

ARTICLE 17. NONCONFORMITIES

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17.1 NONCONFORMING BUILDINGS, STRUCTURES AND USES OF LAND

Land uses which existed legally upon the effective date of a zoning change, but which are not in conformance with all the applicable provisions of the adopted or amended zoning regulation, are ~~shall be~~ subject to the provisions of this section to the fullest extent permitted by state law.

A nonconforming building, structure or use of land lawfully existing at the time of the adoption or amendment of this ordinance may be continued and maintained as provided in this article; provided, however, that nothing herein may ~~shall~~ be construed to authorize the continuation of any illegal or nonconforming use which was illegal prior to the adoption of this ordinance.

A. Alteration or enlargement of buildings and structures.

1. The board of zoning appeals may, in appropriate cases and after public notice and hearing, permit the extension of an existing building and the existing use thereof upon the lot occupied by such building, or permit the erection of an additional building. The addition or extensions are ~~shall be~~ subject to the following requirements:

- a. Yard requirements will ~~shall~~ not be permitted which are less than those required for the district in which the nonconforming use is located.
- b. Percentage of lot covered by building ~~shall~~ must not be greater than the maximum stated for the district.
- c. The architectural style of any new building or additions permitted under this section ~~shall~~ must be similar to that which exists in the area.
- d. Off-street parking ~~shall~~ must be provided and ~~shall~~ must be screened from adjacent property by landscaping or a solid screening fence or wall not less than five (5) nor more than six (6) feet in height.
- e. Landscaping may be required where the board deems it necessary.
- f. Signs used in conjunction with the nonconforming use are ~~shall be~~ governed by the regulations of the district in which it is located.
- g. These requirements are ~~shall be~~ binding on the property regardless of succession of ownership, unless the use is changed to one generally permitted in the district, or the zoning is changed to make the use conforming. Performance bonds or other sureties acceptable to the city may be required where appropriate to the circumstances of the case.
- h. Applications ~~shall~~ must be accompanied by site and building plans, and photographs of present conditions of the property and surrounding property.

2. Where a building or structure is conforming as to use, but nonconforming as to yard, height, or off-street parking requirements, such building or structure may be enlarged or added to along existing building lines providing:

- a. Addition or enlargement does not extend into any other required yard or exceed the existing height of the building or structure.
- b. Existing building together with addition or enlargement does not exceed the maximum lot coverage permitted in the district in which it is located.
- c. All off-street parking requirements for both existing building and addition or enlargement are complied with.

B. Outdoor advertising signs and structures.

No outdoor advertising sign or outdoor advertising structure which, after the adoption of this ordinance, exists as a nonconforming use in any Residential Neighborhood ~~A-1 [R-1A], R-1, R-2 or R-3~~ zoning district, ~~shall~~ may continue, as herein provided for nonconforming uses, but every such sign or structure ~~shall~~ must be removed or changed to conform to the regulations of said district within a period of two (2) years.

When the building inspector finds that a portable or movable business or advertising sign is not in conformance with these regulations, he ~~shall~~ will notify the owner or lessee of the sign, whose business or service is benefitted by the sign. If the violation is not corrected within twenty-four (24) hours, the building inspector ~~shall~~ will have the sign removed from the premises at the expense of the owner or lessee thereof.

C. Building vacancy, nonconforming.

With the exception of houses or duplexes, a nonconforming building, structure or portion thereof, which is or hereafter becomes vacant and remains unoccupied for a continuous period of six (6) months, ~~shall~~ may not thereafter be occupied except by the uses which conform to the use regulations of the district in which it is located.

D. Change in use.

A nonconforming use of a conforming building or structure (example—commercial use in a dwelling) ~~shall~~ may not be expanded or extended into any portion of such conforming building or a structure nor changed except to a conforming use. If such a nonconforming use or a portion thereof is discontinued or changed to a conforming use, any future use of such building, structure or portion thereof ~~shall~~ must be in conformity with the regulations of the district in which such building or structure is located. A vacant or partially vacant nonconforming building or structure may be occupied by a use for which the building or structure was designed or intended if occupied within a period of six (6) months after the effective date of this ordinance.

The use of a nonconforming building or structure may be changed to a use of the same or a more restricted district classification. However, where the use of a nonconforming building or structure is changed to a use of a more restricted district classification, it thereafter ~~shall~~ may not be changed to a use of a less restricted district classification.

