



## COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division  
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# Nonconforming Situations

## Checklist & Review Criteria

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### INFORMATION AND INSTRUCTIONS:

- Filing Fees (*subject to change every July 1*): staff will contact you for payment after submittal.
  - No New Construction           \$404
  - New Construction               \$808 plus 0.15% (0.0015) of construction value\* over \$150,000
- All plans and drawings must be to scale, and review criteria responses should be provided as specified in this checklist.
- Email all materials to [plans@cityofalbany.net](mailto:plans@cityofalbany.net). Please call 541-917-7550 if you need assistance.
- Depending on the complexity of the project, paper copies of the application may be required.
- Before submitting your application, please check the following list to verify you are not missing essential information. An incomplete application will delay the review process.

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### BASIC INFORMATION ABOUT THE SITE AND PROPOSAL

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 obtained from the Albany Planning Division.)

Which type of nonconforming situation applies to this application?

- \_\_\_\_\_ Nonconforming lot of record (ADC 2.325)
- \_\_\_\_\_ Nonconforming use (ADC 2.350(a))
- \_\_\_\_\_ Nonconforming residential density (ADC 2.350(b))
- \_\_\_\_\_ Nonconforming development (ADC 2.320)
- \_\_\_\_\_ 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 \_\_\_\_\_

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## NONCONFORMING SITUATION REVIEW CRITERIA FOR TYPE II DECISIONS

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 2.360). There must be at least one finding of fact statement for each criterion (see last page for example findings of fact.)

1. The nonconforming situation was not created unlawfully. See ADC 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) Noise, vibration, dust, odor, fumes, glare, and smoke;
  - (b) Potential for increased litter;
  - (c) The amount, location, and nature of any outside displays, storage, or activities;
  - (d) The appearance of the new use or development will not detract from the desired function and character of the zone;
  - (e) The operating characteristics of the proposed use are compatible with the existing and anticipated uses. The hours of operation in residential zones cannot be extended into the period of 11 p.m. and 6 a.m.;

- (f) The street system has adequate capacity to accommodate the use through the horizon year of the current TSP;
- (g) The site has adequate on-site parking to accommodate the development or adequate parking will be provided in accordance with Article 9;
- (h) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion;
- (i) Public services for water, sanitary sewer, stormwater, water management, and for fire and police protection, can serve the proposed use;
- (j) Activities and developments within overlay districts must comply with the regulations described in Article 4 (Airport Approach), 6 (Natural Resources, and 7 (Historic), as applicable;
- (k) If a commercial use is proposed in an existing building in an industrial zone, the development shall not alter the existing building or site in a way that would discourage or preclude its later conversion back to an industrial use; and
- (l) Any applicable criteria in (3) and (4) below.

3. Structural Expansions shall 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%

- (a) Nonconforming uses and buildings may expand one time only and must comply with current development standards.
- (b) Expansion of a nonconforming use onto another site is prohibited, except when:
  - i. The expansion site abuts the site of the nonconforming use; and
  - ii. The expansion site was in the same ownership as the nonconforming site when it became nonconforming; and
  - iii. Prior zoning regulations on the expansion site would have allowed the use; and
  - iv. The expansion is approved through a nonconforming use review.
- (c) Addition of new residential units to a nonconforming residential use is prohibited.

4. Nonconforming Uses or Expansions in Residential Areas. If the nonconforming use is in a residential zone or in a mixed-use zone with residential uses adjacent 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.

**NOTE: Non-conforming uses and buildings may expand one time only. (See ADC 2.360(3)(a)).**

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

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## SITE PLAN MAP REQUIREMENTS

Submit an accurate site plan, drawn to scale, to determine whether the proposed nonconforming situation complies with Development Code standards.

- 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.

**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.

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## NONCONFORMING SITUATIONS PURPOSE AND PROCEDURE

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 legally established. Nonconforming situations that 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 legally 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 specific 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.

A pre-application 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.

