

CHAPTER 1.4 NONCONFORMING DEVELOPMENT

Section 1.4.10 - BACKGROUND

As used in the Code, nonconforming development includes nonconforming structures and nonconforming uses. A *nonconforming structure* does not fully comply with zoning provisions for setbacks, building height, and/or off-street parking, or does not fully comply with some other standard of the zone. A *nonconforming use* is not permitted outright or has not received conditional approval in the zone in which it exists.

Within the zones established by this Code, development may exist that was lawful at the time it began, but would be nonconforming and prohibited in the future under the terms of this Code or future amendments.

In order to avoid undue hardship to developers, nothing in this Code shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Code and upon which actual building construction has been carried out diligently. Construction is considered to have started if excavation, demolition, or removal of an existing building has begun in preparation for rebuilding, and a building permit has been acquired, prior to the effective date of adoption or amendment of this Code.

Section 1.4.20 - PURPOSES

- a. Permit nonconforming development to continue, but not to encourage its perpetuation.
- b. Ultimately bring development into conformance with this Code and the Comprehensive Plan.

Section 1.4.30 - NONCONFORMING STRUCTURES

1.4.30.01 - Alteration of a Nonconforming Structure

Where the use of a structure is permitted by the applicable zone but the structure is nonconforming, an alteration, expansion, or relocation may be ministerially approved if the improvement, evaluated separately from the existing structure, would be in compliance, and is not within a vision clearance area as defined in Chapter 1.6 - Definitions and/or determined by the City Engineer.

For structures in existence prior to December 31, 2000, reconstruction of structures (both residential and nonresidential) may occur consistent with how the structures previously existed in their nonconforming state, **except for the following:**

- a. Any substantial improvement to a nonconforming structure located within the 100-year flood plain shall be accompanied by raising the finished grade of

any nonhabitable space to an elevation at or above the base flood elevation, and raising the lowest floor of any habitable space to an elevation 1 ft. above the base flood elevation. This requirement for raising the lowest floor of a nonconforming structure applies to all nonconforming structures within the 100-year flood plain, regardless of when the structure was originally constructed. Note: Pursuant to section 4.5.70 of Chapter 4.5 - Flood Control and Drainageway Provisions, new construction, substantial improvements, and encroachments are prohibited within the 0.2-ft.-rise floodway; and

- b. Where a structure is designated as historic, any alteration, expansion, enlargement, extension, reconstruction, relocation, or demolition shall be consistent with the provisions in Chapter 2.9 - Historic Preservation Provisions.

1.4.30.02 - Damage to a Nonconforming Structure within the 100-Year Flood Plain

If a nonconforming structure within the 100-year flood plain is substantially damaged, the finished grade of any nonhabitable space shall be raised to an elevation at or above the base flood elevation and the lowest floor of any habitable space shall be raised to an elevation 1 ft. above the base flood elevation. Refer to Chapter 1.6 for a definition of "substantial damage to structures within the 100-year flood plain." Note: Pursuant to section 4.5.70 of Chapter 4.5 - Flood Control and Drainageway Provisions, new construction, substantial improvements, and encroachments are prohibited within the 0.2-ft.-rise floodway.

Section 1.4.40 - NONCONFORMING USES

1.4.40.01 - Alterations of a Nonconforming Use (within a structure or on land)

No building, structure, or land area devoted to a nonconforming use shall be expanded. Reconstruction, relocation, or structural alteration shall conform to the provisions of this Code. Nothing in this chapter shall be construed as prohibiting normal repair, maintenance, and nonstructural alterations to such development, nor the alteration, strengthening, or restoration to safe condition as may be required by law.

1.4.40.02 - Continuance of a Nonconforming Use

A nonconforming use shall not be expanded or relocated to a different or greater area of land, buildings, or structures than it occupied at the time it became nonconforming. Additionally, where a nonconforming use exists on a site, its use type may continue to exist, provided it is in accordance with the provisions of this Code.

