



NONCONFORMING USES, NONCOMPLYING STRUCTURES, AND OTHER NONCONFORMITIES

Section 2301 – Purpose:

This Chapter is provided to establish procedures for determining the existence, expansion, or modification of a legal nonconforming use, a legal noncomplying structure, or other legal nonconformity, including noncomplying lots and signs.

Section 2302 – Approval Authority:

As provided for by the Act, the BOA is authorized by the Council as the Land Use Authority with the responsibility to determine the existence of any legal nonconforming use, a legal noncomplying structure, or other legal nonconformity,

Section 2303—Application Initiation and Application Completeness:

- 1) Requests for a determination by the BOA of the existence of a legal nonconforming use, legal noncomplying structure, or other legal nonconformity shall be made on the applicable application form.
- 2) An Application for a Determination of a Legal Nonconforming Use, Legal Noncomplying Structure, or other Legal Nonconformity shall be determined complete by the Zoning Administrator, as provided herein.

Section 2304—Determination of a Legal Nonconforming Use/Legal Noncomplying Structure/Other Legal Nonconformity Application Review Procedures and Approval Standards:

- 1) The procedures for the approval or denial of the Application for a Determination of a Legal Nonconforming Use/Legal Noncomplying Structure/Other Legal Nonconformity are identified by Figure 23-1, herein.
- 2) The BOA shall review the Application for a Determination of a Legal Nonconforming Use/Legal Noncomplying Structure/Other Legal Nonconformity and determine if the application:
 - a) From the evidence presented by the applicant, who shall have the burden of establishing the legal existence of a nonconforming use, noncomplying structure, lot, sign, or other nonconformity, as provided by the Act, that sufficient information, documentation and other materials have been presented to clearly establish that the use, structure, lot, sign, or other nonconformity, which is the subject of the application, legally existed on the date of adoption of this Ordinance, and complied with all prior enactments of this Ordinance.
- 3) Upon a finding by the BOA that the use, structure, lot, sign, or other nonconformity, which is the subject of the application, legally existed on the date of adoption of this Ordinance, and complied with all prior enactments of this Ordinance, the applicant may present any other necessary applications that may be required by this Ordinance, or the Building Codes, as adopted, as provided by Section 2308 below.
- 4) Upon a finding by the BOA that the use, structure, lot, sign, or other nonconformity, which is the subject of the application, did not legally exist on the date of adoption of this Ordinance, and did not legally comply with all prior enactments of this Ordinance, the applicant shall present an application to correct the illegality. No other action shall be taken by the City until

the use, structure, lot, sign, or other nonconformity complies with the requirements of this Ordinance, as adopted.

Section 2305—Terms and Conditions for Nonconforming Uses:

Following a determination by the BOA of the existence of a legal nonconforming use, the use shall comply with the following terms and conditions:

- 1) A nonconforming use may be continued by the present or future property owner.
- 2) As allowed by the Act, a legal nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purposes of the extension. For the purposes of this subsection, the addition of a solar energy device to a building is not a structural alteration.
- 3) Necessary maintenance and repairs may be made to a structure housing a legal nonconforming use by following the procedures for any approval, permit, or license, including the issuance of a Building Permit, for such maintenance and repairs.
- 4) The City may require the termination of a legal nonconforming use by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use.
- 5) The City may not terminate a nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the use has been abandoned.
- 6) A nonconforming use of a structure shall terminate if:
 - a) The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice is provided to the property owner, by the Zoning Administrator or Building Official, that the structure is uninhabitable and that the nonconforming use will be lost if the structure is not repaired or restored within six (6) months.
 - b) The property owner has voluntarily demolished a majority of the building that houses the nonconforming use.
- 7) Change in Use. A nonconforming use may only be changed to a use allowed in the Table of Uses for the Zoning District in which the property is located by following the approval procedures for such new use, as required by this Ordinance.

