

**CHAPTER 02-07 NONCONFORMING USES – NONCOMPLYING STRUCTURES**

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**02-07-001 DEFINITION**

**02-07-001 NONCOMPLYING STRUCTURE**

- a. A structure that legally existed before its current land use designation; and
- b. because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations excluding those regulations which govern the use of land.

**02-07-002 DETERMINATION OF NONCONFORMING USE AND NONCOMPLYING STRUCTURE**

All matters regarding the Nonconforming use and Noncomplying Structures shall be determined by the Planning Commission. Upon application, the Commission shall determine if the use or structure is nonconforming or noncomplying as defined in this Chapter. The Land Use Administrator may determine routine and uncontested requests to verify Nonconforming uses and Non-complying structures as provided in the Naples City Land Use Ordinance.

**02-07-003 ALTERATION OF MODIFICATIONS TO NONCOMPLYING STRUCTURES**

Noncomplying structures with respect to setbacks or height may be continued. Additions, enlargements or structural alterations may be made to the extent that they comply with all requirements of the current Naples City Code. In addition, the commission may allow an enlargement or structural alteration provided the change is in harmony with the surrounding neighborhood and in keeping with the intent of the General Plan and this ordinance. The proposed change shall not

impose any unreasonable impact or burden upon land located in the vicinity. Reasonable conditions may be attached to the approval in order to assure neighborhood compatibility. If any such noncomplying structure is removed, every future use of the land on which the building was located shall conform to the provisions of the Naples City Land Use Ordinances and Codes.

**02-07-004 NONCONFORMING USE OF LAND**

A nonconforming use lawfully existing on the effective date of this Land Use Ordinance may be continued provided such nonconforming use shall not be expanded or extended into any other open land, except as otherwise provided in the Naples City Land Use Ordinance. If the nonconforming use is discontinued for continuous period of more than one year it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located.

**02-07-005 NONCOMPLYING STRUCTURES**

The noncomplying structure lawfully existing on the effective date of this ordinance may be continued, provided no structural alterations, except those permitted by law, are made. If such noncomplying structure is discontinued for a continuous period of more than one year it shall constitute an abandonment of the use and any future use of the structure shall conform to the provisions of the zone in which it is located.

**02-07-006 CHANGE IN STATUS OF NONCONFORMING USE AND NON COMPLYING STRUCTURES.**

A nonconforming use and noncomplying structure may be succeeded, upon approval of <sup>1</sup>Planning Commission as provided in the Naples City Land Use Ordinance, by an equally restrictive or more restrictive nonconforming use and/or noncomplying structure. Provided such change is effected prior to amendment of the prior nonconforming use and noncomplying structure. After a change to a less intensive use occurs, the use may not change back to a more intensive use.

**02-07-007 ALTERATIONS OF MODIFICATIONS TO NONCONFORMING USE AND NONCOMPLYING STRUCTURES**

A use or structure which has been declared nonconforming or noncomplying shall not be enlarged or moved except as provided in the Land Use Ordinance. The commission may allow an enlargement or modification provided the change is in harmony with the surrounding neighborhood and in keeping with the intent of the General Plan and this ordinance. The proposed change shall not impose any unreasonable impact or burden upon land located in the vicinity. Reasonable conditions may be attached to the approval in order to assure neighborhood compatibility.

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<sup>1</sup> Amended 02-28-2019

**02-07-008 RECONSTRUCTION OF NONCOMPLYING BUILDING OR STRUCTURE PARTIALLY DESTROYED**

A Noncomplying structure destroyed to the extent of not more than 50 percent (50%) of its reasonable replacement value at the time of its destruction by fire, explosion, other casualty, act of God or action of a public enemy, may be restored to the use of such building, structure, or part thereof which existed at the time of such partial destruction may be continued subject to all of the provisions of the Title. If the building or structure is torn down or destroyed to an extent of more than 50%, any future use must follow the current Land Use ordinance.

**02-07-009 AMORTIZATION OF NONCONFORMING USES AND NONCOMPLYING STRUCTURES**

The Commission, under authorization of State statute, may provide for the timely modification or removal of a Nonconforming Use and Noncomplying Structure or open storage or signage deemed to be incompatible with the surrounding neighborhood. A maximum of a five-year period may be granted in which the nonconforming use and noncomplying structure shall be modified or removed in order to comply with the General Plan and the Land Use Ordinance.

**02-07-010 <sup>2</sup>NONCONFORMING USE/STRUCTURE CERTIFICATES**

The existence of any nonconforming use will be recognized by the city through issuance of a Noncomplying Use/Structure Certificate. It is the city's acknowledgement that the use was legal at its time of construction and is allowed to remain. If the use is vacated for a period of a year or longer, any nonconforming right is lost. Therefore, verification must be given that the use has been continuous since first allowed or approved.

**A. APPLICATION REQUIREMENTS**

The application shall include the following information:

1. Property owner name and contact information;
2. Proof of ownership;
3. Tax ID (parcel) Number;
4. Requested use of property;
5. Description of nonconformity:
  - a. Evidence verifying the existence of the use prior to the adoption of the ordinances which made the use nonconforming;
  - b. Date the building was construction;
  - c. Date the use was established;

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<sup>2</sup> Added 02-28-2019

- d. Site plan showing all existing buildings, structures, parking facilities and other improvements on the applicable lot with setbacks and dimensions;
  - e. Any evidence the applicant intends to submit to establish the noncompliance;
6. If the building or site has been vacant for more than one year; if so, the reason for vacancy;
  7. Any permits authorizing expansions, additions or changes of use approved by the city;
  8. Any additional information that could be used to establish that the building, use or other nonconformity existed and was in compliance before the current land use regulation.

## **B. REVIEW PROCEDURES**

The burden of proving the nonconformity shall be upon the applicant. The Commission may conduct its own investigation to insure the information is accurate, and there are no questions about the nonconformity.

Once the application has been submitted and reviewed, the Commission shall either approve issuance of the certificate, request additional information, or deny the application stating the reasons for denial. The applicant may appeal the decision to the Appeals and Variance Authority within thirty (30) days of the final decision. The approved nonconforming use/structure certificate must be recorded with the Uintah County Recorder's office by the applicant within 30 days of the approval date.

Any nonconforming use/structure permit approving an expansion or change shall become a part of the original certificate and subject to any conditions placed thereon. Any approval granted for an expansion, addition or change of a nonconforming use/structure shall expire if, within one year, there is no substantial action taken to complete the change or expansion.

No building permit shall be issued which encompasses any nonconforming use/structure without the prior issuance and except in accordance with the terms and conditions of a Nonconforming Use/Structure Certificate.