1.4.40.03 - Discontinuance of a Nonconforming Use

Whenever a nonconforming use is discontinued for more than one year, further use shall conform with the provisions of this Code. For purposes of this Code, rental payments or lease payments and taxes shall not be considered a continued use. "Discontinued" shall mean non-use and shall not require a determination of the voluntary or involuntary nature of the discontinuance or the intent to resume the nonconforming use.

1.4.40.04 - Damage to a Nonconforming Use

If a structure containing a nonconforming use is substantially damaged, any future development on the site shall use a land use type conforming to those allowed within the applicable zone in which it is located. Refer to Chapter 1.6 for a definition of "substantial damage to structures containing nonconforming uses."

1.4.40.05 - Reclassification to Conditional Development

Whenever a nonconforming use is permitted conditionally, it shall be reclassified as conforming upon receipt of an approved Conditional Development application in accordance with Chapter 2.3 - Conditional Development.

Section 1.4.50 - EXCEPTIONS

1.4.50.01 - Commercial Uses in RS-12 Zone along SW Third, SW Fifth, and SW Sixth Streets

- a. Specific commercial use types in existence on individual sites as of December 31, 2000, in the RS-12 Zone along SW Fifth and SW Sixth Streets from SW Adams Avenue to SW Western Boulevard, shall not be classified as nonconforming development.
- b. Specific commercial use types in existence on individual sites as of December 31, 2000 (e.g., Automotive and Equipment - Light Equipment Repairs), in the Mixed Use Community Shopping Zone at 2220 SW Third Street (Assessor's Map #12-5-11BC, Tax Lot 700 and 701), shall not be classified as nonconforming development. Upon further development, perimeter buffers shall be established consistent with Mixed Use Community Shopping Zone standards.

1.4.50.02 - Existing Uses

Uses that were permitted by the underlying zone prior to a subject property's rezoning via ZDC00-00009 (the zoning map changes related to the Code Update Project), shall not be classified as nonconforming development unless the uses on the subject property have been discontinued for a period of more than 18 months (in which case section 1.4.40.03 shall apply).

1.4.50.03 - Office Uses in the RS-9, RS-9(U), RS-12, RS-12(U), and RS-20 Zones

Office uses (defined in Chapter 1.6) in existence as of December 31, 2000, in the RS-9, RS-9(U), RS-12, RS-12(U) and RS-20 zones shall not be classified as nonconforming development.

1.4.50.04 - North Campus Area (defined in Chapter 1.6)

- a. Multi-dwellings in existence as of December 31, 2000, shall not be classified as nonconforming development. However, redevelopment or expansion requires compliance with current parking standards contained in Chapter 4.1 - Parking, Loading, and Access Requirements.
- b. Office uses (defined in Chapter 1.6) in existence as of December 31, 2000, shall not be classified as nonconforming development. However, redevelopment or expansion requires compliance with current parking standards contained in Chapter 4.1 - Parking, Loading, and Access Requirements.

1.4.50.05 - Nonconforming Lots of Record

A lot of record may not meet the lot size requirements of the zone in which it is located. Such a lot may be occupied by a use permitted in the zone. If, however, the lot is smaller than the size required in its zone, residential use shall be limited to one dwelling unit or to the number of dwelling units consistent with density requirements of the zone.

1.4.50.06 - Street and Drainageway Dedications

The act of conveyance to or appropriation by the City for street or drainage purposes shall not in itself render as nonconforming the use of land, structure, or other improvement maintained upon a lot.

1.4.50.07 - Nonconforming Duplexes

Where a duplex fails to meet the building type requirements in the zone in which it is located and has been damaged as described in 1.4.40.04 above, it may be reconstructed provided such reconstruction commences within one year of the damage and complies with required development standards.

1.4.50.08 - Residential Uses

Any residential building type permitted prior to December 31, 2000, but which is no longer allowed as a new use, may be modified, enlarged, or rebuilt, provided it complies with required development standards of the zone.