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ARTICLE 6. NONCONFORMITY PROVISIONS

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Section 6-101. Purpose/applicability.

The purpose of this division is to regulate and limit the development and continued existence of uses, structures and lots which were lawful on the date of the adoption of this Code, but which would be prohibited, regulated, or restricted under the terms established herein. While nonconformities may continue, it is the intent of this development code to bring nonconforming properties into compliance with the provisions of this code in conjunction with a change of use, redevelopment, or any other change of condition of the property in order to eliminate the nonconformity or to bring the nonconformity as practical as possible to a conforming status.

(Ord. No. 6573-00, § 7, 8-3-00)

Section 6-102. Nonconforming structures.

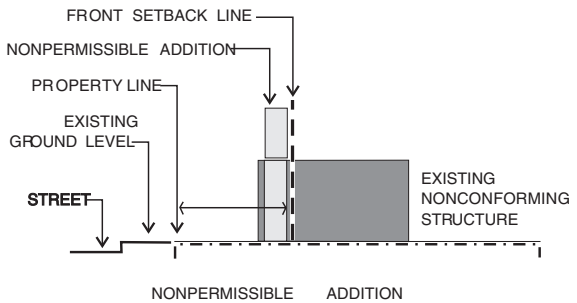
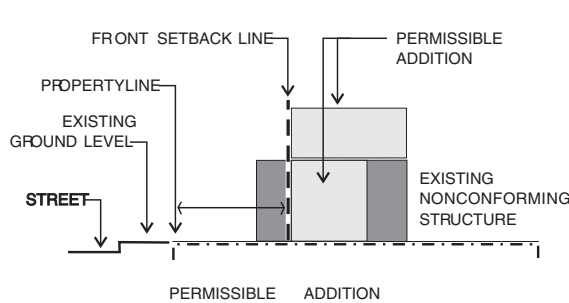
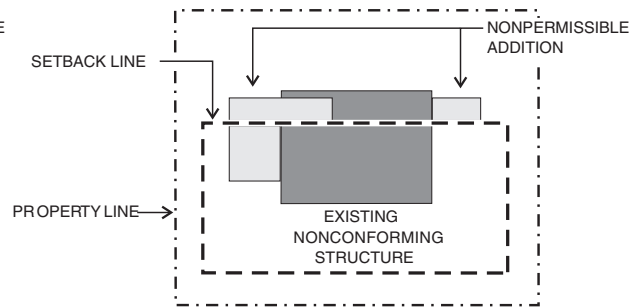
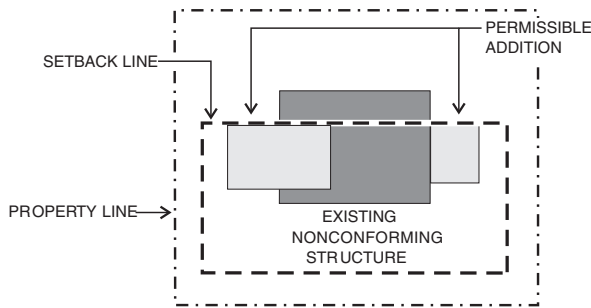
A. Except as otherwise provided in this development code, a nonconforming structure may be used for any purpose permitted in the zoning district in which it is located.

B. Normal repair and maintenance, such as painting, cleaning, replacement, and repairing of same nonconformity may be performed on nonconforming structures.

C. The use of a nonconforming structure may be changed, provided that such change complies to the maximum extent practicable with the requirements of the landscaping and parking standards in Article 3 Divisions 12 and 14 of this Development Code.

D. A nonconforming structure may be expanded:

1. If it is nonconforming solely because of its failure to comply with the off-street parking requirements of this development code and the enlargement will not increase the required amount of parking by more than three additional spaces; or
2. If the expansion, when considered in isolation from the existing structure, is in compliance with all requirements of this development code.



permissible and nonpermissible additions

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E. In the event the use of a nonconforming structure is abandoned for a period of six consecutive months, the future use of the structure shall be required to be brought into compliance with all the requirements of this Development Code.

