

## Article 8 – Transitional Provisions, Nonconformities, Nonconforming Alteration Approval

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### 25.08.01 – Purpose of this Article

It is recognized that the adoption of this Chapter will change the previous zoning policy and regulations in the City and thereby render some existing developments nonconforming. This Article is intended to address development both in the pipeline as of March 16, 2009 and existing development that will become nonconforming. The provisions of this Article are intended to recognize the interests of property owners in continuing to develop property that has been previously planned and approved and to use property previously built, while promoting the future establishment and reestablishment of structures and uses that comply with current zoning policy and regulations.

### 25.08.02 - Transitional Provisions

- a. *Purpose* – In order to maintain continuity for development approvals filed and processed in good faith under the provisions of this Chapter in effect prior to March 16, 2009, the following provisions provide a process for completing the development review process.
- b. *Previously Approved Developments* – The following provisions apply to any portion of a development approved prior to March 16, 2009, except for those planned developments identified in Section 25.14.07 of this Chapter, for which all approvals required for implementation have not been obtained by March 16, 2009.

1. *Use Permits*

Construction under a use permit approved prior to March 16, 2009 must commence within two (2) years from the date of the approval letter of the Planning Commission or Chief of Planning or the use permit will expire. For good cause shown, not more than two (2) extensions not exceeding one (1) year each, may be granted by the original Approving Authority.

2. *Use Permits for Multi-Phase Projects*

- (a) All phases of a multi-phase project for which a use permit or detailed application has been approved as of March 16, 2009 must be commenced within eight (8) years from the date of the approval letter of the Approving Authority or the use permit or detailed application will expire except as may be extended by the provisions of Section 25.07.15. A use permit or detailed application will become void for those buildings within a multiple building development for which construction has not commenced within eight (8) years from the date of the use permit or detailed application approval letter.
- (b) Any multi-phase project for which a use permit was approved prior to October 25, 1993 that has not commenced construction on all buildings as of March 16, 2009 must commence construction on all buildings within 8 years from March 16, 2009, or the use permit will expire.
- (c) Notwithstanding compliance with subsection 2.(a) above, and except as may be extended by the provisions of Section 25.07.15, for any development

located within the Town Center Performance District or within the Twinbrook Metro Performance District the following will apply:

- i. Where 30 percent or more of the total approved gross floor area has been constructed within eight (8) years from the date of the issuance of the use permit, the use permit becomes void with respect to any building for which construction has not commenced within 12 years from the date of issuance of the use permit.
  - ii. Where 60 percent or more of the total approved gross floor area has been constructed within 12 years from the date of the issuance of the use permit, the use permit becomes void with respect to any building for which construction has not commenced within 14 years from the date of issuance of the building permit.
- (d) Nothing herein shall affect the validity of a use permit for a building constructed in accordance with the requirements of the use permit prior to the expiration for the time frames set forth herein, and as may be extended by the provisions of Section 25.07.15.
3. *Special Exception*
- (a) If a use permit approval is required to implement a special exception approved prior to March 16, 2009, the use permit application must be filed within six (6) months from the date of the approval letter of the Board of Appeals or the special exception will expire. However, if the use permit application is not filed prior to March 16, 2009 an application for site plan approval must be filed within the six (6) month period to implement the approved special exception. The provisions of this Chapter governing site plan approval will apply.
  - (b) If a building permit but no use permit or site plan approval is required to implement a special exception approved prior to March 16, 2009, the building permit application must be filed within 12 months from the date of the approval letter of the Board of Appeals or the special exception will expire.
  - (c) If neither a use permit, site plan approval, nor a building permit is required to implement a special exception use approved prior to March 16, 2009, such use must be established within 12 months of the approval letter of the Board of Appeals or the special exception will expire.
  - (d) Special exceptions approved prior to March 16, 2009 for uses that are permitted or conditional uses under this Chapter may be implemented and continue to exist as such permitted or conditional use and the special exception approval shall become void; provided that if the previously approved special exception use does not satisfy the current requirements of the applicable zone, such use may continue as a valid special exception subject to all terms and conditions of the special exception approval.
4. *Variances* – Variances approved but not fully implemented prior to March 16, 2009 must be implemented in accordance with Section 25.06.03.h or the variance will expire.

c. *Expiration of Development Approval* – The requirements of this Chapter apply to:

1. Any development approval that has expired prior to March 16, 2009; and
2. Any development approval granted after March 16, 2009 that does not implement an approval granted prior to March 16, 2009.

