

Sec. 36-401. Scope of article.

Nothing in this article shall be construed to permit a violation of any section of this chapter or the continuation of any unsafe or unsanitary condition.

(Ord. No. 2320-06, 12-1-2006)

Sec. 36-402. Purpose.

The purpose of this article is to provide for the continuation and eventual elimination of nonconformities and other instances of nonconformance by:

- (1) Recognizing nonconformities which lawfully existed prior to the effective date of the ordinance from which this article is derived.
- (2) Prohibiting the enlargement or extension of nonconformities.
- (3) Providing criteria which provide for the reconstruction of nonconforming uses which are damaged by fire or other natural disaster.
- (4) Encouraging the elimination of nonconformities or minimizing their impact on adjacent properties.
- (5) Requiring nonconformities and other instances of nonconformance in certain situations to either comply with this chapter or terminate.

(Ord. No. 2320-06, 12-1-2006)

Sec. 36-403. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nonconformity means any use, lot, or structure which was legally constructed or established prior to the effective date of the ordinance from which this chapter is derived, or subsequent amendment to it, which would not be permitted by or is not in full compliance with the provisions of this chapter.

Nonconforming bufferyards means bufferyards which do not conform to the distance, height, screening, density, material or planting requirements of this chapter.

Nonconforming lot means a lot of record which does not conform to the width, lot area, or other dimensional requirements of the district in which it is located.

Nonconforming structure is any structure which was legally constructed prior to the effective date of the ordinance from which this chapter is derived, or subsequent amendment to it, which would not be permitted by or is not in full compliance with the provisions of this chapter.

Nonconforming use means any use which was legally established prior to the effective date of the ordinance from which this chapter is derived, or subsequent amendment to it, which would not be permitted by or is not in full compliance with the provisions of this chapter.

Structure for purposes of this article means a permanent building having a roof which may provide shelter or enclosure of persons, animals or personal property.

Use for purposes of this article means the overall general purpose or activity for which a premises is generally designed, arranged or intended for which it is or may be occupied or maintained.

(Ord. No. 2320-06, 12-1-2006)

Sec. 36-404. General requirements.

- (1) *Right to continue.* Except for a Sexually Oriented Business as defined in the City Code, a nonconformity may be continued in the manner of operation existing at the time of adoption of the ordinance from which this chapter is derived, subject to the provisions of this Article.
- (2) *Subject to general requirements of this chapter.* Subject to its right to continue, a property having a nonconformity is subject to all provisions of this chapter and future amendments thereto.
- (3) *Expansion prohibited.* A nonconformity shall not be expanded in any manner. Expansion included the intensification of the character or operation of a nonconformity. Expansion shall include, but not be limited to, increased hours of operation, expansion of the use to a portion of the property not previously used, reducing the size of the parcel containing the nonconformity by subdivision or administrative lot line adjustment, expansion of a parking area and increased number of employees.
- (4) *Damaged or destroyed structures.* If any nonconformity is destroyed by fire or other peril to the extent of greater than 50 percent of its assessed market value, and no building permit has been applied for within 180 days of when the property is damaged, the building official may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property. If the building permit has not been applied for within one year of the date of destruction, any right to continue the nonconformity is terminated and any future use of the land must comply fully with this chapter.
- (5) *Termination of rights through discontinuation of the use.* If a nonconformity is discontinued for a period of more than one year, any right to continue the nonconformity is terminated and any future use of the land must comply fully with this chapter.

(Ord. No. 2320-06, 12-1-2006)

Sec. 36-405. Special requirements.

- (1) *City approvals.*
 - a. *Condition for approval.* The city may not issue a Conditional Use Permit (CUP), Planned Unit Development (PUD), or building permit for an addition which increases the leasable floor area or density for any property that is not in compliance with the provisions of this chapter. Amendments to existing special permits shall be administered in accordance with section 36-36(c)(4).
 - b. *Exception.* If a new use requiring a CUP, PUD or special permit amendment is proposed for part of a multiple tenant building, and there are no exterior modifications needed to accommodate the new tenant which would result in an increase in floor area ratio, ground floor area ratio, building height, density, or a decrease in required yards, or other substantial change (other than property improvement to meet building code requirements), then the city may issue a CUP, PUD or special permit amendment provided the following standards are met:

