

Chapter 19

Nonconforming Uses and Structures

Section 19.01 Purpose and Intent

Nonconformities are uses, structures, buildings, or lots which do not conform to one or more provisions or requirements of this Ordinance or a subsequent amendment, but which were lawfully established prior to the time of adoption of the Ordinance or amendment. Such nonconformities are declared by this Ordinance to be incompatible with the current or intended use of land in the district in which they are located. While such nonconformities may be continued in accordance with the provisions of this Chapter, it is the intent of Gobles that such nonconformities should eventually be phased out and eliminated.

Accordingly, the purpose of this section is to establish regulations that govern the completion, restoration, reconstruction, extension, and/or substitution of nonconformities, and to specify the circumstances and conditions under which nonconformities shall be permitted to continue.

Section 19.02 Nonconforming Uses

A nonconforming use is a use which was lawfully in existence as of the effective date of this Ordinance, or amendment thereto, and which does not now conform to the use regulations of this Ordinance for the zoning district in which it is now located.

- A. **Continuation of Nonconforming Uses.** Where, on the effective date of this Ordinance, or the effective date of an amendment to this Ordinance, a lawful and fully permitted use of land exists, which use is no longer permitted by right under the terms of this Ordinance as enacted or amended, such use may be continued, provided it remains otherwise lawful, subject to the following provisions:
1. **Expansion of Use.** No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
 2. **Moving.** The right to continue a nonconforming use runs with the land. A change in property ownership shall not otherwise affect the rights to continue a nonconforming use established in this Section. No such nonconforming use shall be moved in whole or in part to any other portion

of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance.

3. **Discontinuation of Use.** If such nonconforming use of land ceases for any reason for a period of more than twelve (12) months the right to continue such nonconforming use shall be null and void, with or without written notification from Gobles. Any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.

B. Special standards for single family homes in nonresidential district:

1. A single family residential dwelling in a zoning district which does not permit such a use may be expanded to occupy the floor area necessary for living purposes subject to approval by the Zoning Board of Appeals.
2. A single family dwelling and its accessory structures, in a zoning district which does not permit such use may be continued, replaced, repaired or remodeled if damaged by flood, fire, or vandalism, if approved by the Zoning Board of Appeals. Such approval requires a finding that the resulting building footprint and floor area will be the same size or smaller than that of the building before such change. Replacement of such nonconforming single-family building shall commence no sooner than receiving a valid building permit and within one (1) year of the date of damage. Work shall be diligently pursued toward completion. The applicant may be required to provide the City with evidence, visual or otherwise, to demonstrate to the satisfaction of the Zoning Administrator or Zoning Board of Appeals that work is being diligently pursued. Failure to complete replacement or diligently work toward completion shall result in the loss of legal, nonconforming status unless good cause for the delay is accepted at a hearing before the Zoning Board of Appeals.

- C. Change in use.** Except for single family dwellings as permitted above, a nonconforming use shall not be enlarged, extended, constructed, reconstructed, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located. If no structural alterations are made, any nonconforming use of a building, or building and land in combination, may be changed to another nonconforming use if the Zoning Board of Appeals, either by general rule or by making findings in the specific case, finds the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may require conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a nonconforming use of a structure, land, or structure and land in combination is hereafter changed to a more conforming use, it shall not thereafter be changed to a less conforming use.

- D. **Removal:** Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 19.03 Nonconforming Lots

- A. A nonconforming lot is a lot which was lawfully in existence at the effective date of this Ordinance, or amendments thereto, and which does not now conform to the lot size, lot width, or other provisions of this Ordinance pertaining to lots in the zoning district in which it is located.
- B. A nonconforming lot may be used for any use which is permitted in accordance with the relevant zoning district regulations, provided that any building or structure to be constructed complies with the minimum yard requirements of the applicable zoning district regulations.
- C. **Variance to Area and Bulk Requirements:** If the use of a non-conforming lot requires a variation of the minimum floor area and bulk (minimum setback and maximum height) requirements, then such use shall be permitted only if a variance is granted by the Zoning Board of Appeals. (See item D below).
- D. To develop a nonconforming lot(s) under the provisions of paragraphs B and C of this section, the applicant is required to submit evidence that ownership of the lot was not under contiguous single ownership with other lots which could have been combined into a conforming or more conforming lot.

Section 19.04 Nonconforming Structures

Where a lawful building or structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, landscape buffer, off-street parking, loading space, minimum setback, or other characteristics of the structure or its location on the lot, such building or structure may be continued provided it remains otherwise lawful, subject to the following provisions.

- A. **Permitted expansions.** An expansion (footprint or floor area) of a non-conforming building or structure shall be permitted on a conforming side when all of the following conditions exist:
1. The entire building or structure is dedicated to a conforming use.
 2. The expansion will conform to all setback and height requirements.