E. Nonconforming uses of land.

1. A nonconforming use of land, where the aggregate value of all permanent buildings or structures is less than one thousand dollars (\$1,000.00), existing at the time of adoption of this ordinance, may be continued for a period of not more than three (3) years therefrom, provided:

a. Said nonconforming use may not be extended or expanded.

b. If said nonconforming use or any portion thereof is discontinued for a period of six (6) months, or changed, any future use of such land ~~shall~~ must be in conformity with the provisions of the district in which said land is located.

2. The following regulations ~~shall~~ apply to any automobile wrecking, junk or salvage yard, building material storage yard, contractor's yard, or any similar, more or less temporary, use of land when located as a nonconforming use in any residential district.

a. Any such use is hereby declared to be a public nuisance in any residential district established by this ordinance and ~~shall~~ must be abated, removed or changed to a conforming use within a period of one (1) year after the date of passage of this ordinance.

b. Whenever any district has ~~shall have~~ been changed to a residential district from any other district, the date of abatement, removal or change of such nonconforming use ~~shall~~ must be within a period of one (1) year after the date of change of such district.

3. Any nonconforming automobile wrecking, junk or salvage yard in any nonresidential district ~~shall~~ must be, after the adoption of this ordinance, abated, removed or changed to a conforming use within three (3) years.

4. Notwithstanding other provisions of this ordinance any automobile wrecking, junk or salvage yard, lawfully existing in an I-H Heavy Industrial District (previously zoned I-2, or I-3 ~~general industrial distric~~) on January 17, 1964, may be continued and maintained as a nonconforming use provided that:

a. Such nonconforming use ~~shall be~~ is subject to all the requirements of this section relating to extension or expansion of use, and discontinuance of such use for a period of six (6) months.

b. Such nonconforming use is ~~shall be~~ subject to all applicable requirements of this article.

c. Within ninety (90) days from the effective date of this amendment, all such nonconforming uses ~~shall~~ must be brought into full compliance with all applicable requirements of this ordinance not herein excepted, ~~including but not limited to the requirements set forth in article V, section 3.~~

5. Nonconforming parking areas may be continued and counted towards the total parking requirements for any new activity, addition or extension placed on the site; provided, however, that the existing parking design does not pose a threat to traffic safety. The department of engineering may require redesign of such areas if a traffic safety hazard can be eased or eliminated. Loss of parking spaces resulting from the required redesign will be considered by the building inspection department in determining the minimum parking requirements.

F. Damage

With the exception of houses or duplexes, a building which by reason of the passage of this ordinance has become nonconforming, which has been damaged by fire, explosion, act of God or the public enemy to the extent of more than fifty (50) percent of its value at the time of damage, may ~~shall~~ not be restored except in conformity with the regulations of the district in which it is located.

When damaged by less than fifty (50) percent of its value, a nonconforming building may be repaired or reconstructed, and used as before the time of damage, provided such repairs or reconstruction are completed within one (1) year of the date of such damage.

G. Pending applications for building permits.

Nothing herein contained ~~shall~~ requires any change in the overall layout, plans, construction, site or designated use of any development, building, structure or part thereof, for which official approvals and required building permits have been granted before the enactment of this ordinance, the construction of which, conforming with such plans, ~~shall~~ must have been started prior to the effective date of this ordinance, and completion thereof carried on in a normal manner within the subsequent six (6) months' completion except for reasons beyond the builder's control.

17.25 NONCONFORMING SIGNS

THIS WAS MOVED FROM THE SIGN ARTICLE (ARTICLE 13). NO CHANGES HAVE BEEN PROPOSED TO THE LANGUAGE FROM THE PREVIOUS DECEMBER 2018 DRAFT.

A. Effect of Change in Use for On-Premise Signs

The utilization of a nonconforming on-premise sign and/or sign structure may continue subject to the conditions and requirements of this Section. When the use of a property changes (including but not limited to the redevelopment of the site or a change in the use of the business), the signs on that property must be brought into compliance with the provisions of this Article; provided, however, that this change in use provision is not construed to require conformity of a legally existing, nonconforming development directory sign or on-site directory sign upon changes in the use of individual businesses or tenants advertised on the directory sign.

1. Change Defined

A change in use of property occurs whenever the essential character or nature of the activity conducted on a lot changes. For the purposes of this Article, a change in use occurs under the following circumstances:

- a. When the principal use occupying the property changes from a use permitted or permitted on review, as designated or enumerated for the district, to another use permitted or permitted on review designated or enumerated for the district.
- b. When there is an expansion, an increase in the gross square footage or number of dwelling units of an existing use, or in its operating characteristics (such as an expansion of operations, previously conducted within a fully enclosed building to operations conducted outside an enclosed building) such that the resulting use is a designated or enumerated use separate from the designated or enumerated previous use, then this constitutes a change in use.
- c. A change in the ownership or management of a use or establishment, without the type of changes noted above, is not considered a change in use.

