

Chapter 27.61 NONCONFORMING AND NONSTANDARD USES

Contents:

- 27.61.010 Continuation of Nonconforming Use.
- 27.61.020 Use Becoming Nonconforming by Change in Law or Boundaries.
- 27.61.030 Discontinuance of Nonconforming Use.
- 27.61.040 Extension or Enlargement.
- 27.61.050 Restoration After Damage or Reconstruction.
- 27.61.060 Sign Regulations.
- 27.61.070 Open Storage.
- 27.61.080 Effect on Use Which is Illegal Under Prior Law.
- 27.61.090 Continuation of Nonstandard Uses.
- 27.61.100 Enlargement or Extension of Nonstandard Single- and Two-family Dwellings Into Required Yards.

27.61.010 Continuation of Nonconforming Use.

Subject to the provisions of this chapter, the lawful use of a building or premises existing immediately prior to the effective date of this title may be continued although such use does not conform to the provisions hereof.

If no structural alterations are made, a nonconforming use may be changed to another nonconforming use of the same or of a more restrictive category. For the purposes of this chapter, each of the following categories of use shall be considered to be "more restrictive" than those it precedes:

- a. Single- and two-family residential;
- b. Multiple-family residential;
- c. Office buildings;
- d. Retail sales and service;
- e. General commercial;
- f. Light industrial;
- g. Heavy industrial;
- h. Uses only by special permit in the I-1 industrial district.

Whenever a nonconforming use has been changed to a more restrictive use or to a conforming use, such use shall not thereafter be changed to a less restrictive use.

Subject to the requirements of Sections 27.61.040 and 27.61.080, below, a nonconforming use not involving a building may be continued even though such use does not conform to the provisions hereof if no changes are made in regard to size or location of water lines, sewer lines or private roads. (Ord. 12571 §295; May 8, 1979).

27.61.020 Use Becoming Nonconforming by Change in Law or Boundaries.

Whenever the use of a building or premises becomes a nonconforming use through a change in the zoning ordinance or district boundaries, such use may be continued and if no structural alterations are

made, it may be changed to another nonconforming use of the same or of a more restrictive category, subject to the provisions of this chapter. Whenever a nonconforming use has been changed to a more restrictive use or to a conforming use, such use shall not thereafter be changed to a less restrictive nonconforming use. (Ord. 12571 §296; May 8, 1979).

27.61.030 Discontinuance of Nonconforming Use.

In the event that a nonconforming use of any building or premises is discontinued or its normal operation stopped for a period of two years, the use of the same shall thereafter conform to the uses permitted in the district in which it is located. (Ord. 12571 §297; May 8, 1979).

27.61.040 Extension or Enlargement.

Any nonconforming building or premises devoted to a use not permitted by this title in the district in which the building or premises is located shall not be enlarged, extended, converted, reconstructed, or structurally altered unless such use is changed to a use permitted in the district in which the building or premises is located or unless authorized under the provisions of Section 27.63.280 or this Chapter or required to do so by law or order. (Ord. 20108 §6; November 17, 2014: prior Ord. 12571 §298; May 8, 1979).

27.61.050 Restoration After Damage or Reconstruction.

When the use of a building is nonconforming as defined in this chapter and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than sixty percent of its fair market value, it shall not be restored except in conformity with the regulations of the district in which the building is located, or in conformance with the provisions of Chapter 27.75, Section 27.63.280, or this chapter. Notwithstanding this section, dwellings in the R-1, R-2, R-3, R-4, R-5, R-6, R-7, or R-8 districts damaged by fire, explosion, act of God, the public enemy, or intentionally demolished, in whole or in part, may be restored using the setbacks to the dwelling existing immediately prior to the restoration or reconstruction. If, however, the proposed repair or replacement would increase any preexisting nonconformity or nonstandard setback or parking it shall only be rebuilt in conformance with the provisions of Chapter 27.75, Section 27.63.280, or this chapter. (Ord. 21125 §4; August 30, 2021: Ord. 20108 §7; November 17, 2014: Ord. 12571 §299; May 8, 1979).

27.61.060 Sign Regulations.

Signs for nonconforming uses and nonconforming signs shall be regulated in conformance with the provisions of Chapter 27.69. (Ord. 12571 §300; May 8, 1979).

27.61.070 Open Storage.

Where land within the R-1, R-2, R-3, and R-4 districts contain no main buildings as distinguished from accessory buildings and fences, and where said land was used solely for open storage immediately prior to the effective date of this title, use of such land for open storage shall be discontinued within two years.

Where land is used for a nonconforming or nonstandard use in conformance with the provisions of this chapter and where such land contains a main building or structure in addition to open storage, said open storage shall be brought in conformance with the area, front yard, side yard, rear yard, height,

unobstructed open space, and parking requirements for the district in which it is located within the period of one year from the effective date of this title. (Ord. 12571 §301; May 8, 1979).

27.61.080 Effect on Use Which is Illegal Under Prior Law.

Nothing in this title shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect immediately prior to the effective date of this title. (Ord. 12571 §302; May 8, 1979).

