

ZONING CODE AMENDMENTS - NONCONFORMING BUILDINGS AND USES, LAPSE / REVOCATION

DRAFT FOR PLANNING BOARD DISCUSSION

A. EDITS TO CLARIFY DEFINITIONS OF NONCONFORMING BUILDINGS AND USES

AMC SECTION 30-2 - DEFINITIONS

Nonconforming building shall mean a building or structure or portion thereof which was lawfully designed, and erected or structurally altered prior to the effective date in accordance with prior requirements of these regulations or any subsequent amendments thereto for a use and which does not conform to the use current development regulations of the district in which it is located.

Nonconforming use shall mean a use which occupies of a building or structure or portion thereof or of open land, and which was lawfully established in accordance with prior requirements of these regulations and which does not comply with conform to the current use regulations of the district in which it is located was located prior to the effective date of these regulations, or any subsequent amendments thereto.

B. EDITS TO RESTORE EXCEPTIONS LOST WHEN ORD. 3333 WAS ADOPTED

AMC SECTION 30-5.6 - Building Site, Areas and Easements.

- a. Exceptions for Non-Conforming Lots of Record. Any residentially zoned or residentially developed lot of record existing prior to the effective date of this article, August 1, 1958, shall be considered a legal building site regardless of which does not conform to current lot area, width, depth, and/or frontage requirements is and may be used as such, subject to all applicable regulations of this article subject to the following minimum required yards, unless a lesser yard is required by the current regulations.
 1. Interior Lots. The following regulations apply to non-conforming interior lots.
 - A. Front Yard. The front yard of a lot less than one hundred (100') feet deep shall be equal to the average of the setback of the adjoining properties having the same frontage. In computing the average, any adjoining setback greater than twenty (20') feet shall be considered as twenty (20') feet; provided, further, that in the absence of a building on an adjoining property, such property shall be assumed to have a setback of twenty (20') feet.
 - B. Rear Yard. The rear yard of a lot less than one hundred (100') feet deep shall be twenty (20%) percent of the average lot depth of the subject lot, but in no case less than twelve (12') feet.
 2. Corner Lots. The following regulations apply to non-conforming corner lots.

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- A. Front Yard. As regulated in paragraph a.1.A. except that on the side street side the setback shall be assumed to be twenty (20') feet.
 - B. Rear Yard. As regulated in paragraph a.1.B.
- b. Adjustments to ~~m~~Minimum ~~r~~Rear ~~y~~Yard ~~r~~Requirements for ~~c~~Certain ~~w~~Waterfront ~~p~~Parcels. The following adjustments to the minimum required rear yards ~~otherwise prescribed by the subject zoning district (i.e. the minimum required setback from the rear property line)~~ apply to parcels which are either immediately adjacent to, or adjacent to interceding public tidal lands (i.e. "public trust lands") which are immediately adjacent to, the Tidal Canal, San Leandro Bay or San Francisco Bay:
- 1. Additional setback requirements for parcels immediately adjacent to water. For parcels where the rear property line is either: a) at the same elevation as the higher high water line, or b) is at a lower elevation than the higher high water line (i.e. the rear property line is submerged), the minimum required rear setback shall be measured from the higher high water line as if it were the rear property line.
 - 2. Special adjustments to setback requirements for parcels adjacent to those interceding public lands which do not have public access. For parcels with interceding public lands between the parcel's rear property line and the higher high water line (such as public tidal lands owned and/or managed by federal, state or local agencies which do not have public access, but portions of which may be leased to owners of adjacent parcels for public use), the minimum required rear setback shall be measured from the higher high water line (which falls within the interceding property) as if it were the rear property line of the subject parcel, thereby reducing the minimum required rear setback from that prescribed by the subject zoning district. However, in no case shall the subject parcel have a rear setback from the actual rear property line of less than three (3') feet. The above adjustment to minimum rear setback requirements does not apply to parcels adjacent to public or private waterfront lands which have been improved as parklands, trail easements, or similar amenities.
 - 3. Exceptions to setback requirements for waterfront lots may be granted. Notwithstanding the minimum rear yard requirements of the subject zoning district, exceptions to the rear setback requirements prescribed for waterfronts regulated by this subsection (paragraphs 1. and 2. above), may be approved subject to the notification and approval process for improvements requiring Major Design Review, as outlined in Section 30-27, Design Review Requirements. Exceptions to reduce the minimum required rear setback, but not to less than three (3') feet from the actual rear property line, may be granted with Major Design Review approval, with the additional and specific finding that the proposed encroachment into the

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setback otherwise required by this subsection will not substantially impair the adjoining neighbors' views of the water and hillsides beyond.

4. Exemptions for Piers and Floating Docks. Notwithstanding the minimum rear yard requirements of the subject zoning district and the specific setback requirements of this subsection, piers and floating docks are exempt from such minimum yard and setback requirements, and may be built up to and across the property line of adjacent public tidal lands, provided all permit requirements of the A.B.C., A.M.C., and applicable governmental agencies (e.g. B.C.D.C.) are met.

C. CLARIFYING EDITS FOR NON-CONFORMING YARDS

AMC SECTION 30-5.7 - Projections from Buildings and Roof Planes, Permitted Encroachments and Treatments of Minimum Required Yards.

Subsection f – Accessory Buildings

6. Reconstruction of Legally Nonconforming Accessory Buildings.
Notwithstanding the limitations prescribed by Section 30-20, Nonconforming Buildings and Uses, a legally nonconforming accessory building(s) with a conforming residential uses in a residential zoning districts may be reconstructed, with an equal or lesser nonconformity to the size, and location requirements of this subsection (i.e., paragraphs 2- through 4.5) by right, ~~subject to the approval process for improvements, as outlined in Section 30-37, Design Review Regulations, and allowing for including~~ modifications to the height and/or roof configuration, provided that the ~~resulting design building~~ building does not exceed the height limitation prescribed by paragraph 1- of this subsection. Such reconstruction ~~may occur as part of~~ includes any duly permitted project to repair, remodel or replace the existing nonconforming ~~structure~~ accessory building.

Subsections k, l, m

k. Exceptions to Allow Additions with Less Than the Required Minimum Side Yards For Legally Established Nonconforming Buildings.

1. Single-story additions within the ~~If a main building has less than the required side or rear or street side yard setback, additions may be approved with are allowed by right with the same or lesser yards consistent with the existing setbacks, or none, if none exist, if the following finding can be made: no major adverse effects such as significant shading or significant view blockage will occur on adjoining properties relative to existing conditions and relative to an addition built with a conforming setback.~~

2. For stories above the ground floor, an addition may be approved with

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exterior walls in the same plane as the walls of the existing building below or with a setback greater than those existing but still less than the minimum required if the following finding can be made subject to the approval process in Section 30-37, Design Review Regulations: no major adverse effects such as significant shading or significant view blockage will occur on adjoining properties relative to existing conditions and relative to an addition built with a conforming setback.

~~3. 1. New cantilevered projections, above the first story which are to have the same or less horizontal area as an existing first story projection are allowed by right, may be approved with the existing projection's setbacks.~~

~~2. If necessary to make the finding in the section above, or to address Design Review or building code concerns, the Director may require a setback greater than those existing, but still allow a setback(s) that is less than the minimum required side yard or street side yards of corner lots prescribed by the subject zoning district.~~

~~l. In exception to the setback requirements of this chapter for stories above the ground floor, an addition at the second floor level may be approved with exterior walls in the same plane as the walls of the existing building below if the following finding can be made: no major adverse effects such as significant shading or significant view blockage will occur on adjoining properties relative to existing conditions and relative to an addition built with a conforming setback.~~

~~1. If necessary to make the finding in the section above, or to address Design Review or building code concerns, the Director may require a setback greater than those existing, but still allow a setback(s) that is less than the minimum required side yard or street side yard of corner lots prescribed by the subject zoning district.~~

~~m. Exceptions to Allow Extension of Roof Ridges and Roof Pitch with Heights Greater Than the Maximum Building Height Limitation.~~ If a main building exceeds the maximum building height for the district in which it is located, main building additions may be approved that extend upon the same height roof height, ridge, pitch, and plane as the existing roof structure ~~providing that if the following findings can be made subject to the approval process in Section 30-37, Design Review Regulations: (1) no major adverse effects such as significant shading or significant view blockage will occur on adjoining properties relative to existing conditions and relative to an alternative design with the roof extension built in compliance with the maximum building height; (2) the ridge and/or pitch continuation complies with the City of Alameda Building Code.~~

**D. EDITS TO CLARIFY DEFINITIONS AND PROVISIONS IN AMC SECTION 30-20
NONCONFORMING BUILDINGS AND USES.**

30-20.1 General.

a. This chapter provides regulations for nonconforming uses, structures, and buildings that were lawful before the adoption or amendment of the development code, but which would be prohibited, regulated, or restricted differently under the present terms of this title.

b. It is the intent of the city to discourage the long-term continuance of nonconformities, providing for their eventual elimination, while allowing them to continue to exist under the conditions identified in this chapter.

c. Nonconforming signs are subject to the requirements in AMC Chapter 30-6.

d. Any use or structure which was established or constructed in violation of the applicable zoning regulations in effect at the time of establishment or construction and which does not conform to the applicable regulations of this development code is not a nonconforming use or structure, and the use or structure is in violation of this code.

e. Any nonconforming building or structure; or any nonconforming use being conducted within a building or structure or upon open land may be continued; as provided in this section, except that as provided in this section.

~~a. Any nonconforming use being conducted on open land, and not incidental or accessory to a use being conducted within a structure upon the site, shall not be continued longer than two and one-half (2 ½) years from the date of nonconformity under the provisions of this article.~~

~~b. Any nonconforming outdoor advertising sign or outdoor advertising structure may be continued for a period of not longer than five (5) years from the date of nonconformity under the provisions of this article; and~~

~~c. If any nonconforming use is abandoned (not actively used), or voluntarily or by legal action caused to be discontinued for a period of one (1) year or more, then any subsequent use of the property shall be in conformity with the provisions of this article.~~

30-20.2 Use Permit For Change of Non-Conforming Use.

a. A nonconforming use shall not be enlarged or expanded in size or capacity, or extended to occupy a greater area of land or building floor area than it legally occupied before it became nonconforming unless a Use Permit is granted.

b. A nonconforming use shall not be intensified so that the hours of operation are extended, the number of employees are increased, the occupancy capacity is increased, the volume of traffic or noise generated by the use is increased, or a different amount of parking is required unless a Use Permit is granted.

c. If no structural alterations are made, a nonconforming use ~~of a building may, upon approval of a use permit~~ be changed to another nonconforming use of the same or more restricted use classification if a Use Permit is granted.

30-20.3 Nonconforming Buildings with Conforming Residential Uses.

Nonconforming buildings, with conforming residential uses in residential zoning districts, may be reconstructed, with an equal or lesser nonconformity to the development standards of this chapter, subject to the approval process for improvements, as outlined in Section 30-37: Design Review Requirements. Such reconstruction may occur to repair damage as defined by subsection 30-20.4 of this chapter, or, as part of ~~any~~ a duly permitted project to repair, remodel or replace an existing non-conforming ~~structure-building~~. For reconstruction of nonconforming buildings with residential uses in residential zoning districts, the value limitations prescribed by subsection 30-20.4 do not apply.

30-20.4 Changes to and Restoration of Nonconforming Buildings and Uses.

~~Notwithstanding~~ For property that does not qualify for the provisions in subsection 30-20.3 of this chapter to allow reconstruction of nonconforming buildings with residential uses in residential zoning districts, the following regulations apply to nonconforming uses and buildings:

- a. *Changes Permitted.* ~~No nonconforming building or use shall~~ may be enlarged, extended, reconstructed or structurally altered, unless it is changed to conform to the regulations specified by this ~~section-chapter~~, provided-except that routine maintenance and repairs ~~required by applicable health and safety codes shall be permitted~~ are allowed in an aggregate amount during a five (5) year period of not to exceed one hundred (100%) percent of the total appraised valuation as determined by the Building Official, who may require verification as verified by a certified appraiser selected by the City, and conducted at the property owner's expense.
- b. *Restoration of Damaged Buildings.* ~~If at any time any~~ A nonconforming use or building ~~shall be that is involuntarily damaged or destroyed by fire, explosion, or act of God to the extent of more than seventy (70%) percent of the value thereof, then, and without further action by the City Council, the building and the land on which said building was located or maintained shall from and after the date of such destruction thereafter be subject to all the regulations of the district in which such building land and/or building are is located. For the purposes of this section, the value of any building shall be the estimated cost~~

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of the replacement of the building in kind, as determined by the Building Official, who may require verification by a certified appraiser selected by the City and conducted at the property owner's expense. Where any nonconforming building shall have been is destroyed less than seventy (70%) percent, as specified above, a building permit for its restoration shall be secured diligently pursued not later than one (1) year from the date of such destruction and the restoration shall be completed within one (1) year from the date of issuance of the building permit or the exception under this section shall lapse and the property shall be subject to enforcement for violation of the blight prevention ordinance.

30-20.5 Restoration of Destroyed Residential Buildings.

Subsection 30-20.4 notwithstanding, any damaged or destroyed structure building containing three (3) or more dwelling units may be rebuilt to its existing density as provided by [subsection 30-53.3](#).

30-20.6 Completion of Approved Building or Establishment of Approved Use

a. A use, structure or physical improvements for which a planning or building permit was approved and issued, but not yet established or construction completed before the effective date of a new ordinance codified in this title, may be completed, provided substantial construction has commenced or business commenced under valid permits.

b. If upon establishment or completion a use, building, structure or physical improvements or parts thereof are not in compliance with this code, they shall be deemed to be nonconforming and shall thereafter be subject to the provisions of this chapter.

30-20.7 Loss of Nonconforming Use Status

A nonconforming use shall not be reestablished in the following cases.

a. Discontinuance.

1. If the nonconforming use of a building or structure or upon open land is discontinued for a continuous period of 365 calendar days or more, the City may initiate the lapse procedure as set forth in subsection 30-21.13.

2. The City shall base a determination of discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other components of the

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nonconformity, disconnected or discontinued utilities, no business receipts or records to document continued operation, and other substantial evidence.

b. Destruction.

1. Nonconforming use status shall terminate if the structure in which it occurred is involuntarily damaged or destroyed except as provided in subsection 30-20.4.b.

2. Nonconforming use status shall terminate if the structure in which it occurred is voluntarily demolished.

~~Certification of Nonconforming Use.~~

- ~~a. The owner of any land or building classified as a nonconforming use under the provisions of this section may apply to the City Planning Director for a nonconforming use certificate. Upon such application, the City Planning Director shall issue such certificate, which shall set out the name of the owner, the location of the land or building, the extent and validity of such nonconforming use, and other appropriate data regarding such use.~~
- ~~b. Upon notification by the City Planning Director, the owner of any land or building classified as a nonconforming use under the provision of this section shall apply to the City Planning Director for a nonconforming use certificate. Upon such application, the City Planning Director shall issue such certificate as in paragraph a. above.~~
- ~~c. Any nonconforming use certificate issued under the provisions of paragraphs a. and b. above shall become invalid upon change of use or ownership, provided, that in the event of change of ownership the City Planning Director shall, upon request of the new owner, issue a new nonconforming use certificate, and provided, further, that in the event of change of use, the City Planning Director shall issue a new nonconforming use certificate upon the City Planning Board's approval of a Use Permit under the provisions of subsection 30-20.2 of this section.~~

E. ADDITION OF A NEW LAPSE PROCEDURE

30-21.13 Lapse Procedure

a. The Zoning Administrator may declare a use permit or variance lapsed if it is not exercised after two years of its issuance as provided in this subsection.

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b. A use permit or variance authorizing construction may not be declared lapsed if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction.

c. The Zoning Administrator may declare a use permit or variance or an existing nonconforming use lapsed only after giving written notice to the applicant/owner/tenant at least 14 days in advance of a hearing.

d. A determination that a use permit or variance or an existing nonconforming use has lapsed may be appealed to the Planning Board pursuant to section 30-25.

e. A use permit or variance or an existing nonconforming use that has been declared lapsed shall be void and of no further force and effect.

f. Upon the determination of the lapse of a use permit or variance or an existing nonconforming use, any further use of the land, building, structure or physical improvements shall comply with all of the regulations of the applicable zoning district and all other provisions of this code.