

Chapter 21A.38

NONCONFORMING USES AND NONCOMPLYING STRUCTURES

21A.38.010 Purpose Statement And Intent:

A. **Purpose:** The purpose of this chapter is to regulate the continued existence of **nonconforming uses and noncomplying structures as defined in this title. While nonconforming uses, noncomplying structures and improvements may continue, this chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the development standards prescribed by this Code, and**

1. Legal nonconforming principal and accessory uses, which do not conform to the use regulations of this title in the zoning districts in which such uses are located;
2. Legally constructed noncomplying buildings, structures and property improvements that do not comply with the applicable bulk and/or yard area regulations of this title in the zoning districts in which such buildings or structures are located.

B. **Intent:** The intent of this chapter is to allow continued use of legal nonconforming uses and noncomplying structures, while at the same time protecting existing conforming development and furthering orderly development and improvement of the community. Certain nonconformities are permissible as is their continued use so long as in their particular location they are not detrimental to the surrounding neighborhood.

1. Uses of nonconforming and noncomplying buildings, structures or land which are compatible and complement existing or planned development patterns should be allowed to continue. Improvement for better integration into the surrounding neighborhood should be sought as much as possible.
- 2 Nonconforming and noncomplying situations which hinder the attainment of the city's master plan, create a nuisance, or are a hazard to a community or neighborhood, should be eliminated or brought into compliance with the provisions of this title. (Ord. 15-05 § 1, 2005)

21A.38.020 Scope Of Regulations:

~~This chapter applies to nonconforming uses, noncomplying structures and noncomplying lots. (Ord. 15-05 § 1, 2005)~~

21A.38.030~~20~~ Determination Of Nonconforming Use Status:

A. **Burden Of Owner To Establish Legality Of Nonconforming Use:** The burden of establishing that any nonconforming use lawfully exists under the provisions of this title shall, in all cases, be the owner's burden and not the city's. Building permits, business

licenses and similar documentation may be considered as evidence establishing the legality of use.

B. Determination Of Nonconforming Status: The zoning administrator shall determine the nonconforming use or noncomplying structure status of properties pursuant to the provisions of this chapter. (Ord. 15-05 § 1, 2005)

21A.38.04030 Nonconforming Parking, Signs And Landscaping:

Nonconforming parking, signs and landscaping, as accessory uses, are regulated by the provisions set forth in chapters 21A.44, 21A.46 and 21A.48 of this part. (Ord. 15-05 § 1, 2005)

21A.38.05040 Authority To Continue:

A. Continuation Of Nonconforming Use: A nonconforming use that lawfully occupies a structure or lot may be continued so long as it remains otherwise lawful, subject to the standards and limitations in this chapter.

B. Continuation Of Noncomplying Structure: ~~A noncomplying structure that was legally constructed on the effective date of any amendment to this title, that makes the structure not comply with the applicable bulk regulations and/or with the standards for front yards, side yards, rear yards, buffer yards, lot area, lot coverage, height, floor area of structures, driveways or open space for the district in which the structure is located may be used and maintained, subject to the standards and limitations in this chapter. (Ord. 15-05 § 1, 2005)~~ **A non-complying structure that was lawfully constructed prior to a contrary change in this Code may be used and maintained, subject to the standards and limitations of this chapter.**

21A.38.06050 Ordinary Repair And Maintenance And Structural Safety:

Normal maintenance and incidental repair may be performed on a complying structure which contains a nonconforming use or on a noncomplying structure. This section shall not be construed to authorize any violation of section 21A.38.080 or 21A.38.090 of this chapter. This section shall not prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of the building official who declares a structure to be unsafe and orders its restoration to a safe condition. (Ord. 15-05 § 1, 2005)

21A.38.07060 Abandonment Or Loss Of Nonconforming Use:

A. Abandonment Of Nonconforming Use: A nonconforming use of land or of a structure in a district that is discontinued or remains vacant for a continuous period of **(1)** one year shall be presumed to be abandoned and shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of the structure or site must conform with the regulations for the district in which it is located.

B. **Rebuttal Of Presumption Of Abandonment:** The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the ~~zoning administrator~~ **Administrative Hearing Officer**, that during such period the owner of the land or structure:

- 1) has been maintaining the land and structure in accordance with the building code and did not intend to discontinue the use, or
- 2) has been actively and continuously marketing the land or structure for sale or lease, with the use, or
- 3) has been engaged in other activities evidencing an intent not to abandon.