F. Any part of a nonconforming structure which is destroyed or damaged to the extent of less than 50 percent of the assessed value of the entire structure may be repaired or restored if a complete and legally sufficient application for all required permits to repair or restore the damage is submitted within six months of the date of the damage. Any nonconforming structure which is destroyed or damaged to 50 percent or more of the assessed value may be repaired or restored only if the structure conforms to the standards of this development code for the zoning district in which it is located. Assessed value shall be determined by reference to the official property tax assessment rolls for the year the structure is destroyed or damaged. The extent of damage or destruction shall be determined by the building official by comparing the estimated cost of repairs or restoration with the assessed value.
(Ord. No. 6928-02, § 114, 5-2-02)

Section 6-103. Nonconforming uses.

A. Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses, may be maintained only in accordance with the provisions of this section.

B. Nonconforming uses of land or structures shall not be expanded but normal repair and maintenance may be performed to allow the continuation of the nonconforming use.

C. Except as provided in 6-109, a nonconforming use shall not be changed to any other use unless the new use conforms to the standards of the zoning district in which it is located. Once a nonconforming use is changed to a conforming use, the nonconforming use shall not be re-established.

D. In the event a nonconforming use is discontinued or abandoned for six consecutive months, then the use shall not thereafter be re-established

or resumed and any subsequent use of the land or structure shall conform to all of the requirements of this Development Code.

E. In the event a structure in which a nonconforming use is located is destroyed or damaged to the extent of less than 50 percent of the assessed value of such structure, the nonconforming use may be re-established if a complete and legally sufficient application for all required permits to repair or restore is submitted within six months of the date of the damage. In the event a structure in which a nonconforming use is located is destroyed or damaged to 50 percent or more of the assessed value, these structures may be repaired or restored only if the structure and the use conforms to the standards of this development code for the zoning district in which it is located, except that a nonconforming owner-occupied single-family detached dwelling unit may be reconstructed within the associated structure's original setbacks through a Level 1 (minimum standard) approval process. Assessed value shall be determined by reference to the official property tax assessment rolls for the year the structure is destroyed or damaged. The extent of damage or destruction shall be determined by the building official by comparing the estimated cost of repairs or restoration with the assessed value.

F. In the event a nonconforming use is damaged or destroyed to the extent that the cost of repair or replacement of the fixtures and/or inventory used in the business equals 50 percent of the value of the fixtures and inventory at the time of such damage or destruction, the use may not be re-established except in compliance with all requirements of this Development Code.
(Ord. No. 6526-00, § 1, 6-15-00)

Section 6-104. Nonconforming sign/redevelopment of principle use/structure.

A. In the event a building permit is required for the redevelopment of a principal use/structure, or a principal use/structure is vacant for a period of 180 days, signs on the parcel proposed for development shall be brought into compliance by obtaining a level one approval in accordance with the provisions of Article 4, Division 3.

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B. If the copy is not current or is missing letters or words on a nonconforming sign for a period of 30 days, the sign shall become unlawful. (Ord. No. 6928-02, § 115, 5-2-02)

Section 6-105. Nonconforming adult use establishments.

A. Adult use establishments that have established or commenced business at their existing locations on or before October 15, 1998, and which are not in conformity with the locational requirements of section 3-202, may continue to operate for two years after the date of adoption of this the development code, unless terminated sooner for failure to obtain the permit required by Article 4, Division 15, voluntary discontinuation of business for a period of 30 days or more, or suspension or revocation of the adult use permit. Such nonconforming adult use establishments shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. After two years from the date of adoption of this development code, a nonconforming adult use establishment shall be deemed to be operating in violation of this development code.

B. If two or more adult use establishments are within 750 feet of one another, but both are otherwise in a permissible location, the adult use establishment which first began continual operation at the particular location is the conforming use and the later-established adult use establishment is the nonconforming use.

C. An adult use establishment lawfully operating or permitted to operate as a conforming use is not rendered a nonconforming use through the subsequent location of a church, school, residentially zoned property, or public recreation area.

Section 6-106. Nonconforming lots.

A. No principal use or structure shall be established on a residential lot of record unless the lot conforms with the lot area and lot width requirements in this Development Code for the zoning district in which it is located, except in accordance with the provisions of this section.

