

## Chapter 49.30

### NONCONFORMING DEVELOPMENT

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#### 49.30.010 Purpose.

It is the intent of this section to provide standards for the continued use of property made nonconforming by adoption of this title.

(Serial No. 87-49, § 2, 1987)

#### 49.30.100 Continuation of nonconforming situations.

Unless otherwise specifically provided in this chapter and subject to the restrictions and qualifications set forth in sections 49.30.200--49.30.700, nonconforming situations that were otherwise lawful on the effective date of the ordinance codified in this chapter may be continued.

(Serial No. 87-49, § 2, 1987)

#### 49.30.200 Residences in industrial and waterfront commercial industrial zones.

The restrictions of this chapter shall not apply to existing dwellings in the industrial and waterfront commercial industrial zones.

(Serial No. 87-49, § 2, 1987)

#### 49.30.300 Nonconforming lots.

(a) A lot rendered substandard in size by the adoption of this title may nonetheless be used in conformity with applicable use regulations, provided that no use, including duplexes and multifamily dwellings, requiring a lot size greater than the minimum for that zone shall be permitted except as provided in subsections 49.25.510(h) and (i)

(b) This section applies only to nonconforming lots undeveloped at the time of the adoption of this Code. A change in use of a developed nonconforming lot shall be accomplished in accordance with section 49.30.600.

(c) If, on the date the ordinance from which this section derives becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, each lot may be developed with single-family dwellings if community or approved individual waste systems are provided.

(Serial No. 87-49, § 2, 1987; Serial No. 91-01, § 4, 1991)

#### **49.30.400 Aggravation of nonconforming situations.**

(a) Except as provided in this section, section 49.25.430, section 49.25.440, and section 49.25.510, nonconforming situations may not be aggravated. As used herein, "aggravate" includes the physical alteration of structures or the placement of new structures on open land if such results in:

- (1) An increase in the total amount of space devoted to a nonconforming use; or
- (2) A greater invasion in any dimension of setback requirements or height limitations, a further violation of density requirements or further deficiencies in parking or other requirements.

(b) A use made nonconforming by the adoption of the ordinance codified in this title may be extended throughout any portion of a completed building manifestly designed or arranged to accommodate such use, but may not, except as provided in section 49.30.800, be extended to other buildings or to land outside the original building.

(Serial No. 87-49, § 2, 1987; Serial No. 91-03, § 4, 1991; Serial No. 91-50, § 3, 1991)

#### **49.30.500 Reconstruction.**

(a) Except as provided in subsections (b) and (c) of this section, if a building is damaged by any change so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building shall not be rebuilt, unless the building and its intended use comply with this title. The determination of whether a building is destroyed to the extent described shall be made by the building official.

(b) If a single-family dwelling, duplex, or multifamily dwelling in a residential district in geographic areas Juneau and Douglas is damaged by any involuntary change, including fire, flood, landslide, avalanche, or earthquake, so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building may be replaced or reconstructed to the same footprint on the original location with the exception of encroachments into public rights-of-way or adjacent property; provided, the intended use of the building is the same as, or less intensive than, the prior use and is a permissible use in the district. The determination of whether a building is destroyed to the extent described shall be made by the building official. If the building official determines that the foundation of the building is not reusable due to damage or substantial noncompliance with title 19, the building regulations code, then the building may be replaced or reconstructed to the same footprint and the footprint shall be relocated on the lot so as to reduce, to the extent reasonably feasible, the occurrence or severity of any nonconforming setbacks, taking into consideration topography, shape, and size of the lot, and all other relevant factors. However, if such relocation is not reasonably feasible, the building may be replaced or reconstructed to the same footprint on the original location. Projections beyond the footprint including architectural features, roof eaves, foundation footings, porches, decks, terraces, patios, unenclosed stairways, and fire escapes, and attached structures, may also be replaced or reconstructed as they existed on the original building, with the exception of encroachments into public rights-of-way or adjacent property. An as-built survey or other proof of the footprint and location of the original building and projections beyond the footprint is to be provided to the City and Borough at the time the building is to be replaced or reconstructed. A building may be replaced or

reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building. Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a public right-of-way or adjacent property, nor does it authorize the building or projections beyond the footprint of the building to be replaced or reconstructed so as to encroach into a public right-of-way or adjacent property. Nothing in this subsection waives any other applicable laws or regulations including title 19, the building regulations code, and this title.

