

ARTICLE 3 ZONING PROCESS

Sec. 29.300. ESTABLISHMENT OF ZONES.

(1) **Base Zones.** For purposes of this Ordinance, the City is hereby divided into the following Base Zones:

"A"	Agricultural Zone
"RL"	Residential Low Density Zone
"RM"	Residential Medium Density Zone
"RH"	Residential High Density Zone
"UCRM"	Urban Core Residential Medium Density Zone
"RLP"	Residential Low Density Park Zone
"NC"	Neighborhood Commercial Zone
"CCN"	Community Commercial Node
"DSC"	Downtown Service Center
"CSC"	Campustown Service Center
"HOC"	Highway-Oriented Commercial Zone
"PRC"	Planned Regional Commercial Zone
"GI"	General Industrial Zone
"PI"	Planned Industrial Zone
"CCR"	Community Commercial/Residential Node
"CVCN"	Convenience Commercial Node
(CGS)	Convenience General Service Zone

(Ord. No. 3872, 3-07-06; Ord. No. 4031, 4-13-10)

(2) **Special Purpose Districts.** For purposes of this Ordinance, the City hereby establishes the following Special Purpose Districts:

"S-HM"	Hospital-Medical District
"S-GA"	Government/Airport District
"S-SMD"	South Lincoln Sub Area Mixed-Use District

(Ord. No. 3710, 5-13-03)

(3) **Overlay Zones.** For the purpose of this ordinance, the City hereby establishes the following Overlay Zones:

"O-SFC"	Single Family Conservation Overlay
"O-H"	Historical Preservation Overlay
"O-E"	Environmentally Sensitive Area Overlay
"O-G"	Gateway Overlay
"O-UIE"	East University Impacted Overlay
"O-UIW"	West University Impacted Overlay
"O-SLF"	South Lincoln Way Fringe
"O-GNE"	Northeast Gateway Overlay
"O-GSE"	Southeast Gateway Overlay
"O-GSW"	Southwest Gateway Overlay

(Ord. No. 3872, 3-07-06; Ord. No. 3889, 09-12-06)

(4) **Floating Zones.** For purposes of this Ordinance the City hereby establishes the following Floating Zones:

"FS"	Suburban Residential
"FS-RL"	Suburban Residential Low Density
"FS-RM"	Suburban Residential Medium Density
"F-PRD"	Planned Residence District
"F-VR"	Village Residential

(Ord. No. 3591, 10-10-00; Ord. No. 4475, 08-09-22)

Sec. 29.301. OFFICIAL ZONING MAP.

(1) **Interpretation of Boundaries.** The Official Zoning Map described in this Section shall be established by a separate and specific ordinance, and shall be known as and may be cited and referred to as the Official Zoning Map of the City and will be referred to herein as the "Official Zoning Map" to the same effect as if the full title were stated.

(2) **Adoption.** The Official Zoning Map, together with any designations and explanatory matter recorded thereon by the City Council, is adopted by this reference thereto and incorporated in the Ordinance as a part hereof. The Official Zoning Map shall show the boundaries of all base zones, special purpose districts and overlay zones, and any amendments thereto. The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Clerk, and shall bear the seal of the City. The Official Zoning Map, updated to the date of the most recent amendment, shall be on file in the Office of the City Clerk. Regardless of the existence of purported copies of the Official Zoning Map that may from time to time be made, published, or displayed, the Official Zoning Map that is located in the Office of the City Clerk shall be the final authority as the current zoning status of buildings, structures, and land in the City.

(3) **Amendments.** Amendments changing the district boundaries or other matters portrayed on the Official Zoning Map shall be made on the Official Zoning Map, and a certified copy of the amending ordinance shall be attached to or kept with the Official Zoning Map as of the date thereof. No changes shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in the Ordinance for amendments. The Department of Planning and Housing shall review the Official Zoning Map annually for compliance with any amendments made by the City Council through the past year.

