

CHAPTER 10.62

NONCONFORMING USES AND STRUCTURES

10.62.010 Purpose

This Chapter 10.62 establishes a framework for nonconforming uses and structures and a procedure for Nonconformity Permits to allow additions or alterations to, and replacement of, existing or previously existing nonconforming uses and structures. In addition to the general purposes of this Title, the specific purposes of this Chapter are as follows:

- A. To acknowledge the existence of legally established structures and/or uses that may become nonconforming due to the adoption of this Zoning Ordinance;
- B. To allow the continued use of legally established nonconforming uses as long as the use remains operational and the structure remains;
- C. To provide a permit process to allow for additions or alterations to, and/or replacement of, existing or previously existing nonconforming structures;
- D. To provide a permit process for substituting one nonconforming use with another nonconforming use of similar or less intensive character; and
- E. To provide for replacement of a nonconforming use or structure that was involuntarily vacated and/or demolished.

10.62.020 Applicability

Any use or structure legally existing at the time of adoption of this Title 10 or any of its amendments and not in compliance with said ordinance shall be allowed to continue and shall be considered a nonconforming use or structure, unless otherwise specified in this Chapter. This Chapter does not apply to any use or structure established in violation of any pre-existing zoning ordinance inside or outside the City of Sausalito, unless said use or structure now complies with this Title.

10.62.030 Conditional Uses

Any use other than transmission poles and lines existing on the effective date of this Title which is listed as a conditional use in the applicable district, shall be and remain a nonconforming use until a Conditional Use Permit is obtained pursuant to this Title.

10.62.040 Nonconforming Uses

- A. Existing structures or premises that are utilized for a nonconforming use shall not be enlarged, extended, reconstructed, substituted or structurally altered unless one of the following conditions is met:

1. The structure or use is changed to a permitted use; or
 2. A Nonconformity Permit is secured, pursuant to Section 10.62.070 (Nonconformity Permits).
- B. A nonconforming use located within any zoning district, which was involuntarily ceased, may be reinstated within one year of the cessation of the use.
- C. A nonconforming use that is changed to a conforming use shall not return to a nonconforming use.
- D. A nonconforming use that is located in a structure listed on the National Register of Historic Places may be allowed to resume if the use was involuntarily ceased and necessary permits are secured.
- E. Nonconforming use of a structure or premises shall not be allowed under the following conditions:
1. Nonconforming use has been voluntarily vacated for six (6) months or more; or
 2. Nonconforming use has ceased for six (6) months or more due to voluntary demolition of the structure or premises; or
 3. Nonconforming use that involves only minor structures (e.g., fences, signs, and buildings of less than 400 square feet floor area) has ceased for ninety (90) days or more.
- F. For purposes of this Title, a use shall be deemed to have ceased when it has been discontinued either temporarily or permanently, whether with the intent to abandon said use or not.

10.62.050 Nonconforming Structures

- A. **Substitution, Replacement, Extension.** Nonconforming structures may be replicated, replaced, renovated, or expanded consistent with non-conforming zoning entitlement according to only the following specific circumstances:
1. Structural additions and remodels to non-conforming structures that do not increase or exacerbate the specific nonconformity. An addition or remodel which shifts a specific nonconformity from one part of a parcel or building to another part is not considered to exacerbate that nonconformity if a Nonconformity Permit has been obtained based on the following findings:
 - a. The shift of nonconformity improves the appearance of the structure;
 - b. The shift of nonconformity provides a public benefit;
 - c. The shift of nonconformity brings the structure into closer conformity with applicable zoning regulations and the General Plan; and
 - d. The shift of nonconformity does not intensify the use of the property.

2. A nonconforming structure, or portion thereof, that is voluntarily demolished may be replicated, subject to a Nonconformity Permit.
3. A nonconforming structure, or portion thereof, that is involuntarily demolished (partially or substantially) may be replicated if building permits are issued within one (1) year of involuntary demolition.
4. A nonconforming structure that is involuntarily and substantially demolished may be remodeled, subject to a Nonconformity Permit and Design Review approval.
5. Any nonconforming structure that is voluntarily and substantially demolished may be remodeled, subject to a Non-Conforming Permit and Design Review approval.
6. Any nonconforming structure that is either voluntarily or involuntarily partially demolished may be remodeled as long as the new building elements comply with code and the nonconforming portion of the building is not demolished.
6. A nonconforming structure that is voluntarily demolished cannot be substantially remodeled, unless it is brought into full code compliance or a variance is obtained.
7. A nonconforming structure which is listed on the National Register of Historic Places and which is involuntarily demolished may be substantially replicated subject to Historic Landmarks Board Review.

B. Permit and Parking Requirements. The table that follows (Table 10.62-1, Parking and Permit Requirements for Nonconforming Structures) summarizes the parking requirements based on the type of demolition (voluntary versus involuntary), amount of demolition (substantial versus partial), and permit required, as outlined in subsection A (Substitution, Replacement and Extension) above..

Type of Demolition		Amount of Demolition		Construction	Permit Required	Parking Required
Involuntary	Voluntary	Partial	Substantial			
X	X	X		Replication	Building Permit	No
	X		X	Replication	Nonconformity Permit	Yes*
X			X	Replication	Building Permit if within one year or Nonconformity Permit if more than one year	No
X	X	X		Remodel	Building Permit	No
	X		X	Remodel	Not Permitted (variance must be obtained)	
X			X	Remodel	Nonconformity Permit	Yes*

*This parking requirement may be waived if the finding specified in section 10.62.070.G(7) can be made for the Nonconformity Permit.