2. Determination of Change by Building Official

If a use is not designated or enumerated in this Code, the Building Official has the discretion to determine whether there is a change in use.

3. Illegal Use Excluded

A use prohibited by the district or an otherwise illegal use is not allowed to continue use of a nonconforming sign.

B. Regulations for Off-Premise Signs Approved Prior to 1984

1. Size, Location, and Structure Restrictions

Off-premise signs must be placed on a unipole structure and cannot be double-decked (either one above the other, or side by side on the same structure). The total sign area per face cannot exceed 48 feet by 14 feet (672 square feet) with a 20% nonpermanent extension, except within 500 feet of interstate arteries where the total sign area per face may be 775 square feet.

2. Spacing Requirements on Primary and Secondary Arteries

No off-premise sign structure may be established within 750 feet of any other off-premise sign structure on either side of the same street. The minimum distance between sign structures is measured along a straight line and between the two nearest points of the structures. The minimum spacing applies to off-premise sign structures located on either side of the same street or highway. Official and on-premise signs as well as any other sign which does not constitute an off-premise sign structure as defined herein, is not counted nor are measurements made from them for the purpose of determining compliance with these spacing requirements.

3. Spacing Requirements on Interstate Arteries

No off-premise sign structure may be established within 1,000 feet of any other off-premise sign structure on the same side of the same interstate artery. The minimum distance between sign structures is measured along a straight line and between the two nearest points of the structures.

4. Setback Requirements

All off-premise sign structures, including billboards, must be erected in conformity with the front, side and rear yard requirements of the district in which located.

~~17.1 GENERAL APPLICABILITY~~

~~A.—Authority to Continue~~

~~Any use, structure, or lot that legally existed as a legal nonconformity as of the effective date of this Code, and any use, structure, or lot that has been made nonconforming as of the effective date of this Code, and any subsequent amendments, may continue subject to the provisions of this Article so long as it remains otherwise legal.~~

~~B.—Burden on Property Owner~~

~~The burden of establishing the legality of a nonconformity under the provisions of this Code is the responsibility of the property owner or operator of the nonconforming use, structure, or lot.~~

~~C.—Safety Regulations~~

~~All police power regulations enacted to promote public health, safety, and welfare, including, but not limited to, all building, fire, and health codes apply to nonconformities.~~

~~17.2 NONCONFORMING USE~~

~~A nonconforming use is the use of a structure or land that at one time was an allowed use within a zoning district, but because of this Code, or a subsequent amendment to this Code, is no longer allowed. This includes nonconformities created by prior zoning codes or amendments to those codes.~~

~~A.—Expansion~~

~~A legally established nonconforming use of a structure or land may be expanded, extended, enlarged, or increased on its existing lot, provided there is reasonable space for such expansion or extension that avoids nuisances to adjoining landowners. The addition of additional lot area to an existing, legally established nonconforming use is prohibited and nullifies nonconforming use protections. The Board of Zoning Appeals may only approve expansions of a nonconforming use on an existing lot through the variance process.~~

~~B.—Relocation~~

~~A nonconforming use of a structure or land cannot be relocated, in whole or in part, to any other structure or location on the same lot. The nonconforming use may only be relocated to another structure or lot only if the use conforms to all regulations of the zoning district where it is relocated.~~

C.—Change of Use

~~A nonconforming use can only be changed to a use allowed within the zoning district where it is located. When a nonconforming use has been changed, in whole or in part, to an allowed use, the whole or part that conforms cannot be changed back to a use that is not allowed in the district. A change of use occurs when an existing nonconforming use has been terminated and another use has commenced. Any change in use is deemed an abandonment of the previously existing nonconforming use.~~

D.—Discontinuation or Abandonment

~~If a nonconforming use is discontinued for a continuous period of 12 months, and is not actively marketed, the nonconforming use terminates automatically. Any subsequent use of such land or structure must comply with all regulations of the zoning district in which the structure or land is located.~~

E.—Damage or Destruction

~~In the event that any structure that is devoted in whole or in part to a nonconforming use is structurally damaged or destroyed through no fault of the property owner or tenant, the nonconforming use may be re-established provided that no new nonconforming uses are created and the degree of the previous nonconformity is not increased, and a building permit is obtained for such rebuilding, restoration, repair, or reconstruction within one year of the date of damage or destruction. In the event that the building permit is not obtained within one year, then the use cannot be re-established. If the structure containing the nonconforming use is also a nonconforming structure, the structure may only be rebuilt, restored, repaired, or reconstructed in accordance with Section 17.3.~~

