



Nonconforming Situations Application

COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division
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TO BE FILLED OUT BY STAFF

File No. _____ Date of Preapplication Conference _____

Filing Fee (Fees subject to change every July 1)

No New Construction.....\$371

New Construction.....\$740 plus 0.15% (0.0015) of construction value* over \$150,000

Date Fee and Application Received: _____ Amount Paid: _____

Receipt No.: _____ Received By: _____

NONCONFORMING SITUATIONS OVERVIEW

Some lots, developments, and uses in the City of Albany were lawful before the Albany Development Code was adopted or amended, but would no longer be allowed under the current terms of the Code. These nonconformities are referred to as “nonconforming situations.” The terms of the Development Code may allow these situations to continue but are not intended to encourage their perpetuation.

Nonconforming situation regulations only apply to situations which were allowed when established or which were approved through a land use review. Nonconforming situations which were not allowed when established have no grandfather rights and must be removed. The property owner or applicant must document that a nonconforming situation was allowed when established and has been maintained over time. Evidence might consist of building permits, utility hookups, tax records, business licenses, or telephone directory listings.

A lot of record may be nonconforming because it does not meet the dimensional or area standards currently required in its zoning district. A site may be nonconforming because it contains a nonconforming use, an allowed residential use that exceeds the allowed density, a nonconforming development, or a combination of these.

These regulations apply to all nonconforming situations:

1. Their status is not affected by changes in ownership.
2. They may be changed to conforming situations by right. Once a conforming situation occupies a site, the nonconforming rights are lost and a nonconforming situation may not be re-established.
3. They may change to conditional uses if approved through a conditional use review. Once a conditional use occupies a site, the nonconforming rights are lost and a nonconforming use may not be re-established.
4. Normal maintenance and repair is allowed.

Loss of nonconforming status:

1. A nonconforming use will be considered terminated if the building, structure, or land is not occupied by a permitted or legally nonconforming use for one continuous year. The Director may grant extensions of up to two additional years upon finding that:
 - a) Converting to a conforming use will result in a substantial economic loss, and the proposed use will result in greater conformance with the zone’s development standards; or
 - b) Immediately surrounding land uses are similarly nonconforming and the proposed use will be compatible with both the nonconforming and conforming uses in the review area.
2. Nonconformance with any development standard or condition other than building setback, coverage, or height will be considered terminated if the building, structure, or land is not occupied by a permitted or legally nonconforming use for one continuous year.
3. Any nonconforming use or development dependent upon a building that has been declared dangerous and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Chapter 18.16) will be considered terminated upon that declaration and order.
4. Any nonconforming use or development dependent upon a building or structure that has been damaged to the extent that repair or restoration would cost more than 70 percent of its fair market value will be considered terminated.
 - a) The Building Official will determine the cost of repair or restoration. Fair market value will be determined by an independent appraisal acceptable to the City. The owner or applicant may

appeal these determinations to the Building Board of Appeals, or may apply for an exception to this standard.

b) The Director may allow additional reconstruction upon finding that:

- i. Conversion to a conforming use will result in substantial economic loss, and
- ii. The proposed use will result in greater conformance with the zone's development standards, or
- iii. Immediately surrounding land uses are similarly nonconforming and the reconstructed use will be compatible with both the nonconforming and conforming uses in the review area.

5. Rebuilding of structures which contained nonconforming uses and which have been intentionally destroyed is prohibited.

A preapplication meeting is held for all applications unless the Director determines one is not necessary. The meeting provides for an exchange of information about Development Code and Comprehensive Plan requirements and offers technical and design assistance to the applicant.

The Director normally processes Nonconforming Use applications without a public hearing. The Director makes a decision based on standards specified in the Code that are reasonably objective and may require limited discretion. If the Director determines that the proposal appears to meet the required standards, he or she will mail notice of the tentative decision to all property owners within 100 feet of the site.

The notice will list the relevant criteria and any conditions of approval and invite people to contact Planning staff within 10 days to request a public hearing. A public hearing may be requested if the person believes that the conditions of approval do not adequately address the approval criteria or alleviate adverse impacts on the neighborhood. If no one requests a public hearing, the tentative decision becomes final 10 days after the notice is mailed.

If a public hearing is requested, the Director will set a date for a hearing before the Planning Commission, the Hearings Board, or the Landmarks Advisory Commission, and mail notice of such to the same people who received the original notice.

An affected party may appeal the decision of the Planning Commission, Hearings Board, or Landmarks Advisory Commission to the City Council within 10 days. There is an appeal fee. Appeal applications are available from the Community Development Department.

NONCONFORMING SITUATION APPLICATION

Note: Some properties may have covenants or restrictions, which are private contracts between neighboring landowners. These frequently relate to density, minimum setbacks, or size and heights of structures. While these covenants and restrictions do not constitute a criterion for a City land use decision, they may raise a significant issue with regard to the City's land use criteria. It is the responsibility of the applicant to investigate private covenants or restrictions.

BASIC INFORMATION ABOUT THE SITE AND PROPOSAL

Property address(es) _____

Assessor's Parcel Map No. _____ Tax Lot No. _____

Comprehensive Plan designation _____ Zoning designation _____

Total land area of the site _____

Current use of site _____

Are there any existing structures on the site? _____

If yes, will any of these structures be removed? _____

(Before you demolish or remove any structure, you must obtain a demolition/moving permit from the City of Albany Building Division.)

Are there any historic structures or historically significant features as identified on the City's Historic Inventory? Yes _____ No _____

If yes, what are they? _____

(This information may be acquired from the Albany Planning Division.)

Which type of nonconforming situation applies to this application?

