

CHAPTER 9: LEGAL NONCONFORMING USES STRUCTURES AND LOTSNONCONFORMITIES

10.9.1 GENERAL PROVISIONS

A. Purpose

The purpose of this Chapter is to regulate and limit the development and continued existence of ~~zoned~~ legal nonconforming uses, structures, lots, ~~signs, and use characteristics such as parking and landscaping, established prior to the effective date of this UDC, or the effective date of future amendments to this UDC, that no longer conform to the requirements of this UDC.~~ All such situations are collectively referred to in this Chapter as “nonconformities.” ~~While nonconformities may continue, the provisions of this Chapter are designed and~~ to curtail substantial investment in such nonconformities to bring about their eventual elimination in order to preserve the integrity of this UDC and the character of the Town.

B. Authority to Continue

1. Generally

Any nonconforming ty use, structure or lot that lawfully existed as of the effective date of this UDC ~~and that remains nonconforming,~~ and any nonconforming ty use, structure or lot that is created as a result of any subsequent rezoning or amendment ~~of to the text of~~ this UDC, may be continued or maintained ~~as a nonconformity~~ only in accordance with the terms of this Chapter.

2. ~~Exception Due to Variances or Minor Modifications~~

~~Notwithstanding Subsection 9.1.B.1 above, T~~his Chapter shall not apply to any structure or lot ~~development standard or feature~~ that is the subject of a variance ~~or minor modification~~ granted under this UDC, ~~because a variance renders such structure or lot conforming. Where a Variance or Minor Modification has been granted that results in a development standard or feature that does not otherwise conform to the requirements of this UDC, that development standard or feature shall be deemed conforming.~~

3. Special Review Uses

- a. A permitted use existing prior to the effective date of this UDC that is permitted by this UDC as a Special Review Use in the district in which it is located ~~under this UDC,~~ but ~~that~~ which lacks an approved Special Review Use permit, shall be considered to exist as a conforming Special Review Use.
- b. A ~~s~~Special ~~R~~Review ~~u~~Use existing prior to the effective date of this UDC that is permitted without condition or modification by this UDC in its entirety as a principal use in the district in which it is located ~~under this UDC~~ shall be deemed a permitted principal use and any associated ~~the~~ Special Review Use permit shall be null and void.

C. Determination of **Nonconformity** Status

In all cases, the burden of establishing the existence of a legal nonconforming ng use or structure ~~ty~~ shall be solely upon the owner of the nonconformity, not the Town.

D. Nonconformities Created Through Government Action

If a use, structure or lot, ~~use of land, use of structure, or characteristic of use~~ does not comply with ~~the requirements of~~ this UDC solely as a result of an acquisition of land or other action by a government agency for a public purpose, then such use, structure or lot, ~~use of land, use of structure, or characteristic of use on land not acquired by the government~~ shall be deemed conforming. ~~For purposes of this Section the word "land" means fee simple interest in real estate.~~

~~E. Change of Ownership or Tenancy~~

~~Changes of ownership, tenancy, or management of property with an existing nonconformity are permitted but such nonconformities shall continue to be subject to the provisions of this Chapter.~~

F.E. Damage or Destruction

1. If a nonconforming ~~structure~~ structure is damaged or destroyed by any means to an extent greater than 50 percent of its replacement cost at the time of damage or destruction, then such nonconforming ~~structure~~ structure shall not be re-established unless it is made to conform to the requirements of this TitleUDC.
2. ~~If/Where~~ a nonconforming ~~structure~~ structure ~~building~~ is damaged less than 50 percent of the cost of ~~its replacement cost~~ reconstructing the entire structure, it may be repaired or restored, provided any such repair or restoration is ~~commenced~~ started within 12 months and is completed within 18 months from the date of ~~the initial damage or~~ partial destruction.
3. The Chief Building Official shall determine the applicable replacement above reconstruction costs. ~~The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any building or activity devoted to a nonconforming use.~~
4. ~~These requirements shall not apply in the Downtown, Neighborhood Mixed-Use (Old Town) and Old Town Residential Districts.~~