Except as noted above, no nonconforming building or structure may be enlarged unless a variance is granted by the Zoning Board of Appeals.

- B. Replacement of a nonconforming single family dwelling.** A nonconforming building used as a single family residence, and its accessory structures, may be continued, replaced, repaired or remodeled if damaged by flood, fire, vandalism, accident or other natural disaster if approved by the Zoning Board of Appeals. Such approval requires a finding that the resulting building footprint will be the same size or smaller than that of the building before such change or that the building will become more conforming. Replacement of such a nonconforming single family building shall commence within one (1) year of the date of damage and work shall be diligently pursued toward completion. Failure to complete replacement or diligently work toward completion shall result in the loss of legal, nonconforming status unless good cause for the delay is accepted at a hearing before the Zoning Board of Appeals.
- C. Damaged nonconforming buildings and structures.** Except as noted in item B above, a nonconforming building or structure, which is damaged by flood, fire, or vandalism to an extent of more than fifty percent (50%) of its market value prior to damage (as described in paragraph G), exclusive of the foundation, shall be reconstructed only in conformity with the provisions of this Ordinance, unless the lot is a nonconforming lot of record, in which case the provisions of Section 19.03 also apply. Such nonconforming building(s) may be replaced provided replacement is commenced within one (1) year of the date of damage and is being diligently pursued toward completion. Failure to complete replacement shall result in the loss of legal, nonconforming status unless good cause for the delay is accepted at a hearing before the Zoning Board of Appeals.
- D. Relocation of a nonconforming building or structure.** Should any nonconforming building or structure be relocated or removed for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is relocated or moved.
- E. Safety related repairs, improvements and modernization.** Repairs, improvements, or modernization of non-conforming buildings or structures deemed necessary by the City Building Inspector or the Zoning Administrator to keep a non-conforming building structurally safe and sound shall be permitted provided such repairs or improvements do not exceed fifty percent (50%) of the market value (as described in paragraph G) of the building or structure during any period of 12 consecutive months. This cost/value calculation shall not include any costs associated with modernization of electrical, plumbing, heating, or cooling systems to meet Building Code requirements. Any such repairs, improvements, and modernization shall not result in an enlargement of the non-conforming structure. However, if a non-conforming structure or a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of maintenance and repairs and is declared as such by the Building

Department, it shall not thereafter be restored, repaired, or rebuilt except in full conformity with the regulations in the district in which it is located.

- F. **Elimination of nonconformity:** In the event a non-conforming situation is removed, the corresponding section of the building or structure shall thereafter conform.
- G. **Market Value:** For the purpose of this Article, Market Value shall be determined by an acceptable independent appraisal provided by the applicant. The City Assessor shall review the appraisal. The value of the repairs of improvements shall be based on a written estimate from a licensed contractor provided by the applicant. This estimate shall be reviewed by the Zoning Administrator and if necessary the Building Inspector.

Section 19.05 Change in Tenancy or Ownership

A change of tenancy, ownership, or management of any existing nonconforming use, lot or structure shall not affect the nonconforming rights set forth in this Chapter.

Section 19.06 Unlawful Nonconformities

Any nonconforming use, lot, or structure that was not lawful and fully permitted prior to the enactment of this Ordinance or pertinent amendment thereto shall not be allowed and shall be in violation of this Ordinance and subject to the enforcement provisions of Chapter 21.

Section 19.07 Burden of Proof

The provisions of this Section shall apply to any finding by the Zoning Administrator, Planning Commission, or the Zoning Board of Appeals that a use, structure, or lot does not conform with the provisions of this Ordinance, or pertinent amendment thereto. In such cases, the burden of proof shall be upon the property owner to prove by a preponderance of the evidence that such use, structure, or lot was legal and fully permitted prior to the effective date of this Ordinance or pertinent amendment thereto. In any permit request, enforcement action, or any other proceeding, the burden of proof shall be upon the property owner or applicant to prove by a preponderance of the evidence that a nonconforming use, lot, or structure was lawful and fully permitted prior to the effective date of this Ordinance, or pertinent amendment thereto.

Section 19.08 Recording of Nonconformities

Upon the written request by a property owner and upon the property owner showing by a preponderance of the evidence that a nonconforming use, structure, or lot was lawful and fully permitted prior to the effective date of this Ordinance, or pertinent amendment thereto, the Zoning Administrator shall issue a Zoning Certificate, in accordance with Section 20.06, that establishes that the use, structure, or lot is a legal nonconforming use and is eligible for the nonconforming rights established by this Chapter. In any such request, the burden is upon the property owner to provide sufficient information and evidence for the Zoning Administrator to make a finding that such use, structure, or lot was lawful and fully permitted prior to the effective date of this Ordinance or pertinent amendment thereto.