C. **Calculation Of Period Of Discontinuance:** Any period of such discontinuance caused by government actions, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance pursuant to subsection A of this section. (Ord. 15-05 § 1, 2005)

21A.38.08070 Moving, Enlarging Or Altering Nonconforming Uses Of Land And Structures:

No nonconforming use may be moved, enlarged or altered and no nonconforming use of land may occupy additional land. ~~except as provided in this section.~~

A. ~~— **Enlargement:** A nonconforming use may not be enlarged, expanded or extended to occupy all or a part of another structure or site that it did not occupy on the effective date of any amendment to this title that makes the use nonconforming. A nonconforming use for the purposes of this section may be extended within the same structure or as an addition to the same structure, provided the enlargement does not increase the need for additional hard surface parking than is existing on the property.~~

Reoccupation Or Enlargement Of A Structure With A More Intensive Nonconforming Use: ~~The Administrative Hearing Officer may approve a nonconforming use with another nonconforming use, only if all of the following standards are met or can be met with conditions:~~

1. ~~The proposed use is compatible to the neighborhood in terms of development intensity.~~
2. ~~The traffic generated by the proposed use is similar to that generated by the existing nonconforming use.~~
3. ~~The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.~~

~~Whenever expansion of a nonconforming use exceeds fifty percent (50%) of the original use at the time the use became nonconforming; a nonconforming use expansion requires additional off street parking than existing on the site; or a nonconforming use changes to a more intensive nonconforming use, such expansions shall only be approved as a conditional use subject to the requirements of part V, chapter 21A.54, "Conditional~~

Uses", of this title and applicable specific conditional use standards and/or site and design review standards provided in this section:

~~a. **Specific Conditional Use Standards:** The planning commission may grant a conditional use permit for the enlargement of a structure containing a nonconforming use, provision of additional parking area for a nonconforming use or the reoccupation of a structure with a nonconforming use that is more intensive, excepting uses which are only permitted as a conditional use in the heavy manufacturing district (M-2) of this title located within any residential, mixed use, commercial or nonresidential zoning district, subject to consideration of the following standards:~~

- ~~i. The condition and economic life of the building is such that near future demolition is not likely to occur;~~
- ~~ii. The use provides reuse of buildings with architectural or historic value;~~
- ~~iii. The use supports walk to work or live work opportunities;~~
- ~~iv. The use provides an appropriate scale of neighborhood or community level of services;~~
- ~~v. The enlargement will not create any additional noncompliance with zoning standards except for building modifications for life safety concerns;~~
- ~~vi. The enlargement and reuse of the structure would not substantially change the character of the neighborhood; and/or~~
- ~~vii. The use is not in conflict with any other current, local or state development standards (i.e., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition).~~

~~b. **Site And Design Review Standards:** Whenever an expansion or intensification of a nonconforming use is located within residentially zoned property or abuts residentially zoned property the following site and design review standards shall be reviewed as part of the conditional use approval process:~~

~~i. **Building Orientation:** The development shall orient to the street, not an interior courtyard or parking lot. The primary access shall be oriented to the pedestrian and have at least one operable building entrance that faces a public street. Residential uses shall meet the standards for subsections 21A.24.010H, "Side Entry Buildings", and 21A.24.010I, "Front Facade Controls", of this title;~~

~~ii. **Facade:** For nonresidential uses, street oriented facades shall maintain detailing and glass in sufficient quantities to facilitate pedestrian interest and interaction:~~

~~(A) **Minimum First Floor Glass:** The first floor elevation facing a street of all new building additions or buildings in which the property owner is modifying the size of windows on the front facade, shall not have less than forty percent (40%) glass surfaces. All first floor glass shall be nonreflective. Display windows that are three dimensional and are at least two feet (2') deep are permitted and may be counted toward the forty percent (40%) glass requirement. Exceptions to this requirement may be authorized by~~

the planning commission as part of the conditional use site and design review procedure, if the planning commission finds:

- (1) The requirement would negatively impact the historic character of the building,
- (2) The requirement would negatively impact the structural stability of the building, or
- (3) The ground level of the building is occupied by residential uses, in which case the forty percent (40%) glass requirement may be reduced to twenty five percent (25%).

