

Chapter 18.410
NONCONFORMING SITUATIONS AND VESTED RIGHTS

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18.410.010 Definitions

Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

- A. **“Effective date of this ordinance.”** Whenever this chapter refers to the effective date of this ordinance, the reference shall be deemed to include the effective date of any amendments to this ordinance if the amendment, rather than this ordinance as originally adopted, creates a nonconforming situation.
- B. **“Expenditure.”** A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures, as well as any other substantial changes in position.
- C. **“Nonconforming dimension.”** A nonconforming situation that occurs when the height, size, or minimum floor area of a structure or the relationship between an existing building or buildings and the other buildings or lot lines does not conform to the regulations applicable to the zoning district in which the property is located.
- D. **“Nonconforming lot.”** A lot existing on the effective date of this ordinance (and not created for purposes of evading the restrictions of this ordinance) that does not meet the minimum area requirement of the zoning district in which the lot is located.
- E. **“Nonconforming project.”** Any structure, development, or undertaking that is incomplete on the effective date of this ordinance and would be inconsistent with one or more of the regulations applicable to the zoning district in which it is located if completed as proposed or planned.

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- F. **“Nonconforming sign.”** A sign that, on the effective date of this ordinance, does not conform to one or more of the regulations set forth in this ordinance.
- G. **“Nonconforming site improvement.”** A nonconforming situation that occurs when, on the effective date of this ordinance, an existing site improvement on a lot, including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping, no longer conforms to one or more of the regulations of this ordinance applicable to the property.
- H. **“Nonconforming use.”** A nonconforming situation that occurs when property is used for a purpose or in any manner made unlawful by the use regulations or development and performance standards applicable to the zoning district in which the property is located. The term also refers to the activity that constitutes the use made of the property.
- I. **“Nonconforming situation.”** A situation that occurs when, on the effective date of this ordinance, an existing lot, structure or improvement, or the use of an existing lot, structure or improvement no longer conforms to one or more of the regulations applicable to the zoning district in which the lot, structure or improvement is located.

(History: Ord. ZRR-1725; ZRR-1637)

18.410.020 Continuation of nonconforming situations and completion of nonconforming projects

- A. Unless otherwise specifically provided in this title and subject to the restrictions and qualifications set forth in Sections 18.410.030 through 18.410.090, nonconforming situations that were otherwise lawful on the effective date of this ordinance may be continued.
- B. Nonconforming projects may be completed only in accordance with the provisions of Section 18.410.090.
- C. The burden shall be on the landowner or developer to establish entitlement to continuation of nonconforming situations or completion of nonconforming projects.

(History: Ord. ZRR-1725; ZRR-1637)

18.410.030 Nonconforming lots

- A. This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. For purposes of this section, a substantial structure shall include any structure in excess of 600 square feet in floor area which was constructed for a use which was a principal use permitted in the zoning district at the time of construction. A change in use of a developed nonconforming lot may be accomplished only in accordance with Section 18.410.060.

- B. When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum lot area applicable to that zoning district, then the lot may be used as proposed just as if it were conforming. However, no use that requires a greater lot size than the established minimum lot size for a particular district is permissible on a nonconforming lot.
- C. When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements cannot be complied with, then the Board of Zoning Appeals (in the case of a conventional zoning district) or the Planning Commission (in the case of a planned zoning district) may allow deviations from the applicable setback requirements if it finds that:
 - 1. Development of the property is not reasonably possible for the use proposed without such deviations;
 - 2. The deviations are necessitated by the size or shape of the nonconforming lot; and
 - 3. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
- D. For purposes of subsection C, development in compliance with the applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.
- E. Subject to the following sentence, if, on the date this ordinance becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his or her successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the neighborhood that has previously been developed.

(History: Ord. ZRR-1725; ZRR-1637)

18.410.040 Extension or enlargement of nonconforming situations

- A. Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

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1. An increase in the total amount of space or building area devoted to a nonconforming use; or
 2. Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements, or other requirements such as parking requirements.
- B. Subject to subsection D, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this ordinance, was manifestly designed or arranged to accommodate such use. However, except as otherwise provided in Section 18.410.090, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- C. Except as otherwise provided in Section 18.410.090, a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming; provided, however, that a use that involves the removal of natural materials from the land may be expanded to other portions of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed on the effective date of this ordinance, and where the development and performance standards otherwise applicable to such a use are complied with.
- D. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.
- E. Notwithstanding subsection A, any structure used as a one-family dwelling and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of the existing nonconformities with respect to such matters as setback and parking requirements. This paragraph is subject to the limitations stated in Section 18.410.080.

(History: Ord. ZRR-1725; ZRR-1637)

18.410.050 Repair, maintenance and restoration

- A. Minor repairs to and routine maintenance of structures where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 50% of the fair market value of the structure to be renovated, shall not be permitted.

- B. If a structure located on a lot where a nonconforming situation exists is damaged by fire, explosion, act of God, or the public enemy to an extent that the costs of repair or restoration would not exceed 50% of its fair market value, then the damaged structure may be repaired or restored only in accordance with a nonconforming situation permit issued by the Code Administrator pursuant to this section. This subsection does not apply to structures used for one-family dwellings, which structures may be reconstructed pursuant to a building permit just as they may be enlarged or replaced as provided by subsection E of Section 18.410.040, except as otherwise provided in Chapter 18.360 (Floodplain Management Ordinance).
- C. Any repairs, renovation or restoration of a structure pursuant to this section which would require the issuance of any permit under Title 16 of the code shall also require the issuance of a nonconforming situation permit by the Code Administrator. In support of the application for such permit, the applicant shall submit such information as may be required to satisfy the Code Administrator that the cost of the proposed repairs, renovation or restoration would not exceed 50% of the fair market value of the structure.
- D. For purposes of this Chapter:
 - 1. The "cost" of renovation or repair or restoration shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair or restoration.
 - 2. The "cost" of renovation or repair or restoration shall mean the total cost of all such intended work, and no person may seek to avoid the intent of this Chapter by doing such work incrementally.

(History: Ord. ZRR-2450 §19, 2003; ZRR-1725; ZRR-1637; ZRR-889 §18.44)

18.410.060 Change in use of property where a nonconforming situation exists

- A. A change in use of property (where a nonconforming situation exists) may not be made except in accordance with subsections B through E of this section. However, this requirement shall not apply if only a sign permit is needed.
- B. If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this Title applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this Title is achieved, the property may not revert to its nonconforming status.

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- C. If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this ordinance applicable to that use cannot reasonably be complied with, then the change is permissible only if the Planning Commission issues a nonconforming situation permit authorizing the change. This permit may be issued if the Planning Commission finds, in addition to any other findings that may be required by this Title, that the intended change will not result in a violation of Section 18.410.040 and that all of the applicable requirements of this Title will be complied with that are reasonably possible. Compliance with a requirement of this Title is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or without moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. Further, in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.
- D. In making a determination under subsection C, whenever (1) there exists a lot with one or more structures on it, and (2) a proposed change in use that does not involve any enlargement of a structure is proposed for such lot, and (3) the parking or loading requirements that would be applicable as a result of the proposed change cannot be satisfied on such lots because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded by the Planning Commission as resulting in an impermissible extension or enlargement of a nonconforming situation in violation of Section 18.410.140. However, if the proposed use is approved, the applicant shall be required to comply with all applicable parking and loading requirements than can be satisfied without acquiring additional land, and shall also be required to obtain off-site parking if parking requirements cannot be satisfied on the lot with respect to which the site development permit is required and such off-site parking is reasonably available. If such off-site parking is not reasonably available at the time the nonconforming situation permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the nonconforming situation permit.