(4) **Interpretation of Boundaries.** The City Council shall resolve any uncertainty as to the location of boundaries as shown on the Official Zoning Map by applying the following rules:

(a) Boundaries indicated as approximately following the centerline of streets, highways, alleys, or rights-of-way shall be construed to follow such centerline. If the actual location of such street, highway, alley, or right-of-way varies from the location as shown on the Official Zoning Map, then the actual location shall control. Boundaries indicated as following streets, highways, alleys, or rights-of-way shall automatically be construed to follow the center line of such streets, highways, alleys, or rights-of-way in case of the vacation of such.

(b) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

(c) Boundaries indicated as approximately following City limits shall be construed as following City limits.

(d) Boundaries indicated as adjoining or coincident with a railroad shall be construed to be in the center of the railroad right-of-way and distances measured from a railroad shall be measured from the center of such right-of-way.

(e) Boundaries indicated as approximately following shorelines shall be construed as following such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the center lines of streams, rivers, lakes, or other bodies of water shall be construed to follow such center lines. If the actual location of such stream, river, lake, or other body of water varies from the location as shown on the Official Zoning Map, then the actual location shall control.

(f) Boundaries indicated as parallel to, or extensions of features indicated in paragraphs (a) through (e) of this subsection 29.301(4) shall be so construed.

(g) Distances specifically indicated on the official Zoning Map between a boundary and a public way or other physical feature shall determine such distance. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale portrayed thereon.

(h) Zones shall be construed as adjoining even if separated by a public right-of-way.

Sec. 29.302. APPLICATION OF REGULATIONS.

(1) Land shall be in the agricultural zoning classification, automatically, at the time that it is annexed to the city and shall remain in that classification until it is rezoned to another classification. Rezoning to another classification shall not occur until a development plan and zoning district is proposed that is consistent with the Land Use Policy Plan, those regulations and all other applicable regulations are submitted to the City Council with a request to rezone, or rezoning is initiated by the City Council.

(2) When a lot held in single ownership is divided by a zone boundary line, the entire lot shall be construed to be within the more restrictive zone for purposes of complying with the requirements of the Ordinance, unless otherwise indicated on the Official Zoning Map or by resolution of City Council.
(Ord. No. 3571, 6-27-00)

Sec. 29.303. GENERAL DEVELOPMENT STANDARDS AND ZONING REGULATIONS.

(1) **Land, Buildings and Structures Regulated.** No land, building or structure shall be used, no building or structure shall be erected, and no existing building or structure shall be moved, added to, or altered except in conformity with this Ordinance.

(2) **Lots.**

(a) Change in Lot Size or Shape Regulated.

(i) No lot shall be reduced in size or changed in shape so that the total area, minimum frontage, setbacks, lot area per dwelling unit, or other development standards required by this Ordinance are not maintained. Maintaining minimum Floor Area Ratio requirements is excluded for Boundary Line Adjustments and Lot Mergers only. Any building on a lot that results from such a lot merger will be considered nonconforming and subject to the limitations of Sec. 29.307. All remaining development standards and nonconformity requirements related to buildings and site improvements shall still apply.

(Ord. No. 4492, 03-14-23)

(ii) No lot shall be divided to create an additional lot that is not in conformity with this Ordinance unless such lot is deeded, dedicated, and accepted for public use.

(Ord. No. 4492, 03-14-23)

(b) **Corner Lots.** On a corner lot nothing shall be erected, placed, or planted or allowed to grow so as to hinder the visibility of operators of approaching motor vehicles within 20 feet of the intersection of the street right-of-way lines bounding the corner lot, except in zoning districts with no minimum required building setbacks.

(Ord. No. 4097, 01-10-12)

Sec. 29.304. USE REGULATIONS.

(1) **Uses Regulated.** No building or land shall be used or occupied, and no structure shall be constructed or altered to be used for any purpose other than a Permitted Use, including any use lawfully accessory to a Permitted Use. Any use not listed in this Ordinance as a Permitted Use, a Specially Permitted Use or as an accessory to a Permitted Use is prohibited.