#### **25.08.03 – R-60 Qualifying Undersized Lots**

Any lot legally recorded by subdivision plat that is at least 35 feet wide but less than 60 feet wide at the building line is deemed to be a buildable lot even though it may have less than the minimum area required in any current residential zone. Such lots may be developed under the zoning development standards in effect when the lot was recorded except that:

1. A lot created by deed prior to October 1, 1957 that is a minimum of 5,000 square feet in area and at least 40 feet wide may be recorded as a buildable lot;
2. The maximum building height and maximum building coverage for any building or structure must comply with the current standards of the zone in which the lot is classified;
3. The main building setbacks are as follows:
  - (a) Front: 25 feet,
  - (b) Side: Seven (7) feet; and
  - (c) Rear; 20 feet.
4. Construction on such lots must conform to any current established building line.

#### **25.08.04 – Nonconformities, in General**

Any use or development rendered nonconforming by the adoption of this Chapter or any amendment thereto, may continue subject to the limitations provided in this Chapter.

#### **25.08.05 – Nonconforming Uses**

- a. This section applies to any use that was lawful when established but no longer conforms to the requirements of the zone in which it is located except as provided in Article 14.
- b. *Limitations on Expansion, Alteration, or Enlargement of Nonconforming Uses* – No nonconforming use may be expanded, altered, or enlarged, except as follows:
  1. A nonconforming use may be extended throughout those parts of a building or structure which were specifically designed or constructed for such use prior to March 16, 2009 and which parts were either completed or substantially completed structurally prior to such date; and

2. Structural alterations of a building or structure designed for a specific use that does not conform to the requirements of this Chapter may be made only if the alteration is for the purpose of conforming to the use requirements of this Chapter, or to maintain the building or structure in safe repair.
  3. *Nonconforming Alteration Approvals* – Any proposed alteration, expansion, or enlargement to a nonconforming use under this Section 25.08.05 must comply with the nonconforming alteration approval requirements set forth in Section 25.08.08.
- c. *Termination*
1. The right to continue a nonconforming use terminates if:
    - (a) Damage or destruction of the building or structure encompassing the nonconforming use exceeds 50 percent of the building or structure; or
    - (b) The nonconforming use is replaced by a permitted, conditional, or special exception use; or
    - (c) The use ceases for at least three (3) calendar months. A nonconforming use is not considered to have ceased if:
      - i Approval and execution of modifications or renovations are pursued to continue the use, subject to a validly issued building permit, occupancy permit, or nonconforming alteration approval; or
      - ii The property is being actively marketed for tenants to continue the use. A sign on the property advertising its availability is not, by itself, evidence of active marketing.
  2. Notwithstanding the foregoing, if the property remains vacant for a period of 12 months, the nonconforming use is terminated. The property owner may request a six (6) month extension of the termination date from the Planning Commission for good cause shown. Such request must be submitted before the termination date. No more than two (2) such extensions may be granted.
- d. Self-storage warehouse use in the MXE Zone.
1. a. Any self-storage warehouse use in the MXE Zone that exists or is subject to an approved or pending site plan application as of July 8, 2019 may continue as a conforming use for a period of ten (10) years from the date the use become nonconforming.
  - b. Notwithstanding subsection 1.a, any such self-storage warehouse use in the MXE Zone may not be expanded, altered, or enlarged beyond the size and configuration of the original site plan approval.
  2. After the ten (10) year period set forth in subsection 1.a expires, such a self-storage warehouse use in the MXE Zone will be considered nonconforming.

**25.08.06 – Development Standards Nonconformities**

- a. Except as otherwise provided in Section 25.08.07 or Article 14 of this Chapter, this section applies to a building, structure, or site that was lawful when established but no longer conforms to the development standards of the zone in which it is located.
- b. *Expansion, Structural Alteration, or Enlargement of Development Standards Nonconformities* -
  - 1. Alterations, expansions, and enlargements made to a building, structure, or site that contains a development standards nonconformity must not expand or extend the development standards nonconformity except as provided in subsection b.3 below.
  - 2. Expansions, structural alteration, and enlargements to the conforming portions of a building, structure or site are subject to the amendment procedures set forth in Section 25.05.07.
  - 3. *Exceptions.*
    - (a) Alterations, expansions, and enlargements to the portion of the building, structure or site that contains a development standards nonconformity may be made only for the following reasons:
      - i To maintain the building, structure or site in safe repair;
      - ii To improve the façade of the building or structure so as to enhance its appearance; or
      - iii To comply with the requirements of the Americans with Disabilities Act or other safety code requirements.
    - (b) Such alteration or expansion must not exceed that amount reasonably necessary to accomplish the purpose of the alteration or expansion.
    - (c) Conversion of a carport to a garage does not constitute the expansion of a development nonconformity.
    - (d) Any proposed expansion, structural alteration, or enlargement to a development standards nonconformity under this Section 25.08.06.b.3 must comply with the nonconforming alteration approval requirements set forth in Section 25.08.08.
- c. *Historic District Zone Exceptions* – Within a designated Historic District Zone, any contributing building, structure, or site may be repaired or replaced in kind in its original location, subject to approval of the Historic District Commission, notwithstanding its failure to comply with any development standard contained in this Chapter. Any renovations or additions beyond the scope of the original structure as defined by the period of significance is subject to the provisions of this Chapter.
- d. *Nonconformity through Public Acquisition*