_____ Nonconforming lot of record [ADC 2.345]

_____ Nonconforming use [ADC 2.350]

_____ Nonconforming residential density [ADC 2.360]

_____ Nonconforming development [ADC 2.370]

_____ Combination of the above

On a separate sheet of paper, briefly describe the nonconforming situation.

Area of proposed addition or modification to the existing nonconforming situation _____

Proposed percent of increase in the area presently devoted to the nonconforming situation _____

Describe fully the following (attach additional pages if necessary):

The existing use and the extent of the proposed modification _____

Why and how the expansion and/or modification increases compatibility with surrounding land uses _____

Total building and parking lot coverage _____

Additional public facilities and private utilities needed for the proposed development _____

NONCONFORMING SITUATION REVIEW CRITERIA

On a separate sheet of paper, prepare a detailed written response using factual statements (called findings of fact) to explain how the proposed Nonconforming Situation complies with each of the following review criteria [ADC 2.400]. There must be at least one finding of fact statement for Criteria 1 and 2 and either 3 or 4. See Attachment B for an example.

1. The nonconforming situation was not created unlawfully. See Section 2.310.

2. With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - a) The hours of operation;
 - b) Vehicle trips to the site and impact on surrounding on-street parking;
 - c) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - d) Potential for increased litter; and
 - e) The amount, location, and nature of any outside displays, storage, or activities; and either 3 or 4 below.

3. If the nonconforming use is in a residential zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - a) Building scale, placement, and façade;
 - b) Parking area placement;
 - c) Buffering and the potential loss of privacy to abutting residential uses; and
 - d) Lighting and signs.

4. If the nonconforming use is in a commercial or industrial zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

NOTE: Non-conforming uses and buildings may expand one time only.

Nonconforming uses may continue to operate, and may make changes in their operations. However, nonconforming uses in residential zones may not extend their hours of operation into the period between 11 p.m. and 6 a.m.

A change to another use in the same use category is allowed by right. A change to a use in a different use category prohibited by the base zone may be allowed through a Nonconforming Use review.

Structural expansions must be limited to the following:

Existing Gross Floor Area	% of Expansion Allowed
Building under 4,000 sq. ft.	25%
Building under 10,000 sq. ft.	20%
Building larger than 10,000 sq. ft.	15%

SITE PLAN MAP REQUIREMENTS

The City needs an accurate site plan, drawn to scale, to determine whether the proposed nonconforming situation complies with Development Code standards. Submit **NINE (9)** full-size copies (typically 18 x 24-inch or larger paper) and **NINE (9)** reduced-size copies (on 8 1/2 x 11-inch or 11 x 17-inch paper) of the site plan map. The map must include the following information:

- Scale of drawing, north arrow, name of drafter.
- Assessor's map and tax lot number and lot and block description or other legal description.
- Lot dimensions and total lot area.

- Location of all existing and proposed structures, including minimum distances from structures to lot lines.
 - Location of all existing and proposed improvements on the site, including driveways, sidewalks, and patios.
 - Location and species of trees larger than 25 inches in circumference measured 4½ feet above mean ground level from the base of the trunk.
 - Contour lines at two-foot intervals.
 - Natural drainage patterns.
 - Direction of maximum passive solar gain potential (usually due south depending on site features and building design).
 - Abutting streets, whether public or private.
 - Locations, dimensions, and nature of all easements.
 - Adjacent zoning designations and land uses, including approximate location of buildings.
-

LIST OF SURROUNDING PROPERTY OWNERS

The notification area includes the land to be developed and all tax lots within 100 feet of its boundary.

- Using the County Tax Assessor's maps, submit a map that shows the property and outlines or highlights the notification area. In addition, using the County Tax Assessor database, prepare a typed (or clearly printed) list of the names, addresses, and map and tax lot numbers of all tax lots within the notification area.
- At the bottom of the notification list, indicate the name of the preparer, the date the list was compiled, and the source of the data.

APPLICATION AUTHORIZING SIGNATURES

I hereby apply for approval of the Nonconforming Situation as requested on this application and certify that the list of attachments is correct, and that the names and addresses of the surrounding property owners are correct as reflected by the latest records in the Linn or Benton County Assessor's Office.

Property Owner(s)

Name (print or type) _____

Current Mailing Address _____

Daytime Telephone No. _____ Fax No. _____

Email (optional) _____

Signature _____

Name (print or type) _____

Current Mailing Address _____

Daytime Telephone No. _____ Fax No. _____

Email (optional) _____

Signature _____

Authorized Agent or Representative

Authorized agents must submit evidence of their authority to act on the property owner's behalf.

Name (print or type) _____

Mailing Address _____

Daytime Telephone No. _____ Fax No. _____

Email (optional) _____

Relationship to property owner(s) _____

Signature of Authorized Agent _____

ATTACHMENT B

EXAMPLE OF FINDINGS OF FACT

CRITERIA FOR FINDINGS OF FACT:

A Nonconforming Use will be approved if the approval authority finds the application conforms with the criteria found in Section 2.400 of the Albany Development Code. Before the reviewing authority can approve an application, the applicant must submit information that adequately supports the application. If the applicant submits insufficient or unclear information, the application will be denied or delayed.

FORMAT FOR FINDINGS OF FACT:

Statements addressing individual criteria must be in a “finding of fact” format. A finding of fact consists of two parts:

1. Factual information such as the distance between buildings, the width and type of streets, the particular operating characteristics of a proposed use, etc. Facts should reference their source: on-site inspection, a plot plan, City plans, etc.
2. An explanation of how those facts result in a conclusion supporting the criterion.

EXAMPLE:

Criterion: The Nonconforming Situation was not created unlawfully.

Fact: State fact(s) relating to the question – “The business has been in operation at this location since June 1954.”

Conclusion: State conclusion – “The property was annexed to the City in 1978, becoming a nonconforming use.”