(B) Maximum Length: Architectural detailing shall emphasize the pedestrian level of the building. The maximum length of any blank wall uninterrupted by windows, doors, art or architectural detailing at the first floor level shall be fifteen feet (15');

iii. **Parking Lots:** Parking lots shall be appropriately screened and landscaped to minimize their impact on the neighborhood. Lightproof fencing is required adjacent to residential properties. Parking lot lighting shall be shielded to eliminate excessive glare or light into adjacent neighborhoods. The poles for parking lot lighting are limited to sixteen feet (16') in height from finished grade;

iv. **Screening:** Dumpsters and loading docks shall be appropriately screened or located within the structure. All building equipment and service areas, including on grade and roof mechanical equipment and transformers that are readily visible from the public right of way, shall be screened from public view. These elements shall be sited to minimize their visibility and impact, or enclosed as to appear to be an integral part of the architectural design of the building; and

v. **Signs:** Signage for residential uses shall meet sign standards for subsection 21A.46.080B, "Sign Regulations For Multi-Family Residential Districts", of this part. Signage for nonresidential uses shall emphasize a pedestrian scale and shall meet the sign standards of subsection 21A.46.090A4, "Sign Type, Size And Height Standards For The CN Districts", of this part. Exceptions to this requirement may be authorized by the planning commission as part of the conditional use site and design review procedure, if the planning commission finds that maintaining the nonconforming sign does not negatively impact the neighborhood character.

e. **Limitations On Development:** Any conditional use authorized for the reoccupation or enlargement of a structure with a more intensive use shall be limited to the following criteria:

- i. No additional lot area may be added to the subject nonconforming property;
- ii. No enlargement of a nonconforming principal structure shall involve the razing of more than fifty percent (50%) of the existing building footprint; and
- iii. Any nonconforming property with an existing mix of residential and nonresidential uses with more than two (2) existing dwelling units shall provide for a mixed use development with no reduction in the number of dwelling units.

B. Exterior Or Interior Remodeling Or Improvements To Structure: Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed provided the improvements do not increase the parking requirement.

C. Relocation Of Structure: A structure containing a nonconforming use may not be moved unless the use shall thereafter conform to the regulations of the zoning district into which the structure is moved.

D. Change Of Nonconforming Nonresidential Use To Another Nonconforming Use: The Administrative Hearing Officer may approve a substitution of a nonconforming use with another nonconforming use, only if all of the following standards are met or can be met with conditions:

1. The proposed use is compatible to the neighborhood in terms of development intensity.
2. The traffic generated by the proposed use is similar to that generated by the existing nonconforming use.
3. The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.

~~Upon application to the zoning administrator, a nonconforming use may be changed to another nonconforming use of the same or similar land use type as defined in part VI, chapter 21A.62 of this title. Whenever any nonconforming nonresidential use is changed to a less intensive nonconforming nonresidential use, such use shall not be changed back to a more intensive nonconforming nonresidential use. For purposes of this section, a more intensive nonresidential use is determined when the existing hard surfaced parking available on site does not provide the required number of parking stalls. Whenever any nonconforming nonresidential use is changed to a conforming use, such use shall not later be changed to a nonconforming use.~~

~~**E. Destruction Of Structure With Nonconforming Use:** No structure containing a legal nonconforming use may be reconstructed for a nonconforming use, except in the manner provided in subsections E1 and E2 of this section or unless required by law. Restoration of a damaged or destroyed structure with a nonconforming use shall be started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.~~

If a building or structure that contains a nonconforming use is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable; and that the nonconforming use will be lost if the structure is not repaired or restored within one (1) year; or the property owner has voluntarily demolished seventy five (75%) or more of the exterior walls and/or total floor area of a structure, improvement or object; or if a building or structure that contains a nonconforming use is

voluntarily razed, or is required by law to be razed, the nonconforming use shall not be resumed, and the building or structure shall not be restored unless it is restored to accommodate a conforming use within a complying structure. If a building or structure that contains a nonconforming use is involuntarily destroyed in whole or in part due to fire or other calamity and the structure or use has not been abandoned, the nonconforming use may be resumed and the building or structure may be restored to the condition prior to the destruction, provided such work is reasonable pursued of such calamity.