10.62.060 Documentation of Existing or Pre-Existing Nonconformity

Existing nonconforming structures may be replicated without a loss of the nonconforming feature(s) subject to the following:

- A. Documentation.** Documentation of the specific existing or pre-existing structural nonconformity is presented either:
1. By presentation of architectural or building permit plans authorized by the City or by demonstrating to the satisfaction of the Community Development Director that the nonconformity was constructed legally without a permit before building permits were required; or
 2. If a Nonconformity Permit is required for the project, through evidence presented at the required public hearing before the Planning Commission, which documents the legal status and, if no longer existing, prior existence and extent of the lost nonconformity.
- B. Title XXIV.** All replacement structures shall be constructed to meet the current Title XXIV requirements. Replication of structures that are listed on the National Register of Historic Place or on the California Register of Historic Places, or are designated local landmarks or determined to be potential historic resources, shall be constructed to meet the current California Historic Building Code.
- C. Requirements.** All replacement structures shall be subject to the requirements of

Sections 10.62.050.A (Substitution, Replacement, Extension) and 10.62.050.B (Permit and Parking Requirements).

10.62.070 Nonconformity Permits

- A. Applicability.** Nonconformity Permits shall be required to maintain nonconforming zoning entitlements for the following:
1. Substitution of a nonconforming use with another nonconforming use of a similar or less intensive character.
 2. Extension of a nonconforming use to those parts of a building that were specifically designed or arranged for such use prior to the date when such use of a building became nonconforming.
 3. Enlargement, modification, or structural alteration of a structure or premises occupied by a nonconforming use.
 4. Reinstatement of a nonconforming use located within any zoning district if the nonconforming use was ceased involuntarily for more than one year.
 5. The remodel of a non-conforming structure per Sections 10.62.050.A.1, 10.62.050.A.2 and 10.62.050.A.4, above, and the project involves a physical change to the part of the structure which is nonconforming.
 6. A building permit for replacement of a non-conforming structure is not issued within one (1) year of demolition.
- B. Authority.** The Planning Commission may approve, conditionally approve, or deny an application for Nonconformity Permit.
- C. Applications.** Applications for Nonconformity Permits shall include all information specified by resolution of the Planning Commission. Submittal shall include a site plan drawn to scale showing locations of all existing and proposed buildings, yards, driveways, and parking areas; floor plans showing the location of uses in the structure; and the required fee. Application procedures and processing timeframes shall be consistent with Chapter 10.50 (Land Use Permit Procedures) of this Title, State law, and procedural guidelines established by the Community Development Director. Acceptance of an application does not constitute any indication of approval.
- D. Environmental Review.** Applications for Nonconformity Permits shall be subject to environmental review pursuant to Section 10.50.060 (Environmental Review) of this Title and Title 11 (Environmental Protection).
- E. Public Notice and Hearing.** The Planning Commission shall hold a public hearing on an application for a Nonconformity Permit, following completion of a staff report pursuant to Section 10.50.090 (Staff Report and Recommendations). Public hearing shall be noticed and held in accordance with Chapter 10.82 (Public Hearings).
- F. Conditions of Approval.** The Planning Commission may apply reasonable conditions of

approval to provide optimal compliance to applicable regulations and to help make findings required by this section.

G. Findings. As applicable, the Planning Commission may issue a Nonconformity Permit if all of the following findings can be made:

1. Plans that document the nonconforming zoning entitlement being requested are on file with the City or an Evidentiary Public Hearing has been held to document the existence and extent of requested nonconforming zoning entitlement.
2. The existing non-conforming use and/or structure has not resulted in a notable negative impact or nuisance to the surrounding properties and district (i.e. excessive parking demand, traffic, noise, view obstruction, etc).
3. The non-conforming use or structure is not incompatible with the general character of the surrounding neighborhood or district.
4. If the application is for a nonconforming use, the non-conforming use will contribute to the social and economic vitality of the district or will otherwise benefit the public health, safety and welfare.
5. The requested action will not be inconsistent with the purpose and intent of the zoning district.
6. If it is a nonconforming structure, the applicant has reduced the nonconformities to an extent reasonably practicable.
7. For Nonconformity Permits that trigger conformance with current parking requirements pursuant to Table 10.62-1, the Planning Commission may waive the current parking requirement and allow the maintenance of the existing nonconforming parking entitlements through the grant of the Nonconformity Permit, if the Commission finds that (a) it is not practicable to provide parking onsite in a manner that preserves neighborhood character, and (b) for substantial replications, the provision of the required parking would be in conflict with the replication of the structure, and (c) preserving the nonconforming parking entitlements is the best solution to be consistent with the goals, policies and intent of the General Plan.

H. Notice of Decision. Planning Commission decision shall be in the form of a written resolution, which shall include findings on which the decision was based, applicable conditions of approval and a summary of the appeal process. Written decision shall be mailed to the applicant.

I. Appeals. All decisions of the Planning Commission may be appealed to the City Council within ten (10) days of the decision date. All appeals shall be filed and processed in accordance with Chapter 10.84 (Appeals) of this Title.

J. Effective Date. Nonconformity Permits shall become effective at the end of the appeal

period, provided no appeal has been filed. While an appeal is pending, the establishment of the proposed structure or use shall be held in abeyance.

- K. Expiration of Permit.** Nonconforming Permits shall expire two (2) years following the effective date of the permit, unless a different expiration date is stipulated at the time of approval, a construction permit has been issued and construction diligently pursued, or the permit is extended.