

SECTION 8.0200 EXISTING AND NONCONFORMING USES AND DEVELOPMENT

General

8.0201 Purpose

8.0202 Design Review Standards

Continuation of Nonconforming Situations

8.0210 Nonconforming Situations

8.0211 Legal Nonconforming Situation

Alteration, Enlargement, Expansion, Movement or Replacement of Nonconforming Situations

8.0220 Changes to Nonconforming Uses and Developments

8.0221 Alteration, Enlargement, Expansion, Movement or Replacement of a Nonconforming Development

8.0222 Alteration, Enlargement, Expansion, Movement or Replacement of a Nonconforming Use

Loss of Nonconforming Status

8.0230 Damages to Nonconforming Situations

8.0231 Discontinuation or Vacation of Nonconforming Situations

Special Requirements for Nonconforming Uses in Land Use Districts

8.0240 Nonconforming Uses in Residential Land Use Districts

Process For Establishing Or Altering Nonconforming Situations

8.0250 Documentation of Existing Conditions and Continuance

8.0251 Nonconforming Procedures

General

8.0201 Purpose

It is the intent of the Community Development Code to permit nonconforming uses and developments to continue until they are removed, but not to encourage their perpetuation. It is further the intent of the Code that nonconforming uses and developments shall not be enlarged or moved, nor be used as grounds for adding other structures or uses not permitted elsewhere in the same district, except as specifically provided in this section.

8.0202 Design Review Standards

All design review requests shall comply with all applicable standards in the Community Development Code. Development which only affects a portion of a site shall conform with the applicable standards for that portion of the site where development is proposed. With the exception of industrial development in

industrial land use districts subject to a Design Review A, where non-conforming development exists on part of a site (not being re-developed) compliance with the following standards for the entire developed site is required:

- A. Street facing façade upgrades when located in a Design District with adopted design principles, design guidelines, and design standards.
- B. The screening requirements in **Section 9.0100** - Buffering and Screening, if applicable.
- C. The street tree planting requirements in **Sections 9.1023** and **9.1033**.
- D. The parking lot landscaping requirements in **Section 9.0823(C)(1), (2), (3), and (4)**.
- E. The pedestrian circulation connection requirements in **Section 7.0202(K)** and in **Section 7.0203(G)** for industrial uses.
- F. The bicycle parking requirements in **Section 9.0830** - Parking.
- G. The Carpool /Vanpool requirements in **Section 9.0857**.

The applicant shall not be required to spend more than 10% of project costs on these improvements if they are on that portion of the site not being developed. If full compliance with the above requirements cannot be achieved within the 10% project cost limitation, the applicant shall comply with the above requirements in the order of priority as listed. However, the Manager may vary the listed priority if it is determined that the adjacent neighborhood or the public would be better served by applying a different order of the above standards on a particular site.

Continuation of Nonconforming Situations

8.0210 Nonconforming Situation

Nonconforming situations are created when prior uses, development and structures were developed in compliance with specific land use districts, but are no longer in conformance due to changes to the land use district or changes to the regulations of the Code. Nonconforming situations can be made up of either a nonconforming use or a nonconforming development, which are defined in **Section 3.0100**, Definitions.

8.0211 Legal Nonconforming Situations

Legal non-conforming (“Grandfather”) situations recognize that all uses and developments are not required to conform automatically to changes in the Community Development Code. The following subsections may be considered a legal non-conforming situation:

- A. Except as otherwise provided in this section, any situation lawfully existing prior to the implementation of this development code on August 27, 1992 or subsequent amendments to the development code shall be defined as a legal nonconforming situation and may be continued so long as it remains otherwise lawful.
- B. A lot of record or a parcel of land for which a deed or other instrument dividing the land was recorded with Multnomah County prior to December 16, 1975, or either approved by Multnomah County or recorded prior to July 26, 1979, if annexed after that date, may be occupied by uses as provided in **Article 4** - Land Use Districts of this ordinance.
- C. A pre-existing address that is determined not to conform to current City standards as specified in the Development Code and City of Gresham Street Naming and Property Addressing Guidelines is not considered a legal non-conforming situation and is not allowed to remain, once identified. A non-conforming address or property number is subject to correction upon notice.