(c) The commission, through the conditional use permit process, may allow the replacement or reconstruction of a multifamily dwelling in any multifamily residential, general commercial, light commercial, mixed use, or waterfront commercial district when the dwelling is damaged by any involuntary change, including fire, flood, landslide, avalanche, or earthquake, and the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, provided the intended use of the building is the same as, or less intensive than, the prior use. The determination of whether a building is destroyed to the extent described shall be made by the building official. A building may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building unless additional spaces are required under the Federal Americans with Disabilities Act. Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a required yard, nor does it authorize the building or projections beyond the footprint of the building to be replaced or reconstructed so as to encroach into a required yard, except as provided in subsection 49.25.430(5). Nothing in this subsection waives any other applicable laws or regulations, including title 19, the building regulations code; and title 49, the land use code.

(d) The director may allow a building in the MU zoning district which has been converted from residential to nonresidential use to revert to residential use at the original density and parking requirement, if the reversion results in no additional floor space.

(Serial No. 87-49, § 2, 1987; Serial No. 89-05, § 3, 1989; Serial No. 89-33, §§ 3, 4, 1989; Serial No. 91-46, § 2, 1991; Serial No. 2001-02, § 2, 4-2-2001; Serial No. 2006-15, § 7, 6-5-2006)

**Cross References:** Right-of-way encroachment permits, CBJ Code ch. 62.55.

#### **49.30.600 Change in use of property.**

(a) A substantial change in the use of property containing a situation made nonconforming by the adoption of the ordinance codified in this title may be made only after review and approval according to the procedures applicable to an initial use.

(b) Property changed in use pursuant to subsection (a) of this section may not thereafter revert to its nonconforming status. As used in this subsection the term "substantial change" means a change sufficient to require a new development permit.

(Serial No. 87-49, § 2, 1987)

#### **49.30.700 Abandonment and discontinuance of nonconforming situations.**

(a) If a nonconforming use is discontinued for 365 consecutive days, or discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.

(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 shall be considered as a whole. Discontinuance of part of a use or the use of part of the property shall not necessarily terminate rights to the nonconformity, but if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of the nonconforming use for the required period shall terminate the right to maintain it thereafter.

(c) When a structure or operation made nonconforming by this chapter is vacant or discontinued at the effective date of the ordinance codified in this chapter, the 365-day period for purposes of this section begins to run on the effective date of the ordinance codified in this chapter.  
(Serial No. 87-49, § 2, 1987)

#### **49.30.800 Completion of nonconforming developments.**

- (a) *Completion of structures.* Any structure for which a building permit has been issued prior to the effective date of the ordinance codified in this chapter may be completed in accordance with such permit.
- (b) *Completion of developments other than structures.*
- (1) Any development for which a variance, planned unit development certificate, conditional use permit, or temporary permit has been issued prior to the effective date of the ordinance codified in this chapter may be completed in accordance with a building permit issued prior to the expiration of and in accordance with such variance, planned unit development certificate, conditional use permit or temporary permit. Such expiration shall occur as specified prior to the adoption of the ordinance codified in this title or six months after the effective date of the ordinance codified in this title, whichever is later.
  - (2) A preliminary plat approval issued prior to the effective date of the ordinance codified in this chapter shall expire 18 months after issuance, or six months after the effective date of the ordinance codified in this title, whichever is later, unless the development for which it was issued is first awarded a public transmission facilities permit.
  - (3) A final plat approval issued prior to the effective date of the ordinance codified in this chapter shall expire two years after such effective date, unless the plat is recorded.
- (c) *Allowance for completion.* 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 nonconforming units only if they were the subject of a building permit issued prior to the effective date of the ordinance codified in this chapter and if they were included in the initial phase.  
(Serial No. 87-49, § 2, 1987)