1. An existing building, structure, or site improvement is not a development standards nonconformity if it is located on a lot and the lot was reduced in area by acquisition under eminent domain, or by other government action in lieu of eminent domain that would otherwise render the building, structure, or site improvement nonconforming because a dimension or location of the building, structure, or site improvement is deficient due to the public acquisition. For the purpose of this section, the dedication of land for a public park or for the right-of-way for a public street proposed in the Plan is considered a public acquisition. The building, structure, or site improvement may be repaired, altered, or reconstructed, if it is an otherwise lawful use, only to the extent of original development existing on the date of the public acquisition.
  2. In the event such property is subject to redevelopment that includes the removal of the principal use or structure on the site, the new development must conform to all provisions of this Chapter.
- e. *Sidewalk Modifications* - Sidewalks on private property that do not meet the standards set forth in Section 25.17.05 are not nonconforming and may be repaired or replaced in kind. If the property is subject to development or redevelopment, then all sidewalks are subject to the guidelines set forth in Section 25.17.05.
- f. *Termination of Development Standards Nonconformity* – The right to continue a development standards nonconformity terminates:
1. Except for detached and semi-detached single unit dwellings, a development standards nonconformity terminates when more than 50 percent of the gross floor area of a building or structure, or more than 50 percent of the net lot area of a site, that includes a development standards nonconformity:
    - (a) is altered or reconstructed or
    - (b) suffers damage or deterioration by fire, flood, explosion, or any other cause or casualty, whether voluntary or involuntary.
  2. *Provisions for Single Unit Detached and Semi-detached Dwellings* –
    - (a) In the event an existing single unit detached or semi-detached dwelling is damaged or destroyed by fire, flood, explosion or other cause or casualty outside the control of the property owner, the dwelling may be reconstructed to the configuration which existed immediately prior to the damage or destruction.
    - (b) If there is a voluntary destruction of 50 percent or more of the exterior wall surfaces from the grade up, or an expansion of more than 100 percent of the existing floor area in a detached or semi-detached single unit dwelling, the development standards nonconformity terminates and the dwelling must be brought into compliance with the provisions of Article 10 and any other applicable provisions of this Chapter.

**25.08.07 – Certain Existing Structures or Development**

- a. Any building, structure, or site existing as of March 16, 2009 that conforms to the development standards and requirements in effect immediately prior to March 16,

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2009 but no longer conforms to the development standards of the zone in which it is located is deemed to be conforming, subject to the following:

1. In the event the building, structure, or site is damaged or destroyed by fire, flood, explosion, or other cause or casualty outside the control of the property owner, the building, structure or site may be reconstructed to the density and configuration which existed immediately prior to the damage or destruction.
  2. If a building or structure is demolished, or a redevelopment of a site occurs, due to causes within the control of the property owner, all reconstruction and redevelopment must comply with the current development standards and requirements of the zone in which the property is located.
- b. Any building, structure, or site approved but not built as of March 16, 2009 that conforms to the development standards and requirements in effect immediately prior to March 16, 2009, but no longer conforms to the development standards of the zone in which it is located, may be built or developed in accordance with the approval and is thereafter deemed to be conforming, subject to the provisions of subsection a above.
  - c. Any expansion, structural alteration or enlargement to the portion of the building, structure or site that no longer conforms to the development standards of the zone in which it is located is subject to the provisions of Section 25.08.06 and Section 25.08.08.
  - d. If extensions or additions to any portion of such an existing building, structure or site (whether conforming or nonconforming) cumulatively exceed 50 percent of the existing gross floor area or 50 percent of the net lot area, then the entire building, structure, or site must be brought into compliance with all of the current development standards contained in this Chapter.
  - e. Exception. Detached or semi-detached single unit dwellings are subject to the provisions of Section 25.08.06.f.2.