Alteration, Enlargement, Expansion, Movement or Replacement of Nonconforming Situations

8.0220 Changes to Nonconforming Uses and Developments

- A. In order to avoid undue hardship, nothing in this section shall require any change in the location, plans, construction, size, or designated use of any building, structure, or part thereof, for which a valid development permit has been granted prior to the enactment of the Community Development Plan.
- B. Where alteration, enlargement, expansion, or movement of a nonconforming use or nonconforming development is permitted, it shall be limited to the lot or parcel on which the original use and/or development was located when the use or development was first established, or to an abutting lot or parcel under the same ownership at the time the nonconforming use or nonconforming development became nonconforming, provided the abutting lot or parcel is contiguous and not separated by right-of-way from the lot or parcel on which the nonconforming use or development is located. If the abutting lot or parcel has a different district designation than the nonconforming use or nonconforming development, alteration, enlargement, expansion or movement of the nonconforming use or nonconforming development onto that lot or parcel shall be permitted only if the use is permitted within that district.
- C. A nonconforming use may be extended throughout any existing parts of a building which were clearly arranged or designed for such use at the time the use became nonconforming.
- D. For any existing structure on the site of a nonconforming use or development, normal maintenance and repairs or replacement of walls, fixtures, wiring, or plumbing shall be performed in a manner not in conflict with the other provisions of this section. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- E. The alteration, enlargement, or moving of a nonconforming use or development shall not increase detrimental effects (i.e. noise, vehicle traffic, vibration, dust, odor, fumes, smoke, or glare) in the surrounding area greater than the effects from the existing use or development generated at the time it became nonconforming. Findings to this effect shall be made by the Manager under the Type II procedure.
- F. The enlargement, moving, or structural alteration of a nonconforming use or development shall not:
 - 1. Place any structure associated with the nonconforming use or development in a different occupancy group as defined by the Building Code.
 - 2. Increase the risk to life or risk of fire hazard of the use or development, or of any structure associated with the use or development, as defined by the Building Code Occupancy Group Classification.
- G. Full conformance with the following requirements and standards of the Community Development Code shall be required in connection with the enlargement or moving of any nonconforming use or development that does not require a design review as per **Section 7.0000**:
 - 1. Public facilities standards of **Section A5.000**, et. seq.;

- 2. Screening and buffering requirements of **Section 9.0100**;
 - 3. The requirements of **Section 8.0202**.
- H.** Full conformance with applicable standards which specify the proportion of the site to be landscaped, shall be achieved in connection with the enlargement or moving of a nonconforming use or development.
 - I.** A legally established nonconforming use may be replaced by another nonconforming use that is deemed to be essentially identical to the legally established nonconforming use under the Type I procedure. An example would be the replacement of a nonconforming hair salon by a barber shop. Any such replacement is subject to compliance with **Sections 8.0220** and **8.0231**.
 - J.** A legally established nonconforming use shall only be replaced by another such use that is deemed substantially similar to the legally established use after review under the Type II procedure. An example would be the replacement of an automotive tire and brake repair facility by an automotive muffler shop. Any such replacement is subject to compliance with **Sections 8.0220** and **8.0231**.
 - K.** An alteration to a nonconforming development that requires a design review as per **Section 7.0000** shall be subject to all current standards with the exception that existing nonconforming structures are allowed to remain in a nonconforming condition. Enlargement of a nonconforming structure is subject to this section and **Section 8.0221**, and to applicable design review standards. New development and structures on a nonconforming development site are subject to all current standards.

8.0221 Alteration, Enlargement, Expansion, Movement or Replacement of a Nonconforming Development

A nonconforming development may be enlarged or moved as authorized by meeting the requirements of this section, following Type II procedures.

- A.** Where a nonconforming development is substandard with respect to setbacks, enlargement or moving of a development which maintains the existing, substandard setback may be permitted, but further encroachment into required setbacks shall not be permitted. Any new development other than enlargement or moving of an existing development feature shall conform with applicable setback requirements for the district in which the site is located. Actions which would cause encroachment into an abutting public street right-of-way shall not be permitted.
- B.** Any portion of a nonconforming development to be relocated on site or enlarged shall be subject to height limits applying to the district in which the development is located except that minimum height standards shall not apply to one-time additions or expansions of non-conforming buildings of no more than 25% and less than 1,000 square feet. In undertaking any enlargement or moving, the development as a whole shall conform with applicable lot coverage standards.
- C.** Where a nonconforming development is substandard with respect to the minimum floor area ratio (FAR), the nonconforming development may be expanded without meeting the minimum FAR standards of the district, provided the expansion has the effect of moving towards and increasing compliance with the FAR standards of the district and not reducing compliance with the FAR standards in the district, and provided the combination of new and old developments are sited so as not to preclude meeting the minimum FAR in the future.