(History: Ord. ZRR-2420 §22, 2003; ZRR-1725; ZRR-1637; ZRR-889 §18.44)

18.410.070 Nonconforming site improvements

- A. On lots with nonconforming site improvements, no additions to, or repairs or renovations of, any structure or site improvement may be made without first either bringing the nonconforming site improvements into complete conformity with the regulations applicable to the zoning district in which the lot is located or obtaining a nonconforming situation permit pursuant to this section. Provided, however, that this section shall not apply to the following circumstances:

1. Repairs or restoration of a structure pursuant to subsection B of Section 18.410.050; or
 2. Minor repairs or renovation of a structure or site improvement.
- B. For purposes of this section, "minor repairs or renovation" shall mean repairs or renovation costs which do not exceed 10% of the structural value of a structure or site improvement.
- C. When an addition to, or repairs or renovation of, any structure or site improvement is proposed on a lot with a nonconforming site improvement(s), the Board of Zoning Appeals (in the case of a conventional zoning district) or the Planning Commission (in the case of a planned zoning district) may approve a nonconforming situation permit allowing such addition or repairs or renovation if it finds that:
1. The nonconforming site improvement(s) is the only nonconforming situation pertaining to the property.
 2. Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible.
 3. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
- D. For purposes of subsection C, mere financial hardship does not constitute grounds for finding that compliance with the site improvement requirements is not reasonably possible.

(History: Ord. ZRR-1725; ZRR-1637)

18.410.075 Nonconforming status of gravel driveways

All residential driveways and parking areas in existence prior to June 1, 1991, and not paved with a hard surface in compliance with O.P.M.C. 18.430.020 shall be considered a "nonconforming site improvement." Such driveways and parking areas shall not be required to be paved, but shall be required to comply with all maintenance standards established for gravel driveways and parking areas. In order to be granted this nonconforming site improvement status, the existence and the relative size and location of a gravel driveway must be recorded in the Overland Park Gravel Driveway Survey of 1991, or be registered with the Department of Planning and Research (now known as Department of Planning and Development Services) as provided in this section. Residents and property owners will have until December 31, 1992, to verify the accuracy of the survey as it applies to their property or to register their property by showing that a gravel driveway existed prior to June 1, 1991. After December 31, 1992,

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unpaved driveways and parking areas which are not included in the survey or registered with the City will be presumed to be unlawful unless the property owner can provide convincing evidence to the contrary.

(History: Ord. ZRR-2343 §50, 2002; ZRR-1747 §1, 92)

18.410.080 Abandonment and discontinuance of nonconforming situations

- A. When a nonconforming use is discontinued for a consecutive period of 180 days, or discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.
- B. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 180 days, or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the Board of Zoning Appeals (in the case of a conventional zoning district) or the Planning Commission (in the case of a planned zoning district) issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. Such permit may be issued if the permit-issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or without moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.
- C. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 180 days shall not result in a loss of the right to rent the apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.
- D. When a structure or operation made nonconforming by this ordinance is vacant or discontinued on the effective date of this ordinance, the 180-day period for purposes of this section begins to run on the effective date of this ordinance.

(History: Ord. ZRR-1725; ZRR-1637)

18.410.090 Completion of nonconforming projects -- vested rights

- A. All nonconforming projects on which construction was begun at least 180 days before the effective date of this ordinance as well as all nonconforming projects that are at least 10% completed in terms of the total expected cost of the project on the effective date of this ordinance may be completed in accordance with the terms of their permits, so long as those permits were validly issued and remain unrevoked and unexpired, and a vested rights permit is obtained from the Director of Planning and Development Services. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.
- B. Except as provided in subsection A, all work on any nonconforming projects shall cease on the effective date of this ordinance, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a vested rights permit issued in accordance with this section by the Planning Commission. The Planning Commission shall approve such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his or her position in some substantial way in reasonable reliance on the development regulations as they existed before the effective date of this ordinance and thereby would be unreasonably prejudiced if not allowed to complete its project as proposed. In considering whether these findings may be made, the Planning Commission shall be guided by the following, as well as other relevant considerations:
1. All expenditures made to obtain, or pursuant to, a validly issued and unrevoked building, land disturbance, site development or sign permit shall be considered as evidence of reasonable reliance on the development regulations that existed before the effective date of this ordinance.
 2. Except as otherwise provided in subsection B-1, no expenditures made more than 180 days before the effective date of this ordinance may be considered as evidence of reasonable reliance on the development regulations that existed before the effective date of this ordinance. An expenditure is made at the time a person incurs a binding obligation to make that expenditure.
 3. To the extent that expenditures are recoverable with a reasonable effort, a person shall not be considered prejudiced by having made those expenditures. For example, a person shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.

