

# Article 23-2G: Nonconformity

---

## Contents

---

### Division 23-2G-1: General Provisions

23-2F-3010	Purpose and Applicability
23-2G-1020	Nonconforming Status
23-2G-1030	Determination of Nonconforming Status
23-2G-1040	Appeal of Decision on Nonconforming Status
23-2G-1050	Continuation of Nonconformity
23-2G-1060	Termination of Nonconforming Use
23-2G-1070	Alteration of Nonconforming Structures
23-2G-1080	Effect of Conditional Use Permit

---

### Division 23-2G-2: Specific Types of Nonconformity

23-2G-2010	Nonconforming Uses Near Hazardous Pipelines
23-2A-2010	Order of Process
23-2G-2030	Nonconforming Parking
23-2G-2030	Termination of Nonconforming Use

*This page intentionally left blank*

# Division 23-2G-1: General Provisions

---

## Contents

23-2G-1010	Purpose and Applicability . . . . .	1
23-2G-1020	Nonconforming Status . . . . .	2
23-2G-1030	Determination of Nonconforming Status . . . . .	2
23-2G-1040	Appeal of Decision on Nonconforming Status . . . . .	3
23-2G-1050	Continuation of Nonconformity . . . . .	3
23-2G-1060	Termination of Nonconforming Use. . . . .	5
23-2G-1070	Alteration of Nonconforming Structures. . . . .	5
23-2G-1080	Effect of Conditional Use Permit. . . . .	6

---

## 23-2G-1010 Purpose and Applicability

- (A) **Purpose.** This Article provides standards for nonconforming land uses, structures, and lots established under Section 23-2G-1020 (Nonconforming Status). The purpose of this Article is to:
- (1) Generally allow nonconformities to continue until they cease by abandonment or through conformance with applicable regulations; but
  - (2) Discourage the long-term continuation of nonconformities by limiting investments in them and restricting expansions or alterations that increase their degree of noncompliance or otherwise impact adjoining properties or neighborhoods; and
  - (3) Seek to phase-out or amortize, where appropriate, those nonconformities that are deemed to be especially incompatible with the Comprehensive Plan or applicable regulations of this Title or which pose a threat to public health, safety, and welfare.
- (B) **Applicability.** This Article applies to:
- (1) A use, structure, or lot within the zoning jurisdiction that is nonconforming to land use or site development regulations under Chapter 23-4 (Zoning) or a separately adopted zoning ordinance; and
  - (2) A structure or lot within the planning jurisdiction that is nonconforming to other applicable regulations of this Title.

---

## 23-2G-1020 Nonconforming Status

### (A) Nonconforming Uses

- (1) A use of land or buildings that does not conform with the applicable use regulations of Chapter 23-4 (Zoning), or a separately adopted zoning ordinance, is a nonconforming use if:
  - (a) The use existed lawfully, in conformance or legal nonconformance with applicable use regulations, on the date that a zoning restriction prohibiting or restricting the use became effective; and
  - (b) The use has continued to exist since the zoning restriction prohibiting or restricting the use became effective, without cessation or abandonment in violation of applicable regulations.
- (2) A use that is not a nonconforming use is in violation of this Title if it does not conform to the use regulations of Chapter 23-4 (Zoning Code) or a separately adopted zoning ordinance.
- (3) Nonconforming uses are declared to be incompatible with permitted uses in the zoning district in which they are located.

### (B) Nonconforming Structures

- (1) A building, structure, or developed area, including a parking or loading area, that does not comply with site development regulations applicable under this Title, or a separately adopted zoning ordinance, is a nonconforming structure if it existed lawfully, in conformance or legal nonconformance with applicable site development regulations, at the time it was constructed.
- (2) A building, structure, or developed area that is not a nonconforming structure is in violation of this Title if it does not comply with applicable site development regulations.

### (C) Nonconforming Lots

- (1) A platted lot that does not comply with the applicable regulations of this Title is a nonconforming lot if the lot existed lawfully, in compliance or legal noncompliance with applicable regulations, on the date the lot was platted.
- (2) A platted lot that is not a nonconforming lot is in violation of this Title if it does not comply with applicable regulations of this Title.

---

## 23-2G-1030 Determination of Nonconforming Status

- (A) **Purpose and Applicability.** This Section establishes a process for obtaining a formal determination on whether an existing use or structure is nonconforming under Section 23-2G-1020 (Nonconforming Status). The responsible director may also recognize a use, structure, or lot as nonconforming during review of a development application, without issuing an administrative determination under this Section.