G.F. Maintenance and Minor Repair

Minor repairs ~~and~~ and maintenance of nonconforming ~~structures~~ structures ~~that are required to keep structures or sites in a safe condition~~ are permitted, provided that the minor repair or maintenance does not increase the extent of the nonconformity. For purposes of this Section, "maintenance or minor repair" shall mean:

1. Repairs that are necessary ~~to maintain and~~ to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the footprint of the building or structure; and
2. ~~Maintenance of land areas to protect against health and environmental hazards and promote the safety of surrounding land uses;~~
3. ~~2.~~ Repairs that are required to remedy unsafe conditions that cause a threat to public safety; and
4. ~~Repairs and maintenance of nonconforming signs as set forth in Section 9.5.~~

10.9.2 LEGAL NONCONFORMING USES OF LAND

A. Limitations ~~on Continuation of Nonconforming Uses of Land~~

~~Nonconforming uses of land or structures may continue, subject to the general provisions of Section 9.1 and the following limitations:~~

1. No legal nonconforming use ~~of land~~ shall be enlarged, ~~or~~ increased or extended to occupy a greater area of land than was occupied when the use was rendered ~~at the effective date of adoption or amendment of the regulations that make the use~~ nonconforming. Any nonconforming use ~~on a lot or portion thereof may be altered to decrease~~ its nonconformity.
2. No legal nonconforming use ~~of land~~ shall be moved in whole or in part to any portion of ~~at the~~ lot or parcel other than that occupied by such use when the use was rendered ~~at the effective date of adoption or amendment of the regulations that make the use~~ nonconforming.
3. No existing structure devoted to a legal nonconforming use ~~not permitted by this UDC in the district in which it is located~~ shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a conforming, permitted use, or if such enlargement, extension, construction, reconstruction, movement or structural alteration does not increase the footprint of the structure permitted in the district in which it is located.

~~4. Any nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed for such use at the time of adoption or amendment of the~~

~~applicable regulations, but no such use shall be extended to occupy any land outside such buildings.~~

~~5.4. No additional structure not conforming to the requirements of this UDC shall be erected in connection with the legal nonconforming use of land or structure.~~

B. ~~Change of Use~~

~~1. If no structural alterations are made, any nonconforming use may be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards.~~

~~2. Any structure or premises, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the use regulations for the district, and the nonconforming use may not thereafter be resumed.~~

C.B. ~~Abandonment or Cessation of Use~~

If a legal nonconforming use ceases for any reason, except when government action impedes access to the premises, ~~on a lot or any portion of a lot~~ for a period of 12 or more than 12 consecutive months, the legal nonconforming use shall be considered abandoned and terminated, and. ~~Once abandoned, the prior legal nonconforming status of the use shall be considered terminated and reestablishment of the use shall be prohibited.~~ Any subsequent use of the property shall comply with all applicable provisions of this Title.

~~1. Where nonconforming use status applies to a structure and premises, removal, or destruction of the structure shall eliminate the nonconforming status of the land. The term "destruction," for the purpose of this Subsection, is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction.~~

10.9.3 LEGAL NONCONFORMING STRUCTURES

A. ~~Continuation of Nonconforming Structures Generally~~

~~Nonconforming structures may continue, subject to the general provisions of Section 9.1 and the following limitations:~~

~~1. No legal nonconforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Alterations to a legal nonconforming structure that do not increase the footprint of the structure shall not be considered an increase in the structure's nonconformity. This Subsection shall not be construed to allow the expansion of a nonconforming use of structure.~~

~~2. No legal nonconforming structure shall be moved, unless upon relocation it conforms with the applicable requirements of this Title. Should a nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.~~

~~2.—~~

~~Any structure in which a nonconforming use is superseded by a permitted use shall thereafter conform to the use regulations for the district, and the nonconforming use may not thereafter be resumed.~~

10.9.4 LEGAL NONCONFORMING LOTS OF RECORD

A. Unless otherwise provided in this UDC, single-family residences and customary accessory buildings may be erected on any legally created single lot of record existing at the time of adoption of this UDC. Such lot must have been in separate ownership and not of continuous frontage with other lots under the same ownership. This provision shall apply even though such lot fails to meet the requirements

of the district in which it is located for area, width or both area and width; provided

however, that the minimum setback requirements of the district shall be met unless a variance is granted to said requirements has been granted as provided herein.

