

Chapter 16.18 NONCONFORMANCES

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16.18.010 Nonconformances – Continuance.

Unless otherwise specifically provided in this unified development code, nonconforming situations that were otherwise lawful on the effective date of this code may be continued. (Ord. 715-00; Ord. 630 § 2 [16.06.160(A)], 1995)

16.18.020 Nonconformances – Lots smaller than required minimums.

When a nonconforming lot can be used in conformity with all of the requirements applicable to the intended use, except that the lot is smaller than the required minimums set forth in the dimensional and density requirements for each zoning district, then the lot may be used as proposed just as if it were conforming. (Ord. 715-00; Ord. 630 § 2[16.06.160(B)], 1995)

16.18.030 Nonconforming lots – Setbacks.

When the use proposed for a nonconforming lot is one that is conforming in all other respects, but the applicable setback requirements cannot reasonably be complied with, then the zoning official may allow variances from the applicable setback requirements if he/she finds that:

- A. The property cannot reasonably be developed for the use proposed without such deviations;
- B. These deviations are necessitated by the size or shape of the nonconforming lot;
- C. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety; and
- D. Compliance with 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, financial hardship does not constitute

grounds for finding that compliance is not reasonably possible. (Ord. 715-00; Ord. 630 § 2[16.06.160(C)], 1995)

16.18.040 Nonconforming lots – Applicability.

This chapter applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. (Ord. 715-00; Ord. 630 § 2 [16.06.160(D)], 1995)

16.18.050 Nonconformances – Adjoining lots.

If, on the date this unified development code 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 successors in interest may take advantage of the provisions of this chapter. This requirement 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 chapter 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 way the neighborhood has previously been developed. (Ord. 715-00; Ord. 630 § 2[16.06.160(E)], 1995)

16.18.051 Nonconforming accessory dwelling units.

A. Commencing on October 1, 2003, a registration period of six months, ending April 1, 2004, at 5:00 p.m. is hereby established for the registration of legal nonconforming and illegal detached and attached accessory dwelling units (ADU). No fees shall be charged for such registration. Accessory dwelling unit (ADU) is defined in SMC [16.150.010\(6\)\(a\)](#). Upon receipt of the registration, the city shall develop a schedule for the inspection of such accessory dwelling units to determine compliance with the State Building and Fire Codes. An inspection of such structures by the State Electrical Inspector shall also be requested if no records of a prior electrical inspection is provided by the registrant.

B. Nonconforming Structures. An attached or detached ADU, which qualifies as a legal nonconforming structure as defined in SMC [16.150.140\(9\)](#), shall be inspected to determine whether it was in compliance with the State Building and Fire Codes in existence at the date it was constructed. An applicant shall submit a final occupancy permit issued by the city of Sultan or Snohomish County, as appropriate, with respect to said ADU prior to the date said use was regulated by the agency with jurisdiction, as proof of its legal nonconformity or such other proof as may be reasonably available. Upon an adequate showing of nonconformity as determined at the discretion of the city, the ADU shall be required to meet the provisions of the State Building and Fire Codes which are applicable to any building or structure and are considered life safety codes. The city shall issue a certificate of noncompliance noting the size and characteristics of the ADU and the structure in which it is located in order to permit its use and continuation and to determine its compliance with the other provisions of SMC

[16.25.010](#). Such registration of legal nonconforming structures may include both attached and detached units which were in conformance with the applicable provisions of law and ordinance at the date constructed.

C. Registration of Illegal Accessory Dwelling Units. ADUs which were not legal uses at the date constructed may be registered during the registration period set forth in subsection (A) of this section. Registration shall be accompanied by the fee established for the issuance of a permit for each ADU with such fees to be used to defray the cost of building, fire and other inspections. The city shall establish an inspection schedule for ADUs. Certificates of registration and permit shall be issued to the former illegal structure granting the privileges of a legal nonconforming structure subject to the provisions of SMC [16.25.010](#) upon certification that the structure is or has been brought into compliance with all current provisions of the State Building Code and city ordinance.

1. Once registered, a formerly illegal ADU shall enjoy all the protections and privileges afforded to a nonconforming structure under the provisions of this section; provided, however, that such ADU shall be subject to the permit review requirement of SMC [16.25.010](#) to the end that the city council reserves the right to impose additional conditions on the continued use and occupancy of the formerly illegal ADU if it is found to constitute a nuisance or present a hazardous condition, or to revoke such registration and permit if a nuisance or hazardous condition relating to the ADU is not abated.

2. The provisions of this subsection (C) shall apply to both attached and detached accessory dwelling units; provided, however, that such ADUs shall be registered and permitted to continue subject to the provisions of this section only if they were constructed in good faith by construction completed prior to December 31, 1999.

D. Legal nonconforming units shall receive a permit certificate confirming such status and listing the physical dimensions and other characteristics of the structure; provided, however, that the registration and permit of a formerly illegal ADU may be revoked and/or conditioned in accordance with the provisions of SMC [16.25.010](#).

E. Failure to register a structure within the time period established by the provisions of this section shall be considered to be presumptive proof that such a unit is an illegal unit and subject to abatement. The owner of such structure may overcome such a presumption only by presentation of substantial and competent evidence which establishes the legal nonconforming nature of such building by clear and convincing evidence that the structure was permitted by Snohomish County or the city of Sultan and was in complete compliance with the applicable provisions of state law and county or city ordinance, at the date such construction was initiated and was completed. (Ord. 823-03 § 2)

16.18.060 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:

1. An increase in the total amount of space devoted to a nonconforming use; or

2. Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, density requirements, or other regulations such as parking requirements.

B. Subject to subsection (D) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this unified development code, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.

C. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

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 requirements of this section occur.

E. Notwithstanding subsection (A) of this section, any structure used for single-family detached residential purposes 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 existing nonconformities with respect to such matters as setback and parking requirements.

F. Notwithstanding subsection (A) of this section, whenever: (1) there exists a lot with one or more structures on it; and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot; and (3) the off-street parking or loading requirements of this code that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for off-street parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable off-street parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite off-street parking if: (1) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (2) such off-street satellite parking is available within 500 feet of the site said satellite parking area is intended to serve, measured from property line to property line. If such off-street satellite parking is not reasonably available at the time the 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 permit. (Ord. 715-00; Ord. 630 § 2 [16.06.160(F)], 1995)

16.18.070 Nonconformances – Repair, maintenance, and construction.

A. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 25 percent of the appraised valuation of the structure to be renovated, may be done only in accordance with a permit issued pursuant to this unified development code.

B. If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed 25 percent of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a permit issued pursuant to this unified development code. This section does not apply to structures used for single-family detached residential purposes, which structures may be reconstructed pursuant to a permit just as they may be enlarged or replaced.

C. For purposes of subsections (A) and (B) of this section:

1. The “cost” of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.

2. The “cost” of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of subsections (A) or (B) of this section by doing such work incrementally. An itemized appraisal of the work shall be prepared by an independent professional and provided to the city by the applicant.

3. The “appraised valuation” shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.

D. The building and zoning official shall issue a permit authorized by this section if it finds that, in completing the renovation, repair or replacement work:

1. No violation of subsection (B) of this section will occur;

2. The permittee will comply to the extent reasonably possible with all provisions of this code applicable to the existing use (except that the permittee shall not lose his or her right to continue a nonconforming use); and

3. Compliance with a requirement of this code is not reasonably possible if it cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or 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. (Ord. 715-00; Ord. 630 § 2[16.06.160(G)], 1995)

16.18.080 Change in use of property where a nonconforming situation exists.

A. A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require an amendment in accordance with Chapter [16.128](#) SMC may not be made, except in accordance with subsections (B) through (D) of this section.

B. If the intended change in use is to a principal use that is permissible in the zoning district where the property is located, and all of the other requirements of this code 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 code is achieved, the property may not revert to its nonconforming status.

C. If the intended change in use is to a principal use that is permissible in the zoning district where the property is located, but all of the requirements of this code applicable to that use cannot reasonably be complied with, then the change is permissible if the city council approves an application authorizing the change. A permit may be issued if the building and zoning official finds, in addition to any other findings that may be required by this code, that:

1. The intended change will not result in a violation of SMC [16.16.020](#); and

2. All of the applicable requirements of this code will be reasonably complied with.

Compliance with a requirement of this code is not reasonably possible if it cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or 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. And, in no case may an applicant be given permission pursuant to this section to construct a building or add to an existing building if additional nonconformities would thereby be created. (Ord. 715-00; Ord. 630 § 2 [16.06.160(H)], 1995)

16.18.090 Abandonment and discontinuance of nonconforming situations.

A. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 180 calendar days, then that property may thereafter be used only in conformity with all of the current regulations. A permit may be issued if the council 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 moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

B. 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 calendar days shall not result in a loss of the right to rent that 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. (Ord. 715-00; Ord. 630 § 2[16.06.160(I)], 1995)

16.18.100 Completion of nonconforming projects.

A. All nonconforming projects on which construction was begun before the effective date of this code, as well as all nonconforming projects that are at least 10 percent completed in terms of the total expected cost of the project (excluding land acquisition) on the effective date of this code may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this section shall apply only to the particular phase under construction.

B. Except as provided in subsection (A) of this section, all work on any nonconforming project shall cease on the effective date of this code, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a permit issued in accordance with this section for the type of development proposed. The hearing examiner shall order the issuance of 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 position in some substantial way in reasonable reliance on the code as it existed before the effective date of this code and, thereby, would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the city council 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 development permit shall be considered as evidence of reasonable reliance on the code that existed before this code became effective.

2. Except as provided in subsection (B)(1) of this section, no expenditures made more than three years before the effective date of this code may be considered as evidence of reasonable reliance on the law that existed before this code became effective.

3. To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party 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.

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 party shall not be considered prejudiced by having made such expenditures.

5. An expenditure shall be considered substantial if it is equal to 10 percent or more of the total estimated cost of the proposed project (excluding land acquisition).

6. A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the code affecting the proposed development site could not be attributed to him or her.

7. Even though a person had actual knowledge of a proposed change in the code affecting a development site, the hearing examiner may still find that he or she acted in good faith if he or she did not proceed with his or her plans in a deliberate attempt to circumvent the effects of this code. The hearing examiner may find that the developer did not proceed in an attempt to undermine the code if it determines that: (a) at the time the expenditures were made, either there was considerable doubt about whether any code would ultimately be passed, or it was not clear that the proposed code would prohibit the intended development, and (b) 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) of this section. The hearing examiner 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 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 hearing examiner shall not consider any application for the permit authorized by subsection (B) of this section that is submitted more than 60 working days after the effective date of this code. The council may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.

E. The hearing examiner shall send copies of this section to the persons listed as owners for tax purposes (and developers, if different from the owners) of all properties in regard to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be in some stage of development. This notice shall be sent by certified mail not less than 15 working days before the effective date of this code.

F. The hearing examiner shall establish expedited procedures for hearing applications for permits under this section. These applicants shall be heard, whenever possible, before the effective date of this code so that construction work is not needlessly interrupted. (Ord. 715-00; Ord. 630 § 2 [16.06.160(J)], 1995)