

# Chapter 64 Unified Development Code

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## Article 6 Nonconformities

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### Sec. 64-6-1 Nonconforming Uses

#### A. 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 associated area of existing development in active use as documented by surveys or aerial photography.

#### 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. If the number of dwelling units in a building exceeds the density permitted in the applicable zoning district, then the number of dwelling units shall not be increased

#### C. Abandonment of Nonconforming Uses

1. A nonconforming use that has been abandoned or discontinued for a period of two years shall not thereafter be re-established.
2. Factors to be considered in determining whether a use has been abandoned or discontinued, may include but are not limited to:
  - (a) Utilities such as water, gas and electricity to the property, have been disconnected;
  - (b) The property, buildings, and grounds have fallen into disrepair;
  - (c) Signs or external indications of the existence of the nonconforming use have been removed;
  - (d) Equipment or fixtures which are necessary for the operation of the nonconforming use have been removed; and
  - (e) Other actions have occurred which in the opinion of the Director evidence an intent on the part of the property owner to abandon the nonconforming use.

#### D. Cessation of Nonconforming Uses

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

#### E. Change in Nonconforming Uses

1. A nonconforming use may change to a conforming use. After a nonconforming use changes to a conforming use, it may not change back to a nonconforming use.

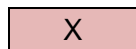
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- 2.** A nonconforming use not conducted in a structure, or one in which a structure is incidental to the use of the land, shall not be changed to any other nonconforming use.
- 3.** A nonconforming use of any classification shall not be added to an existing nonconforming use. However, a nonconforming use may be changed to another nonconforming use permitted by right in that zoning classification. A nonconforming use may change to another nonconforming use as indicated in Table 64-6- 1 Chart of Non-Conforming Uses below. However, a nonconforming use changed to another nonconforming use allowed in a lower zoning classification shall not change back to the former nonconforming use or higher zoning classification.

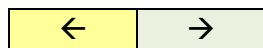
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Table 64-6- 1 Chart of Non-Conforming Uses

Zoning District	Use Classification																		
	Less Intense Use															More Intense Use			
	R-A	R-1	R-2	R-3	R-B	T-B	H-B	B-1	LB-2	B-2	MM	B-3	B-4	B-5	CW	I-1	ML	I-2	MH
R-A	■	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←
R-1	→	■	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←
R-2	→	→	■	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←
R-3	→	→	→	■	←	←	←	←	←	←	←	←	←	←	←	←	←	←	←
R-B	→	→	→	→	■	←	←	←	←	←	←	←	←	←	←	←	←	←	←
T-B	→	→	→	→	→	■	←	←	←	←	←	←	←	←	←	←	←	←	←
H-B	→	→	→	→	→	→	■	←	←	←	←	←	←	←	←	←	←	←	←
B-1	→	→	→	→	→	→	→	■	←	←	←	←	←	←	←	←	←	←	←
LB-2	→	→	→	→	→	→	→	→	■	←	←	←	←	←	←	←	←	←	←
B-2	→	→	→	→	→	→	→	→	→	■	←	←	←	←	←	←	←	←	←
MM	→	→	→	→	→	→	→	→	→	→	■	←	←	←	←	←	←	←	←
B-3	→	→	→	→	→	→	→	→	→	→	→	■	←	←	←	←	←	←	←
B-4	→	→	→	→	→	→	→	→	→	→	→	→	■	←	←	←	←	←	←
B-5	→	→	→	→	→	→	→	→	→	→	→	→	→	■	←	←	←	←	←
CW	→	→	→	→	→	→	→	→	→	→	→	→	→	→	■	←	←	←	←
I-1	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	■	←	←	←
ML	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	X	■	X	←
I-2	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	X	■	←
MH	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	X	→	X	■



Prohibited



Permissible



Properly Zoned

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### Sec. 64-6-2 Nonconforming Structures

#### A. Continuance of Nonconforming Structures

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

#### B. Expansion of Nonconforming Structures.

1. A nonconforming structure may be expanded; however, the expansion shall:
  - (a) Conform to all zoning district requirements of Article 2;
  - (b) Conform to the Development Standards of this Chapter, if the expansion exceeds 50% of the footprint of the existing structure; and
  - (c) Not create a new nonconformity.

#### C. 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.
2. The Board of Zoning Adjustment may grant an extension of the time periods established in subsection 1 above upon application and showing of hardship.

#### D. Nonconforming Building Design

1. Generally
  - (a) This subsection applies to any building that is nonconforming as to the applicable zoning district (Article 2), the building design standards established in Article 3, and Development Standards (Article 4).
  - (b) Existing nonconforming buildings are not required to meet Building Design and Height Requirements unless the alterations include changes to the exterior building form (alterations to height, wall or architectural features).
2. Additions to Existing Buildings
  - (a) Additions to Existing Buildings must comply with all requirements of this Chapter.

### Sec. 64-6-3 Nonconforming Sites

#### A. Applicability

1. This section applies to any site that has nonconformities, including but not limited to any of the following:
  - (a) Parking

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- (1) Number of Parking spaces
- (2) Parking Surfacing
- (3) Parking Maneuvering Area
- (b) Signs
- (c) Landscaping
  - (1) Tree planting
  - (2) Tree spacing
  - (3) Tree species
- (d) Lots
- (e) Lighting
- (f) Riparian buffer
- (g) Buffers
- (h) Open/civic space

### B. Generally

1. **Building Expansion.** On nonconforming sites, expansions that increase the total gross floor area of a structure by fifty (50) percent or more, will require all non-conforming site improvements to comply with current requirements.
2. **Development Expansion.** On nonconforming sites, expansion of the developed area of the site by fifty (50) percent or more, will require all non-conforming site improvements to comply with current requirements.

## Sec. 64-6-4 Applications and Projects in Progress

### A. Applications in Progress

1. **Generally.** Any application for Planning Commission, Board of Zoning Adjustment, Zoning Clearance, Sign Permit, Land Disturbance or Building Permit submitted prior to the effective date of this Chapter, shall be reviewed under the criteria and requirements in effect at the time of application submission. However, if the corresponding approvals or permits are not obtained within one-year of the effective date of this Chapter, full compliance with this Chapter shall be required.

### B. Construction Begun or Authorized

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 of this Chapter, or,

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- (b) a Land Disturbance permit was issued for the development before the effective date, and construction began prior to the expiration of the permit; or
  - (c) a building permit was issued for the structure before the effective date, and construction began prior to the expiration of the permit, or
  - (d) the Board of Zoning Adjustment grants a variance.
2. If a site or structure is subject to subsection 1 above, the entire site or structure must be completed prior to the expiration of the associated permits.

### C. Phasing

When a project is intended to be completed in phases, and Planning Commission and Board of Zoning Adjustment approvals were granted based upon overall development, the developer may complete each phase as approved, upon submission of documentation of the following factors:

- 1. Plans prepared or approved regarding uncompleted phases based upon detailed surveying, architectural or engineering work; or
- 2. Improvements, such as streets, stormwater infrastructure, or utilities, have been installed in phases not yet completed.

### D. Prior Approved Planned Unit Development

All planned unit developments (PUDs) approved prior to the effective date of this Chapter will continue in effect and may be developed in accordance with their approved plan, 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 or any validly authorized amendment thereto.