(2) **Permissible Uses.**

(a) **Permitted Uses.** Uses permitted by right shall be allowed if they comply with all applicable regulations.

(b) **Special Use Permit.** Special Permitted uses are allowed if approved through the Special Use Permit process, Section 29.1503, and if they comply with all Development Standards and other applicable zoning regulations.

(3) **Prohibited Uses.**

(a) **Uses Prohibited in All Zones.** The following uses of land and buildings are prohibited in all zones whether on public or private land:

(i) Any structure or building or any use of any structure, building or land that is injurious, obnoxious, dangerous or a nuisance to the City or to the neighborhood through noise, vibration, concussion, odors, fumes, smoke, gases, dust, harmful fluids or substances, danger of fire or explosion, or other features detrimental to the City or neighborhood health, safety, or welfare;

(ii) The use of recreational or other vehicles, semitrailers, trailers, commercial vehicles, manufactured homes, or mobile homes for human habitation or any accessory use, except incidental to construction ongoing on a site or emergency shelter for up to 30 days by persons whose dwelling has been made uninhabitable by fire or other casualty, or as permitted in the Residential Low Density Park (RLP) Zone or on the permitted permanent site of a manufactured home;

(Ord. No. 4517, 01-23-24)

(iii) Outside storage, including junked vehicles, commercial vehicles, equipment, recreational vehicles, mobile homes, trailers, and semitrailers unless otherwise permitted in the individual Zone Development Standards Tables or incidental to construction ongoing on a site. Except:

(1) One (1) junked vehicle shall be permitted to be stored per property for up to 30 days outdoors cumulative per vehicle per calendar year accessory to a residential use. Storage of a junked vehicle is subject to all parking area and driveway standards of 29.406.

(2) One (1) unoccupied recreational vehicle, boat, or trailer is permitted to be stored in the rear yard or wholly in the side yard of the lot accessory to a residential use. Storage of an unoccupied recreational vehicle, boat, or trailer is subject to all parking area and driveway standards of 29.406.

(Ord. No. 4517, 01-23-24)

(iv) Any building for human habitation located to the rear of another building on the same lot. Any building for any purpose whatever located in front of any building for human habitation on the same lot. This subsection does not apply to uses located in the Agricultural (A) Zone or to any use of a lot expressly permitted by provisions of this Ordinance, including multifamily residential use and accessory dwelling units (ADUs).

(Ord. No. 4516, 01-09-24)

(v) Detached garages located in front of the principal building.

(b) Uses Prohibited in Particular Zones. All uses not listed as uses permitted by right or by Special Use Permit in any zone are prohibited.

(4) **Application of Use Regulations.** The Use Regulations for each Base Zone and Special Purpose District are set forth in the Use Tables within the Section describing such Base Zone or Special Purpose District. Land or structures situated within an Overlay Zone will be subject to Overlay Zone Use Regulations in addition to the Base Zone Use Regulations.

Sec. 29.305. APPLICATION OF DEVELOPMENT STANDARDS.

No structure shall be constructed or altered or use of land established or altered except in conformance with all applicable Development Standards. Alternative Design Review for certain Development Standards must be approved per requirements of Article 15. Any site previously developed that does not conform to the Development Standards of this ordinance without approval of an Alternative Design approval shall be considered nonconforming as defined within Article 3.

(Ord. No. 4534, 06-25-24)

This Ordinance provides for Development Standards as follows:

(1) **General Development Standards.** General Development Standards are applicable to development in all zones and are set forth in Article 4.

(2) **Zone Development Standards.** Zone Development Standards are applicable to development in each zone and are set forth in the Articles and Sections describing each zone or district.

(3) **Special Use Standards.** Special individual uses have additional development standards and use regulations as established within Article 13.

