

Chapter 18.50
NONCONFORMING CIRCUMSTANCES

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18.50.010 Purpose

The purpose of this chapter is to allow certain nonconforming lots, structures, uses, and development to continue but to prohibit their enlargement, expansion, or extension. (Ord. 18-23 §2; Ord. 17-22 §2)

18.50.020 General Provisions

- A. Nonconforming circumstances are lots, structures, uses of land, and site improvements that were lawful when established, but would not be allowed under current regulations as a result of a change to the applicable base zone or development standards.
- B. The status of a nonconforming circumstance is not affected by changes in ownership.
- C. A nonconforming circumstance may be changed to a conforming circumstance by right. Once a conforming circumstance occupies a site, the nonconforming rights are lost and the nonconforming circumstance may not be re-established.
- D. The regulations of this chapter apply to all nonconforming circumstances except the following:
 - 1. Single detached houses in the MU-CBD zone.
 - 2. Nonconforming uses and developments in the Washington Square Regional Center Plan District, which are subject to the standards of Section 18.670.050.
 - 3. Nonconforming uses and developments in the TMU zone, which are subject to the standards of Chapter 18.660, Tigard Triangle Plan District. (Ord. 18-23 §2; Ord. 17-22 §2)

18.50.030 Determination of Nonconforming Use Status

A determination regarding the legal status of a nonconforming circumstance is processed through a Director determination, as provided in Chapter 18.730, Director Determinations. A nonconforming use is determined to be legal when both of the following are met:

- A. The applicant has provided proof that the use was lawful at the time it was established, by one or more of the following:
 - 1. Copies of issued development permits or land use approvals granted at the time the use was established;
 - 2. Copies of zoning ordinances or maps; or

3. Demonstration that the use was established before the first development code for the City of Tigard was adopted.
- B. The applicant has provided proof that the use has been maintained over time. This proof must include copies of one or more of the following for every other year from the time the use was established until the current year:
1. Utility bills;
 2. Income tax records;
 3. Business licenses;
 4. Listings in telephone, business, or other related directories;
 5. Advertisements in dated publications, for example trade magazines; or
 6. Land use approvals or development permits. (Ord. 18-23 §2; Ord. 17-22 §2)

18.50.040 Criteria for Nonconforming Situations

A. Nonconforming lots.

1. Except as provided in Paragraph 18.50.040.A.2 and Subsection 18.50.040.B and C, development of nonconforming lots and enlargement, modification, or reconstruction of uses on nonconforming lots are prohibited.
2. If a lot does not meet the minimum lot size standard, the lot may:
 - a. Be occupied by one use allowed in a commercial zone, if the lot is located within a commercial zone; or
 - b. Be occupied by a single detached house and accessory structures if located in a residential zone.
3. Development allowed on a nonconforming lot under the provisions of Paragraph 18.50.040.A.2 is subject to the following:
 - a. The nonconforming lot must not be contiguous with other lots in the same ownership; and
 - b. All other applicable provisions of this title must be met.
4. If a nonconforming lot is contiguous with another lot in common ownership, the following provisions apply:
 - a. The lots involved are considered to be an undivided unit of land for the purposes of this title;
 - b. Conveyance, transfer, or use of the lots or any portion of the lots in any manner that violates this title is prohibited; and
 - c. Division of the lots in a manner that results in a nonconforming lot is prohibited.

B. Nonconforming uses.

1. If a lawfully established use of land exists that would not be allowed by this title, the use may be continued provided:
 - a. The nonconforming use is not enlarged, increased, or extended to occupy a greater area of land or space, except that a nonconforming use may be enlarged, increased, or extended into any existing parts of the building it occupies, provided that the building was specifically designed and constructed to lawfully accommodate that use at the time of original construction;
 - b. The nonconforming use is not moved in whole or in part to any portion of the lot;
 - c. The nonconforming use of land is not discontinued for any reason for a period of more than six months;
 - d. If the use is discontinued or abandoned for any reason for a period of six months, any subsequent use of land must conform to the regulations specified by this title; and
 - e. For purposes of calculating the six-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
 - i. On the date when the use of land is vacated,
 - ii. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services,
 - iii. On the date of termination of any lease or contract under which the nonconforming use has occupied the land, or
 - iv. On the date a request for final reading of water and power meters is made to the applicable utility provider.
 - f. Additional structures, buildings, or signs are prohibited on a lot with a nonconforming use.
2. A nonconforming use may be changed to a conditional use allowed in the applicable base zone if approved through a conditional use review. Once a conditional use occupies the site, the nonconforming rights are lost and a nonconforming use may not be re-established.
3. The provisions of Section 18.50.040 do not grant an owner of a nonconforming use a vested right. The provisions of the section may be revised in a manner that does not change the rights granted by this section under this chapter.

C. Nonconforming development.

1. Where a lawful structure or development exists that could not be built under the terms of this title by reason of restrictions on lot area, lot coverage, height, required parking, landscaping, or other requirements, such structure or development may remain and its use continued provided it remains otherwise lawful and complies with the following:
 - a. The nonconforming structure or development may not be enlarged or altered in a way that

increases its nonconformity;

- b. If a nonconforming structure, development, or nonconforming portion of a structure or development is destroyed by any means to an extent of more than 60 percent of its current value as assessed by the Washington County assessor, reconstruction is prohibited except in conformity with this title. This prohibition does not apply to single detached houses destroyed by accident. If a nonconforming single detached house is partially or totally destroyed by accident, such as by fire or earthquake, reconstruction is allowed; and
- c. If a structure or development is moved any distance for any reason, it must thereafter comply with all applicable development standards. (Ord. 18-28 §1; Ord. 18-23 §2; Ord. 17-22 §2)

18.50.050 Repairs and Maintenance

- A. Routine repairs and maintenance. On any nonconforming structure or portion of a structure containing a nonconforming circumstance, normal repairs, or replacement of roofs, non-bearing walls, fixtures, wiring, or plumbing may be performed in a manner not in conflict with the provisions of this chapter.
- B. Restoration to safe condition. Nothing in this chapter prevents the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. (Ord. 18-23 §2; Ord. 17-22 §2) ■