~~1. **Destruction Of Structure To The Extent Of Fifty Percent:** If a structure that contains a legal nonconforming use is destroyed to the extent of fifty percent (50%) by fire or natural calamity, or is voluntarily razed, the nonconforming use may be resumed, and the structure restored. The determination of the extent of damage or destruction under this subsection shall be determined by the building official and based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction. The estimate shall be based on the current issue of "Building Standards" published by the International Conference of Building Officials.~~

~~2. **Destruction Of Structure Greater Than Fifty Percent:** If a structure that contains a legal nonconforming use is destroyed, greater than fifty percent (50%), by fire or natural calamity, the nonconforming use may be resumed, and the structure may be restored to accommodate the nonconforming use subject to subsections E2a and E2b of this section.~~

~~a. **Nonconforming Residential Uses:** The zoning administrator may authorize the reconstruction and reestablishment of a legal nonconforming residential structure subject to consideration of the following:~~

- ~~i. Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition); and/or~~
- ~~ii. The reconstruction will not increase the number of units.~~

~~b. **Nonconforming Nonresidential Uses:** The board of adjustment may authorize as a special exception the reconstruction and reestablishment of a legal nonconforming nonresidential use structure subject to consideration of the following:~~

- ~~i. Reconstruction plans shall be reviewed to consider the feasibility of site redesign to better meet underlying zoning district standards without a reduction in type or intensity of use of the property;~~
- ~~ii. Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition);~~
- ~~iii. The reconstruction and reuse of the structure would not change the character of the neighborhood by using construction materials which did not exist previously on the~~

~~building. Other building materials should not be used, unless the materials are compatible with the neighborhood; and/or~~

~~iv. Consideration of the enforcement history of the property regarding any continual public nuisance generated by the nonconforming use activity. (Ord. 14-06 § 1, 2006; Ord. 15-05 § 1, 2005)~~

21A.38.09080 Noncomplying Structures:

No noncomplying structure may be moved, enlarged or altered, except in the manner provided in this section or unless required by law. **For purposes of this section, the addition of a solar energy device/improvement to a building is not a structural alteration.**

A. **Repair, Maintenance, Alterations And Enlargement:** Any noncomplying structure may be repaired, maintained, altered or enlarged, except that no such repair, maintenance, alteration or enlargement shall either create any new noncompliance or increase the degree of the existing noncompliance of all or any part of such structure.

B. **Moving:** A noncomplying structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

C. **In-Line Addition:** Additions or extensions to existing residential or commercial buildings, which are noncomplying as to yard area only may be allowed provided:

1. The addition follows the existing building or foundation line.
2. The maximum exterior wall height adjacent to the interior side yard shall meet the required setback and zone height of the district.

€ D. Damage Or ~~Partial~~ Destruction Of Noncomplying Structure:

If a noncomplying structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure will be lost if the structure is not repaired or restored within one (1) year; or the property owner has voluntarily demolished a majority of the non-complying structure or the building that houses a non-complying structure is voluntarily razed or is required by law to be razed, the structure shall not be restored unless it is restored to comply with the regulations of the zone in which it is located. Demolition of a non-complying structure includes any act or process that destroys or removes seventy five (75%) or more of the exterior walls and/or total floor area of a structure, improvement or object. If a non-complying structure is involuntarily destroyed in whole or in part due to fire or other

calamity and the structure or use has not been abandoned, the structure may be restored to its original condition, provided such work is reasonable pursued of such calamity.

~~1. **Restoration:** If a noncomplying structure is damaged or destroyed by fire or natural calamity, the structure may be restored, or, if a noncomplying structure is voluntarily razed to the extent of seventy five percent (75%), the structure may be restored if restoration is started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.~~

~~2. **Destruction Of Noncomplying Structure With Nonconforming Use:** No legal nonconforming structure containing a nonconforming use may be reconstructed, except in the manner provided in subsections C2a and C2b of this section or unless required by law. Restoration of a damaged or destroyed noncomplying structure with a nonconforming use shall be started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.~~