(Ord. No. 4534, 06-25-24)

Sec. 29.306. ADAPTIVE REUSE.

(1) **Purpose.** The purpose of these adaptive reuse provisions is to foster the renovation and reuse of structures that have historic, architectural, or economic value to the City and are vacant or at risk of becoming underutilized, vacant, or demolished.

(2) **Qualifying Adaptive Reuses.** Any proposal for the adaptive reuse of a structure or group of contiguous structures, whether or not the proposal involves one or more Nonconforming Uses, Nonconforming Structures, and/or Nonconforming Lots, shall qualify for City Council review if the proposal meets all the following conditions:

(a) The proposed adaptive reuse must be residential, commercial, or a combination of such uses except if it is located in an industrial zone. If the proposed adaptive reuse is located in an industrial zone, it may be devoted to any use or uses that the City Council finds compatible with the uses permitted in the industrial zone. All adaptive reuses proposed in industrial zones, except industrial uses, require a Special Use Permit.

(b) The structure or group of structures proposed for adaptive reuse must have historic, architectural, or economic value to the City justifying renovation and preservation, as determined by the City Council.

(c) The City Council must determine that the long-term benefits of the proposed adaptive reuse outweigh any negative impact on the neighborhood of the proposed project and on the City, as compared with the alternative of having the structures demolished or remaining vacant or underutilized.

(d) In all matters relative to the administration of the Adaptive Reuse requirements, the City Council shall obtain a recommendation from the Historic Preservation Commission on all structures that are determined to have architectural or historic value.

(3) **Adaptive Reuse Performance Standards.** If the City Council determines that a proposed project qualifies for consideration as an adaptive reuse, then the City Council may waive some or all the applicable Zone Development Standards and General Development Standards set forth in Article 4, so long as the project conforms to the following:

(a) The renovation and remodeling of structures for adaptive reuse may not destroy or obscure essential architectural features. In addition, such architectural features must be enhanced to the extent that it is feasible and prudent to do so.

(b) Where landscaping and public space required by Section 29.403 cannot be provided on site, any area on site that is available for landscaping shall be so utilized. When the City grants permission, the owner or operator of the site must also use areas within the public right-of-way and adjacent to the site to satisfy landscaping requirements.

(c) Where necessary parking cannot be provided on site, reasonable provision for parking shall be provided off site.

(4) **Adaptive Reuse Procedures.** Any property in any zone is eligible for adaptive reuse status if it meets the requirements of this Section 29.306, unless otherwise limited by the Use Table for the zone. Submission and review of a project qualified for adaptive reuse shall be in accordance with the procedures set forth in Section 29.1502(4)(c), Major Site Development Plan.

Sec. 29.307. NONCONFORMITIES.

(1) General.

(a) **Purpose.** It is the general policy of the City to allow uses, structures and lots that came into existence legally, in conformance with then-applicable requirements, to continue to exist and be put to productive use, but to mitigate adverse impact on conforming uses in the vicinity. This Section establishes regulations governing uses, structures and lots that were lawfully established but that do not conform to one or more existing requirements of this Ordinance. The regulations of this Section are intended to:

(i) Recognize the interests of property owners in continuing to use their property;

(ii) Promote reuse and rehabilitation of existing buildings; and

(iii) Place reasonable limits on the expansion of nonconformities that have the potential to adversely affect surrounding properties and the community as a whole.

(b) **Unsafe Situations.** Nothing in this Section shall be construed to permit the continued use of a building or structure found to be in violation of building, basic life safety or health codes of the City. The right to continue any nonconformity shall be subject to all applicable housing, building, health, and other applicable life safety codes.

(c) **Repair and Maintenance.** Normal maintenance and incidental repair may be performed on a conforming structure that contains a nonconforming use or on a nonconforming structure. Nothing in this Section shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an order of the Building Official.

(d) **Accessory Uses and Structures.** Nonconforming accessory uses and nonconforming accessory structures shall be subject to all provisions that govern Principal Uses and structures.

