

## Chapter 20.32

## NONCONFORMING SITUATIONS

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20.32.010 Continuation of Nonconforming Situations and Completion of Nonconforming Projects.

- (a) Unless otherwise specifically provided in this Title and subject to the restrictions and qualifications set forth in [§20.32.020 \(Nonconforming Lots\)](#) through [§20.32.070 \(Completion of Nonconforming Projects\)](#), nonconforming situations that were otherwise lawful on the effective date of this Title may be continued.
- (b) Nonconforming projects may be completed only in accordance with the provisions of [§20.32.070 \(Completion of Nonconforming Projects\)](#).

20.32.020 Nonconforming Lots.

- (a) This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with [§20.32.050 \(Change in Use of Property Where a Nonconforming Situation Exists\)](#).
- (b) When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimums set forth in [§20.48.010 \(Minimum Lot Size Requirements\)](#), then the lot may be used as proposed just as if it were conforming. However, no use (e.g., a two-family residence) that requires a greater lot size than the established minimum lot size for a particular zone is permissible on a nonconforming lot.
- (c) When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements ([§20.48.040, Building Setback Requirements](#)) cannot reasonably be complied with, then the permit-issuing authority may allow deviations from the applicable setback requirements if it finds that:
  - (1) The property cannot reasonably be developed for the use proposed without such deviations,
  - (2) These deviations are necessitated by the size or shape of the nonconforming lot, and
  - (3) The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
- (d) For purposes of Subsection (c), compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for

the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, that an applicant is facing financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

20.32.030 Extension or Enlargement of Nonconforming Situations.

- (a) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:
- (1) An increase in the total amount of space devoted to a nonconforming use, or
  - (2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.
- (b) Subject to Subsection (d), a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this Title, was manifestly designed or arranged to accommodate such use. However, subject to [§20.32.070 \(Completion of Nonconforming Projects\)](#), a nonconforming use may not be extended to additional buildings or to land outside the original building.
- (c) Subject to [§20.32.070 \(Completion of Nonconforming Projects\)](#), 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 sand pit) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed on the effective date of this Title and where the proposed expansion conforms to all applicable federal, state, and local regulations concerning the use.
- (d) 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 section occur.
- (e) Notwithstanding Subsection (a), any structure used for single-family residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements. This paragraph is subject to the limitations stated in [§20.32.060 \(Abandonment and Discontinuance of Nonconforming Situations\)](#).
- (f) Notwithstanding Subsection (a), whenever: (i) there exists a lot with one or more structures on it, and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the parking or loading requirements of [Chapter 20.72](#) that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking in accordance with [§20.32.070 \(Completion of Nonconforming Projects\)](#) if: (i) parking requirements cannot

be satisfied on the lot with respect to which the permit is required; and (ii) such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning or special or conditional use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

20.32.040 Repair, Maintenance and Reconstruction.

- (a) Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 25 percent of the appraised valuation of the structure to be renovated since the time it became nonconforming, may be done only in accordance with a zoning permit issued pursuant to this section.
- (b) If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed 50 percent of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a zoning permit issued pursuant to this section. This subsection does not apply to structures used for single-family residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced as provided in Subsection [20.32.030\(e\) \(Extension or Enlargement of Nonconforming Situations\)](#).
- (c) For purposes of Subsections (a) and (b):
- (1) The “cost” of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.
  - (2) The “cost” of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of Subsections (a) or (b) by doing such work incrementally.
  - (3) The “appraised valuation” shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.
- (d) The Community **and Economic** Development Director shall issue a permit authorized by this section if he finds that, in completing the renovation, repair or replacement work:
- (1) No violation of [§20.32.030 \(Extension or Enlargement of Nonconforming Situations\)](#) will occur, and
  - (2) The permittee will comply, to the extent reasonably possible, with all provisions of this Title applicable to the existing use (except that the permittee shall not lose his right to continue a nonconforming use).

**Commented [AR1]:** Changed Community Development Director to Community and Economic Development Director.

Compliance with a requirement of this Title is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. That an applicant is facing financial hardship caused by the cost of meeting such requirements does not constitute grounds for finding that compliance is not reasonably possible.

20.32.050 Change in Use of Property Where a Nonconforming Situation Exists.

- (a) A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning, special use, or conditional use permit in accordance with ~~§20.16.010-100 (Permits Required)~~ may not be made except in accordance with Subsections (b) through (d). However, this requirement shall not apply if only a sign permit is needed.
- (b) If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this Title applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this Title is achieved, the property may not revert to its nonconforming status.
- (c) If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this Title applicable to that use cannot reasonably be complied with, then the change is permissible if the entity authorized by this Title to issue a permit for that particular use (the Community ~~and Economic~~ Development Director or Hearing Examiner) issues a permit authorizing the change. This permit may be issued if the permit-issuing authority finds, in addition to any other findings that may be required by this Title, that:
- (1) The intended change will not result in a violation of [§20.32.030 \(Extension or Enlargement of Nonconforming Situations\)](#), and
  - (2) All of the applicable requirements of this Title that can reasonably be complied with will be complied with. Compliance with a requirement of this Title is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. That an applicant is facing financial hardship caused by the cost of meeting such requirements does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.
- (d) If the intended change in use is to another principal use that is also nonconforming, then the change is permissible if the entity authorized by this Title to issue a permit for that particular use (Community ~~and Economic~~ Development Director, Hearing Examiner, or City Council) issues a permit authorizing the change. The permit-issuing authority may issue the permit if it finds, in addition to other findings that may be required by this Title, that:
- (1) The use requested is one that is permissible in some zoning district with either a zoning, special use, or conditional use permit, and
  - (2) All of the conditions applicable to the permit authorized in Subsection (c) of this section are satisfied, and
  - (3) The proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.

**Commented [AR2]:** Updated code sections from other chapters.

20.32.060 Abandonment and Discontinuance of Nonconforming Situations.

- (a) When a nonconforming use is (i) discontinued for a consecutive period of one hundred eighty-days, or (ii) 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.

- (b) If the principal activity on property where a nonconforming situation other than a nonconforming use exists is (i) discontinued for a consecutive period of 180 days, or (ii) discontinued for any period of time without a present intention of resuming that activity, then that property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the entity with authority to issue a permit for the intended use issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. This permit may be issued if the permit-issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.
- (c) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, 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 for one hundred eighty-days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building 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.
- (d) When a structure or operation made nonconforming by this Title is vacant or discontinued at the effective date of this Title, the one hundred eighty-day period for purposes of this section begins to run on the effective date of this Title.

20.32.070 Completion of Nonconforming Projects.

All nonconforming projects on which construction was begun before the effective date of this Title may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired.