



Article 9/ Nonconformities

Sec. 9.1/ General

9.1.1 / General

Except as specified in this article, any use, building, structure or sign existing at the time of enactment of this UDC or classification amendment applicable to its use, may be continued even though such use, building, structure or sign may not conform with the provisions of this UDC for the district in which it is located; provided, however, that this article shall not apply to any use, building or structure established in violation of this UDC or any ordinance previously in effect in the City of Farmington.

9.1.2 / Non-conforming status

The use of land, use of a structure, or a structure itself; including but not limited to substandard parcels, or structures not complying with applicable dimensional standards, shall be deemed to have nonconforming status when each of the following conditions are satisfied:

- A. The use or structure does not conform to the regulations prescribed in the district in which such use or structure is located and was in existence and lawfully constructed, located and operating prior to, and at the time of the event that made such use or structure nonconforming.
- B. The event that made such use, structure, lot or parcel nonconforming was one of the following: annexation by the City of Farmington, adoption of this UDC or a previous Zoning Ordinance, acquisition of land by the City for public purposes, amendment of this UDC, or by Court Order.
- C. The nonconforming use or the use occupying the nonconforming structure has been operating since the time that the use or structure first became nonconforming without abandonment, as abandonment is defined in Sec. 9.2.5, Cessation of a Nonconforming Use.

9.1.3 / Burden of Proof

The burden of establishing that a nonconforming use or structure lawfully exists under this UDC, in all cases, shall be the owner's and not that of the City of Farmington.

Sec. 9.2/ Nonconforming Uses

9.2.1 / Continuance and Expansion

An existing use that is not in compliance with this UDC or subsequent amendment applicable to the use shall not be enlarged, extended, or substituted unless the use is brought into compliance with this UDC. However, reasonable repairs and alterations are permissible in accordance with the provisions of Sec. 9.3.2. A nonconforming use may be extended through the same pre-existing building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

9.2.2 / Special Use

A use existing on the effective date of this UDC, or subsequent amendment applicable to the use, which would only be permitted as a Special Use, shall be deemed to have a Special Use Permit. Any change or expansion of such use shall require a new Special Use Permit pursuant to Sec. 8.9.

9.2.3 / Change of Use

- A. Any nonconforming use may be changed to a conforming use and once such change is made, the use shall not revert to a nonconforming use.
- B. Where a conforming use is located in a nonconforming structure, the use may be changed to another conforming use by securing a Certificate of Occupancy.

9.2.4 / Destruction or Demolition

If a nonconforming use or structure containing a nonconforming use (see Sec. 9.3.3) is destroyed by fire, the elements or other cause, it may not be rebuilt except in conformity with the provisions of this UDC. In the

case of partial destruction of such a use not exceeding 50 percent of its replacement value, reconstruction may be permitted by Special Use Permit, provided, however:

- A. The size and function of the nonconforming use shall not be expanded; and
- B. Work on the restoration of the use must begin within 6 months and be completed within 12 months of the time of the calamity.

9.2.5 / Cessation of a Nonconforming Use

- A. Whenever a nonconforming use has been discontinued and changed to a conforming use, or whenever a nonconforming use, other than a mobile home park existing on February 13, 1973, has been discontinued for more than 12 months attributable, at least in part, to the property owner or occupant, a presumption of intent to cease said use shall have been established and the right to continue the former nonconforming use shall no longer exist. Subsequent operation as a nonconforming use shall be unlawful, unless following written notice from the City to the property owner of the pending loss of the nonconforming status, the property owner shows the Director proof that it was not the intention to abandon the use.
- B. Whenever a nonconforming mobile home has been discontinued and changed to a conforming use, or whenever a nonconforming use, has been discontinued for more than 12 months attributable, at least in part, to the property owner or occupant, a presumption of intent to cease said use shall have been established and the right to continue the former nonconforming use shall no longer exist. Subsequent operation as a nonconforming use shall be unlawful, unless following written notice from the City to the property owner of the pending loss of the nonconforming status, the property owner shows the Director proof that it was not the intention to abandon the use.
- C. Upon determination by the Director of cessation of a nonconforming use, the property owner shall have 30 calendar days within which to submit a written appeal to the ARB.

Sec. 9.3/ Nonconforming Structures

9.3.1 / Continuance

An existing structure that is not in compliance with this UDC or subsequent amendment applicable to the structure shall not be enlarged, extended, or substituted, except in full compliance with this UDC.

9.3.2 / Ordinary Repair and Maintenance

Normal maintenance and incidental repair may be performed on a conforming structure that contains a nonconforming use or on a nonconforming structure. This Section shall not be construed to prevent the strengthening or restoration of a nonconforming structure.

9.3.3 / Destruction or Demolition

If a nonconforming structure is destroyed by fire, the elements, or other cause, it may not be rebuilt except to conform to the provisions of this UDC. In the case of partial destruction of a structure occupied by a nonconforming use not exceeding 50 percent of its replacement value, reconstruction may be permitted by the Special Use Permit, provided, however:

- A. The size and function of the nonconforming use shall not be expanded; and
- B. Work on the restoration of the use must begin within 6 months and be completed within 12 months of the time of the calamity.



Sec. 9.4/ Nonconforming Lots of Record

9.4.1 / Authority to Utilize for Single Family Residence

A single-family dwelling and customary accessory buildings may be developed on a qualified lot of record, as defined in Article 11, Definitions, which has less area than the minimum required by the subject zone district pursuant to Sec. 6.3, Building Lots. The proposed single-family dwelling shall be located on the lot so that the yard, height, and other dimensional standards of the underlying zoning district can be met, or a variance is obtained from the ARB pursuant to Sec. 8.12, Variances. The dwelling shall be placed on the lot so as to provide a yard on each side of the dwelling.

