

## CHAPTER 74. ZONING

### ARTICLE X. Non-conforming Uses and Dimensionally Substandard Structures

#### Section 74-601. General.

- (a) Purpose and Intent. The purpose and the intent of this section is to:
- (1) Recognize the existence of nonconforming uses of land, nonconforming buildings, structures and signs, and nonconforming lots of record.
  - (2) Discourage the enlargement, expansion, intensification or extension of any nonconforming use of land or nonconforming building, structure or sign or any increase in the impact of a nonconforming use of land of nonconforming building, structure or sign on adjacent properties.
  - (3) Regulate the repair, replacement, restoration, maintenance and improvement of nonconforming uses and nonconforming structures, buildings and signs to prevent and abate nuisances and to protect the public health, safety and welfare.
  - (4) Encourage the elimination of nonconforming uses, buildings, structures, and signs or reduce their impact on adjacent properties.
  - (5) Eventually bring all nonconforming uses of land and nonconforming buildings, structures and signs into conformity.
- (b) **Definitions.** For purposes of this Section, the following words and phrases shall have the meaning ascribed to them by this Section or Section 74.2 of this Chapter. Words not defined shall have the plain meaning generally ascribed to them.

*Expansion, enlargement or intensification* means (1) any increase in a dimension, size, area, volume, or height; (2) any increase in the area of use; (3) any placement of a structure or building or part thereof where none existed before; (4) any improvement that would allow the land to be more intensely developed; (5) any move of operations to a new location on the property; or (6) any increase in intensity of use based on a review of the original nature, function or purpose of the nonconforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odor, area of operation, number of employees, and other factors deemed relevant by the city.

*Illegal nonconformity or nonconforming use* means a land use, lot of record, structure, building, or sign that was illegally established when it was initiated, created or constructed and which did not conform to the applicable conditions or provisions of the City Code for the district in which the use, lot, structure, building or sign is located.

*Improvement* means making the nonconforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed and does not include an expansion, enlargement or intensification.

*Legal nonconformity or nonconformity use* means any land use, lot of record, structure, building or sign that is not permitted by, or is not in full compliance with, the applicable regulations of the zoning ordinance but which complied with existing regulations at the time the use or lot was established or the building, structure or sign was constructed.

*Nonconforming land use* means an activity using land, buildings and/or structures for a purpose that was legally allowed when established but that is not currently allowed as a use in the zoning district in which it is located.

*Nonconforming lot of record* means an existing lot of record which, at the time of the approval of the zoning ordinance is nonconforming in terms of lot area, lot width, or lot depth, and that has not, at any time, been the site of a principal use or structure.

*Nonconforming structure, building or sign* means a legal nonconformity, other than a nonconforming land use, that complied with the zoning ordinance standards when established, but that does not currently conform to standards in the zoning ordinance for height, setback or size.

*Replacement, reconstruction or restoration* means construction that matches pre-existing conditions and otherwise complies with Section 74-697 (g) of this Chapter.

*Zoning Ordinance* means the City of Anoka Zoning Ordinance and any subsequent amendments thereto.

### **Section 74-602. General Standards.**

The following standards shall apply to nonconformities:

- (a) Continued Use of a Nonconforming Land Use. A nonconforming use of land and conforming structures used for a nonconforming use of land may be used and continued, including through repair, replacement, restoration, maintenance or improvement, but not including expansion, enlargement or intensification.
- (b) Continued Use of a Nonconforming Structure or Building.
  - (1) Any nonconforming structure or building damaged by fire or other peril to an extent of fifty percent (50%) or less of its estimated market value, as indicated in the records of the county assessor at the time of damage, may be restored, reconstructed, or repaired, and can be used as before, provided the work is completed within one year after the damage occurred.
  - (2) Any nonconforming structure or building damaged by fire or other peril to an extent greater than fifty percent (50%) of its estimated market value, as indicated in the records of the county assessor at the time of damage, shall not be restored or reconstructed and used as before such destruction unless a building permit to restore, reconstruct or repair the structure or building has been applied for within 180 days after the damage occurred. In this case, the city may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent properties.
  - (3) The city may permit an expansion, as authorized in this Chapter, and impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare or safety.
  - (4) Existing car lots at the addresses listed below, so long as they are continuously used as car lots, shall be required to maintain only three foot positive setbacks from the front, side and rear yards, unless adjacent to a residential property, in which case the respective setback shall be at least ten feet or three feet if a vision-proof fence approved by the City is installed:

<u>Address</u>	<u>PIN Number</u>
822 E River Rd	07-31-24-43-0016
814 E River Rd	07-31-24-43-0015
2535 N Ferry St	01-31-25-14-0029

- (c) Change of Use. When any legal nonconforming use of land has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use of land.
- (d) Discontinuance of Nonconforming Use of Land, Structures and Buildings. If a nonconforming use of land is discontinued or ceases for a period of more than one year, any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.
- (e) Maintenance of Nonconforming Structures, Buildings and Signs. Maintenance of a nonconforming structure, building or sign will be permitted when it includes necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming use of a structure, building or sign.
- (f) Alterations or Expansions.

Sub-parts (1-4) apply to residential uses; subpart (5) applies to non-residential uses.

- (1) Alterations may be made to a nonconforming residential structure or building when such alterations improve the livability and safety of such structure or building, provided, however, that they do not increase the number of dwelling units in the structure or building.
- (2) Where a single family dwelling is a nonconforming use of land, the following shall apply:
  - a. The addition of a bedroom that otherwise meets the zoning ordinance regulations shall not be considered an expansion of the use and is permitted. Such addition shall be limited to an increase in the living area of no more than twenty percent (20%) of the existing main floor square footage.
  - b. The addition of a deck, garage, patio, fence, parking area, swimming pool or other development that improves the livability and/or safety and the dwelling and otherwise meets the single family residential zoning ordinance standards for height and setbacks shall be permitted.
  - c. A parallel extension/expansion of a pre-existing nonconforming single family dwelling is permitted without a variance if said expansion does not encroach further into the already established nonconforming setback and the extension/expansion meets all other applicable standards of the zoning ordinance.
- (3) Expansion of parking lots on parcels with existing multiple family structures is permitted in single and two-family residential zoning districts (R-1 and R-2) provided the following are met:
  - a. No parking shall be permitted within ten feet (10') of any property line adjacent to a residential zoning district or five feet (5') of any property line adjacent to a commercial or industrial zoning district.

- b. A front yard setback of twenty feet (20') is required from any right-of-way line.
  - c. A setback of twenty-five feet (25') is required when located across the street from a residential zoning district.
  - d. Driveways may be permitted within five feet (5') of any property line.
  - e. Existing parking areas located within the previously established setbacks shall be allowed a parallel extension but shall not encroach further into an established nonconforming setback.
  - f. Expansion of a parking lot shall not exceed an impervious surface coverage of fifty percent (50%) for the subject property.
  - g. Garages are permitted on parking lots of existing multiple family structures or buildings, provided a five-foot (5') rear and side yard setback is met and a twenty-five foot (25') front yard setback is met. A site plan review and approval is required prior to construction of such garage(s).
- (4) Any modification to an existing nonconforming residential building or structure to provide an accessibility improvement shall be permitted upon approval of the zoning administrator or designee and the building official.
- (5) Expansion of a nonconforming non-residential use, structure, or building may be permitted if it can be demonstrated that the proposed expansion prevents or abates a public nuisance and/or protects the public health, safety, and welfare. Such expansion shall require review by the Planning Commission and approval by the City Council. Reasonable requirements may be imposed on the expansion as a condition of approval.
- (g) Replacement, reconstruction, restoration or improvements to nonconforming structures or buildings. If replacement, reconstruction, restoration or improvement is allowed, it may occur without any land use approvals from the City, except a building permit, subject to the following:
- (1) The resulting use does not create any new adverse impacts on adjacent property.
  - (2) Internal improvements and improved materials used to replace roof surfaces, siding, windows, doors and similar components are permitted.
  - (3) Work that would not meet sub-parts (1) and (2) above, or any other improvement to a nonconforming use of land, structures, buildings, or signs may not be undertaken unless a variance is issued in accordance with the zoning ordinance. The city may impose conditions in its approval to protect public health, safety or welfare and to mitigate any newly created impacts on adjacent property.
  - (4) A building permit must be obtained prior to commencing such work.
- (h) Change in Tenancy. A change in tenancy, ownership or management will not affect the status of the nonconformity if the nonconformity continues in the same manner and of no greater intensity as that occurring prior to the change.