17.3 NONCONFORMING STRUCTURE

~~A nonconforming structure is a principal or accessory structure that at one time conformed to applicable zoning regulations, but because of this Code, or a subsequent amendment to this Code, does not conform. This includes nonconformities created by prior zoning codes or amendments to those codes.~~

A.—Maintenance

~~Normal maintenance and repair may be performed on any nonconforming structure. No repairs or reconstruction are permitted that would create any new nonconformity or increase the degree of the previously existing nonconformity.~~

B.—Structural Alterations

~~No structural alterations are permitted on any nonconforming structure, except in the following situations:~~

- ~~1.—When the alteration is required by law or is necessary to restore the structure to a safe condition upon the order of any official charged with protecting public safety.~~
- ~~2.—When the alteration will eliminate the nonconformity.~~
- ~~3.—When the alteration will not create a new nonconformity or will not increase the degree of any existing nonconformity.~~

C.—Relocation

~~A nonconforming structure cannot be relocated, in whole or in part, to any other location on the same lot unless such relocation would make the structure conforming. A nonconforming structure may be relocated to another lot only if the structure conforms to all regulations of the zoning district where it is relocated.~~

D.—Damage or Destruction

- ~~1.—If a nonconforming structure is destroyed or damaged, regardless of the percent of damage, it may be rebuilt to its original condition before such casualty or loss if a building permit is obtained within one year of the date of damage or destruction. In the event that the building permit is not obtained within one year, then the structure cannot be restored unless it conforms to all regulations of the district in which it is located.~~
- ~~2.—As of the effective date of this Code, structures that do not comply with the following standards are deemed conforming in regard to these elements, and are subject to the following:~~

a.—Required Build To Zone or Build To Line

~~When a structure does not conform to the required build-to-zone or build-to-line of the applicable district, the structure is deemed conforming in regard to that standard and may be expanded or altered without having to conform to build-to-zone or build-to-line of the district until the structure's building footprint is expanded by 50% or more. If expansions to the structure are incremental, this is calculated as the sum total of all expansions that occur after the effective date of this Code. Once the principal structure is demolished, deemed conforming status is null and void.~~

b.—Surface Parking Lot Location

~~When a structure does not conform to the required surface parking lot location of the applicable district, the structure is deemed conforming in regard to that standard and may be expanded or altered without having to conform to parking lot location requirements of the district until the structure's building footprint is expanded by 50% or more. If expansions to the structure are incremental, this is calculated as the sum total of all expansions that occur after the effective date of this Code. Once the principal structure is demolished, deemed conforming status is null and void.~~

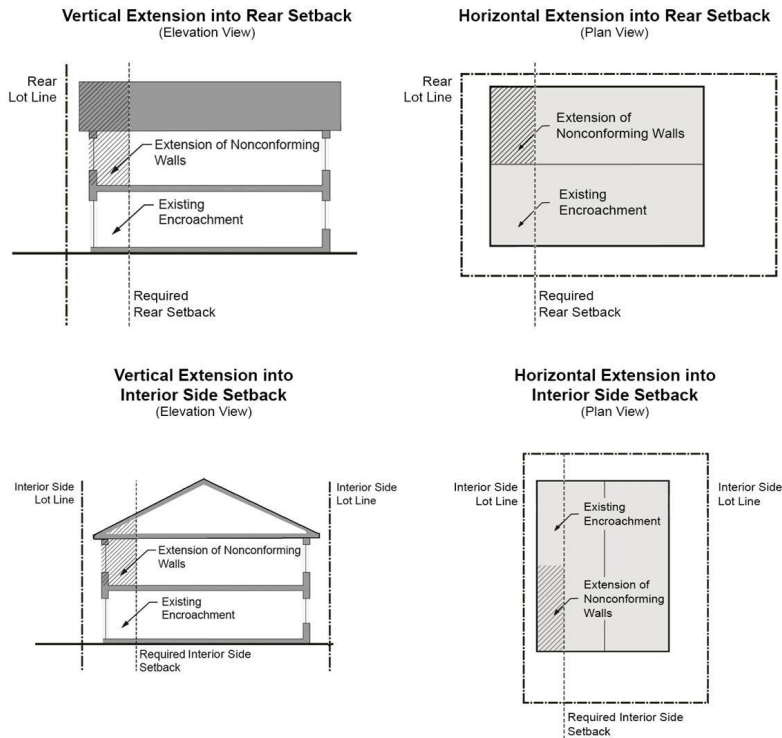
E.—Nonconforming Single-Wide Manufactured Homes