9.4.2 / Other Uses of Nonconforming Lots: Site Plan Required

In any district in which single family dwellings are not permitted, a nonconforming lot of record, which meets the requirements above, may be used for any use permitted in the district in which it is located if, but only if, a site plan for such use has been approved in accordance with the provisions of Sec. 8.5, Site Plan Review.

Sec. 9.5/ Nonconforming Signs

9.5.1 / Continuation Allowed

A lawfully existing nonconforming sign may continue except as otherwise provided in or authorized by this section. A change in the information on the face of an existing nonconforming sign is allowed if the change does not increase the area of the sign face or decrease the opacity of an internally illuminated sign. However, any nonconforming sign shall either be eliminated or made to conform to the requirements of Sec. 5.8, Signs, when any substantial alteration to the sign or structure is performed, other than change of text or sign panels, routine maintenance, or repair.

9.5.2 / Alteration, Expansion, Moving

Signs may be temporarily removed for maintenance or sign face change if re-erected within 20 days, provided that no nonconforming sign shall be:

- A. Changed or altered in any manner which would increase the degree of its nonconformity;
- B. Expanded;
- C. Altered by replacement of structural supports; or
- D. Moved in whole or in part to any other location where it would remain, or continue to be, nonconforming.

9.5.3 / Cessation of Nonconforming Sign

A. Whenever a nonconforming sign has been discontinued for more than 12 months, a presumption of intent to cease said sign shall have been established and the right to continue the former nonconforming sign shall no longer exist, unless following written notice from the City to the property owner of the pending loss of the nonconforming status, the property owner shows the Director proof that it was not the intention to abandon the sign. If the Director determines that the subject structure lost its nonconforming status, subsequent use as a nonconforming sign shall be unlawful and the sign shall be promptly removed.

B. Upon determination by the Director of cessation of a nonconforming sign, the property owner shall have 30 calendar days within which to submit a written appeal to the ARB.

9.5.4 / Termination of Nonconforming Signs

A. Immediate Termination

The following nonconforming signs, or sign features, shall be terminated immediately by removal of the sign or by alteration of the sign to eliminate the specified feature:

1. Any illegal sign, including all signs without required permits;
2. Any sign prohibited by Sec. 5.8.4, Prohibited Signs;
3. Any sign which advertises a business no longer conducted or a product no longer sold on the premises where such sign is located; and
4. Signs which contain statements, words, or pictures of pornographic character or which contain advertising matter which is untruthful.

B. Termination by Abandonment

Any nonconforming sign the use of which is discontinued for a period of 90 days, regardless of any intent to resume or not to abandon such use, shall be deemed to be abandoned and shall not thereafter be re-established. Any period of such discontinuance caused by government actions, strikes, material shortages or acts of God, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this subsection.

C. Termination by Change of Business

Any nonconforming sign advertising or relating to a business on the premises on which it is located shall be terminated upon any change in the ownership or control of such business.

D. Termination by Damage or Destruction

Any nonconforming sign damaged or destroyed, by any means other than by fault or cause of the owner, to the extent of 50 percent of its replacement cost new shall not be restored but shall be terminated.

Sec. 9.6/ Nonconforming Mobile Homes and Mobile and Manufactured Home Parks

9.6.1 / Continuation Allowed

Lawfully existing nonconforming mobile homes and mobile and manufactured home parks may continue except as otherwise provided in or authorized by this section.

9.6.2 / Alteration, Expansion, Moving

- A. No such mobile home park shall be enlarged, intensified or increased or extended to occupy a greater area of land than was occupied at the effective date of the ordinance from which this section derives or the effective date of any amendment of this section.
- B. No such mobile home park shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use on February 13, 1973.
- C. If any such mobile home park ceases for any reason for a period of more than 30 days, any subsequent similar use of such land shall conform to this section.
- D. No additional structure not conforming to the requirements of this section shall be erected in connection with such nonconforming use of land.
- E. Any portion of a mobile home park existing on February 13, 1973, shall not be subject to this section.

9.6.3 / Cessation of Nonconforming Mobile Home or Mobile Home Park

A. Any mobile home park in existence upon the effective date of any amendment to this section subsequent to February 13, 1973, shall come into conformance to such amended regulations not later than 3 years from their effective date; provided, however, that where a hardship is shown by the owner of any nonconforming park or mobile home, the City Council may modify any requirement of this section.



- B. Any mobile home located in an area other than a mobile home park, existing on February 13, 1973, and not conforming to requirements contained therein, shall be brought to conformance within not later than 5 years from this date.

9.6.4 / Waiver

Upon good cause shown, the Planning and Zoning Commission may at its discretion waive or vary the requirements of this section.

Sec. 9.7/ Elimination of Nonconforming Status

The owner of a nonconforming use, structure, or sign may employ the following mechanisms in an attempt to eliminate the nonconformity:

9.7.1 / Nonconforming Uses

- A. Replace the existing use with a conforming use;
- B. Rezone to a district where the use is permitted; or
- C. Apply for a Special Use Permit, provided the use is listed as a Special Use in the Use Table of Sec. 2.3 for the zoning district applied to the subject property.

9.7.2 / Nonconforming Structures and Signs

- A. Modify the structure or sign to conform;
- B. Apply for a variance to allow the structure or sign as built; or
- C. Rezone to a district where the structure would conform.