B. A principal use or structure may be established on a residential lot of record prior to March 8, 1999 even though the lot is nonconforming with the lot area and lot width requirements in this development code for the zoning district in which it is located, provided that a Level One (standard) approval is obtained. A level one (flexible standard) approval shall be required only if required setbacks can not be met. The applicant for a level one (flexible standard) approval shall demonstrates the following:

1. The lot was a lawfully created lot. If the lot was created before 1982, then it is automatically considered to be lawful. If the lot was created after 1982, to be a lawfully created lot, it must have been created by an approved plat in accordance with the City Code; and
2. Upon adoption of this development code, the lot is not held in common ownership with any abutting land which, in combination with the lot in question, would create a building site meeting the lot area and lot width requirements of the zoning district; or
3. The lot has not been previously developed in combination with an adjacent lot; and
4. If the lot is proposed for a detached dwelling, the dwelling is developed in conformity with the other development standards of the zoning district in which it is located or is approved as a residential infill project.

(Ord. No. 6526-00, § 1, 6-15-00)

Section 6-107. Nonconforming accessory uses and accessory structures.

A. No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure conforms to the standards for the zoning district in which it is located.

B. Any nonconforming accessory use or accessory structure shall be brought into conformity with this development code whenever a substan-

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tial improvement to, addition to, or change in the principal use or structure on the property is proposed and approved.

Section 6-108. Nonconforming access features.

A. Permitted access connections in place as the date of adoption of this development code that do not conform with the standards in Article 3 Division 1 shall be designated as nonconforming access features and shall be brought into compliance with applicable standards under the following conditions:

1. When new access connection permits are requested;
2. Substantial enlargements or improvements;
3. Significant change in trip generation; or
4. As roadway improvements allow.

B. If the principal activity on a property with nonconforming access features is discontinued for a consecutive period of 180 days, or discontinued for any period of time without the present intention of resuming that activity, then that property must thereafter be brought into conformity with all applicable connection spacing and design requirements, unless otherwise exempted through a level one or level two approval. For uses that are vacant or discontinued upon the effective date of this development code, the one hundred eighty (180) day period begins on the date of adoption of this development code.

Section 6-109. Termination of status as a nonconformity.

A. A nonconforming use or structure may be deemed to be in conformity with this development code, and may thereafter be allowed to continue and to expand as a lawfully existing use or structure, if such use or structure is granted level two approval in accordance with the provisions of this section.

B. A structure which is nonconforming with respect to density may be reconstructed on the same parcel with the same density provided Level Two approval is obtained and that:

1. Such reconstruction complies with all other requirements of this Community Development Code; and
2. Such reconstruction does not constitute a change in use.

C. A level two approval shall not be granted to terminate status as a nonconforming use or structure unless the nonconformity is improved according to the following requirements:

1. Perimeter buffers conforming to the requirements of section 3-1202(C) shall be installed.
2. Off-street parking lots shall be improved to meet the landscaping standards established in section 3-1202(D).
3. Any nonconforming sign, outdoor lighting or other accessory structure or accessory use located on the lot shall be terminated, removed or brought into conformity with this development code.
4. The comprehensive landscaping and comprehensive sign programs may be used to satisfy the requirements of this section.

(Ord. No. 6526-00, § 1, 6-15-00; Ord. No. 7413-05, § 22, 5-5-05; Ord. No. 7445-05, § 1, 7-21-05)

Section 6-110. Nonconformities created as a result of eminent domain.

A. In the event that an eminent domain action creates a nonconforming structure, such nonconforming structure may remain as a legal nonconforming structure provided that all other regulations of this Code regarding nonconforming structures are met. This section shall not be applicable to single-family detached and attached dwellings.

B. In the event that an eminent domain action renders a site nonconforming with respect to the development standards of this Code, the property shall be required to comply with the development standards to the maximum degree physically and financially feasible as determined by the commu-

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nity development coordinator. The community development coordinator may require mitigation and/or improvements to the site that are related to the specific conditions of the site, that adequately improve the public safety issues of the site and which implement the purposes of this Code.

C. All other nonconformities created as a result of eminent domain shall be governed by the provisions of this article.

(Ord. No. 6417-99, § 13, 8-19-99)