~~Existing nonconforming single-wide manufactured homes in any district may be replaced with a new single-wide manufactured home. The replacement single-wide manufactured home may be a larger square footage so long as the replacement home meets setbacks. In a manufactured home park, the following setbacks are required: a setback of ten feet from all streets and/or access roads, a minimum 20-foot clearance between homes or for homes parked end-to-end, the end-to-end clearance is a minimum of ten feet, and there is a minimum of 20 feet from any permanent structure. When located on a single lot within a district, it must meet all the setback requirements of the district. If a single-wide manufactured home is replaced with a multi-sectional manufactured home, it cannot be replaced with a single-wide manufactured home.~~

F.—Extension of Walls for Nonconforming Single-Family and Two-Family Dwellings

~~Where a single-family or two-family dwelling is deemed nonconforming because a building wall of the principal structure is located within the required rear or interior side setback, the structure may be enlarged or extended horizontally or vertically along the same plane as the existing perimeter building walls, so long as the resulting structure does not violate any other district regulation.~~

EXTENSION OF NONCONFORMING WALLS



17.4 NONCONFORMING LOT OF RECORD

~~A nonconforming lot of record is a lot of record that at one time conformed to the lot dimension requirements of the zoning district in which it is located, but because of this Code, or a subsequent amendment to this Code, no longer conforms does not conform. This includes nonconformities created by prior zoning codes or amendments to those codes.~~

A.—Use

~~A nonconforming lot of record may be used for a permitted or special use allowed within the zoning district. In the residential districts, a nonconforming lot of record may be used for a single family dwelling without a variance but must meet all other district requirements for a single family dwelling. In addition, a nonconforming lot of record may be used for a two-family dwelling without a variance if the lot is only nonconforming in terms of lot width but meets lot area and all other district requirements for a two family dwelling. Other residential dwelling types on a nonconforming lot of record in the residential district that would not meet the lot width and/or lot area standards require a variance or variances.~~

B.—Development

~~Development of a nonconforming lot of record must meet all applicable dimensional and design regulations of the district in which it is located with the exception of the lot area and/or width requirement that renders it nonconforming.~~

C.—Lot Division

~~No recorded lot may be divided into two or more lots unless such division results in the creation of lots each of which conform to all of the applicable regulations of the district where the property is located. No reduction in the size of a recorded lot below the minimum requirements of this Code is permitted except in the following situations:~~

- ~~1.—When the dedication of right of way is required and approved under the provisions of the Knoxville Knox County Minimum Subdivision Regulations, and this dedication makes a lot or structure nonconforming with requirements for setbacks, building coverage, lot area, or lot width, a final plat may be approved which results in no other new nonconformity and no other increase in the extent of a nonconformity.~~
- ~~2.—When a legal, nonconforming structure exists on the property being subdivided and this structure is nonconforming with requirements for setbacks or height, a final plat may be approved which results in no new nonconformity and no increase in the extent of any existing nonconformity.~~
- ~~3.—When a subdivision of property is proposed and each proposed new lot will contain a principal building categorized as contributing in an H or NC Overlay District. If each proposed new lot meets this criteria, and the existing principal buildings are nonconforming with requirements for setbacks and/or lot coverage, the property owner may seek a variance as prescribed by law.~~
- ~~4.—Items 1,2, and 3 above also apply to one lot subdivisions, as defined in the Knoxville Knox County Minimum Subdivision Regulations, which combine two or more lots into one lot or where an adjustment is made to one lot line between two existing recorded lots.~~

D.—Lot Consolidation

~~A nonconforming lot is permitted to consolidate with an adjacent lot, even if such consolidation still does not conform to the lot dimension requirements of the zoning district in which it is located. Such consolidation is seen as a reduction of the nonconformity.~~

E.—Lot Created by Deed

~~In any residential district, a house may be constructed on a lot created by deed provided the lot is:~~

- ~~1.—Located in the area within the City boundary resulting from an annexation in 1917; is described by a deed recorded prior to February 3, 1947; and has remained intact with the same boundary configuration since the recorded date; or~~
- ~~2.—Located in the area within the City boundary resulting from a series of annexations in 1962 (Ordinances 3049, 3050, 3052, 3053 and 3054); is described by a deed recorded prior to February 3, 1947; and has remained intact with the same boundary configuration since the recorded date.~~

~~If a lot created by deed meets the criteria cited above, and is nonconforming with requirements for minimum yards, building setbacks, and/or lot coverage, the property owners may seek a variance. Upon application for a building permit, the owner will be required to submit a survey completed by a registered land surveyor that has been recorded with the register of deeds.~~