27.61.090 Continuation of Nonstandard Uses.

Nonstandard uses existing immediately prior to the effective date of this title and uses becoming nonstandard through a change in the zoning ordinance or district boundaries may be continued, although such uses do not conform to the provisions hereof.

Structures and buildings located upon a premises the use of which constitutes a nonstandard use may be enlarged, extended, or reconstructed, as follows:

- a. Enlargements, extensions, or reconstructions may be made as required by law or ordinance or ordered by the Director of Building and Safety to secure the safety of the structure;
- b. Enlargements, extensions or reconstruction of buildings or structures may be made if authorized under the provisions of Section [27.63.280](#);
- c. Enlargements, extensions, or reconstruction of buildings or structures may otherwise be made if such changes comply with the minimum requirements as to front yard, side yard, rear yard, height, and unobstructed open space for the district in which they are located.
- d. The number of dwellings units in multiple dwellings shall be limited to no more than the number of dwelling units licensed with Building and Safety on the effective date of this title or on the effective date of the change in district boundaries from another zoning district to the new zoning district.

Whenever an existing building or use has a reduced setback below the requirements of this title, due to the acquisition of land for right-of-way by a government agency, the setback to the new property line shall be considered automatically adjusted and will not be deemed as nonstandard. Enlargements, extensions, or reconstructions of the existing building or use may be made if such changes do not encroach into the adjusted setback.

Whenever the 2016 amended definitions of “building, height of”, and “grade” under Change of Zone TX 16007 cause a lawfully existing building to exceed the maximum height allowed in the zoning district in which the building is located, the allowed maximum height of the building shall be considered automatically adjusted to the height of the building under the amended definitions and the building will not be deemed nonstandard as to height. (Ord. [20426](#) §1; January 9, 2017; prior Ord. [20372](#) §16; August 29, 2016: Ord. [19172](#) §12; November 3, 2008: Ord. [18827](#) §12; October 9, 2006: Ord. [18730](#) §1; May 22, 2006: Ord. [16798](#) §2; June 5, 1995: Ord. [12894](#) §23; April 7, 1980: Ord. 12571 §303; May 8, 1979).

27.61.100 Enlargement or Extension of Nonstandard Single- and Two-family Dwellings Into Required Yards.

In the R-1, R-2, R-3, R-4, R-5, R-6, R-7, and R-8 districts, the enlargement or extension of a nonstandard main building used as a single-family or two-family dwelling into a required yard is allowed under the following conditions:

- a. The proposed building enlargement or extension shall not extend further into any required yard than the furthest extension of an existing exterior wall of the building, not including a bay window or any other projection allowed by [Chapter 27.72](#) or any wall of less than ten feet in length, and shall maintain a minimum required setback of three feet for a side yard and ten feet for a front or rear yard.
- b. The proposed building enlargement or extension shall comply with all other height and area regulations of the zoning district in which the building is located.
- c. The use of the main building shall remain a single- or two-family dwelling.
- d. This does not allow for the enclosure of front porches that encroach into the front yard setback.

For the purposes of this section, an accessory building which is attached to or not located more than six feet from the main building used for the single-family or two-family dwelling shall be considered part of the main building and may be enlarged or extended as provided above. (Ord. [21125](#) §5; August 30, 2021; Ord. [19582](#) §1; July 25, 2011; Ord. [19245](#) §1; May 4, 2009).

27.61.110 Lot Subdivision for a Nonstandard Use

Any lot or parcel in the R-1 through R-8 zoning districts platted prior to November 2, 1953, with two or more nonconforming single- and/or two-family dwellings constructed prior to the same date, may be subdivided to create separate lots for each building. The Planning Director may waive any requirements of Chapter 27.72 Height and Lot Regulations, including but not limited to minimum setbacks, lot width, and lot area and/or requirements of Chapter 27.67 Parking, to create a new nonstandard use for each building. The building(s) on each newly created lot must meet all applicable building and life safety code requirements for the new lot lines prior to final plat approval.

26.23.140 Lot.

- a. Minimum lot width and area requirements shall conform to the zoning ordinance, [Title 27](#) of this code. Double frontage residential lots permitted under subparagraph (e) below which abut a major street with at least 60 feet of right-of-way from the centerline of the street shall have a minimum depth of 110 feet. Double frontage residential lots permitted under subparagraph (e) below which abut a major street with less than 60 feet of right-of-way from the centerline of the street shall have a minimum lot depth of 120 feet. The minimum depth of all other residential lots shall be ninety feet, except where the existing lot does not meet this requirement and the lot depth is not further reduced. Any lot in the O-1, O-2, O-3, B-1, B-2, B-3, B-4, B-5, H-1, H-2, H-3, H-4, I-1, I-2, or I-3 districts which has a minimum width of at least 100 feet shall have a maximum depth of five times its width. Any residential lot in the R-3 district

which does not meet the required minimum lot area, average lot width, or yard requirements shall have a maximum depth of four times its width. Any other lot shall have a maximum depth of three times its width. However, the Planning Director may modify this requirement where the lot is occupied or intended to be occupied by a portion of a duplex or townhouse structure. An existing lot which does not comply with said lot width-to-depth ratios may be subdivided so as to increase such lot's width, decrease such lot's depth, or both, even though such lot does not thereafter fully comply with the lot width-to-depth ratio as set forth above.

