

CHAPTER 8
NONCONFORMITIES
TABLE OF CONTENTS

8.01	General.....	1
8.02	Nonconforming Lots	1
8.03	Nonconforming Uses	1
8.04	Nonconforming Situations	3
8.05	Non-conforming Signs	5
8.06	Repairs and Reconstruction of Nonconforming Uses, Situations and Signs	5
8.07	Nonconforming Situations within Flood Damage Prevention Zone	6

CHAPTER 8

NONCONFORMITIES

8.01 GENERAL

Nonconformities that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in Sections (8.02) through (8.07) of this Chapter.

8.02 NONCONFORMING LOTS

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.

8.03 NONCONFORMING USES

(A) Extensions

- (1) Subject to paragraph (3) 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.
- (2) 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.
- (3) The volume, intensity, or frequency of use of property where a nonconforming use exists may be increased and the equipment or processes used at a location where a nonconforming use exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in use and no violations of other paragraphs of this subsection occur.

- (4) 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 use. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- (5) Notwithstanding any part of 803(A)(4), 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 Chapter 5. This paragraph is subject to the limitations stated in subsection 803(C) on abandonment and discontinuance of nonconforming uses.
- (6) 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.

(B) Change of Use

- (1) A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use.
- (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, such a change shall constitute a discontinuance of the nonconforming use, with consequences as stated in subsection 803(C).
- (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.

(C) Abandonment and Discontinuance

- (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 803(C)(2).
- (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.
- (3) When a use 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.

8.04 NONCONFORMING SITUATIONS

(A) Extensions

- (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.
- (2) 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.
- (3) Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:
 - (a) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements; or
 - (b) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming situation. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.

- (4) Notwithstanding Section 804(A)(3), expansion of a legal non-conforming single-family or two-family principal and/or accessory structure that encroaches into a required setback may be permitted as long as the following criteria are met:
- (a) The expansion is related to a conforming use; and
 - (b) The expansion of the legal nonconforming structure does not bring any portion of the structure closer to the zoning lot line.
 - (c) The expansion of the legal nonconforming structure does not exceed an increase of more than fifty (50) percent of the linear footage of the existing encroachment. Expansions permitted after the effective date of this ordinance shall cumulatively count towards this calculation; and
 - (d) Outside of the context of required yards, the expansion does not create or increase the extent of existing nonconformities, including but not limited to, height and floor area ratio.
 - (e) The applicant shall submit a site plan drawn to scale and with sufficient detail to determine property boundaries, measurements, existing structures and other information as necessary to determine compliance of the proposed expansion with this subsection.

These provisions shall not apply to new structure(s). For purposes of determining the extent of an existing encroachment described in subsection (b) above and allowable expansion of the structure is based on the setback of the structure being expanded and independent of any other structure(s) located on the zoning lot.

(B) Abandonment and Discontinuance

- (1) 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.
- (2) 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 as 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.

- (3) When a situation 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.

8.05 NON-CONFORMING SIGNS

- (A) All signs except those specifically addressed below shall be regulated according to 806 Repairs and Reconstruction of Nonconforming Uses, Situations and Signs.
- (B) All signs that are nonconforming because of location within public right-of-way shall, where permitted, comply with this Chapter. All others shall be considered as a violation and subject to Chapter 2.

8.06 REPAIRS AND RECONSTRUCTION OF NONCONFORMING USES, SITUATIONS AND SIGNS

- (A) Minor repairs to and routine maintenance of property not required by the partial or total destruction of a structure where a non-conforming use, situations or sign exists are permitted and encouraged. Except for single-family residential structures (including mobile homes), if the estimated cost-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 section or make the property more incompatible with the surrounding neighborhood.
- (B) 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:
 - (1) 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.

- (2) 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;
- (3) 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.
- (4) Except for single-family residential structures (including mobile homes), if the estimated cost 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.

8.07 NONCONFORMING SITUATIONS WITHIN FLOOD DAMAGE PREVENTION ZONE

All foregoing sections shall apply to nonconformities within Flood Prevention Zones except in a case where conflict with Chapter 9 occurs. In a case of conflict with Chapter 9 regulations therein shall govern.