~~a. **Destruction Of Structure To The Extent Of Fifty Percent:** If a noncomplying structure that contains a nonconforming use is destroyed to the extent of fifty percent (50%) by fire or natural calamity, or is voluntarily razed or destroyed by other means, the nonconforming use may be resumed, and the structure restored. The determination of the extent of damage or destruction under this subsection shall be determined by the zoning administrator and based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction. The estimate shall be based on the current issue of "Building Standards" published by the International Conference of Building Officials (ICBO).~~

~~b. **Destruction Of Structure Greater Than Fifty Percent:** If a noncomplying structure that contains a legal nonconforming use is destroyed, greater than fifty percent (50%), by fire or natural calamity, the nonconforming use may be resumed, and the structure may be restored to accommodate the nonconforming use subject to subsections C2bi and C2bii of this section.~~

~~i. **Nonconforming Residential Use:** The zoning administrator may authorize the reconstruction and reestablishment of a legal noncomplying residential structure with a nonconforming residential use subject to consideration of the following:~~

~~(A) Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition); and/or~~

~~(B) The reconstruction will not increase the number of units.~~

ii. **Nonconforming Nonresidential Uses:** The board of adjustment may authorize as a special exception the reconstruction and reestablishment of a legal noncomplying structure with a nonconforming nonresidential use subject to consideration of the following:

(A) Reconstruction plans shall be reviewed through the site plan review process to consider the feasibility of site redesign to better meet underlying zoning district standards without a reduction in type or intensity of use of the property;

(B) Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition);

(C) The reconstruction and reuse of the structure would not change the character of the neighborhood by using construction materials which did not exist previously on the building. Other building materials should not be used, unless the materials are compatible with the neighborhood; and/or

(D) Consideration of the enforcement history of the property regarding any continual public nuisance generated by the nonconforming use activity. (Ord. 14-06 § 1, 2006; Ord. 15-05 § 1, 2005)

21A.38.10090 Noncomplying Lots:

A lot that is noncomplying as to lot area or lot frontage that was in legal existence on the effective date of any amendment to this title that makes the existing lot noncomplying shall be considered a legal complying lot, **subject to the underlying zoning regulations**. Legal complying lots in residential districts shall be approved for the development of a single family dwelling regardless of the size of the lot subject to complying with all yard area requirements of the R-1/5,000 district. Legal complying lots in residential districts shall be approved for any permitted use or conditional use allowed in the zoning district, other than a single family dwelling, subject to complying with all lot area and minimum yard requirements of the district in which the lot is located. Legal complying lots in nonresidential districts shall be approved for any permitted use or conditional use allowed in the zoning district subject to complying with all yard requirements of the district in which the lot is located. (Ord. 15-05 § 1, 2005)

21A.38.110100 Nonconforming Accessory Uses And Noncomplying Accessory Structures:

The continued existence of a nonconforming accessory use and a noncomplying accessory structure shall be subject to the provisions governing principal nonconforming uses and noncomplying structures set forth in sections 21A.38.080 and 21A.38.090 of this chapter. (Ord. 15-05 § 1, 2005)

21A.38.120~~110~~ Legal Conforming Single-Family Detached Dwellings, Two-Family Dwellings, And Twin Homes:

Any single-family detached dwelling, two-family dwelling, or twin home, except those located in M-1 and M-2 zoning districts, that is in legal existence, shall be considered legal conforming.

Subject to complying with all other current, local or state development standards, legal conforming status shall authorize alterations, extensions/additions, and replacement of the single-family detached dwelling, two-family dwelling, or twin home.

In ~~zoning districts other than~~ **the M-1 and M-2 zones**, which do not allow detached single-family dwelling units, two-family dwelling units or twin homes, the replacement structure may exceed the original footprint of the existing structure by twenty five percent (25%) when the structure has been destroyed by fire, voluntary demolition or natural calamity. Replacement structures which exceed twenty five percent (25%) of the original footprint, or the replacement of a single-family detached dwelling, two-family dwelling or twin home in an M-1 or M-2 zoning district may be allowed as a conditional use subject to the provisions of chapter 21A.54 of this title.

