

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) A nonconforming use or noncomplying structure shall be terminated if the use or structure is abandoned.

(d) Any use, structure, lot or other nonconformity not authorized under a previously existing zoning ordinance, or which was illegal under such ordinance, shall remain unauthorized and illegal unless expressly authorized or allowed by the provisions and procedures of this Chapter.

(e) The City shall prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:

(1) The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after the day on which written notice is served to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or

(2) The property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.

12-35-103. Nonconforming Lots.

(a) Continuation. A lawful nonconforming lot may continue to be occupied and used although it may not conform in every respect with the dimensional requirements of this Title; the continued use thereof shall be subject to the provisions of this Chapter.

(b) New Single-Family Dwelling. A new single-family dwelling may be constructed on a legally established lot which is nonconforming as to area, width, or both, provided:

(1) The lot was legally nonconforming when the area or width requirements were changed;

(2) The use is for the sole purpose of a single-family dwelling;

(3) There is only one main building on the lot; and

(4) The dwelling will conform to all other requirements of this Title, such as lot frontage, yard setbacks, building height, and other applicable requirements, such as street improvements, fire protection, and Construction Codes.³

12-35-104. Alterations, Expansions and Changes: Nonconforming Uses and Noncomplying Structures.

(a) Nonconforming Use. A nonconforming use may be altered, expanded or changed only upon meeting the requirements of Subsection C, below.

³ See Woods Cross Code §§10-03-010, *et seq.* where various standardized codes (“Construction Codes”) have been adopted.

(b) Noncomplying Structure. A noncomplying structure may be altered, expanded or changed only if the proposed alteration, expansion or change is limited to issues of height, lot coverage, setback, area requirements, architectural design or similar considerations, and only upon meeting the requirements of Subsection (c), below.

(c) Criteria for Review of Proposal for Alteration, Expansion or Change. A proposal to alter, expand or change a nonconforming use or noncomplying structure shall be reviewed by the Planning Commission who shall give its recommendation to the City Council; final approval, denial or approval with conditions shall be made by the City Council. The City Council may, in its discretion, refer any matter back to the Planning Commission for further analysis and recommendation(s). The following criteria shall be analyzed in making a recommendation or decision under this section:

(1) The proposal will not adversely affect the purposes and objectives of the General Plan, will not violate this Chapter, and will not adversely impact the purposes of the zone in which the use or structure is located;

(2) The proposal will not adversely impact adjacent properties and the general vicinity more than the existing noncompliance or nonconformity;

(3) The proposal will make the site of the nonconformity or noncompliance more compatible with existing adjacent and nearby uses, structures and properties;

(4) Given existing site limitations, the proposal meets all site use and development requirements to the extent physically possible;

(5) The proposal will improve the general appearance and safety of the use or structure and the surrounding area;

(6) The proposal will provide additional or modified parking and/or improved pedestrian and vehicular traffic flows where required to mitigate the negative effects of the proposed alteration, expansion or change;

(7) The proposed alteration, expansion or change will be adequately screened or buffered, if needed to mitigate negative impacts to adjoining properties or in the general vicinity; and

(8) The proposal will not create new non-conformities.

(d) Moving Noncomplying Structures. A nonconforming building or structure may only be moved in whole or in part to any other location on the same lot or parcel if:

(1) Approval is granted by the City Council in consideration of the prior recommendation of the Planning Commission; or

(2) Every portion of such building or structure is made to conform to all the regulations of the zone in which it is to be located and all Construction Codes.

(e) Public Hearing. The Planning Commission shall hold a public hearing on any proposed alteration, expansion or change of a nonconforming use or a noncomplying structure

and shall allow interested persons to be heard prior to making its recommendation to the City Council. At its discretion, the City Council may also hold a public hearing before issuing its final decision.

12-35-105. Destruction; Abandonment – Cessation of Use.