(e) **Determination of Nonconformity Status.**

(i) Whether a nonconformity exists shall be a question of fact to be decided by the Zoning Enforcement Officer, subject to appeal to the Zoning Board of Adjustment.

(ii) The burden of establishing that a nonconforming use or nonconforming structure lawfully exists under this Zoning Code, shall in all cases be the owner's burden and not the City's.

(f) Reversion Prohibited. No nonconforming use, building, structure and/or lot, if once changed to conform with the Ordinance shall thereafter be changed to be nonconforming again. No nonconforming use, building, structure and/or lot, if once changed to conform with the Ordinance more nearly, shall thereafter be changed to be less conforming again.

(2) **Nonconforming Uses.** Any use of any structure or lot that was conforming or validly nonconforming and otherwise lawful at the enactment date of this ordinance and is nonconforming under the provisions of this Ordinance or that shall be made nonconforming by a subsequent amendment, may be continued so long as it remains otherwise lawful, subject to the standards and limitations of this Section.

(a) Movement, Alteration and Enlargement. No increase of intensity of use is permitted except in conjunction with the allowances of subsection b and c. Increase of intensity means any of the following:

- (i) increase to the amount of floor area for a non-Household Living use,
- (ii) an increase in the horizontal or vertical dimensions of a non-Household Living use (both indoor and outdoor),
- (iii) a change in operation of a non-Household Living use that requires corresponding improvements to the site,
- (iv) an increase in the amount of building coverage for a manufactured home, single or two-family dwelling as Household Living,
- (v) an increase in the number of apartment dwelling units, SRO, and other self-contained dwelling units as Household Living, and
- (vi) an increase in the number of bedrooms for an apartment dwelling unit, SRO, and other self-contained dwelling units as Household Living.

(b) The building area, floor area, or dimensions of a nonconforming use may not be enlarged, expanded or extended to occupy parts of another structure or portions of a lot that it did not occupy on the effective date of this Ordinance, unless the enlargement, expansion or extension complies with all requirements for the zone, does not create an additional nonconformity, and is approved for a Special Use Permit by the Zoning Board of Adjustment, pursuant to the procedures of Section 29.1503, excluding 29.1503(4)(b)(vii) of the Review Criteria General Standards, and subject to subsection c.

(c) Any building or structure containing a nonconforming use may be enlarged up to 125% of the floor area existing on the effective date of this ordinance, provided that the expanded building or structure complies with all development standards of the zone in which it is located. An increase in intensity of operations, dimensions, dwelling units, or apartment bedrooms shall not be specially permitted.

The enlargement of a nonconforming use that has the effect of making a structure nonconforming, shall not be specially permitted pursuant to Section 29.1503, but rather shall be construed as a request for a variance, subject to the procedures of Section 29.1504.

(d) Exterior or Interior Remodeling or Improvements to Structure. Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be permitted, provided that any proposed enlargement, expansion, or extension shall be subject to the provisions set forth in the above paragraph. An increase in intensity is not permitted in conjunction with remodeling or other improvements to the structure.

(e) Relocation of Structure. A structure containing a nonconforming use shall not be moved unless the use and structure will comply with all the regulations that apply in the new location. The Zoning Board of Adjustment may authorize a structure containing a nonconforming use to be moved to another location on the same lot, provided that they determine that such a move will not have the effect of increasing the degree of nonconformity.

(f) Change of a Nonconforming Use. Except as provided in this Section, a nonconforming use may be changed only to a use that conforms to the Ordinance. Once changed to a conforming use, no use may revert to, or be re-established as a nonconforming use.