**(B) Application Requirement**

- (1) An applicant may request a determination from the responsible director under this Section at any time on whether an existing use or structure is nonconforming in compliance with Section 23-2G-1020 (Nonconforming Status).
- (2) A request must be submitted on a form approved by the responsible director and include whatever information the director requires to substantiate the history of the use or structure for which the determination is requested.
- (3) The responsible director shall provide notice of an application for a determination of nonconforming status in compliance with Section 23-2C-5010 (Notice of Application).

**(C) Determination Requirements**

- (1) No later than 14 days after receiving a request under this Section, the responsible director shall issue a written determination stating whether the use or structure is nonconforming in compliance with Section 23-2G-1020 (Nonconforming Status).
- (2) The responsible director shall provide notice of the determination in compliance with Section 23-2C-5020 (Notice of Administrative Decision).

---

**23-2G-1040 Appeal of Decision on Nonconforming Status**

- (A) Any person who meets the requirements of Section 23-2I-1010 (Right to Appeal) may appeal the responsible director's determination of nonconforming status in compliance with Section 23-2G-1030 (Determination of Nonconforming Status) to the Board of Adjustment in compliance with Article 23-2I (Appeals).
- (B) If the responsible director issues a determination in compliance with Section 23-2G-1030 (Determination of Nonconforming Status), that determination may not subsequently be challenged by appealing the director's approval or disapproval of a development application for the use or structure.

---

**23-2G-1050 Continuation of Nonconformity**

- (A) **Purpose and Applicability.** This Section specifies general requirements and limitations applicable to nonconforming uses and structures. Additional requirements for particular types of nonconformity may also apply, as specified by this Article.
- (B) **Continuation of Nonconforming Use and Structures.** A nonconforming use or structure may continue to be used, operated, or occupied in compliance with the regulations under which it was established, but may not be expanded or converted except in compliance with the requirements of this Subsection.
  - (1) **Expansion of Use Prohibited.** A nonconforming use may not be expanded or extended beyond the floor area or lot area that it occupied on the date it became a nonconforming use, except as otherwise provided by this Article.
  - (2) **Conversion to Conforming Use Terminates Nonconformity.** If a nonconforming use is converted to a conforming use, a nonconforming use of the property or structure may not be resumed.

- (3) **Conversion to Other Nonconforming Use Prohibited.** A nonconforming use may not be established or replaced by another nonconforming use, except as provided in Subsection (B)(4).
- (4) **Conversion of Nonconforming Uses in Residential Buildings.** A nonconforming use operating within a single- or multi-family building may be replaced by another nonconforming use if the responsible director determines that the requested use is of comparable or lesser intensity to the original nonconforming use; and the original use was not abandoned in compliance with Section 23-2G-1060 (Termination of Nonconforming Use).
- (5) **Conversion to Allowed or Conditional Use.** A nonconforming use may be converted to an allowed use or a conditional use for the zone in which the property is located.

**(C) Modification to Nonconforming Structures**

- (1) **General Standard.** A nonconforming structure may be maintained and repaired as necessary to allow its continued use and occupancy. However, a nonconforming structure may not be altered or expanded in a manner that increases its nonconformity with the requirements of this Title, except as otherwise provided in this Subsection.
- (2) **Height Requirements.** The height of a nonconforming structure may only be increased if:
  - (a) The height increase is limited to a portion of the structure that complies with the maximum height required by this Title and will not cause the modified portion of the structure to exceed the maximum height requirement;
  - (b) The height increase is limited to a portion of the structure that is located outside of a setback required by this Title;
  - (c) The height increase does not exceed 15 percent of the building's existing height, as measured at the tallest point; and
  - (d) The height increase will not cause the modified portion of the structure to exceed the existing height of the building, as measured at its tallest point.
- (3) **Setback Requirements.** A structure that is nonconforming with a setback required by this Title may only be altered if:
  - (a) The alteration is a vertical change in finished floor elevation allowed in compliance with Section 23-2G-1070(C)(2) (Alteration of Nonconforming Structures); or
  - (b) The modified portion of the structure does not exceed:
    - (i) The maximum height allowed by this Title;
    - (ii) The existing height of the tallest portion of the structure that extends or encroaches into a required setback, other than a street setback; or
    - (iii) If a structure is expanded horizontally, the lesser of 50 percent of the length of the nonconforming portion of the structure or 25 feet measured from the existing structure, parallel to the lot line.

