one permitted by the regulations applicable to the district in which the property is located, and
- B. the property can be developed as proposed without any significant negative impact on the surrounding property or the public health, safety, or welfare. In issuing the permit authorized by this paragraph, the Council may allow deviations from applicable dimensional requirement (such as set-back lines and yard size minimums) if it finds that no reasonable use of the property can be made without such deviations.

802.2: If an undeveloped (a lot that has no substantial structures upon it) nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his 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 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 way the neighborhood has previously been developed.
EXCEPTION: *Where the nonconforming lots were created by the exercise of the power of eminent domain or threat thereof or as a result of a court order, combination of the lots shall not be required.*

803: Extension or Enlargement of Nonconforming Situations:

803.1: Except as specifically provided in this subsection, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.

803.2: Subject to paragraph (4) of this subsection, a nonconforming use may be extended throughout any portion of a completed building that, when the use was

made nonconforming by this ordinance, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

- 803.3: A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming, if 10 percent or more of the earth products had already been removed at the effective date of this ordinance.
- 803.4: The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased 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 subsection occur.
- 803.5: Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:
- A. An increase in the total amount of space devoted to a nonconforming use;
 - B. Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements; or
 - C. The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- 803.6: Minor repairs to and routine maintenance of property not required by the partial or total destruction of a structure (see 803.8) where non-conforming situations exist are permitted and encouraged. Except for single-family residential structures (including mobile homes), if the estimated costs of the renovation work exceeds 10 percent of the appraised value of the structure, the work may be done only after issuance of a Special Use Permit by the City Council. The Council shall issue the permit if it finds that the work will not result in a violation of any other paragraphs of this subsection (particularly part 803.5) or make the property more incompatible with the surrounding neighborhood.
- 803.7: Notwithstanding any part of Section 803.5, any structure used for single-family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of a larger size, so long as the replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to yard size and setback requirements.. For illustration purposes, a manufactured home may be replaced with a larger manufactured home, and a "single-wide" manufactured home may be replaced with a "double-wide." The replacement manufactured home must meet the criteria for manufactured/mobile homes as listed in Article 300A, Section 326A.1. This paragraph is subject to the limitations stated in subsection 805 on abandonment and discontinuance of nonconforming situations.

803.8: A structure that is nonconforming in any respect or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed, subject to the following restrictions:

- A. The total amount of space devoted to a nonconforming use may not be increased, except that a larger, single-family residential structure may be constructed in place of a smaller one and a larger mobile home intended for residential use may replace a smaller one.
- B. The reconstructed building may not be more nonconforming with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements, and such dimensional nonconformities must be eliminated if that can reasonably be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such building;
- C. The reconstructed building may not enclose areas that were previously unenclosed, even though those areas were used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent or more of the perimeter of the area is marked by a permanently constructed wall or fence.

Except for single-family residential structures (including mobile homes), if the estimated costs of the reconstruction work exceeds 10 percent of the appraised value of the structure, the work may be done only after issuance of a Special Use Permit by the City Council. The Council shall issue the permit if it finds that the work will be done in accordance with this paragraph and that the reconstructed building will not make the property more incompatible with the surrounding property than it was before the destruction occurred.

803.9: Manufactured home parks for which the City Council has not issued a Special Use Permit shall be permitted to replace existing manufactured homes with similar manufactured homes. A manufactured home shall not be deemed similar, for purposes of this Ordinance, if the date of manufacture of the replacement home is earlier than July 1, 1979 or the date of manufacture of the original home, whichever date is later.

804: Change in Kind of Nonconforming Use:

804.1: A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use.

804.2: A nonconforming use may be changed to another nonconforming use only in accordance with a Special Use Permit issued by the City Council. The Council shall issue such a permit if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for. If a nonconforming use is changed to any use other than a conforming use without obtaining a Special Use Permit pursuant to this paragraph, that changes shall constitute a discontinuance of the nonconforming use, with consequences as stated in subsection 805.

804.3: If a nonconforming use and a conforming use, or any combination of conforming and nonconforming uses, or any combination of nonconforming uses exist on one lot, the use made of the property may not be changed substantially (except to a conforming use), only in accordance with a Special Use Permit issued by the City Council. The Council shall issue such a permit if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the permit is applied for.

804.4: Notwithstanding any other provisions of this ordinance, a legally nonconforming mobile home may be relocated on the same lot provided that such relocation does not further encroach upon the side, front, or rear yard required for a single-family dwelling on said lot. Any legally nonconforming mobile home may be replaced by another mobile home provided that, (1) the total number of nonconforming mobile homes is not increased; and (2) all side, rear, and lot area requirements for a single-family dwelling are met. Any person or persons desiring to relocate or replace a legally non-conforming mobile home shall first make or have made an application to the Building Inspector for permission to do so.

805: Abandonment and Discontinuance of Nonconforming Situations:

805.1: When a nonconforming use is (1) discontinued for a consecutive period of 180 days, or (2) discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes, except as provided in Section 805.2 of this subsection.

805.2: The City Council may issue a Special Use Permit to allow a nonconforming use that has been discontinued for more than 180 consecutive days to be reinstated if it finds that (1) the nonconforming use has been discontinued for less than two years, and (2) the discontinuance resulted from factors that, for all practical purposes were beyond the control of the person maintaining the nonconforming use.

805.3: If the principal activity on property where a nonconforming situation other than a nonconforming use exists is (1) discontinued for a consecutive period of 180 days, or (2) discontinued for any period of time without a present intention of resuming that activity, then that property may thereafter be use only in conformity with all of the regulations applicable to the district in which the property is located, unless the City Council issues a Special Use Permit to allow the property to be used (for a conforming purpose) without correcting the nonconforming situation. The Council shall issue such a permit if it finds that (1) the nonconforming situation cannot be corrected without undue hardship or expense, and (2) the nonconforming situation is of a minor nature that does not adversely affect the surrounding property or the general public to any significant extent.

805.4: For purposes of determining whether a right to continue a non-conforming situation is lost pursuant to this subsection, 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 apartment in a nonconforming apartment building or one space in a nonconforming mobile home park for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long at the

apartment building or mobile home park 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. And so, if a mobile home is used as a nonconforming use on a residential lot where a conforming residential structure is also located, removal of that mobile home for 180 days terminates the right to replace it.

805.5: When a structure or operation made nonconforming by this ordinance is vacant or discontinued at the effective date of this ordinance, the 180 day period for purposes of this subsection begins to run at the effective date of the ordinance.

806: Non-conforming signs:

806.1: Non-conforming signs shall be regulated by this article and Article 500. Where a value is required to be determined, fifty percent (50%) of current value shall be used.

807: Nonconforming Situations within Flood Damage Prevention Zone:

807.1: All foregoing sections shall apply to nonconformances within Flood Prevention Zones except in a case where conflict with Article 700 occurs. In a case of conflict with Article 700 regulations therein shall govern.