

SECTION 176

Nonconforming Development and Uses

176.01 Purpose

The purposes of the Nonconforming Development regulations are:

- a. To allow for reasonable use of legally created lots of record which do not meet current minimum requirements for their respective zoning districts.
- b. To provide for reasonable use of legally constructed structures which do not meet current site development regulations for their respective zoning districts.
- c. To allow for the reasonable continuation of legally established uses which do not meet current use regulations for their respective zoning districts.
- d. To limit the continuation and provide for the gradual replacement of nonconforming uses.

176.02 Regulations Additive

Regulations for nonconforming uses are in addition to regulations for nonconforming structures. In the event of a conflict, the most restrictive regulation shall apply.

176.03 Nonconforming Lots

a. Pre-Existing Lots of Record

Nonconforming lots of record existing at the time of the adoption of this chapter shall be exempt, unless otherwise provided, from the minimum lot area and lot width requirements of each zoning district. Such lots may be developed with any use allowed by the regulations for the district and must comply with all other site development regulations set forth by the Zoning Regulations.

b. Reductions Due to Public Acquisition

If a portion of a legally existing lot in any district is acquired for public use, the remainder of this lot shall be considered a conforming lot.

176.04 Nonconforming Structures

These regulations apply to buildings and structures which were constructed legally under regulations in effect before the effective date of these Regulations.

a. Continuation

A lawful nonconforming structure existing on the effective date of this section may be continued, repaired, maintained, or altered, subject to the provisions of this Section.

b. Additions or Enlargements to Nonconforming Structures

1. A lawful nonconforming structure may be added to or enlarged if the addition satisfies one or more of the following conditions:

(a) The enlargement or addition, when considered independently of the existing building, complies with all applicable setback, height, off-street parking, and landscaping requirements.

(b) The nonconforming building and impervious surface coverages on the site are not increased and the building, after the addition, conforms to height and off-street parking regulations applicable to its zoning district.

(c) The addition projects no further into a required side yard setback than the existing building; the length of the side wall of the addition is the smaller of 25 feet or 50 percent of the length of the existing nonconforming side wall; and the enlarged building complies with building and impervious coverage, front and rear yard setbacks, and height regulations applicable to its zoning district.

2. No permitted addition to a nonconforming structure may place a wall within ten feet of a window of an adjacent pre-existing residential structure.

3. Nonconforming buildings shall be limited to one addition or enlargement pursuant to these regulations.

c. Moving of Nonconforming Structures

A lawful nonconforming building or structure shall not be moved in whole or in part to another location on its lot unless every part of the structure conforms to all site development regulations applicable to its zoning district.

d. Repair of Nonconforming Structures

A lawful nonconforming building damaged by fire, explosion, storm or other calamity, except flood damages, may be repaired and reconstructed provided there is no increase in the degree of nonconformity and that the cost of the reconstruction does not exceed 50% of the value of the building prior to the damage.

e. Conversion of a Conforming Building

A conforming building shall not be changed in any way that will result in a nonconforming development.

f. Applicability of Landscaping and Screening Regulations

A pre-existing structure, building, or development shall be exempt from Section 173, Landscaping and Screening Regulations. However, any expansion of such structure, building, or development or any adjacent new development onto property that is or becomes vacant on or after the effective date of these Regulations shall be subject to Section 173.

g. Amortization of Nonconforming Development

The following nonconformances must be brought into compliance with the provisions of this ordinance within specified periods.

1. Fences, walls, and foliage which violate the vision clearance provisions of this ordinance shall be made conforming within one year of the effective date of the ordinance.
2. Any fences or screens that are inconsistent with the provisions of Section 172.07 shall be made conforming within one year of the effective date of the ordinance.
3. Nonconforming storage operations, including vehicle storage, salvage services, or similar uses made conforming within two years of the effective date of the ordinance.

176.05 Nonconforming Uses

a. Continuation of Nonconforming Uses

1. Any nonconforming use lawfully existing on the effective date of these regulations may continue, subject to the limitations of this Section.
2. Whenever the use of a premise becomes nonconforming through a subsequent change in the zoning ordinance or zoning district boundaries, such use may be continued or changed to another nonconforming use of the same or lesser intensity with the approval of the City Council, following a public hearing and recommendation of the Planning Commission.

b. Change and Amorization of Nonconforming Uses

1. A nonconforming use may be changed to another nonconforming use of the same or lesser intensity, as measured by the Intensity Rating in the Use Matrix and by the category of use type. For the purpose of measuring nonconforming use rights, the hierarchy of Intensity Ratings ascends from low to moderate to high to intensive. The hierarchy of uses ascends from agricultural to residential to office to commercial to industrial and transportation. For example, a nonconforming commercial use in a residential district with an Intensity Rating (IR) of H may be converted to another commercial use with an provided an IR of H, M, or L. However, such a use may not be converted to an industrial use type regardless of its IR.

c. Enlargement of Nonconforming Uses

A building or structure housing a lawful nonconforming use may not be added to or enlarged.

d. Abandonment of Nonconforming Use

1. If any structure or property used as a lawful nonconforming use becomes vacant or unused for a continuous period of twelve months, any subsequent use must conform to all use regulations applicable to the property's zoning district.
2. If a structure housing a nonconforming use converts to a conforming use, it forfeits any further

claim to nonconforming use rights.

e. Allowance for Repairs

Repairs and maintenance of a structure occupied by a nonconforming use may be made, provided that no structural alterations are made other than those required by law.

f. Damage or Destruction of Structures

Should a structure occupied by a lawful nonconforming use be damaged to the extent that the cost of restoration exceeds 60 percent of the replacement cost of the structure, the nonconforming use shall no longer be permitted.

g. Nonconforming Uses and Conditional Use Permits

A lawful pre-existing use which would require a Conditional Use Permit in its zoning district shall be presumed to have the appropriate Permit and shall be considered a conforming use. The use shall be subject to the regulations governing lapses or revocation of Permits, set forth in Section 177.