- D. Conformance with applicable minimum lot size, minimum street frontage, and lot dimension requirements shall not be required in connection with the enlargement or moving of a development which is deficient in these areas, provided the Manager finds full conformance with all other provisions of this section.

8.0222 Alteration, Enlargement, Expansion, Movement or Replacement of a Nonconforming Use

Except as provided in **Section 8.0222** and except as provided in **Subsections (F)** and **(G)**, a nonconforming use may be enlarged or moved as authorized by this section, following the Type II procedure.

- A. Buildings associated with a nonconforming use may be enlarged as provided in this section, but shall not be moved. Non-building elements of a nonconforming use, such as off-street parking or outdoor storage areas, may be moved in conformance with provisions of this section.
- B. Except as provided in **Subsections (F)** and **(G)**, a nonconforming use may be permitted to enlarge by no more than 20% of the floor area or land area occupied by the use. Any such enlargement of building area or of land area occupied by a nonconforming use may be permitted one time only during the life of the nonconforming use.
- C. Except for nonconforming single-family dwellings and duplexes (see **Subsection (F)**), and except for nonconforming uses approved through the Special Use Review process (see **Subsection (G)**), any portion of a nonconforming use proposed to be enlarged or moved shall be subject to height, setback, and lot coverage standards applying in the district in which the use is located.
- D. Non-building elements of a nonconforming use may be moved within the same lot or parcel, or within an abutting lot or parcel under the same ownership at the time the use became nonconforming, provided the abutting lot or parcel is contiguous and not separated by right-of-way from the lot or parcel on which the nonconforming use is located. If the abutting lot or parcel has a different district designation than the nonconforming use, movement of the use onto that lot or parcel shall be permitted only if the use is permitted within that district.
- E. Except as provided in **Subsections (F)** and **(G)**, the enlargement or moving of a nonconforming use shall not result in a greater number of structures associated with the use than the number of structures existing prior to the action. Any enlargement of a nonconforming residential use shall not result in an increase in the number of dwelling units on the site.
- F. Under the Type I procedure, a single-family dwelling, or a duplex which is a nonconforming use, may be altered or enlarged any number of times in conformance with standards of **Table 4.0130(D), (E), (H) and (I)** of the Community Development Code. Accessory structures on the same site as nonconforming single-family dwellings and nonconforming duplexes may, under the Type I procedure, be constructed or enlarged in conformance with standards of **Section 10.0200** of the Community Development Code.
- G. A nonconforming institutional use that was once approved through the Community Service Use Review or Special Use Review process or was permitted outright but is now subject to a Special Use Review, and is now a nonconforming use may be altered or enlarged any number of times, subject to provisions of **Section 8.0100**. Where enlargement or alteration of such a use is permitted, it shall be limited to the lot or parcel on which the use is located, or to an abutting lot or parcel under the same ownership at the time the use became nonconforming.

Loss of Nonconforming Status

8.0230 Damages to Nonconforming Situations

- A. Except as provided in **Section 8.0240** when a nonconforming development or a structure on the site of a nonconforming use or where one or more structures on the site of a nonconforming use (other than a nonconforming single-family dwelling) is damaged by fire or other cause beyond the control of the owner, if the estimated cost of repairing the development or structure is more than 80% of its current value, the development or structure may be repaired or reused only in full conformance with all provisions of the Community Development Code for the district in which the site is located.
- B. Except as provided in **Section 8.0240**, a nonconforming single-family dwelling which has been damaged beyond 80% of its current value may be reconstructed, under Type III procedure, provided the cause of damage was beyond the control of the owner.
- C. A nonconforming single-family dwelling may only be intentionally demolished and replaced by a new single-family dwelling if the new structure is permitted by the district in which the site is located and is conforming to all district development standards. A nonconforming single-family dwelling may not be replaced or reconstructed in a district where single-family dwellings are not permitted except as allowed in **Sections 8.0230(A)** and **(B)** above.

8.0231 Discontinuation or Vacation of Nonconforming Situations

When a nonconforming use or development is discontinued or vacated for one year or longer, the site and any structures on the site shall be occupied only by a use or uses which are permitted in the district in which the site is located. For purposes of this subsection, a use shall be considered discontinued or vacated upon the occurrence of the first of any of the following events, as determined by the Manager under the Type II procedure:

- A. The date on which the structure(s) and/or site are vacated;
- B. The date of termination of any lease or contract under which the nonconforming use has occupied the site;
- C. The date when outwardly visible activity associated with the nonconforming use ceases;
- D. The date for which close out billing for water or sewer service for the nonconforming use is requested;
- E. The date on which payment for water or sewer service for the nonconforming use becomes 60 days past due.
- F. The expiration date of a valid City business license that was not renewed.