- b. The lot arrangement and design of the subdivision shall be such that all lots shall provide satisfactory and desirable building sites, properly related to topography and the character of the surrounding development.
- c. The side lines of any lot shall be at right angles to the street or radial, if the street is curved, except where a variation will provide a better street and lot layout.
- d. Residential corner lots shall be wider than other residential lots to the extent necessary to permit the establishment of front yards along both of the abutting streets. Corner lots fronting on major street intersections and other acute angle intersections which are likely to be dangerous to traffic movement shall have a curved line radius of twenty (20) feet at the street corner.
- e. The residential lot arrangement of a subdivision shall be accomplished in such a manner that there will be no lots with a double frontage; i.e., a lot fronting on two non-intersecting public streets. However, in circumstances where the subdivision abuts a major street, double frontage lots may be permitted when no frontage road exists adjacent to or abutting on the major street and access from the lot is only to the local street. Where double frontage lots are allowed, the subdivider and the subdivider's successors and assigns shall relinquish the right of access from the lot to the major street and place covenants and restrictions upon the land to run with the land relinquishing said access as approved by the City Attorney's office.
- f. A lot used for commercial, industrial, business, or nonresidential purposes with at least 660 linear feet of frontage on a major street may have access to the major street only if a safe access point is available and approved by the city. If a safe access point is not available, or if said lot does not have the required linear feet of frontage, an access road abutting the major street constructed to a width approved by the city shall be dedicated to provide access to said lot.

An exception to the foregoing front foot requirements shall be permitted in the case of a replat or resubdivision of a lot where either the lot does not have 660 linear feet of frontage, or the distance between cross-streets is less than 660 linear feet. In such event, if safe access to the major street can be provided, the access road requirement may be waived.

- g. Every lot shall front upon and have access to a public street, except:
 - 1. Lots located in any zoning district may front upon and take access to a private roadway if said private roadway has been approved either in connection with a use permit under the provisions of Title 27 or with a subdivision of property in conformance with all the requirements of this title;
 - 2. Lots shown within the boundaries of an approved community unit plan under Chapter 27.65, an approved planned unit development under Chapter 27.60, an approved special permit for Planned Service Commercial under Chapter 27.63, or an approved use permit under any chapter of the Lincoln Municipal Code that requires a use permit may front upon and take access to a private road or take access

via a permanent access to and from a public street or private roadway, provided such access is dedicated in the final plat creating said lots. Residential lots shall be required to have a dedicated public access easement. Nonresidential lots may have either a dedicated public or private access easement.

3. Lots which front upon a major street may be required to take access to said major street through an access road to be dedicated in the final plat creating said lots. In such event, direct access to the major street shall be relinquished.
4. Private roadways for residential lots: (i) shall be located in an outlot having a minimum width of 60 feet, (ii) shall also be subject to an easement which provides the same space and location for street trees, utilities, and sidewalks as a public street, and (iii) are not encouraged where fewer than ten dwelling units are proposed unless sufficient justification is provided to show future lot owners will have sufficient financial resources to privately maintain said roadway.

h. A corner lot abutting a temporary dead-end street may be required to relinquish direct vehicular access to the temporary dead-end street when the lot is the only lot fronting on the temporary dead-end street within the same block.

h.i. The Planning Director may waive any requirements above to allow a lot subdivision for nonstandard uses that meet the requirements per Chapter 27.61.110. The building(s) on each newly created lot must meet all applicable building and life safety code requirements for the new lot lines prior to final plat approval.

26.27.005 General Requirements.

The items listed in this chapter shall be the minimum improvements required in a subdivision. These minimum improvements shall conform to and be constructed in conformance with the **design standards** approved by the city, other sections of the Lincoln Municipal Code, and the standard specifications of the city. The subdivider, his successors and assigns, shall be responsible for the entire cost and expense of the minimum improvements unless indicated otherwise in this title. The City may encourage and promote the installation of new minimum required improvements not required in a previously approved final plat by agreeing to subsidize the added cost and expense of the new minimum required improvement in conformance with specific criteria adopted by resolution of the City Council. The Planning Director may waive the minimum improvements when no additional lots are created in a subdivision. The Planning Director may also waive minimum standards as necessary to complete a lot subdivision for a nonstandard use that meets the requirements of Chapter 26.61.110.

Checklist

- Talk with Building and Safety to determine what code requirements will be triggered by the new lot line(s). This may require additional fire-rating of walls, eaves, or even possibly window removal.
- Make sure there are no concerns for any lien holders on the property if it is mortgaged as they will need to sign the final plat.
- If there is only one address for the lot, additional addresses will be needed for each building upon subdivision.
- Check the water and sewer services. If there is only one feeding all dwellings on the current lot, they will either need to be split so each new lot has a separate service, or LTU will need to grant a nonabutting agreement.
- Determine how each new lot will have access to a street or alley. No new lots will be created without access.

DRAFT