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4. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a person shall not be considered prejudiced by having made such expenditures.
 5. An expenditure shall be considered substantial if it is significant in dollar amount and in terms of the total estimated cost of the proposed project and the ordinary business practices of the developer.
 6. A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the development regulations affecting the proposed development site could not be attributed to such person.
 7. Even though a person had actual knowledge of a proposed change in the development regulations affecting a development site, the Planning Commission may still find that such person acted in good faith if such person did not proceed with his plans in a deliberate attempt to circumvent the effects of the proposed ordinance. For example, the Planning Commission may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development, and the developer had legitimate business reasons for making expenditures.
- C. When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection B. In addition to the matters and subject to the guidelines set forth in subsection 1 through 6 of subsection B, the permit-issuing authority shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:
1. Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural or engineering work.
 2. Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.

3. Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or to such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if such approved but uncompleted phases are constructed in conformity with existing regulations.
- D. The Planning Commission shall not consider any application for a vested rights permit authorized by subsection B that is submitted more than 60 days after the effective date of this ordinance. The Planning Commission may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year from the effective date of this ordinance.
- E. The Planning Commission shall establish expedited procedures for hearing applications for permits under this section.
- F. Notwithstanding the provisions of subsections A and B above, development rights for a single-family residential development shall vest upon the recording of a plat of such land. If construction is not commenced on such land within five years of recording a plat, then the development rights in the project shall expire.

(History: Ord. ZRR-2420 §23, 2003; ZRR-2343 §51, 2002; ZRR-1725; ZRR-1637)

18.410.100 Nonconforming signs

- A. Subject to the remaining restrictions of this section, and the provisions of Section 18.410.080, nonconforming signs that were otherwise lawful on the effective date of this ordinance may be continued.
- B. No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition, nor may illumination be added to any nonconforming sign.
- C. A nonconforming sign may not be moved or replaced, and the message may not be changed, except to bring the sign into complete conformity with this ordinance, except for “sign maintenance” as defined in Section 18.110.570
- D. Subject to the other provisions of this section, nonconforming signs may be maintained and repaired so long as the cost of such work within any 12-month period does not

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exceed 50% of the value (tax value if listed for tax purposes) of such sign. No such work shall be done without the person proposing to do such work first submitting such information as may be required to satisfy the Code Administrator that the cost of such work would not exceed 50% of the value of the sign.

- E. If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed within 30 days after such abandonment by the sign owner, owner of the property where the sign is located, or other person having control over such sign.
- F. If a nonconforming billboard remains blank for a continuous period of 180 days, that billboard shall be deemed abandoned and shall, within 30 days after such abandonment, be altered to comply with this article or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this section, a sign is “blank” if:
 - 1. It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
 - 2. The advertising message it displays becomes illegible in whole or substantial part; or
 - 3. The advertising copy paid for by a person other than the sign owner or promoting an interest other than the rental of the sign has been removed.
- G. Sales or leasing signs existing on the effective date of this ordinance which do not conform to the requirements of subsections 18.440.070D or 18.440.080C, and which were not previously in compliance with applicable regulations, shall be removed by November 1, 2004.

(History: Ord. ZRR-2427 §2, 2003; ZRR-1725; ZRR-1637)

18.410.110 Nonconforming utility structures

- A. Subject to the remaining restrictions of this section, and the provisions of Section 18.410.080, nonconforming utility structures that were in existence on the effective date of this ordinance may be continued provided documentation outlining the size and location of the structures has been provided by the City prior to May 1, 2002.

- B. Subject to the other provisions of this section, nonconforming utility structures may be maintained, repaired, or replaced. A nonconforming utility structure may be altered or replaced with an alternate structure in the same location, provided the resulting structure does not increase the size of the pre-existing structure by more than 35% in volume, and further provided that no new nonconforming situations are created.
- C. Nonconforming utility structures may not be moved, except to bring the structure into complete conformity with this ordinance.

(History: ZRR-2626 §4, 2006; ZRR-2262 §15, 2001)

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