- (i) Nonconforming Signs. Nonconforming signs pertaining to or advertising products sold on the premises of a nonconforming structure, building or use, or a nonconforming sign that does not meet height, setback, area or other applicable standards, may be continued only when the nonconforming use is permitted to continue. Such nonconforming signs shall not be relocated or increased in number, area, height or illumination intensity.
- (j) Buildings Under Construction and Building Permits Granted Prior to Adoption or Subsequent Amendment of Zoning Ordinance. Any proposed structure or building which will, under the Zoning Ordinance, become nonconforming, but for which a building permit has been lawfully granted prior to the effective date of the zoning ordinance, may be completed in accordance with the approved plans provided:
  - (1) Construction must commence within 180 days of issuance of the building permit.
  - (2) Construction continues to completion within one year.
  - (3) Such structure or building and use shall thereafter be a legal nonconforming structure, building or use.
- (k) Nonconforming Lots of Record. Except for land in the Rum River Wild and Scenic River District, the Mississippi River Critical Area Corridor, a floodplain management district, or a shoreland management district, the following shall apply to nonconforming lots of record:
  - (1) Any existing lot of record that is nonconforming and that is not improved with a principal use is entitled to be developed with a principal use provided the zoning ordinance standards for setbacks can be met. This provision shall apply even though the lot of record does not meet the current applicable zoning requirements for lot area, lot depth and/or lot width.
  - (2) A nonconforming lot of record is not entitled to be developed with a principal use if the nonconforming lot of record has been in common ownership with an abutting parcel of land or if it has been part of a larger parcel that became nonconforming after adoption of the zoning ordinance.
  - (3) If two or more contiguous lots in any district are under the same ownership and any individual lot does not meet the lot area and lot width requirements of the zoning ordinance, the lot is not considered a separate parcel or lot for the purpose of sale or development and the lot must be combined with the one or more contiguous lots so they equal one or more lots, each meeting the lot area and lot width requirements of the zoning ordinance to the extent possible. This section shall not apply to the construction of a single family dwelling on a nonconforming single lot of record.
  - (4) In any district in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of the zoning ordinance, a single family dwelling and customary accessory buildings or structures, may be erected on any single lot of record. This provision shall apply even though the lot fails to meet the zoning ordinance requirements for lot area, lot width, or lot depth that are generally applicable in the zoning district, provided that other requirements not involving lot dimensions or lot area conform to the regulations for the zoning district in which the lot is located.

- (l) **Burden of Proof.** A person who wishes to take advantage of the rights granted to a legal nonconformity has the burden of proving the status as a legal nonconformity by clear and convincing evidence.
- (m) **Nonconformities in Shoreland Areas.** Nonconformities in shoreland areas shall be regulated by Minn. Stat. 462.357, Section 3, Subd. 1(e), parts (d) to (j) as amended.
- (n) **Creation of Nonconformities by Public Action.** When lot area, width or setbacks are reduced as a result of conveyance to a federal, state, or local government for a public purpose and the remaining area is at least fifty percent (50%) of the otherwise applicable standards, then that lot and any structures existing at the time of public action shall be deemed to be in compliance with the minimum lot area, lot width and setbacks of the zoning ordinance.
- (o) **Appeal of Estimated Value of Damage.**
  - (1) If the City determines that more than fifty percent (50%) of the building or structure has been destroyed, the property owner may, at his/her sole expense, hire an independent appraiser to determine the market value and present the appraisal to the City Council for reconsideration.
  - (2) If the City Council maintains its determination after receiving the appraisal, the property owner shall have the right to appeal the City's market value determination to District Court. Such appeal must be brought within thirty (30) days of the City Council's determination.
- (p) **Violations.** A violation of this Section is subject to the penalties and provisions of Section 74-31 of the Chapter.