

Nonconformities, In General

Date: January 7, 2010

General Reference: Article 8 of the Zoning Ordinance

There are two types of nonconformities – nonconforming uses and development standards nonconformities. A nonconforming use is a use of the property that was permitted when initiated, but through revisions of the zoning code is no longer allowed in that zone. A development standards nonconformity results from a situation where the improvements on the property (building, parking, landscaping, etc.) were legal when originally approved, but do not conform to the current development standards.

In the case of a nonconforming use, the use may continue indefinitely, and it may change owners. However, if the use ceases for more than 3 months it cannot be re-established. The only exceptions are if the use has ceased to allow modifications or renovations to the building under an valid building permit, or if the space is being actively marketed to a new tenant/owner. However, if the use has ceased for 12 months, it cannot be re-established under any circumstance unless a 6-month extension is granted by the Planning Commission. (Sec. 25.08.05)

In the case of a development standards nonconformity, the development may continue to be used and occupied indefinitely. Additions and expansions to that portion of the building or site that is nonconforming can only be made to keep the building or site in safe repair; improve the façade; or comply with the Americans with Disabilities Act (ADA) or life safety codes.

Additions or expansions to the portion of the building or site that complies with the current ordinance may be made so long as such expansions comply with the current code. (Sec. 25.08.06)

In addition, the following provisions apply to developments that conformed to the previous zoning ordinance and were in existence or approved as of March 16, 2009:

- If the building or site is destroyed or damaged through no fault of the owner, the development can be reconstructed to the density and configuration that was in existence at that time.
- If the building or site is demolished or redeveloped through the actions of the owner, then all development must conform to the current regulations.

- If expansions or additions total more than 50% of the gross floor area, or 50% of the site area, then the entire project must be brought into conformance with the current regulations. (Sec. 25.08.07)

The following regulations apply to single-unit detached or semi-detached dwellings:

If a house is damaged or destroyed through no fault of the owner, the house may be reconstructed to the same configuration as it was prior to the damage. If there is voluntary demolition or destruction of 50% or more of the exterior wall surfaces, or an expansion or more than 100% of the existing floor area, the house must be brought into conformance with the current development standards. (Sec. 25.08.06.f.2)

Note: The following activities do not constitute modifications to a nonconformity:

- Landscaping maintenance
- Parking lot maintenance, including resurfacing and re-striping
- Tenant fit-outs within a building

Any modifications to a development standards nonconformity that help bring the building or site closer to conformance to the current regulations are encouraged. Any such modifications cannot be undone at some future time.