Special Requirements for Nonconforming Use in Land Use Districts

8.0240 Nonconforming Uses in Residential Land Use Districts

Notwithstanding the provisions of this section, any nonconforming use engaged in manufacturing, processing, storage, sales, or personal or business services which is located in the LDR-5, LDR-7, TLDR, TR, MDR-12, MDR-24, or CMF districts shall be subject to the following limitations:

- A. The detrimental effects of the nonconforming use in the surrounding area due to noise, vehicle traffic, vibration, dust, odor, fumes, smoke, or glare shall not increase beyond the levels existing at

the time of the effective date of this section.

- B.** The hours of operation and number of employees of the nonconforming use shall not increase beyond the hours of operation and number of employees existing at the time of the effective date of this section.
- C.** There shall be no enlargement or moving of the nonconforming use, or any development associated with the use, after the effective date of this section.
- D.** The extent of existing buffering and screening between the nonconforming use and abutting conforming uses shall not be diminished after the effective date of this section.
- E.** Where one or more structures on the site of a nonconforming use is damaged by fire or other cause, and the estimated cost of repairing the damaged structure or structures amounts to more than 50% of the value of all improvements on the site, the nonconforming use shall be terminated. The estimated cost of repair shall be determined by the Manager under the Type II procedure, based on best available information.

Process For Establishing Nonconforming Situations

8.0250 Documentation of Existing Conditions and Continuance

Nonconforming situations must provide evidence indicating the nonconforming situation was allowed when the development code was established and the situation has been continued over time. The Manager, under the Type I procedure, shall review documentation to determine establishment and continuance of lawful nonconforming situations. The following are lists of potentially accepted evidence of allowed and continued nonconforming situations:

- A.** Documentation showing allowed nonconforming situations:
 - 1.** Building, land use, or development permits;
 - 2.** Plan District codes and maps; or
 - 3.** Other documentation accepted by the Manager.
- B.** Documentation showing a nonconforming situation has been continued over time:
 - 1.** Utility Bills;
 - 2.** Income Tax Records;
 - 3.** Business licenses;
 - 4.** Listings in telephone or business directories;
 - 5.** Advertisements in dated publications;
 - 6.** Building, land use, or development permits; or
 - 7.** Other documentation accepted by the Manager.

8.0251 Nonconforming Procedures

- A.** Except as provided in **Section 8.0240**, a nonconforming development or a structure may be permitted to be repaired or reconstructed under Type II procedures following compliance with one of the following subsections:
 - 1.** A nonconforming use that has been damaged due to causes beyond the owner's control if the estimated cost of repairing or reconstructing the development or structure is less than 80% of

its current value. The estimated cost of repair shall be determined by the Manager based on best available information.

2. The owner of the damaged development or structure must obtain a permit to repair or reconstruct within one calendar year of the damage. If the permit is not obtained the development or structure shall conform fully to all provisions of the Community Development Code for the district in which the site is located.
 - a. The proposed repair or reconstruction will not result in a greater degree of noncompliance with the requirements of Community Development Code Standards that existed prior to the damage or destruction.
 - b. If the application for a development permit sought under this section indicates that the owner is proposing enlargement or movement of the damaged development or structure, then **Sections 8.0221** and **8.0222** shall also apply to nonconforming developments and nonconforming uses, respectively.
 - c. The Manager may attach conditions of approval to a development permit issued for this purpose in order to ensure that the degree of noncompliance with requirements of the Gresham Community Development Code will not be increased. Conformance with Design Review requirements may also be required in connection with the enlargement or moving of a nonconforming development, as provided in **Section 7.0000**.
- B.** Except as provided in **Section 8.0240**, a nonconforming single-family dwelling which has been damaged beyond 80% of its current value may be reconstructed, under the Type III procedure, provided the cause of damage was beyond the control of the owner. In seeking a development permit for reconstruction of a damaged or destroyed nonconforming, single-family dwelling, the applicant shall present findings to satisfy the following criteria:
 1. Removal of the dwelling would result in a substantial hardship to its owners or occupants;
 2. Reconstruction of the dwelling would not result in serious conflicts between the dwelling and existing, conforming uses in the area; and
 3. Reconstruction of the dwelling would not seriously interfere with potential development of new, conforming uses on adjacent sites.