

6. NONCONFORMITIES

A. PURPOSE

The intent of this chapter is to provide for the continuation and, under appropriate circumstances, elimination of existing uses of property that do not conform to the requirements of this Ordinance or that may not conform to future amendments thereto.

The provisions herein are designed to accomplish this intent in a way that:

1. recognizes the rights and interests of owners of individual properties that have been rendered nonconforming by City action to upgrade zoning policies and standards;
2. allows the property owner or lessee to recover his or her investment in the Nonconformity, while also recognizing that by virtue of the Nonconformity he or she enjoys a right not generally available to other property owners in the same district; and
3. minimizes the nuisance, reduction in neighboring property values, and other adverse effects of properties that do not conform to their environs.

B. TYPES OF NONCONFORMITIES

A Nonconformity is any characteristic of a structure or lot or parcel of land, or of the use thereof, which was lawful prior to the date of enactment of this Ordinance or any amendment thereto but that does not currently conform to the requirements thereof.

The lawful issuance of a Building Permit prior to the dates specified above shall be considered to establish the lawful nonconforming status of any building or structure.

There are three categories of Nonconformities:

1. Use Nonconformities

Use Nonconformities are any activities or functions carried on at a premises (as either a Principal or Accessory Use) that are not allowed by the Permitted and Conditional Uses of the zoning district in which the premises is situated, irrespective of the use for which the premises may have been designed.

2. Design Nonconformities

A Design Nonconformity is the design or intended use of all or substantially all of a premises for any Principal or Accessory Use not allowed by the Permitted and Conditional Uses of the zoning district in which it is located, irrespective of the nature of the use or activity currently carried on at that premises.

3. Standards Nonconformities

Standards Nonconformities are all other Nonconformities with the requirements of this Ordinance, usually involving failure to conform to the quantitative development standards established herein.

C. ELIMINATION OF NONCONFORMITIES

Properties with Nonconformities shall be lawful uses hereunder and may continue unchanged without time limitation, but changes thereto shall be subject to the provisions of Table 6A.

D. VACANT ADJACENT NONRESIDENTIAL LOTS

Two or more adjacent lots shall be considered as a single lot for zoning purposes if:

1. all of the lots are in the same ownership, and
2. all of the lots are vacant, and
3. one or more of the lots is a legal nonconforming lot of record, and
4. all of the lots are in the same non-residential district, and
5. at least one of the other lots abuts a nonconforming lot along a side lot line, or, in the case of a corner lot, along a side or rear lot line.

No division, sale, or use shall be made of any portion of such zoning lot except in conformance with the requirements of this Ordinance and with any approved variance therefrom.

E. ADMINISTRATION

A Certificate of Occupancy shall be required for the continuation of all Nonconformities created by this Ordinance or any amendment thereto.

When the Zoning Administrator determines that a property has any Nonconformity, he or she shall notify the owner or lessee thereof of such Nonconformity and of the applicable regulations.

Such notice shall require that the recipient file with the Zoning Administrator, within 90 days of the date thereof, either satisfactory evidence that the property is not nonconforming or a completed application for a Certificate of Occupancy to continue the Nonconformity.

Upon timely receipt of a complete and accurate application therefor, the Zoning Administrator shall issue a Certificate of Occupancy for the nonconforming property.

The Zoning Administrator shall maintain a file of all Nonconformities of which he or she has sent notice and of all Nonconformities issued Certificates of Occupancy.

Table 6A: Mandatory Elimination of Lawfully Pre-Existing Nonconformities

<u>Change to Property</u>	<u>Type of Nonconformity on Property</u>	<u>Types of Nonconformities to Be Eliminated [a]</u>	<u>Conditions [b]</u>
1. REPAIRS & MAINTENANCE			
a. Without Structural Alteration	Any	None	—
b. With Structural Alteration	See "Reconstruction"		
2. RECONSTRUCTION			
a. Minor [c]	Any	None	—
b. Major [c]	Any	All	—
3. ADDITION OR ENLARGEMENT			
a. Of Residential Property	Any	None	Addition is fully conforming
b. All Other	Any	All	—
4. INTERNAL EXPANSION			
a. Within a Structure			
1. Of Residential Property	Any	None	—
2. All Other	Any	All	—
b. Of Use of Land [d]	Use	Use	—
5. CHANGE OF USE			
a. Of Land [d]	Use	Use	—
b. Of Structure: Conforming Use to Conforming Use	Design or Standards	None	—
c. All Other	Any	All	—
6. RESUMPTION OF DISCONTINUED USE			
a. of Structure	Any	Use	—
b. of Land [d]	Use	Use	—
7. MOVING OF STRUCTURE [e]	Any	All	—
8. DEVELOPMENT OF NONCONFORMING LOT [f]	Standards	None	See footnote [f]
9. CHANGES INVOLVING EXEMPTED NONCONFORMITIES	Any	None	—

Footnotes for Table 6A

For cases not included in this table, no Nonconformities are required to be eliminated.

(The following are definitions of Changes to Property as listed on Page 6-3.)

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3. Addition or Enlargement

Any addition, enlargement, or structural alteration as defined herein to a structure.

4. Internal Expansion

Within a Structure: Expansion of a use within a structure involving no addition to or enlargement of the structure.

Of Use of Land: Any extension of a use of land beyond land occupied as of the time the use became nonconforming, whether involving a Principal or Accessory Use.

5. Change of Use

Any change in the functions or activities carried on at a premises as related to the uses allowed in the applicable zoning district.

6. Resumption of Discontinued Use

Any resumption, expansion, or change in any use that was voluntarily and intentionally discontinued for a continuous period of 6 months or more.

7. Moving of Structure

The relocating of a structure in whole or in part to any other location on the same or any other lot.

8. Nonconforming Lot

Any lot of record as of the effective date of this Ordinance or any applicable amendment thereto that has no substantial structure upon it.

9. Exempted Nonconformities

Any Nonconformities resulting solely from changes in the locations of streets, structures, or uses that are beyond the control of the owner of the property with the Nonconformity, such as a nonconforming setback resulting from a street widening or a Nonconformity resulting from relocation of a structure on an abutting lot in different ownership.

[a]: These Nonconformities shall be completely eliminated on properties having the type of Nonconformity specified when the specified change to the property is undertaken, except as may be authorized by variance under the provisions of this Ordinance.

[b]: Provisions shall apply only subject to the Conditions specified.

[c]: A Minor Reconstruction is repair or reconstruction work on a damaged or destroyed structure that:

1. Has a value of less than 50 percent of the cost of constructing the entire building new, based on figures approved by the Zoning Administrator, and
2. Is started within 6 months, and completed within 12 months, of the date of the damage, and at no time ceases for more than 60 days before completion.

A Major Reconstruction is any repair or rebuilding that does not qualify as a Minor Reconstruction, including total replacement of a structure that is completely removed with another structure of the same type. If a structure to be replaced has been removed, other than by natural forces, prior to application for a replacement structure hereunder, total elimination of all Nonconformities of the structure shall be required in the replacement structure.

[d]: Use of land not involving a building, or only incidentally involving one as an accessory use.

[e]: The elevation of the ground previously covered by a moved structure shall be restored to the grade of the rest of the lot.

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[f]: No variance shall be required to build a single-family dwelling served by public sewers on a nonconforming existing lot of record if lot area, width, and yard dimensions are all 80 percent or more of the minimums required by this Ordinance. No variance shall be required to build a single-family dwelling on a nonconforming existing lot of record not served by public sewers if the lot has been approved for a private sewage disposal system by the DuPage County Health Department within the 6-month period prior to the date of Building Permit Application.