

**ARTICLE 12. ZONING PROCEDURES &  
ENFORCEMENT**

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## SECTION 12.2.7 SUMMARY TABLE OF AUTHORITY AND NOTICE

	REVIEW AND DECISION-MAKING AUTHORITY						TYPE OF PUBLIC NOTICE REQUIRED				
	<b>D = Decision-Making Authority</b> <b>R = Review and Recommendation Authority</b> <b>* = Public Hearing Required</b>						<b>■ = Notice Required</b> <b>Blank Cell = Notice Not Required</b>				
							Informational Notice		Notice of Public Hearing		
	Zoning Administrator	Manager	DRC	Board of Adjustment	Planning Board	City Council	Written and Posted Notice of Receipt of Application	Posted Notice of Final Administrative Decision	Written	Posted	Published
Zoning Permit Review	D										
Zoning Permit Review with Informational Notice	D						■	■			
Site Development Plan Review	R	R	D				■ See Sec. 12.4.3 for site development plans that require public notice	■ See Sec. 12.4.3 for site development plans that require public notice	■ See Sec. 12.4.3 for site development plans that require notice of a public hearing		
Zone Lot Amendment	D										
Administrative Adjustment	D										
Code Interpretation, Determination of Unlisted Use	D										
Comprehensive Sign Plan	D				R*		■	■	■	■	
Variance	R			D*			Refer to rules of Board of Adjustment				
Appeal of Administrative Decision	R			D*			Refer to rules of Board of Adjustment				
Special Exception	R	R		D*			Refer to rules of Board of Adjustment				
Official Map Amendment (Rezoning)		R			R*	D*	■ - Written Notice Only		■	■	■
Text Amendment	R	R			R*	D*			■		■
General Development Plan	R		D		R*				■	■	
<u>Regulating Plan</u>	<u>R</u>	<u>D</u>									

## SECTION 12.3.6 LAPSE OF APPROVAL PROVISIONS AND EXTENSION OF APPROVAL PERIOD

### 12.3.6.1 In General - Lapse of Approved Applications, Plans and Permits

An application, site development plan, or zoning permit approved under this Code may lapse if certain actions related to the approved application are not taken within a specified time period as set forth in Division 12.4, Zoning Application and Review Procedures. Specific actions that must be taken with regard to each application, plan or permit to avoid lapsing of the approval are set forth in Division 4 of this Article for each type of zoning application.

### 12.3.6.2 Beginning of Approval Period - General Rule

Unless otherwise specified in Division 4 of this Article 12, the approval period of an approved application, plan or permit, after which lapse will occur, shall begin on the date of the decision-making body's final action, which shall be interpreted to mean:

- A. For approved plans or permits that this Code requires to be recorded: the date of recordation.
- B. For all other approved applications, plans or permits: the date of the decision-making body's final action, which shall be affixed to all approved applications, plans or permits.

### 12.3.6.3 Extension of Approval Period

- A. The Zoning Administrator may grant an extension of an approval period up to 12 months for good cause, including but not limited to a showing that development was delayed by economic or physical problems beyond the applicant's or property owners' control.
- B. In no case shall the Zoning Administrator grant an extension if, since the date of the original approval, the subject property's zoning designation has changed or the applicant proposes an amendment to the approved application, plan or permit with the request for extension. See Section 12.3.7, Modification or Amendment of Applications, Plans and Permits, below.
- C. All requests for extensions shall be submitted to Community Planning and Development in writing at least 30 days before the expiration of the approval period. An extension request shall include:
  1. Payment of any required fee for the extension review; and
  2. A narrative stating the reasons for the applicant's or owner's inability to comply with the specified deadlines, listing any changes in the character of the neighborhood, any changes to the Comprehensive Plan or this Code that have occurred since the original approval date and that affect the subject development, and the anticipated time schedule for completing the development.
- D. Additional review of the application, permit or plan may result in additional conditions placed on the extended approval, application, permit or plan, as applicable.
- E. If the extension is denied, the applicant may re-submit a new application, subject to the fees, standards, and regulations in effect at the time of re-submittal, for the same project.

### 12.3.6.4 **Overlapping Approval Periods**

When a proposed development is subject to more than one zoning review procedure with differing time frames for approval periods and expirations, and the time frames of such approval periods overlap, the approval period that is the longest shall govern the expiration of all subject approvals.

For example, a proposed development requires two different zoning approvals: (1) approval of a zoning permit to establish a new primary use on the property; and (2) approval of a site development plan. Normally, an approved zoning permit for use would expire after a 180-day approval period if the use is not established; however, the approved site development plan has an 18-month

approval period that extends beyond the 180-day zoning permit approval period. Under this Section 12.3.6.4, because the approval periods of the zoning permit and site development plan overlap, the zoning permit for the use is subject to the longer 18-month site development plan approval period, and would not expire at the end of the 180 days.

## **SECTION 12.3.7 MODIFICATION OR AMENDMENT OF APPLICATIONS, PLANS AND PERMITS**

### **12.3.7.1 Modifications to Pending or Approved Applications, Plans or Permits**

The following types of minor modifications, changes, removal, or release of either (1) the Code standards applicable to a pending application; or (2) the Code provisions applicable to, or the conditions attached to, an approved application, plan or permit, shall be treated as "modifications" rather than "amendments," and may be approved administratively by the Zoning Administrator according to this section.