B. If 2 or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of adoption of this UDC, and part or all of said lots do not meet the requirements of the district in which they are located as to minimum area or width, or both minimum area and width, for the purpose of this Chapter, the ~~lots~~lands shall be considered to be an undivided parcel, and no portion of said parcel shall be sold or used in a manner which diminishes compliance with the lot area and width requirements established in this UDC.

C. If the characteristics of a lot, such as off-street parking, off-street loading, lighting, landscaping, or other features regulated by this UDC, do not conform to the requirements of this UDC, no changes shall be made that increase the nonconformity, but changes that decrease the nonconformity shall be permitted.

~~D. If an application is filed for a building permit or for reconstruction, remodeling, expansion, or other improvements of a multi-family, commercial, industrial, or mixed-use structure on a legal nonconforming lot, and the cost of the proposed improvements total more than 25 percent of the replacement cost of the structure, the applicant shall address the following nonconformities prior to, or as part of the improvements, unless the Director determines in writing that such nonconformities have no significant adverse impact on surrounding properties:~~

- ~~— Screening of mechanical equipment;~~
- ~~— Screening walls or fences (for parking areas or storage areas);~~
- ~~— Driveway surfacing;~~
- ~~— Landscaping;~~
- ~~— Parking; and~~
- ~~— Lighting.~~

10.9.5 — LEGAL NONCONFORMING SIGNS

A. — Termination

~~A legal nonconforming sign shall immediately lose its legal nonconforming status, and therefore shall be brought into conformance with this UDC or removed, when any of the following occur:~~

- ~~1. The size or shape of the sign is changed;~~
 - ~~a. The sign structure is altered, other than by . Alteration does not include repairs and/or maintenance; or~~
 - ~~b. The nonconforming sign is accessory to a nonconforming use that has lost its nonconforming status; or~~
 - ~~c. The primary structure on the property to which the sign is located is the subject of an application for a building permit for reconstruction, remodeling, expansion, or other improvements to the primary structure on such property, and the value of the proposed improvements total more than 25 percent of its replacement cost of such primary structure.~~

B. — Maintenance of Nonconforming Signs

~~Legal nNonconforming signs shall continue to be maintained in safe condition pursuant to the building regulations of the Town.~~

C. — Alteration, Relocation, or Replacement of Nonconforming Signs

~~A legal nonconforming sign shall not be structurally altered, relocated, or replaced unless the replacement sign it is brought into in full compliance with the provisions of this UDC Section.~~

D. — Reconstruction of Damaged Sign

~~If a sign and/or its support structure isare damaged to the extent thatwhere the repair costs exceed 50 percent of the replacement cost of the sign, the sign shall be removed or brought into~~

10.9.6 — NONCONFORMING USE CHARACTERISTICS

~~compliance with this UDC.~~

A. — Existing Nonconforming Characteristics

~~If the characteristics of a use, lot, or structure such as off-street parking, off-street loading, lighting, landscaping, or other features regulated by this UDC, are not in accord with the requirements of this UDC, no change shall be made in such characteristics that increase the amount of nonconformity with such requirements. Change shall be permitted in the direction of conformity to the requirements of this UDC.~~

B. — Improvements Triggering Upgrades in Nonconforming Characteristics

~~If (a) an application is filed for a building permit or for reconstruction, remodeling, expansion, or other improvements of a multi-family, commercial, industrial, or mixed-use structure, and (b) the value of the proposed improvements total more than 25 percent of its replacement cost of the~~

~~primary structure(s) on the property, the applicant shall be required to address the following nonconformities prior to, or as part of the improvements authorized by, such land use permit or building permit, unless the Community Development Director determines in writing that such nonconformities have no significant adverse impact on surrounding properties:~~

- ~~1. Screening of mechanical equipment;~~
- ~~2. Screening walls or fences (for parking areas or storage areas);~~
- ~~3. Driveway surfacing;~~
- ~~4. Landscaping;~~
- ~~5. Parking; and~~
- ~~6. Lighting.~~