



Non-Conforming Use

PB-20

Community Development Department

501 N. Anderson, Ellensburg, WA 98926 (509) 962-7239 (Building) (509) 962-7231 (Planning) comdev@ci.ellensburg.wa.us

15.240 Nonconformance

15.240.010 Purpose.

- A. Establish the legal status of a nonconformance by creating provisions through which a nonconformance may be maintained, altered, reconstructed, expanded or terminated;
- B. Encourage the eventual elimination of nonconforming uses having potentially undesirable impacts on conforming uses; and
- C. Encourage the adaptive re-use of existing non-conforming public facilities, which will continue to serve the community, and to ensure public review of redevelopment plans by allowing:
 1. Temporary re-uses of closed public school facilities retained in school district ownership, and the reconversion of a temporary re-use back to a school use;
 2. Permanent re-use of publicly owned surplus nonresidential facilities (e.g., schools, fire stations, government facilities) not retained in public ownership; or
 3. Permanent re-use of historic structures listed on the National Register or designated as city landmarks by the landmarks and design commission and accepted by the city council.

15.240.020 Applicability.

Any use, structure, lot or other site improvement (e.g., landscaping or signage), which was legally established prior to the effective date of a land use regulation that rendered it nonconforming, shall be considered nonconforming if:

- A. The use is now prohibited or cannot meet use limitations applicable to the zone in which it is located; or
- B. The use, structure or lot does not comply with the development standards or other requirements of this code;

A change in the required permit review process shall not create a nonconformance.

15.240.030 Benign and detrimental nonconformities.

The provisions of this chapter often distinguish benign nonconformities from detrimental nonconformities based on the differing levels of impacts that the various types of nonconformities may cause to surrounding uses that conform to the LDC.

- A. **Benign nonconformity.** A nonconformity that does not have a negative impact on the health and safety of the public but may have an impact on public welfare. Examples may include not enough landscaping, too few parking spaces, or minimal deviation from dimensional standards.
- B. **Detrimental nonconformity.** A nonconformity that has a negative impact on the health and safety of the public. Examples include uses involving hazardous materials, such as gasoline, in single family neighborhoods, uses that produce significant noise, such as body shops or paint shops, uses that have been deemed incompatible, such as adult entertainment establishments near schools, or uses that have large trip generation characteristics such as drive through restaurants.

The director shall make a written determination as to whether a nonconformity is benign or detrimental and include the rationale for such determination. Such determination shall be subject to Type I permit review processes for purposes of notice and appeal.

15.240.040 Nonconforming use.

- A. Expansion of nonconforming uses.** No existing building, structure, or land devoted to a nonconforming use shall be expanded, enlarged, extended, reconstructed, intensified, or structurally altered unless the use thereof is changed to a use permitted in the district in which such building, structure, or land is located except as follows: When authorized by conditional use permit, a benign nonconforming use may be expanded, enlarged, extended, reconstructed, intensified, or structurally altered as long as the intensity of the benign nonconformity is the same or smaller.
- B. Change of nonconforming use.** When authorized by the director, a benign nonconforming use may be changed to a similar use that does not increase the intensity of impacts on surrounding conforming uses. For example, a change from a benign non-residential use in a residential zone to another benign use shall be acceptable.
- C. Discontinuance of nonconforming use.** When a detrimental nonconforming use of land or a nonconforming use of all or part of a structure is discontinued or abandoned for a period of 12 months, such use shall not be resumed, notwithstanding any reserved intent not to abandon such use. Normal seasonal cessation of use, or temporary discontinuance for purposes of maintenance or improvements, shall not be included in determination of the 12 month period of discontinuance. Evidence that such use has been actively available and marketed for sale or lease shall be considered by the director in determining if a nonconforming use has been discontinued.
- E. Reversion to nonconforming use.** If a nonconforming use is changed to a permitted use, the nonconforming use shall not be resumed.
- F. Residential exception to nonconforming use status.** Legally established residential uses located in any zoning district shall not be deemed nonconforming in terms of use and density provisions and shall be a legal use.

15.240.050 Nonconforming structure.

Except for properties that are on the Landmark Register, no nonconforming structure may be expanded, enlarged, or extended where they increase an existing nonconformity. Nonconforming buildings may be repaired, maintained and rebuilt provided such work does not increase an existing nonconformity.

15.240.060 Nonconforming lots.

- A. Residential zones.** In any residential zone, and in nonresidential zones where single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected or modified on any nonconforming lot of record, even though such lot fails to meet lot area and width requirements of the zone in which such lot is located; provided that:
 - 1. Such lot is in separate ownership; and
 - 2. The proposed development meets other applicable development standards such as setbacks and building height.
- B. Other districts.** In any other district, permitted building and structures may be constructed on a nonconforming parcel or legal lot of record, provided applicable development standards such as setbacks, landscaping, and off-street parking requirements are met.