#### **25.08.08 – Nonconforming Alteration Approval**

- a. *Requirement* – Nonconforming alteration approvals are required for structural alterations, expansion, or enlargements to a building, structure, or site containing a nonconforming use or development standards nonconformity, as follows:
  1. *Chief of Planning Review* – Nonconforming alteration approvals by the Chief of Planning are required for the following:
    - (a) Expansion of a nonconforming use to those parts of a building that were specifically designed or arranged for such use prior to the date when such use of a building became nonconforming; or
    - (b) The modification of any nonconformity on a lot improved with a detached or semi-detached single unit dwelling.
  2. *Planning Commission Review* – Nonconforming alteration approvals by the Planning Commission are required for the following:

- (a) Expansion, modification, or structural alteration of a structure or premises occupied by a nonconforming use other than a detached or semi-detached single unit dwelling, and/or
  - (b) Any change to a nonconforming building or structure in compliance with the requirements of Sections 25.08.06 or 25.08.07 that involves a physical change to the exterior part of the building or structure that is nonconforming.
- b. *Application* - Applications for nonconforming alteration approvals must be submitted to the Chief of Planning and must contain the following:
- 1. A site plan drawn to scale showing locations of all existing and proposed buildings, yards, driveways, and parking areas and the proposed alteration;
  - 2. Floor plans showing the location of uses in the structures and on the site; and
  - 3. Such other information as may be required by the Approving Authority.
- c. *Procedure*
- 1. *Chief of Planning Review.* Nonconforming alterations requiring Chief of Planning review must be submitted and processed as a Level 1 Site Plan Review pursuant to Article 7 of this Chapter.
- iii. *Public Notification of Pending Application –*
- i. *Sign.* The applicant must post a sign on the property that is the subject of the application in accordance with the requirements in Section 25.05.03.d.
  - ii. *Written notification.* The Chief of Planning must provide written notification of applications filed requiring Chief of Planning review in accordance with the provisions of Section 25.05.03.c
- (b) *Action on Application*
- i. Within 30 days of sending the notice of the application the Chief of Planning must decide to:
    - A. Approve the application,
    - B. Approve the application with conditions as may be necessary to ensure compliance with the intent and purposes of this Chapter, or
    - C. Deny the application.
  - ii. The Chief of Planning may issue a nonconforming alteration approval only if the findings set forth in Section 25.08.08.c.2.(b)(i) - (vi) below are made.



- iii. The Chief of Planning’s decision must be based on written findings of fact.
2. *Planning Commission Review* – Nonconforming Alteration applications requiring Planning Commission review according to Section 25.08.08.a.2 must be submitted and processed as a Level 2 Site Plan Review pursuant to Article 7 of this Chapter.
- (a) *Public Notice and Hearing* – The Planning Commission must hold a public hearing on an application for a nonconforming alteration approval. The applicant must provide notice of the public hearing in accordance with the provisions of Section 25.05.03.c. and d.
  - (b) *Decision* – The Planning Commission may issue a nonconforming alteration approval only if all of the following findings are made:
    - i There exists documentation of the existence and extent of the nonconforming zoning status of the use or development standard.
    - ii The proposed nonconformity alteration does not exceed that amount reasonably necessary to accomplish the purpose of the structural alteration, expansion, or enlargement as permitted by Section 25.08.06.b.3(b).
    - iii The proposed nonconforming alteration is compatible with the general character of the surrounding neighborhood or zone.
    - iv The proposed nonconforming alteration will not have negative impacts on the public health, safety, and welfare of the nearby properties.
    - v The proposed nonconforming alteration will be consistent with the purpose and intent of the zone in which the property is located and of the Plan.
    - vi. For nonconforming alteration approvals that trigger conformance with current parking requirements pursuant to Article 16, the Planning Commission may waive the current parking requirement and allow the maintenance of the existing nonconforming parking status through the grant of the nonconformity alteration approval, if the Commission finds that:
      - A. It is not practicable to provide the required parking onsite in a manner that preserves neighborhood character;
      - B. Preserving the nonconforming parking status is the best solution to provide consistency with the goals, policies, and intent of the Plan.
- d. *Conditions of Approval* – The approval of a nonconforming alteration may be subject to any condition that the applicable Approving Authority finds necessary to satisfy the required findings and to ensure that the proposed nonconforming alteration will be consistent with the purpose and intent of this Chapter.

- e. *Appeals* – The approval or denial of a nonconformity alteration approval may be appealed by an aggrieved party as follows:
  - 1. Decisions by the Chief of Planning may be appealed to the Planning Commission as provided in Section 25.04.06.b.
  - 2. Decisions by the Planning Commission may be appealed to the Circuit Court as provided in Section 25.04.02.f.

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