

Chapter 18.52

NONCONFORMING STRUCTURES AND USES

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18.52.010 Requirements generally (a) Any nonconforming structure may be used and maintained except as otherwise provided in this chapter.

(b) A nonconforming use lawfully established prior to the adoption of this title may be continued, subject to the limitations hereinafter provided.

(c) If any nonconforming use is abandoned or discontinued for any reason, subsequent use of such land shall be in conformity with the provision of this title. The discontinuance of a nonconforming use for a period of six months or more is, in itself prima facie evidence of abandonment. (Ord. 653 (part), 2014; Ord. 434 §1, 1981; Ord. 416 §1, 1980; Ord. 377 §4, 1977; Ord. 270 §1, 1968; prior code §10 113 (part)).

18.52.020 Use changed to another nonconforming use. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification, but such use shall be subject to other provisions of this title. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.030 Alteration. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 “Disaster Recovery and Reconstruction” or this section.

(a) A nonconforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.

(b) A nonconforming structure may be expanded so long as the expansion complies with all zoning regulations, including required parking.

(c) Nonconforming structures in a residential zoning district may be enlarged, extended reconstructed or structurally altered with a nonconformity permit approved under Section 18.52.040 or 18.52.045, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area and a floor area ratio variance shall not be required for floor area associated with an Accessory Dwelling Unit when constructed in accordance with Chapter 18.42 of this Code or state legislation. (Ord. 708 (part), 2020; Ord. 704 (part), 2020; Ord. 653 (part), 2014; Ord. 641 (part), 2013; Prior code §10 113 (part)).

18.52.040 Nonconformity permit. (a) Purpose and Intent. Many residential structures in the town do not conform to the requirements of this Zoning Code because they were established before the adoption of zoning or before residential floor area limits were established in 1967. The purpose of this section is to allow for the continued existence, reconstruction and modification of nonconforming residential structures, subject to limitations set forth in this

section. The intent of these regulations is to protect historic buildings and those that contribute to the Town's small town character; to permit floor area nonconformities to be retained on site redevelopment where the design is appropriate; and to allow other nonconformities to be maintained when reasonable and where they create the same or fewer impacts than strict conformance with town regulations.

(b) Nonconformity Permit. The town council may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a nonconformity permit under this section.

(c) Application. An application for a nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny a nonconformity permit application at a public meeting. The Town Council shall consider the application concurrently with any related application for design review under Chapter 18.41 or demolition permit under Chapter 18.50.

(e) Notice. The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(f) Mandatory findings for nonconformity permit. The town council may approve or conditionally approve a nonconformity permit under this section if the council has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town council can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(9) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces

required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence and number of bedrooms and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

(g) Terms and Conditions. Any nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town council to effect the purposes of this ordinance.

(h) Any request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.045 Minor Nonconformity Permit.

(a) Purpose and Intent. The purpose of this section is to allow minor modifications to nonconforming structures to take place without the cost or the time commitment of town council review. These provisions retain public notice of the pending action and adherence to town guidelines and standards.

(b) Applicability. The town planner may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a minor nonconformity permit under the following conditions:

- (1) No increase to the floor area or the location of the structure is being proposed;
- (2) The structure is not readily visible from the public way or from immediately adjacent properties; or
- (3) There is a minor visual impact as determined by the town planner.

(c) Application. An application for a minor nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town planner shall review and approve, conditionally approve, or deny an exception application administratively with no public meeting in accordance with this chapter, if no other entitlements are required. If other approvals are necessary, the minor nonconformity permit application shall be filed concurrently with the related applications and shall be acted upon by the town council. The town planner may refer an application directly to the town council for consideration.

(e) Notice.

(1) The town planner shall mail notice of intent to take action on a minor exception at least 10 days prior to the decision to the owner of the property that is the subject of the application and all adjacent property owners as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(2) The notice shall provide that a decision will be made by the town planner to approve or disapprove the minor exception application on a date specified in the notice. The notice shall include the name of the applicant, the scheduled date for action, a general explanation of the matter to be considered, the location of the real property that is the subject of

the application and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision. When a hearing is requested, notice of the hearing shall be provided pursuant to Government Code Section 65091.

(f) Mandatory findings for minor nonconformity permit. The town planner may approve or conditionally approve a minor nonconformity permit under this section if the town planner has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town planner can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(g) Terms and Conditions. Any minor nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town planner to effect the purposes of this ordinance. (Ord. 713, 2022; Ord. 708 (part), 2020).

18.52.050 Provision applicability--Suspension time limit. The foregoing provisions shall also apply to nonconforming uses and structures created by future amendments to the provisions of this title and any time limit for the suspension of a nonconforming structure or use shall date from the date of the enactment of this title or any amendment which first creates the nonconformity. (Ord. 653 (part), 2014; Prior code §10 113 (part)).