

CHAPTER 17.08 NONCONFORMING DEVELOPMENT¹

Sec. 17.08.00. Intent.

These regulations are intended to permit nonconforming uses and structures to continue, but not to encourage their perpetuation. The regulation of nonconforming development is intended to bring development into conformance with this Code and the Comprehensive Plan.

As used in this chapter, nonconforming development includes nonconforming structures and nonconforming uses. A nonconforming structure is a structure that does not fully comply with the zoning district provisions because of setbacks, building height, off-street parking, or with some other standard of the district.

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

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

(Ord. No. 2024-01, § 1(Exh. A), 2-20-2024)

Sec. 17.08.10. General provisions.

- A. *Alterations of a Nonconforming Use.* No building, structure, or land area devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered unless such development conforms to the provisions of this Code. Nothing in this chapter shall be construed to prohibit normal repair, maintenance, and nonstructural alterations to such development, nor the alteration, strengthening, or restoration to safe condition as may be required by law.
- B. *Alteration of a Nonconforming Structure.* Where the use of a structure is permitted by the applicable development district but the structure is nonconforming, an alteration, expansion, enlargement, extension, reconstruction, or relocation may be administratively approved if the improvement, evaluated separately from the existing structure, would be in compliance, and is not within a vision clearance area, [or the structure otherwise complies with Section 17.08.50.](#)

~~(Ord. No. 2024-01, § 1(Exh. A), 2-20-2024)~~

Sec. 17.08.20. Discontinuance of a nonconforming use.

Whenever a nonconforming use is discontinued for more than one year, further use shall be in conformity with the provisions of this Code. For purposes of this Code, rental payments or lease payments and taxes shall not

¹Editor's note(s)—Pre-republication, this chapter was last revised by Ord. No. 2013-11, effective December 18, 2013. Any amendments occurring post-republication have a history note in parenthesis at the bottom of the amended section.

be considered a continued use. "Discontinued" shall mean nonuse and shall not require a determination of the voluntary or involuntary nature of the discontinuance or the intent to resume the nonconforming use.

(Ord. No. 2024-01, § 1(Exh. A), 2-20-2024)

Sec. 17.08.30. Damage to a nonconforming use.

Except as provided in Section 17.08.50, if a structure with a nonconforming use is damaged by any means to an extent exceeding 80 percent of its most recent, pre-damage assessed valuation as indicated by the Clackamas County Assessor's office, any future development on the site shall conform to the requirements of the zoning district in which it is located.

~~(Ord. No. 2024-01, § 1(Exh. A), 2-20-2024)~~

Sec. 17.08.40. Reclassification to conditional development.

Whenever a nonconforming use is classified as a use that may be permitted conditionally, it shall be reclassified as conforming upon receipt of an approved conditional use permit in accordance with Chapter 17.68.

(Ord. No. 2024-01, § 1(Exh. A), 2-20-2024)

Sec. 17.08.50. Statutorily Required Restoration or Replacement.

A. As required by state law, if a nonconforming dwelling meets the following criteria, then the City shall approve an application to restore or replace it:

1. The former dwelling is damaged or destroyed by a natural or involuntary event; and
2. The former dwelling had intact exterior walls and roof structure; and
3. The former dwelling had indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system; and
4. The former dwelling had interior wiring for interior lights; and
5. The former dwelling had a heating system; and
6. Either:
 - a. The former dwelling was authorized by building permits or by other regulatory approval process by the appropriate authority; or
 - b. The former dwelling was assessed as a residential dwelling for purposes of ad valorem taxation for the tax year beginning on July 1, 10 years before the date of the application, and is not subject to unresolved enforcement proceedings challenging the lawfulness of the dwelling; and
7. The proposed dwelling will not exceed the floor area of the former dwelling by more than twenty-five percent; and
8. The proposed dwelling will be adequately served by water, sanitation and roads; and
9. The proposed dwelling will be located wholly or partially within the footprint of the former dwelling unless necessary to comply with local flood regulations or to avoid a natural hazard area, in which case the applicant may choose a suitable location on the same lot or parcel; and
10. The proposed dwelling will comply with applicable building codes that were in effect on the date the dwelling was damaged or destroyed.