The Zoning Board of Adjustment may grant a Special Use Permit to allow a change from one valid nonconforming use to a different nonconforming use, provided it is determined that:

(i) The proposed use is in the same section 29.501(4) category of use as the current use;

(ii) No structural alterations will be made in the building or structure containing the use that increases any nonconformity;

(iii) The proposed use will have no greater impact on the surrounding area than the existing nonconforming use;

(iv) Adequate parking exists for the proposed use, based on parking standards in the Ordinance; and

(v) The proposed use is compatible with surrounding land uses, based on the hours of operation and the ability to mitigate noise and light impacts by incorporating buffering between the proposed use and surrounding land uses where necessary.

(Ord. No. 3983, 2-10-09)

(g) Abandonment.

(i) Effect of Abandonment. Once abandoned, a nonconforming use shall not be reestablished or resumed. Any subsequent use or occupancy of the structure or lot must conform with the regulations of the district in which it is located.

(ii) Evidence of Abandonment. A nonconforming use shall be presumed abandoned when any of the following has occurred:

a. The owner has in writing or by public statement indicated intent to abandon the use;

b. The building or structure has been removed through the applicable procedures for the condemnation of unsafe structures;

c. The owner has physically changed the building or structure or its permanent equipment in such a way as to clearly indicate a change in use or activity to something other than the nonconforming use; or

d. The use has been discontinued, vacant or inactive for a continuous period of at least one year.

(iii) Notice. Upon the occurrence of any of the events described in Section 3(b) above, the Zoning Enforcement Officer shall document such event and shall issue a notice to the property owner by certified mail, return receipt requested, stating that the property owner's intent to abandon the Nonconforming Use is presumed, and that the Nonconforming Use will be terminated unless the property owner submits an Answer within 30 days of the date the notice was issued. However, no notice of abandonment is required when a property owner has initiated a change of use or received approvals from the City for changes to use of the property or property improvements.

(iv) Answer. The Answer shall indicate the property owner's intention to resume the Nonconforming Use and shall describe the actions the property owner intends to take within 90 days of submission of the Answer to resume the Nonconforming Use. Answers must be on forms provided by the Zoning Enforcement Officer.

a. If an Answer is submitted within 30 days of the issuance of the Notice, but the Nonconforming Use is not resumed within the 90 days following submission of an Answer, the Nonconforming Use shall be terminated at the end of that 90-day period. Once a Nonconforming Use is terminated, subsequent uses of the property must conform to this Ordinance.

b. If no Answer is submitted within 30 days of the issuance of the Notice, the Nonconforming Use will be terminated.

(v) Overcoming Presumption of Abandonment. The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the Zoning Board of Adjustment, that during the 12-month period in question, the owner of the land or structure has been:

a. maintaining the land and structure in accordance with the Building Code and did not intend to discontinue the use;

b. actively and continuously marketing the land or structure for sale or lease; or
c. engaged in other activities that would affirmatively prove there was no intent to abandon.

(vi) Calculation of Period of Abandonment. Any period of discontinuance or cessation of use caused by government actions, fire, or natural calamities, and without any contributing cause by the owner of the nonconforming use, shall not be considered in calculating the length of discontinuance pursuant to this Section for up to 18 months from the date of the event.

(Ord. No. 4376, 1-8-19)

(3) **Nonconforming Structures.** A nonconforming structure that lawfully occupies a site on the effective date of this Ordinance that does not conform with the Zone Development Standards of the underlying Zone, or the General Development Standards of this Ordinance may be used and maintained, subject to the standards and limitations of this Section.

(a) Maintenance and Repair. Maintenance, remodeling, and repair of a nonconforming structure shall be permitted without a variance or a Special Use Permit, provided that such maintenance, remodeling or repair does not increase the degree of nonconformity.

(i) Remodeling. An alteration to a nonconforming structure is classified as remodeling if, either the majority of the exterior walls or the roof is maintained through-out construction. In the event only an element of the structure (e.g., one wall) is non-conforming the remodeling of that feature must maintain 50% or more of its structural support and wall assembly to be considered remodeling and not rebuilding of the structure. Nothing within this definition is intended to restrict the adding or changing of window and door openings or changes to exterior siding and roof materials in relation to the percentage limitations.