(a) Destruction. A nonconforming use or noncomplying structure that is involuntarily destroyed, in whole or in part, due to fire, flood, wind, earthquake, other calamity or act of nature may be restored as provided herein.

(1) The work on the restoration of the structure shall be completed within one year of the date of damage;

(2) The structure shall maintain the footprint and setbacks, and may not exceed the height of the original use or structure, or shall otherwise comply with current requirements of the zone where located; and

(3) If an alteration, expansion or change of the use or structure is proposed, the owner obtain approval of the City as required by this Chapter.

(b) Abandonment. Any nonconforming use, noncomplying structure or other nonconformity which is not continuously used or occupied for a period of one year shall be deemed abandoned and shall not thereafter be used or occupied except in a manner that fully complies with this Chapter and Title.

(c) Presumption of Abandonment. A nonconforming use, structure, or other nonconformity shall be presumed abandoned when any of the following occurs:

(1) A structure or portion thereof occupied by a nonconforming use becomes vacant and remains unoccupied for a continuous period of one year;

(2) The owner has in writing or by statement to another person indicated an intent to abandon the use, structure, or other nonconformity;

(3) A less intensive use, as determined by the Director, has replaced the original nonconforming use;

(4) The owner has physically changed the structure or its permanent equipment in such a way as to indicate a change in use or activity to something other than the nonconforming use; or

(5) The structure has been removed through applicable procedures for the condemnation of unsafe structures.

(d) Overcoming Presumption of Abandonment. A presumption of abandonment may be rebutted upon substantial evidence presented by the owner showing no intent to abandon the use, structure, or other nonconformity. Such evidence may include proof that during the alleged period of abandonment the owner has:

(1) Maintained the lot and structure, if any, in accordance with the City's ordinances and with Construction Codes;

(2) Not allowed the use or structure to deteriorate to a condition that the structure or use therein is rendered uninhabitable; or

(3) Has actively and continuously marketed the lot or structure for sale or lease.

12-35-106. Construction Approved Prior to Adoption.

A structure, or part thereof which does not comply with the current regulations for the zone where it is located, but for which a building permit has been issued under previous regulations, may be completed in accordance with the plans submitted with the building permit application and in accordance with the building permit. Failure to timely commence and complete construction as required by the City Code shall render a structure noncomplying and shall make such structure subject to the regulations set forth herein.

12-35-107. Conformity – Later Change of Use of Structure Prohibited.

If a nonconforming or noncomplying use, structure, lot or other nonconformity becomes conforming, it shall not be returned to the previously existing nonconforming or noncomplying status.

12-35-108. Nonconformities Detrimental to Health and Safety.

No provision of this Chapter shall be construed to allow continuation of any nonconforming use, structure, or other nonconformity that is detrimental to public health or safety. The right to continue use of a nonconforming use, structure, or other nonconformity shall be subject to the health and safety requirements of all applicable housing, building, health, and Construction Codes adopted by the City, Davis County and the State.

12-35-109. Miscellaneous: Solar Devices; Billboards; Extensions.

(a) For purposes of this Chapter, the addition of a solar energy device is not a structural alteration.

(b) The provisions of this Chapter shall not apply to billboards. Nonconforming billboards may be relocated as provided in *Utah Code Ann.* §10-9a-511(3)(c); a nonconforming billboard may be terminated in accordance with the provisions of *Utah Code Ann.* §10-9a-512 and 513.

(c) The Planning Commission is empowered to extend deadlines imposed in this Chapter upon an owner's demonstration, by substantive evidence, that a deadline cannot be met due to circumstances beyond the owner's control.

12-35-110. Burden of Proof.

In all cases, the property owner shall have the burden of establishing the legal existence of a nonconforming use, a noncomplying structure or other nonconformity.

12-35-111. Appeal.

Any person aggrieved by a final decision under this Chapter may file an appeal within ten (10) calendar days of the date of a written decision. Appeals will be heard by the Hearing Officer and governed by the procedures set forth in Chapter 4 of this Title.