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(Supp. No. 5, Update 4)

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- B. The applicant shall remove the damaged dwelling, demolish the damaged dwelling, incorporate the damaged dwelling into the replacement dwelling, or convert the damaged dwelling into a nonresidential use, within three months after the replacement dwelling is certified for occupancy.
 - C. The applicant shall file an application under this section within three years following the date of the natural or involuntary event.
 - D. The applicant shall commence construction of a replacement dwelling approved under this section no later than four years after approval of the application under this section.
 - E. The City's findings in approving an application under this section are not land use decisions and are subject to review only under ORS 34.010 to 34.100. Notice of the application and decision shall be provided in accordance with Section 17.22.10. The City's findings and conclusions are entitled to deference if there is any evidence to support the findings.

Sec. 17.08.650. Exceptions.

- A. *Multi-Family Dwellings, Office Uses, Automotive Fueling Stations, Car Washes, and Retail Auto Dealerships in the C-1 Zoning District.*
 - 1. Multi-family dwellings in existence as of September 30, 1997, shall not be classified as nonconforming development. However, any redevelopment or expansion shall require compliance with current landscaping, access and parking standards and shall be processed as a conditional use permit.
 - 2. Office uses in existence as of September 30, 1997, shall not be classified as nonconforming development. However, any redevelopment or expansion shall require compliance with current landscaping, access and parking standards and shall be processed as a conditional use permit.
 - 3. Automotive fueling stations and car washes in existence as of September 30, 1997, shall not be classified as nonconforming development. However, any redevelopment or expansion shall require compliance with current landscaping, access and parking standards and shall be processed as a conditional use permit.
 - 4. Retail auto dealerships in existence as of September 30, 1997, shall not be classified as nonconforming development. Redevelopment of the existing dealership shall require compliance with current landscaping, lighting and access requirements. Expansion of an existing dealership shall be permitted only on property contiguous to the existing auto dealership and in the same ownership as the auto dealership on the effective date of the ordinance from which this chapter is derived. Expansion shall be processed as a conditional use permit. If the existing auto dealership building is proposed to be altered or if a new building is proposed to be constructed on the expansion property, the entire dealership shall be required to conform to current applicable criteria and standards in the Sandy Development Code. If the expansion is proposed to include only parking for the display of automobiles, landscaping, light standards and signage, only the expansion property shall be required to conform to current applicable criteria and standards in the Sandy Development Code.
- B. *Self-Service Storage in the C-1, C-2, and I-1 Zoning Districts.*
 - 1. Self-service storage facilities in the C-1 or C-2 zoning districts in existence as of February 16, 2023, shall not be classified as nonconforming development. Permitted expansion of an existing self-service storage facility shall be limited to an increase in building footprint of 20 percent and shall be permitted only on the subject property.
 - 2. Self-service storage facilities in the I-1 zoning district in existence as of February 16, 2023, shall not be classified as nonconforming development. Expansion of an existing self-service storage facility shall be permitted only on the same property or on property contiguous to and in the same ownership as the existing self-service storage facility as of February 16, 2023. If the existing self-service storage building

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is proposed to be altered or expanded on the subject property or if a new building is proposed to be constructed on the subject property, the application shall be processed as a conditional use permit.

- C. *Nonconforming Duplexes.* Where a duplex is a nonconforming building type in the zoning district where it is located and has been damaged as described in 17.08.30 above, a duplex may be reconstructed provided such reconstruction commences within one year of the damage and complies with required development standards.
- D. *Nonconforming Lots.* An existing legal lot may not meet the lot size requirements of the zoning district in which it is located. Such a lot may be occupied by a use permitted in the district. If, however, the lot is smaller than the size required in its district, residential use shall be limited to a single detached dwelling or duplex or to the number of dwelling units consistent with density requirements of the district. Also, other applicable requirements of the zoning district must be met.
- E. *Street and Drainageway Dedications.* The act of conveyance to or appropriation by the City for street, drainage, or other public purposes shall not in itself render as nonconforming the use of land, structure, or other improvement maintained upon a lot.
- F. *Residential Uses.* Any residential dwelling permitted prior to adoption of this Code, but which is no longer allowed as a new use, may be modified or enlarged, provided it complies with required development standards of the district.
- G. *Legally Required Alterations.* Alterations of any nonconforming use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.

(Ord. No. 2000-02, 2000; Ord. No. 2022-26, § 1(Exh. A), 1-17-2023; Ord. No. 2024-01, § 1(Exh. A), 2-20-2024)