(Ord. No. 4376, 1-8-19)

(b) Occupancy by a Conforming Use. A nonconforming structure may be occupied by any use allowed in the Zone in which the structure is located, subject to all other applicable use approval procedures and conditions.

(c) Restoration of a Damaged Nonconforming Structure.

(i) Any nonconforming structure damaged to the extent of 70% or less of its assessed value by fire, wind, tornado, earthquake, or other natural disaster may be rebuilt, provided such rebuilding does not increase the intensity of use, as determined by the number of dwelling units (for residences) or floor area or ground coverage (for nonresidential uses), does not increase the nonconformity, complies with all other legal requirements, and is completed within 18 months from the time of damage. The structure shall not be rebuilt closer to the property line than the original structure or the applicable district setback lines, whichever is closer.

(ii) Any nonconforming structure damaged to the extent of more than 70% of its assessed value may not be rebuilt, repaired, or used unless the rebuilt structure conforms with all regulations of the district in which it is located or unless the Zoning Board of Adjustment approves the reconstruction by granting a Special Use Permit after determining that restoration will be made to the fullest extent possible in conformance with applicable zoning standards.

(d) Enlargement and Expansion. A nonconforming structure may not be enlarged, expanded, or extended unless the enlargement, expansion, or extension conforms to the requirements of this ordinance.

(e) Relocation. The Zoning Board of Adjustment may authorize a structure containing a nonconforming use to be moved to another location on the same lot, provided that it determines that such a move will not have the effect of increasing the degree of nonconformity.

(f) Detached Garage. If a property owner enlarges, expands or extends a principal building on a site in a residential zoning district in conformance with the applicable development standards, and if such expansion, extension or enlargement shall result in a conforming detached garage in the rear yard or a detached garage in the rear yard that is lawfully nonconforming as to setback becoming a detached garage in the side yard that does not meet the applicable side yard setback requirements, such enlargement, expansion, or extension may continue none the less without a variance from the Zoning Board of Adjustment under the following circumstance. The conforming or lawfully nonconforming detached garage in the rear yard shall have occupied the site prior to the effective date of this Ordinance.

(Ord. No. 3606, 1-23-01; Ord. No. 3961, 7-15-08)

(g) Rebuilding Nonconforming Detached Garages and Accessory Buildings. The following applies to nonconformities for setbacks and building lot coverage.

(i) Nonconforming detached garages and accessory buildings may be fully demolished (including the foundation) and rebuilt if:

- a. The new structure is in the exact same location as the old structure;
- b. The new building walls and roof height are the same as the old structure;
- c. No portion of the new building may cross a property line, including eaves;
- d. Any enlargement of the rebuilt, nonconforming detached garage or accessory structure must conform to building setbacks and lot coverage standards; and
- e. The new structure must be completed within 18 months of the removal of the old structure. Removal includes the deconstruction or collapse of a building, regardless of if any or all the foundation or building materials are removed from the site.

(ii) Rebuilt detached garages and accessory buildings may make modifications to door and window location and sizes.

(Ord. No. 4453, 1-25-22)

(4) **Nonconforming Lots.** Lots of record lawfully existing on the effective date of this Ordinance which do not meet the requirements of this Ordinance for lot size and minimum frontage shall be deemed Nonconforming Lots and shall be governed by the following:

(a) Use of Nonconforming Lots. Any Nonconforming Lot may be built upon so long as all use, density and coverage standards and all spatial standards other than minimum lot size and minimum frontage requirements are met.

(b) Vacant Lot. If the lot or parcel was vacant on the date on which this Ordinance became applicable to it, then the owner may use the property as permitted by the applicable Zone, provided that the use shall comply with applicable dimensional requirements of this Ordinance to the maximum extent practicable. If the applicable Zone permits a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable setback requirements while others would not, then only the uses or intensities that would conform with the applicable setback requirements shall be permitted. Otherwise, the owner may seek a variance from such requirements from the Zoning Board of Adjustment.

