

CHAPTER 15.04
PERMITS: NONCONFORMING USES, VARIANCES, SIMILAR USES,
FORMAL CODE INTERPRETATIONS, MODIFICATION OF PRIOR
APPROVAL

Section:

15.04.010	Nonconforming Uses: General Rules
15.04.020	Variances
15.04.030	Authorization of Similar Uses
15.04.040	Formal Code Interpretations
15.04.050	Modification to Prior Approvals

15.04.010 – Nonconforming Uses: General Rules. It is the policy of the city that nonconforming uses are a disfavored exception to the generally applicable zoning requirements and that nonconforming uses will eventually be extinguished and the property, structure and use will eventually come into conformance with the requirements of this ordinance. There is a presumption that the use of any structure or property that does not comply with the requirements of this ordinance is unlawful, and any person claiming entitlement to a nonconforming use has the burden of proving that entitlement through the appropriate process.

A. **Lawfulness.** A nonconforming use or structure, as defined in this ordinance, may be continued at its lawful nature and extent. A nonconforming use cannot be altered or expanded, *i.e.*, no change in use. A nonconforming use can decrease in extent or intensity over time, but it cannot lawfully increase in extent or intensity over time.

B. **Discontinuation.** If a nonconforming use is discontinued for a period of one year (12 continuous months) or more, further use of the property shall conform to the requirements of this ordinance. If a nonconforming use is diminished in intensity for a period of one year (12 continuous months) or more, the use shall not be resumed to the former intensity. If the nonconforming use is a residential use in the Commercial Zone; vacancy of the residence alone is not sufficient to cause the nonconforming use of the structure to be discontinued. A dwelling that is maintained in habitable condition and suitable for residential occupancy is considered to remain “in use” even if vacant for more than one year.

C. **Maintaining a residential use.** A nonconforming residential use in the Commercial Zone must be maintained in habitable condition to retain its nonconforming use right. Habitable condition includes intact and functional walls, roof, bathroom, heating system, kitchen and dining area. To be considered habitable a dwelling must also maintain continuous water and wastewater connections.

D. Alterations and expansions. If a nonconforming use is altered, expanded or replaced by another use or structure, the new use shall conform to the requirements of this ordinance.

E. Replacement following destruction. If a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause or falls into disrepair to an extent that devalues the improvements 80% or more of its fair market value as indicated by the records of the county assessor, a future structure or use on the site shall conform to this ordinance. Legal nonconforming residential use in the Commercial Zone is exempt from this provision.

F. Replacement or repair of nonconforming residential use. In the Commercial Zone any legal nonconforming residential use may be continued, repaired, or replaced in kind within one year (12 calendar months) if damaged or destroyed by any cause beyond the owners control regardless of the extent of the damage. If replacement or repair is not permitted within one year (12 calendar months) of the damage or destruction the nonconforming use right may be considered discontinued by the City Council.

G. Relationship to vested rights. Nothing contained in this section shall require any change in the plans or construction, nor an alteration in the permitted use of a structure for which a permit has been issued by the city prior to the adoption of this ordinance provided the structure or use is completed and in use within two years from the date the permit allowing the use is approved. Issuance of a prior land use or building permit that is allowed to expire or that is not completed as required in this subsection, cannot be relied on to vest a use right.

H. Nonconforming use verification. A property owner, who claims entitlement to a nonconforming use, or the city council on its own motion, may initiate a proceeding to verify the existence, nature and extent of a claimed nonconforming use or structure. Any such request shall follow a Type III process as provided in Chapter 15.07 *Administration and Procedures*. The person claiming the existence of a nonconforming use has the burden of proving with substantial evidence the elements required to substantiate a nonconforming use.

I. Alteration of a nonconforming use. An existing nonconforming use may be altered, *i.e.*, a change in the nature or extent of the use, through a Type III process. A request to alter a nonconforming use may be approved if the proponent demonstrates with substantial evidence all of the following:

1. That the current use, considering its nature and extent, is a lawful nonconforming use as defined above.
2. That the requested alteration will have no greater impact on the neighborhood than does the current nonconforming use, given its current nature and extent. The city council, at its discretion, may attach conditions reasonably calculated to ensure that the alteration will have no greater impact on the neighborhood.

15.04.020 – Variances.

A. Authorization to Grant or Deny Variances. The city council may approve a variance from a dimensional or other quantified or dimensional requirement of this ordinance. Use limitations are not eligible for variances nor may any mandatory requirement or prohibition in this ordinance. In granting a variance, the city may attach conditions which it finds necessary to limit deviations from the requirements of this ordinance and protect the rights of the surrounding property owners and best achieves the purposes of this ordinance.

B. Major variances. A major variance is any variance that does not qualify as a minor variance and may be decided by the city council pursuant a Type III process. A major variance may only be approved if all of the following criteria are met:

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size, shape, topography or some other physical or natural aspect of the property, over which the owners of property have had no control.
2. The variance is necessary for the preservation of a property right of the applicant substantially the same as one enjoyed by the owners of other property in the same zone or vicinity.
3. The variance would not be materially detrimental to the purposes of the ordinance, or to the rights or uses of near-by property owners or otherwise conflict with any Comprehensive Plan goal or policy.
4. The magnitude of variance requested is the minimum necessary to alleviate the identified hardship.

C. Minor Variances. A minor variance is any request for relief of a dimensional or numeric requirement of this ordinance that is within 10% of the specified requirement and the variance would not be materially detrimental to the purposes of this ordinance, or to the rights or uses of near-by property owners or otherwise conflict with any Comprehensive Plan goal or policy. Staff shall rule upon a minor variance application using a Type II process under Chapter 15.07 *Administration and Procedures*.

15.04.030 – Authorization of Similar Uses. The city planner may decide through a Type II process, whether a use not specifically listed as being allowed outright or conditionally, may nonetheless be allowed because it is similar in nature and impact to one of the uses allowed in the applicable zone. Any similar use so authorized must be similar to, or of the same type as, the uses allowed in the underlying district. This section does not allow the authorization of a use which is allowed in some other zone or one which is prohibited. Application for a similar use determination shall be made on the customary land use permit application form provided by the city and shall be processed according to the Type II procedure. The city planner may attach conditions which it finds necessary to limit deviations from the requirements of this ordinance and protect the rights of the surrounding property owners and best achieves the purposes of this ordinance.

15.04.040 – Formal Code Interpretations. In cases where there is uncertainty as to what is allowed, intended or meant by a particular provision of this ordinance, the Land Division Ordinance or the city’s Comprehensive Plan, an interpretation of the ambiguous provision may be made as part of a land use permit application. Where an interpretation is required but is not part of a permit application, the interested party may seek a formal interpretation by making application to the city. Where the interpretation requested involves the exercise of legal or policy discretion, the city shall process the request using a Type II procedure. This chapter does not allow the authorization of a use which is prohibited. If a use is listed as allowed in one zone, but not another, the use is assumed to be prohibited in those zones where it is not specifically allowed.

15.04.050 – Modification to Prior Approvals.

A. Major modification. Any application to modify a prior approval, or any conditions thereof, that qualifies as a “material deviation” as defined in section 15.01.060 of this ordinance, shall be processed according to the same procedure as would be required by this ordinance for the underlying approval.

B. Minor modification. Any modification to a prior approval or conditions thereof that does not qualify “material deviation” as defined above may be processed according to a Type II procedure.