

Chapter 64 Unified Development Code

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Article VII Nonconformities

Section 64-141 Generally



Purpose: The City finds that nonconformities adversely affect the orderly development and value of other property in the district should not continue unless restricted. This Article -

- *Protects property rights by providing for the continuation of nonconforming buildings, structures, lots, site improvements, and applications, and*
- *Specifies those circumstances and conditions under which those nonconformities may continue in order to implement Map for Mobile, promote the purposes of the City's zoning districts and other requirements of this Chapter, and to protect neighboring residents and community character.*

Section 64-142 Applicability

1. This Article applies to any nonconformity. A “**nonconformity**” means any nonconforming use, nonconforming lot, nonconforming structure, nonconforming site improvement, or application or project in progress (as defined in Sections 64-142 through 64-146 below) on the effective date.
2. For purpose of this Article, the “**effective date**” means the effective date of this Chapter, any amendment to this Chapter, or any annexation of territory, that creates a nonconformity.

Section 64-143 Nonconforming uses

A. Applicability

This section applies to a use which lawfully occupies a building or land on the effective date of this ordinance and which does not conform to the regulations of the district in which it is located.¹

B. Continuance of Nonconforming Uses

1. Except as provided below, the lawful operation of a nonconforming use as that use existed at any time within 2 years prior to the effective date may be continued.²
2. The number of dwelling units in a nonconforming dwelling unit shall not be increase over the number of dwelling units existing in the nonconforming use on the effective date.³

C. Expansion or Enlargement of Nonconforming Uses

A nonconforming use may be extended only within the premises on which the nonconforming use was located on the effective date. “Premises” means the building in which the use is being carried on and the accessory buildings, appurtenances, driveways, parking and loading spaces, and the curtilage thereof.⁴

D. Abandonment of Nonconforming Uses

Except as hereinafter provided, a nonconforming use that has been abandoned or discontinued for a period of two years shall not thereafter be re-established.⁵

E. Cessation of Nonconforming Uses

Any automobile or other wrecking yard and any junkyard existing in any RL or RM district on the effective date of this chapter shall, after 3 years from that date, become a prohibited and unlawful use and shall discontinue.⁶

Article VII Nonconformities |Section 64-143 Nonconforming uses

F. Change in Nonconforming Uses

1. A nonconforming use may be changed to a conforming use; provided, however, that a nonconforming use so changed shall not thereafter be changed back to a nonconforming use.⁷
2. A nonconforming use not conducted in a structure, or one in which a structure is incidental to the use of the land, shall not be changed to any other nonconforming use.⁸
3. A nonconforming use of any classification shall not be added to an existing nonconforming use. However, a nonconforming use may be changed to another nonconforming use of the same classification. A nonconforming use may change to another nonconforming use as indicated in Table VII-1 below. However, a nonconforming use changed to another nonconforming use shall not change back to the former nonconforming use.⁹

Table VII-1 Changes From A Nonconforming Use to Another Nonconforming Use

The designated nonconforming uses in these districts: *May change to a use in the following districts (as indicated by an asterisk (*))*

	RL	RM	NCT NCS	DC	CT	CM	IL
Residential Single-Family (RL)							
RM uses	*						
NCT or NCS uses	*	*					
DC uses	*	*	*		*		
CT uses	*	*	*		*		
CM uses	*	*	*				
IL uses	*	*	*	*	*	*	
IH uses	*	*	*	*	*	*	*
Residential Multi-Family (RM)							
RL uses	*	*					
NCT or NCS uses	*	*					
DC uses	*	*	*		*		
CT uses	*	*	*		*		
CM uses	*	*	*		*		
IL uses	*	*	*		*	*	
IH uses	*	*	*		*	*	
Neighborhood Center-Traditional or - Suburban (NCT or NCS)							
RL uses	*	*	*				
RM uses	*	*	*				
DC uses	*	*	*				
CT uses	*	*	*		*		
CM uses	*	*	*		*		
IL uses	*	*	*		*	*	

Article VII Nonconformities |Section 64-143 Nonconforming uses

The designated nonconforming uses in these districts: May change to a use in the following districts (as indicated by an asterisk ())*

	RL	RM	NCT NCS	DC	CT	CM	IL
IH uses	*	*	*		*	*	
District Center (DC)							
RL uses	*	*	*				
RM uses		*	*	*			
NCT or NCS uses		*	*	*			
CT uses		*	*	*	*		
CM uses		*	*	*	*		
IL uses		*	*	*	*	*	
IH uses		*	*	*	*	*	*
Corridor-Traditional (CT)							
RL uses	*						
RM uses	*	*					
NCT or NCS uses	*	*	*	*			
DC uses	*	*	*		*		
CM uses	*	*	*		*		
IL uses	*	*	*		*		
IH uses	*	*	*		*		
Corridor-Mixed (CM)							
RL uses		*	*	*	*		
RM uses		*	*	*	*		
NCT or NCS uses		*	*	*	*		
DC uses		*	*	*	*		
CT uses		*	*	*	*	*	
IL uses		*	*	*	*	*	
IH uses		*	*	*	*	*	*
Light industry (IL), Heavy industry (IH), or Public-Institutional (P)							
RL uses			*	*	*	*	*
RM uses			*	*	*	*	*
NCT or NCS uses				*	*	*	*
DC uses				*	*	*	*
CT uses				*		*	*
CM uses						*	*
IH uses							*