(c) Lot with Building or Structure. If the lot or parcel contains a building or structure on the date on which this Ordinance become applicable to it, then the owner may continue the use of that building or structure and may reasonably expand the structure in any way that does not increase the degree of nonconformity; an increase in building size shall not be deemed to increase the degree of nonconformity unless it increases the encroachment on a required setback or height limitation. Remodeling of a structure within the existing building footprint or expansion in compliance with this Section shall not require a variance but shall be reviewed by the Zoning Enforcement Officer as though the lot were conforming.

(d) Lot Merger. If 2 or more adjoining lots of record, at least one of which is undeveloped, are in the same ownership and any of these lots are made nonconforming by this Ordinance or any amendment thereto, the parcels of land involved shall be considered a single lot for purposes of applying this Ordinance and no portion of said lot shall be divided off, sold, or used in any manner which violates the lot size and frontage requirements of this Ordinance.

(5) **Other Nonconformities.**

(a) Examples of Other Nonconformities. The types of other nonconformities to which this Section applies include:

- (i) Fence height or location;
- (ii) Lack of buffers or screening;
- (iii) Lack of or inadequate landscaping;
- (iv) Lack of or inadequate off-street parking; and
- (v) Other nonconformities not involving the basic design or structural aspects of the building, location of the building on the lot, lot dimensions or land or building use.

(Ord. No. 4493, 03-28-23)

(b) Policy. Because nonconformities such as those listed above involve less investment and are more easily corrected than those involving lots, buildings and uses, it is generally the policy of the City to

eliminate such other nonconformities as quickly as practicable. Practicable improvements take in to account current conditions, planter dimensions, building spacing and scope of improvements proposed for a property. Front yard landscaping, parking lot landscaping and screening shall be reviewed in each instance where new or redevelopment is proposed with a Site Development Plan. Although full compliance may not be achievable, all sites must advance towards compliance with current requirements in terms of location of plantings and quantity of plantings.

(Ord. No. 4329, 12-12-17)

(c) Increase Prohibited. The extent of such other nonconformities shall not be increased without a variance.

(d) Development that is consistent with a Site Development Plan approved before the date that this Ordinance became effective shall be deemed to be in conformance with this Ordinance to the extent that it is consistent with the approved plan and to the extent that such plan or conditions imposed thereon directly addresses the specific issue involved in the determination of conformity. However, redevelopment of a site or reconstruction of improvements must meet current zoning standards and remove nonconformities to extent practicable for issuance of a new certificate of compliance. A building/zoning permit or site development plan is required, as applicable, for a new certificate of compliance.

(Ord. No. 4493, 03-28-23)

(e) Single- and Two-Family Home Driveways and Paving

(i) Properties with existing front yard paving that do not meet requirements of this ordinance and were established prior to January 1, 2023, are considered pre-existing and are not required to be removed or replaced, unless a principal structure is constructed on a site or replaced with a new principal structure and the location of required parking can be accommodated within the standards of this ordinance.

(Ord. No. 4493, 03-28-23)

(f) Unpaved Driveway, Parking, Vehicle Maneuvering Areas

(i) Properties with an unpaved driveway, parking area, or any other vehicle maneuvering area are considered nonconforming, but may continue to be used and maintained as an unpaved vehicle maneuvering area for access and parking in accordance with this section.

(ii) An unpaved driveway, approach, vehicle maneuvering area, and/or associated parking area must be paved when:

(a) It is lengthened or widened,

(b) It is required to serve a new use on the site as required parking,

(c) The parking area is moved or replaced, or

(d) Construction of a new garage or addition to a driveway, parking space, or reconstruction of a garage or parking space.

The nonconforming unpaved area must be paved subject to approval of a Driveway Permit in conformance with City standards of Article 4.

(Ord. No. 4493, 03-28-23)