The replacement structure shall not project into a required yard beyond any encroachment established by the structure being replaced. All replacement structures in nonresidential zones are subject to the provisions of section 21A.36.190, "Residential Building Standards For Legal Conforming Single-Family Detached Dwellings, Two-Family Dwellings And Twin Homes In Nonresidential Zoning Districts", of this part. When replacing a legal conforming single-family detached dwelling, two-family dwelling or twin home, the number of new parking stalls provided shall be equal to or more than the number of parking stalls being replaced. (Ord. 15-05 § 1, 2005)

21A.38.130~~120~~ Reserved:
(Ord. 15-05 § 1, 2005)

21A.38.140~~130~~ Appeal:

Any person adversely affected by a decision of the zoning administrator on a determination of the status of a nonconforming use or noncomplying structure may appeal the decision to the board of adjustment pursuant to the provisions in part II, chapter 21A.16 of this title. (Ord. 15-05 § 1, 2005)

21A.38.150~~140~~ Termination By Amortization Upon Decision Of Board Of Adjustment:

The board of adjustment may require the termination of a nonconforming use, except billboards, under any plan providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of the owner's investment in the nonconforming use, if any, as determined by the zoning administrator. The board of

adjustment may initiate a review for amortization of nonconforming uses upon a petition filed by the mayor or city council, in accordance with the following standards and procedures and consistent with the municipal land use development and management act, title 10, chapter 9, of the Utah Code Annotated and shall mail written notice to the owner and occupant of the property:

A. **Initiation Of Termination Procedure:** Board of adjustment review of a use determined to be nonconforming pursuant to the provisions of this section, for the purpose of establishing an amortization plan for termination of the use, shall first require a report from the zoning administrator to the board of adjustment. The zoning administrator's report shall determine the nonconforming use, provide a history of the site and outline the standards for determining an amortization period.

B. **Notice To Nonconforming User:** Upon receipt of the report of the zoning administrator, recommending the establishment of an amortization plan for a nonconforming use, the board of adjustment shall mail the report and plan to the owner and occupant(s) of the nonconforming use, giving notice of the board of adjustment's intent to hold a public hearing to consider the request in accordance with the standards and procedures set forth in part II, chapter 21A.10 of this title.

C. **Board Of Adjustment Review:** The board of adjustment shall hold a noticed public hearing within a reasonable time, following the procedures established in part II, chapter 21A.10 of this title, on the request for amortization of the nonconforming use. Upon the conclusion of the hearing, the board shall determine whether the nonconforming use should be amortized within a definite period of time.

D. **Standards For Determining Amortization Period:** The board of adjustment shall determine the appropriate amortization period upon the consideration of evidence presented by the zoning administrator and the owner of the nonconforming use that is sufficient to make findings regarding the following factors:

1. The general character of the area surrounding the nonconforming use;
2. The zoning classification and use(s) of nearby property;
3. The extent to which property values are adversely affected by the nonconforming use;
4. The owner's actual amount of investment in the property on the effective date of nonconformance, less any investment required by other applicable laws and regulations;
5. The amount of loss, if any, that would be suffered by the owner upon termination of the use; and
6. The extent to which the amortization period will further the public health, safety and welfare.

E. **Appeal:** Any person adversely affected by the decision of the board of adjustment may, within thirty (30) days after the decision, present to the district court a petition specifying the grounds on which the person was adversely affected. (Ord. 15-05 § 1, 2005)

21A.38.160~~150~~ Nonconformity Of Taverns, Brewpubs, Microbreweries Or Private Clubs Social Clubs:

A legally existing brewpub, microbrewery, ~~private club~~ **social club**, or tavern license, as defined in ~~chapter 6.08 of this code~~, shall not be deemed nonconforming for purposes of expansion, reconstruction or licensing (as long as the use is permitted in the base zoning district) if the only reason for such nonconformity is due to the subsequent location of a school, church or park within the spacing requirements as specified under city ordinances. (Ord. 15-05 § 1, 2005)

21A.38.160 Terminating the Non-Conformance Of A School District Or Charter School:

A non-conforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period of one (1) year.

21A.38.170 Americans with Disabilities Act (ADA):

To accommodate and encourage compliance with the Americans with Disabilities Act (ADA) accessibility guidelines, the enlargement of structures to accommodate ramps, elevators, and bathrooms that meet the minimum ADA accessibility guidelines and improve accessibility for persons with disabilities are not considered as increasing or enlarging the nonconforming use or structure.