Article VII Nonconformities |Section 64-144 Nonconforming Lots

Section 64-144 Nonconforming Lots

A. Applicability

This section applies to any nonconforming lot. A “nonconforming lot” is a lot that, on the effective date of this ordinance or any ordinance that establishes a minimum or maximum lot area, frontage or lot width, is:

1. Not in compliance with the minimum or maximum lot area, frontage or lot width, and
2. lawfully existing and of record, and
3. held in separate and different ownership from any lot immediately adjoining and having continuous frontage.

B. Residential Districts

In the RL and RM districts, a nonconforming lot may be used as the building site for a 1 single-family detached dwelling.¹⁰

C. Business or Industry on Small Building Site

In the NCT, NCS, D, DW, CT, CM, IL and IH districts, a nonconforming lot may be used as the building site for any use permitted in the district.¹¹

D. Noncompliance with Maximum Lot Area or Frontage

A lot that is nonconforming because it exceeds a maximum lot area or lot width may be developed as one (1) lot.¹²

Section 64-145 Nonconforming Structures

A. Applicability

This section applies to any “nonconforming structure.” A “nonconforming structure” means a building or structure that:

1. lawfully exists on the effective date of this Chapter or any amendment to this chapter that would cause the building or structure not to comply with this Chapter, and
2. does not conform to all of the regulations of the zoning district in which it is located.¹³

B. Continuance of Nonconforming Structures

Except as provided below, any nonconforming structure may be occupied and operated and maintained in a state of good repair.

C. Expansion of Nonconforming Structures.

1. A nonconforming structure may expand on land owned on the effective date.
2. The expansion shall conform to all zoning district and development standards of this Chapter, and shall not create a new nonconformity.

D. Restoration of Damaged Nonconforming Structures

1. A nonconforming structure damaged in any manner and from any cause may be restored, if restoration is begun within 1 year and completed within 2 years of the date of the damage.

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2. The board of adjustment may grant an extension of the time periods established in subsection 1 above upon application and showing of hardship.

E. Nonconforming Density

If the number of dwelling units in a building exceed the density permitted in the applicable zoning district, the number of dwelling units shall not increase over the number of dwelling units existing in the on the effective date of the ordinance establishing the density limits. *[See Section 64-143B.2 for density restrictions for nonconforming uses]*

F. Nonconforming Building Design¹⁴

1. Generally

- (a) This subsection applies to any building that is nonconforming as to the building design standards established in Article II, the applicable zoning district (Article III), and development standards (Article IV).
- (b) Existing nonconforming buildings are not required to meet building design requirements unless the facade is reoriented.

2. Additions to Existing Buildings

- (a) Additions to existing buildings may match the foundations, porch depth, and finished floor elevations of the existing building.
- (b) Porches, stairs, stoops, and ramps may encroach into a minimum front setback up to 50% of the front setback depth in RL, RM, NCS and CT, and 100% in all other districts.

Section 64-146 Nonconforming Site Improvements

A. Applicability

1. This section applies to any nonconforming site improvement. A "Nonconforming Site Improvement" is a situation that occurs when, on the effective date:
 - (a) an existing site improvement on a lot (including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping) no longer conforms to the applicable regulations of this Chapter, or
 - (b) the lot does not include site improvements required by of this Chapter for any existing use, building or structure on the lot.
2. This section does not apply to minor repairs and renovations (less than 10% of the structural value of a structure or site improvements), or restoration of a structure pursuant to Section 64-144.D.

B. Generally

On lots with nonconforming site improvements, no additions to, or repairs or alterations of any building, structure or site improvement are allowed, unless:

1. the nonconforming site improvements are brought into complete conformity with the regulations applicable to the use, building, structure or zoning district, or

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2. the activity is authorized by a nonconforming site permit.

C. Nonconforming Site Permit

When an addition to, or repairs or alterations to, any structure or site improvement is proposed on a lot with a nonconforming site improvement, the Planning Director may approve a nonconforming site permit allowing the addition or repairs or renovation if it finds that all of the following criteria apply:

1. The nonconforming site improvement(s) is the only nonconformity pertaining to the property.
2. Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible. Mere financial hardship does not constitute grounds for finding that compliance with the site improvement requirements are not reasonably possible.
3. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
4. The owner has committed to other site design measures to reduce the negative impacts associated with the nonconformity or to accomplish the purpose of the required site improvement.

Section 64-147 Applications and Projects in Progress¹⁵

A. Applicability

This section applies to any Nonconforming Project. A "**Nonconforming Project**" is any structure, development or development subject to an application filed pursuant to Article V or any previous zoning or subdivision regulation, that is either not approved or for which construction is not complete on the effective date, and would be inconsistent with any requirement of this Chapter if completed as proposed or planned.