1. The new use does not involve an expansion of the nonconformity or otherwise increase the noncompliance with the provisions of this chapter.
 2. Any nonconformity or other items of noncompliance existing on the site shall be brought into greater or complete compliance with this chapter to the extent reasonable and possible, except that greater or complete compliance will not be required with the following provisions of this chapter:
 - i. Lot area.
 - ii. Lot width.
 - iii. Required yards.
 - iv. Building height
 - v. Floor area ratio.
 - vi. Ground floor area ratio.
 - vii. Density.
 - viii. Usable open space.
- (2) *Permitted construction.* Construction is permitted under the following circumstances:
- a. The repair, replacement, restoration, maintenance or improvement of any nonconformity, but not including expansion, except that such construction is prohibited in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of construction to flood flows in the floodway.
 - b. Construction which would allow additions and alterations to buildings containing nonconforming dwelling units complying with the following conditions:
 1. The construction will not result in an increase in the number of dwelling units; and
 2. The building or parcel is not located in an area which the council has designated as a high priority for redevelopment according to an adopted redevelopment strategy or plan. For the purpose of this section, a redevelopment strategy or plan shall be defined as a document and/or process which specifically outlines the area to be redeveloped and may include timelines and/or action steps to be taken, or which are being taken, to achieve the redevelopment. These action steps may include, but are not limited to, solicitation of developers, the purchase of property, environmental testing or remediation, demolition of structures and other similar activities.
- (3) *Change in tenant or ownership.* Any change of a tenant or in the ownership of any land which is classified as a nonconforming use shall require the new tenant or owner to obtain a certificate of occupancy or Registration of Land Use before the nonconforming use may be continued.
- (4) *Change to less intense use.* A nonconforming use may be changed to a less intense nonconforming use subject to approval by the zoning administrator. The property owner or tenant has the burden of providing evidence that the proposed use is less intense than the existing nonconforming use. The zoning administrator shall consider the evidence provided by the property owner or tenant in evaluating relative intensities including, but not limited to, each of the following factors:

- a. Hours of operation.
- b. Signage.
- c. Off-street parking and loading.
- d. Nature of business operations.
- e. Type of equipment or machinery.
- f. Outdoor storage.
- g. Number of employees.
- h. Aesthetic impacts on surrounding property.
- i. Property values.

The decision of the zoning administrator may be appealed in the manner set forth in section 36-31.

- (5) Reduction in nonconformity. Any nonconformity which is reduced in size, intensity or otherwise becomes more conforming may not again expand or become less conforming.
- (6) *Nonconformity as a result of government action.*

If the owner of a property which becomes a legal nonconformity or nonconforming lot as the result of a governmental acquisition by condemnation or negotiation applies for a variance to eliminate the nonconforming status of the property, the governmental acquisition shall constitute a hardship for the purpose of the variance.

- (7) *Nonconforming parking.*
 - a. Any use on any property which contains a nonconforming parking lot or paved area shall not be expanded unless the property is brought into compliance with the standards contained in section 36-361. In addition to the other penalties provided by law, the city may withhold a certificate of occupancy for any property not in compliance with this section.
 - b. Any use which does not provide the number of parking spaces required by section 36-361(c) for the amount of parking provided may not be expanded unless it provides the parking spaces required under this chapter for the expansion.
 - c. Uses with nonconforming parking in terms of numbers of stalls shall need not be required to provide additional parking to bring the use into compliance if such parking would occupy required yards or bufferyards.
- (8) *Nonconforming bufferyards.* If buildings were existing on a parcel of land on the effective date of the ordinance from which this chapter is derived which, due to their location, make construction of the required bufferyards impossible, the following reductions in the bufferyard requirements may be made if the required bufferyard is:

- a. A bufferyard B and the available bufferyard width is at least four feet but less than ten feet, a bufferyard shall be installed on the available width using 100 percent of the required plant units.
- b. Either A or B and the available bufferyard width is less than four feet, an F1 fence and 50 percent of the plant units required for each 100 linear feet of bufferyard shall be installed.
- c. Either C or D and the available bufferyard width is at least four feet but less than ten feet, the bufferyard shall be installed on the available width using an F2 fence plus 50 plant units for each 100 linear feet of bufferyard.
- d. Either C or D and the available bufferyard width is less than four feet, an F4 fence shall be installed plus 25 plant units for each 100 linear feet of required bufferyard.
- e. Either E or F and the available bufferyard width is at least ten feet but less than 15 feet, the bufferyard shall be installed on the available width using a BW1 berm wall plus 75 plant units per 100 linear feet of required bufferyard.
- f. Either E or F and the available bufferyard width is at least four feet but less than ten feet, the bufferyard shall be installed on the available width using an F6 wall and 50 plant units per 100 linear feet of required bufferyard.
- g. Either E or F and the available bufferyard width is less than four feet, the bufferyard shall be installed on the available width using an F6 wall plus 25 plant units per 100 linear feet of required bufferyard.

(Ord. No. 2320-06, 12-1-2006)

Secs. 36-409--36-440. Reserved.