

## Chapter 5.2 - Non-Conforming Uses and Structures

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### 5.2.100 Purpose

The purpose of this chapter is to allow nonconformities to continue, but to ultimately bring all uses, buildings, and structures into conformance with this Development Code and the Comprehensive Plan.

### 5.2.200 Nonconforming Use

A use that was legally allowed when established, but which is no longer permitted in the zone in which it is located, may continue so long as it complies with all of the following requirements:

- A. Expansion. A nonconforming use shall not be expanded or moved to occupy a different or greater area of land, building, or structures than the use occupied at the time it became nonconforming.
- B. A nonconforming use may be replaced with another use even though the building or site does not meet the standards of this Code. However, such substitution is to occur only when the new use is designated as permitted or conditionally permitted for the zone in which the property is located.
- C. Discontinuance. If a nonconforming use is discontinued for any reason for more than twelve (12) consecutive months, any subsequent use shall conform to all of the regulations of the subject zone. For purposes of calculating the twelve (12) month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
  1. On the date when the use of land is physically vacated;
  2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
  3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
  4. On the date a request for final reading of water and power meters is made to the applicable utility districts.

### 5.2.300 Nonconforming Structure

- A. Continuation. A nonconforming structure that was allowed when established, but is no longer permitted in the subject zone because it does not conform to the existing height, setback, coverage, or other requirements, may continue so long as it complies with all of the following requirements:

1. The structure is not enlarged, moved, or altered in a way that increases its nonconformity; however, the structure may be altered to decrease in nonconformity
  2. If a nonconforming structure is moved, it must conform to the standards of the zone to which it is moved.
  3. Residential Dwelling Units in the Downtown Commercial (DC) District
    - a. Expansions
      - i. Single-family detached dwelling units may expand up to 50% of the existing habitable square footage.
      - ii. 2 to 4 units may expand up to 35% of the existing habitable square footage.
      - iii. 5 or more units may expand up to 25% of the existing habitable square footage.
    - b. Garages may be permitted and do not count towards the allowable square footage.
    - c. All expansions shall comply with one of the following options;
      - i. The setbacks in the Multi-Family Residential Table 2.3.1; or,
      - ii. The setbacks in the Downtown Commercial District and the Western Frontier Architectural Design Theme.
    - d. An expansion of no more than five hundred (500) square feet of gross floor area is permitted outright. An expansion greater than five hundred (500) square feet of gross floor area shall be processed with a Minor Conditional Use Permit and Site Plan Review.
- B. Maintenance and Repair. Ordinary maintenance and repair is permitted on any structure or portion of any nonconforming structure when:
1. The proposed maintenance and repair is required to keep the building or structure in sound condition, provided however, that no structural alterations shall be made except those required by the Building Official.
  2. The proposed maintenance or repair does not enlarge, move, or alter the structure in a way that increases its nonconformity.
  3. The proposed maintenance or repair is not prohibited on the deed.
- C. Flood Hazard Areas. The provisions of this Section shall not relieve owners of property within mapped special flood hazard areas from complying with the flood hazard zoning provisions of Chapter 2.10 Flood Plain District of this Code.

#### **5.2.400 Restoration - Damaged Buildings**

If a nonconforming structure is damaged by any means, the structure may only be reconstructed or replaced to its pre-damage nonconforming state and the occupancy or use of such structure may be continued or resumed, provided such restoration is started within a period of one (1) year and is diligently pursued to completion. Otherwise, the structure shall be reconstructed in accordance with the provisions of this ordinance.

#### **5.2.500 Off-Street Parking and Non-conforming Structures**

No building as it exists at the time of the effective date of this Development Code shall be deemed to be non-conforming solely by reason of the lack of off-street parking spaces, provided that any portion of the premises being used for off-street parking in connection with any such building shall not be reduced below the requirements of the parking chapter.

**5.2.600 Change to Permitted Use**

When a nonconforming use is changed to a permitted use and additional parking is required, the additional parking spaces shall be provided in accordance with the provisions of Chapter 3.3. However, the number of additional spaces shall be computed only to the extent of the enlargement or additional requirement, regardless of whether or not the number of previously existing spaces satisfies the requirements of this chapter.