---

**23-2G-1060 Termination of Nonconforming Use**

- (A) **Purpose and Applicability.** This Section specifies circumstances under which a nonconforming use is terminated due to a change or abandonment of the use or the destruction of, or damage to, the structure in which the use occurs.
- (B) **Termination by Change of Use.** A nonconforming use may not continue or resume if the use changes to a conforming use.
- (C) **Termination by Abandonment or Discontinuance of Use**
  - (1) If a nonconforming use is discontinued for 90 or more consecutive days, then that use shall be deemed abandoned and may not be renewed or reestablished. Any subsequent use of the parcel of land or structure must conform to the standards of the zone in which it is located.
  - (2) A seasonal discontinuance of a use, or a temporary discontinuance of a use for maintenance or repair, is excluded from a calculation of the 90-day period established under Subsection (C)(1).
- (D) **Termination by Destruction**
  - (1) A damaged structure used for a nonconforming use may be repaired and the nonconforming use continued only if the Building Official determines that the cost of repair does not exceed 50 percent of the value of the structure immediately before the damage, as determined by a licensed appraiser in a manner approved by the Building Official.
  - (2) Approval of a Site Plan is not required to repair a structure under Subsection (D)(1) unless the Building Official determines that a substantial change to the structure or lot is proposed and that a Site Plan would be required by this Title for initial construction of a similar structure.
  - (3) If the cost of repairing a damaged structure containing a nonconforming use exceeds the limitation established in Subsection (D)(1), the nonconforming use may not continue or resume.
  - (4) If a nonconforming use is located within a structure that is also nonconforming with the requirements of this Title, any repair or alteration of the structure is also subject to Section 23-2G-1070 (Alteration of Nonconforming Structures).

---

**23-2G-1070 Alteration of Nonconforming Structures**

- (A) **Purpose and Applicability.** The alteration, repair, or replacement of a nonconforming structure must comply with the applicable requirements of this Section, in addition to the requirements of Section 23-2G-1050 (Continuation of Nonconformity).
- (B) **Involuntary Damage or Destruction.** A nonconforming structure that is damaged or destroyed involuntarily by such acts as fire, explosion, flood, tornado, riot, act of the public enemy, or accident may be rebuilt or replaced with a new structure, provided that the new structure:
  - (1) Is located in the same footprint and does not exceed the height or number of units as the original nonconforming structure;

- (2) Complies with current requirements of Division 23-11B-1 (Building Code) and Division 23-11B-7 (Fire Code); and
  - (3) Does not exceed the degree of nonconformity with the requirements of this Title as the original structure.
- (C) **Alteration, Demolition, and Replacement of Residential Structures.** Except for repair or replacement allowed under Subsection (B), any alteration to a nonconforming residential structure must comply with the requirements of this Subsection.
- (1) Demolition or removal of walls must comply with the following requirements:
    - (a) No more than 50 percent of exterior walls and supporting structural elements of the existing structure may be demolished or removed, including load bearing masonry walls, and in wood construction, studs, sole plate, and top plate. For purposes of this requirement, exterior walls and supporting structural elements are measured in linear feet and do not include the roof of the structure or interior or exterior finishes.
    - (b) Replacement or repair of structural elements, including framing, is allowed if required by the Building Official to meet minimum health and safety standards.
  - (2) Replacement or alteration of an original foundation may not change the finished floor elevation by more than one foot vertically, in either direction.
  - (3) For any residential use other than a single-family use in Low to Medium Intensity Residential Zones established in Section 23-4D-3030(A), the following standards must be met in order to add square footage or convert accessory space into conditioned or habitable space:
    - (a) If the lot is nonconforming with current lot size or lot width standards, the cost of improvements may not exceed 20 percent of the value of the structure before the improvements; and
    - (b) Compliance with current parking and occupancy standards is required.
  - (4) If a nonconforming portion of a residential structure is demolished, it loses its nonconforming status and may only be rebuilt in compliance with the applicable requirements of this Title.

---

## 23-2G-1080    Effect of Conditional Use Permit

- (A) **Purpose and Applicability.** This Section establishes requirements for uses that are nonconforming with this Title based on a requirement to obtain a Conditional Use Permit or on the prior issuance of a Conditional Use Permit for the use. If a use that is nonconforming under this Section is located within a nonconforming structure, additional restrictions may apply as specified in this Article.
- (B) **Absence of Conditional Use Permit.** If an existing use was established as a permitted or allowed use, the use becomes nonconforming if it would require approval of a Conditional Use Permit under this Title and may not be expanded beyond its existing site area boundaries or changed to another conditional use without obtaining a Conditional Use Permit as required by this Title.



- (C) **Previous Conditional Use Permit.** A use that was authorized by a Conditional Use Permit, but is not allowed by this Title in its current location may be:
- (1) Continued within its existing site area boundaries, subject to any conditions imposed by the Conditional Use Permit; or
  - (2) Replaced by a similar nonconforming conditional use approved by the Land Use Commission, which may grant such approval only if it finds that the replacement use will not more adversely affect surrounding uses than the original use based on traffic generation, noise, hours of operation, number of employees, and other relevant factors as determined by the Land Use Commission.

*This page intentionally left blank*