Section 2306— Terms and Conditions for Noncomplying Structures:

Following a determination by the BOA of the existence of a legal noncomplying structure, the structure shall comply with the following terms and conditions:

- 1) A noncomplying structure may be continued by the present or future property owner.
- 2) The City may not prohibit the reconstruction or restoration of a noncomplying structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure has been abandoned.
- 3) Necessary maintenance and repairs may be made to a legal noncomplying structure by following the procedures for any approval, permit, or license, including the issuance of a Building Permit, for such maintenance and repairs.
- 4) A noncomplying structure shall terminate if:
 - a) The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice is provided to the property owner, by the Zoning Administrator or Building Official, that the structure is uninhabitable and that the noncomplying structure will be lost if the structure is not repaired or restored within six (6) months.
 - b) The property owner has voluntarily demolished a majority of the noncomplying structure.

Section 2307—Approved Determinations of a Legal Nonconforming Use/Legal Nonconforming Structure/Other Legal Nonconformity Applications to be on File:

The Zoning Administrator/BOA Recording Secretary shall maintain all Determinations of a Legal Nonconforming Use/Legal Nonconforming Structure/Other Legal Nonconformity Application approvals on file.

Section 2308—Effect of Approval:

- 1) A finding by the BOA of a legal nonconforming use, nonconforming structure, lot, sign, or other nonconformity shall not authorize the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of any nonconforming use, nonconforming structure, lot, sign, or other nonconformity.
- 2) Following a decision by the BOA, the Recording Secretary shall provide the applicant with a written notice of the decision. The written record of all applications shall be maintained on file by the BOA Recording Secretary.
- 3) A finding by the BOA of a legal nonconforming use, nonconforming structure, lot, sign, or other nonconformity shall not be deemed an approval of any application, permit, or license.
- 4) A finding by the BOA of a legal nonconforming use, nonconforming structure, lot, sign, or other nonconformity shall allow the filing of an application for any necessary approval, permit, or license, as may be required by the City's Land Use Ordinances.

Section 2309—Termination of a Nonconforming Use due to Abandonment:

- 1) Any party claiming a nonconforming use has been abandoned shall have the burden of establishing the abandonment.
- 2) Abandonment may be presumed to have occurred if:
 - a) A majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the City regarding an extension of the nonconforming use.
 - b) The use has been discontinued for a minimum period of one (1) year; or
 - c) The primary building associated with the nonconforming use remains vacant for a minimum period of one (1) year.
- 3) The property owner may rebut the presumption of abandonment under this Subsection and shall have the burden of establishing that any claimed abandonment under this Subsection has not in fact occurred. The BOA shall have authority to review and decide all disputes relating to abandonment of structures associated with a nonconforming use or nonconforming structures.
- 4) The City may terminate the nonconforming use status of a school district or charter school when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a minimum period of one (1) year.

Section 2310—Nonconforming Lots:

This Section shall only apply to legal undeveloped lots or parcels.

- 1) A lot of record, or any parcel of record, legally existing on the date of adoption of this Ordinance shall:
 - a) Be eligible for a Building Permit authorizing the construction of one (1) single family dwelling, even though such lot or parcel may not conform to the requirements of the zoning district in which it is located. provided:
 - i) That such lot or parcel of land is located in a Zoning District that allows single family

- dwellings, and
- ii) The proposed construction can qualify for the issuance of a Building Permit, as required by the building codes, as adopted.

Section 2311—Noncomplying Signs:

This Section shall apply only to signs that were legal on the date of adoption of this Ordinance but which may now be a noncomplying structure.

- 1) A noncomplying sign shall not be enlarged.
- 2) A noncomplying sign shall not be moved or replaced, except to bring the sign into compliance with this Ordinance and the City's other Land Use Ordinances.
- 3) The text message of a noncomplying sign may be changed if such changes do not create any new nonconformities or other noncompliance.
- 4) A noncomplying sign shall be considered abandoned if it advertises a business, service, commodity, or other activity that has been discontinued for a minimum period of one (1) year.

Section 2312—Appeal:

Any person aggrieved by a decision of the BOA regarding any matter related to a nonconforming use, noncomplying structure, or other nonconformity may appeal the decision to the District Court, as provided herein.

Figure 23-1 - Determination of Noncomplying Structures/Nonconforming Uses Application Procedures