A Nonconforming Situation request is typically reviewed as a Type II procedure. The Type II procedure allows for the Director to process the application without a public hearing. The Director’s decision is based on Code standards that are reasonably objective and may require limited discretion. The Director will determine whether applications for minor changes from a numeric standard may be processed as adjustments through the Type I procedure. Note: At any time, the applicant, the Director, or any party entitled to notice or otherwise affected by the proposed action may initiate a proposed hearing.

After the application is deemed complete, a Notice of Filing is mailed to the applicant and owners and residents of property located within 200 feet of the subject site. Notice is also provided to any neighborhood association recognized by the City Council and whose boundaries include the site and other neighborhood associations recognized by the City Council within 300 feet. The Director has the discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. Affected parties have 14 days to submit written comments to the City for consideration in preparation of a decision on the application. If the Director determines that the proposal appears to meet the required standards, a Notice of the Tentative Decision will be mailed to the same parties that received the Notice of Filing.

The Notice of Tentative Decision will list the relevant criteria and any conditions of approval and invite people to contact Planning staff in writing within 10 days if they wish to request a public hearing. There is a hearing fee that is currently paid by the applicant. A public hearing may be requested if a 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 written request for a public hearing is received by the City, within 30 days of receiving the request, the Director will set a date for a public hearing before either the Planning Commission or the Hearings Board and mail notice of the hearing date to the same parties who received the original notices and any other persons who submitted written comments on the development.

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

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## LOSS OF NONCONFORMING STATUS (ADC 2.335):

- (1) The nonconforming status of a building, structure, or land shall be deemed to have terminated excluding building height, setbacks or lot coverage, if the building, structure, or land is not occupied by a permitted or legally nonconforming use for one continuous year. The “vacancy clock” stops when a land use application on the property is deemed complete. A request may be submitted to the Community Development Department for reinstatement of nonconforming status within one year from April 9, 2014, or for an extension of up to two additional years prior to the site being vacant for one year. The extension or reinstatement may be granted under the Type II procedure only if the Director finds that:
  - (a) Converting to a conforming use will result in a substantial economic loss; AND
  - (b) The proposed use will result in greater or equal conformance with the development standards of the zone than the previous use; OR
  - (c) Immediately surrounding properties are similarly nonconforming, and the proposed use will be compatible with both the nonconforming and conforming uses in the review area.
- (2) Any nonconforming use or development dependent upon a building or structure that has been declared a “dangerous building” and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Title 18) will be considered terminated upon that declaration and order.
- (3) Any nonconforming use or development dependent upon a building or structure that has been substantially damaged to the extent that repair or restoration of the building or structure would cost more than 70 percent of its fair market value will be considered terminated.
  - (a) Cost of repair or restoration shall be determined by the Building Official. Fair market value shall be determined by an independent appraisal acceptable to the City. The owner or applicant may appeal these determinations of value and cost to the Building Board of Appeals, or may apply for an exception under the Type II procedure.
  - (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 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.
- (4) Rebuilding structures that contained nonconforming uses and which have been intentionally destroyed is prohibited.

### These allowances apply to all nonconforming situations (ADC 2.340):

- (1) Their status is not affected by changes in ownership.
- (2) They may be changed to conforming situations by right or with an applicable land use approval. Once a conforming situation occupies a site, the nonconforming rights are lost and a nonconforming situation may not be re-established. [Ord. 5832, 4/9/14]
- (3) Normal maintenance and repair is allowed.
- (4) Changes that conform to the base zone development standards of the site may be made.
- (5) Legal nonconforming uses may continue to operate.
- (6) A change from a legal nonconforming use to a use in the same use category or to a use not otherwise permitted in the zone may be considered through a Nonconforming Use Review in accordance with Section 2.350.

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## EXAMPLE OF FINDINGS OF FACT

### CRITERIA FOR FINDINGS OF FACT:

A Nonconforming Situation Review approval will be granted if the approval authority finds the application conforms with the criteria found in Article 2.360 of the ADC, and to applicable development standards. 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 use was not created unlawfully.

**Facts:** Retail furniture and appliance sales were allowed conditionally in the Light Industrial (LI) zone at the time the use was originally approved on November 15, 2001. The original use was lawfully created based upon land use review using regulations that were in effect at the time.

**Conclusion:** The nonconforming use was not created unlawfully.