B. Construction Begun or Authorized¹⁶

1. This Chapter does not require any change in plans, construction, or designated use of a structure if:
 - (a) construction was legally and actually begun prior to the effective date, or,
 - (b) a building permit is issued for the structure before the effective date, and construction begins within 90 days of the day of the permit, or
 - (c) the board of adjustment shall grants a variance specifically authorizing any nonconformity.
2. If a structure is subject to subsection 1 above, the entire structure shall be completed within 2 years after the effective date.
3. Within thirty 30 days after the effective date, the owner of both the land on which the structure is being constructed and the structure itself shall file a statement giving the information ordinarily required for a certificate of occupancy with the Planning Director. If the applicant fails to file a timely statement as provided above, the nonconformity is considered abandoned, and no further permits shall issue unless the structure is fully compliant with this Chapter.

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4. If a development is designed to be completed in stages, this subsection applies only to the particular phase under construction.

C. Applications in Progress

1. **Generally.** Except as provided in subsection B, all work on any nonconforming projects shall cease on the effective date, and all permit proceedings or permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a vested rights certification issued in accordance with this section by the Planning Director.
2. **Criteria.** The Planning Director may approve a vested rights certification if it finds that the applicant has, as of the effective date and in good faith reliance upon a validly issued permit or approval required by this Chapter:
 - (a) made a substantial change of position in relation to the land,
 - (b) made substantial expenditures, or
 - (c) incurred substantial obligations.
3. **Guidelines.** In considering whether these findings may be made, the Planning Director shall be guided by the following, as well as other relevant considerations under Alabama law:
 - (a) All expenditures made to obtain a validly issued and unrevoked building, land use or sign permit shall be considered as evidence of reasonable reliance on the zoning, subdivision or development regulations that existed before the effective date.
 - (b) Except as otherwise provided in subsection (a) above, no expenditures made more than one hundred eighty (180) days before the effective date may be considered as evidence of reasonable reliance on the regulations that existed before the effective date. An expenditure is made at the time a person incurs a binding obligation to make that expenditure.
 - (c) To the extent that expenditures are recoverable with a reasonable effort, a person is not considered prejudiced by having made those expenditures.
 - (d) To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively used to complete a conforming project, a person is not considered prejudiced by having made those expenditures.
 - (e) An expenditure is considered “substantial” if it is significant in dollar amount in terms of the total estimated cost of the proposed project and the ordinary business practices of the developer.
 - (f) A person is considered to have acted in “good faith” if actual knowledge of a proposed change in the development regulations affecting the proposed development site could not be attributed to that person. Even though a person had actual knowledge of a proposed change in the development regulations affecting a development site, the Planning Director may still find that the person acted in good faith if the applicant did not proceed with their plans in a deliberate attempt to circumvent the effects of the proposed ordinance.

For example, the Planning Director may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that at the time the expenditures were made, either there was considerable doubt about whether

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any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development, and the developer had legitimate business reasons for making expenditures.

4. Timing of Vested Rights Certification

- (a) The Planning Director shall not consider any application for a Vested Rights Certification authorized by subsection B that is submitted more than sixty (60) days after the effective date of this ordinance.
- (b) The Planning Director may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one (1) year from the effective date of this ordinance.

D. Phasing

When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments or other discrete units, the developer may complete only those phases or segments with respect to which the developer can make the showing required under subsections B or C. In addition to the matters and subject to the guidelines set forth in subsection C.3, the Planning Director shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:

1. Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural or engineering work.
2. Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.
3. Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or to such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in those utilities or other facilities cannot be recouped if the approved but uncompleted phases are constructed in conformity with existing regulations.

E. Planned Development

All planned unit developments (PUDs) approved under a prior zoning ordinance, or Planned Development applications approved under this Chapter, may continue to be developed in accordance with their stipulations, waivers, conditions, and uses if:

1. They have not expired; and
2. they comply with all approved, time requirements, and other requirements of the original approval and any validly authorized amendments to the original approval.

Section 64-148 Reserved.

Endnotes

¹ From 64-2.

² From 64-7.A.1.

³ From 64-7.A.1.

⁴ From 64-7.A.2.

⁵ From 64-7.A.4.

⁶ From 64-7.A.5.

⁷ From 64-7.A.3.

⁸ From 64-7.A.3.

⁹ From 64-7.A.3.

¹⁰ From 64-4.B.

¹¹ From 64-4.B.

¹² From DDD (64-3.I.8(b)(5).

¹³ From 64-2.

¹⁴ From DDD, 64-4.I.

¹⁵ This section carries forward the City's existing regulations for development under construction or authorized by a building permit. It also provides certainty for other applications going through the approval process by providing for formal certification. In lieu of, or in addition to, these rules, the City could establish clear grandfathering rules for applications that have proceeded to a given point in the planned unit development, subdivision, conditional rezoning, or Planning Approval or conditional use permit process. While there does not appear to be many cases in Alabama that address vested rights, Alabama appears to follow the majority rule that examines the level of expenditure in good faith reliance on a validly issued permit. *Greenbriar Village v. City of Mountain Brook*, 202 F.Supp.2d 1279 (N.D. Ala. 2002).

¹⁶ From 64-8.A.4.