#### **A. Modifications to Regulating Plans, Site Development Plans or Zoning Permits**

1. Modifications to a pending or approved regulating plan, site development plan or zoning permit application that are expressly allowed as "administrative adjustments" under Section 12.4.5 (Administrative Adjustments) of this Code, may be approved by the Zoning Administrator according to the procedures and criteria in Section 12.4.5.
2. The Zoning Administrator may allow minor changes in the location of structures shown on an approved regulating plan, site development plan or zoning permit provided such minor changes do not constitute an "amendment" under Section 12.3.7.2.B, "Amendments to Approved Regulating Plans, Site Development Plans and Zoning Permits," below.
3. All modifications to an approved regulating plan, site development plan or zoning permit shall be submitted to the Zoning Administrator as "redline" edits to the previously approved plan or permit documents. After approval, the Zoning Administrator shall record a modified regulating plan or site development plan in the records of the Denver County Clerk and Recorder's Office, and shall register a modified zoning permit in the records of Community Planning and Development.

#### **B. Minor Deviations from Previously Approved GDP Plans**

The DRC may authorize minor deviations from a previously approved General Development Plan (GDP) during the site development plan review. Minor deviations are allowed provided such deviation does not constitute an "amendment" to a GDP under Section 12.3.7.2.C, Amendments to Approved General Development Plans. All modifications to a GDP approved by the DRC shall be submitted as "redline" edits to the previously approved electronic GDP, which, after approval, shall be recorded by the Manager in the records of the Denver County Clerk and Recorder's Office.

#### **C. Other Modifications to Approved Applications, Plans, or Permits**

Changes, modifications, removal, or release of all or some of the provisions of an approved application, plan or permit, which do not otherwise qualify as "modifications" under Section 12.3.7.1.A above, or a minor deviation from a previously approved GDP under Section 12.3.7.B above, or as an "amendment" under Section 12.3.7.2, Amendment to Approved Applications, Plans and Permits, below, may be approved by the Manager, using the same review process and criteria applicable to Administrative Adjustments stated in Section 12.4.5 of this Code.

construction materials, scrap and junk, and raw materials including liquids and powders hazardous or not);

4. The type, size, and typical massing of buildings and structures associated with the unlisted use;
5. Transportation requirements, including the modal split for people and freight, by volume type and characteristics of traffic generation to and from the site; trip purposes and whether trip purposes can be shared by other uses on the site;
6. Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses;
7. The amount and nature of any external effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;
8. Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities; and
9. The type and extent of impacts on adjacent properties created by the proposed use in comparison to impacts from other uses allowed in the zone district.

**C. Form of Determination**

The Zoning Administrator shall provide the code interpretation or determination to the applicant in writing. Such interpretation or determination shall also be kept in the files of the Zoning Administrator.

## **SECTION 12.4.7 VARIANCE**

### **12.4.7.1 When Authorized**

The Board of Adjustment may authorize variances from the terms of this Code pursuant to the charter, subject to terms and conditions fixed by the Board of Adjustment, as will not be contrary to the public interest where, owing to unusual conditions or disability or owing to a property's historic designation, or where a variance would produce a more compatible development, literal enforcement of the provisions of this Code will result in unnecessary hardship.

### **12.4.7.2 Related Procedure**

Under certain circumstances, modifications of this Code's standards may be permitted according to the Administrative Adjustment procedure in Section 12.4.5, without resort to this Variance procedure. The Zoning Administrator may grant administrative adjustments to relieve unnecessary hardship and practical difficulties, without review by the Board of Adjustment for a variance.

### **12.4.7.3 Initiation**

The owner of the subject property or the owner's authorized agent may initiate an application for a variance.

### **12.4.7.4 Application and Fees**

All applications for variance shall be filed in writing according to the rules of the Board of Adjustment. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Application.

### **12.4.7.5 Public Hearing and Decision by Board of Adjustment**

- A. Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve, approve with conditions, or deny the variance request based on whether the applicant has evidenced an unnecessary hardship according to the



review criteria below, and subject to any limitations in Section 12.4.7.7 regarding variances for signs.

- B. The Board may attach any condition to a variance approval necessary to protect the health, safety and welfare of the community and minimize adverse impacts on adjacent properties, including but not limited to a condition changing the location or dimensions of a proposed development directly related to the request for a variance.

#### **12.4.7.6 Showing of Unnecessary Hardship - Review Criteria**

The Board of Adjustment may grant a variance only if it finds that there is an unnecessary hardship whereby the application satisfies the criteria of **any one of** paragraph A. **or** B. **or** C. **or** D. of this subsection **and** satisfies the criteria of paragraph E. of this subsection.

##### **A. Unusual Conditions or Disability**

1. There is a disability affecting the owners or tenants of the property or any member of the family of an owner or tenant who resides on the property, which impairs the ability of the disabled person to utilize or access the property; or
2. There are unusual physical circumstances or conditions, including, without limitation, irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property; or
3. There are unusual physical circumstances or conditions arising from the existence of an existing, nonconforming structure on the affected property; and
4. When the hardship is based on unusual physical circumstances or conditions of the affected property:
  - a. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located, or the circumstances or conditions relate to drainage conditions and challenges found consistently throughout the neighborhood or zone district in which the property is located; and
  - b. The development or use of the property cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district; however, loss of a financial advantage, hardship that is solely financial, or the fact that a more profitable use of the property might be had if a variance were granted are not grounds for a variance; and
  - c. The unusual physical circumstances or conditions have not been created by the applicant.

##### **B. Designated Historic Property or District**

The property could be reasonably developed in conformity with the provisions of this Code, but the building has been designated as a landmark structure or is in a designated historic district. As part of the review pursuant to Chapter 30, Landmarks, of the Denver Revised Municipal Code, the approving authority has found that development on the lot or parcel conforming to this Code's regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved.

##### **C. Compatibility with Existing Neighborhood**

1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed variance will result in a building form that is more compatible, in terms of building height, siting, and design elements, with the existing neighborhood in which the subject property is located. In making a determination of whether the subject property, with the proposed variance, would be more compatible with the existing neighborhood, the Board of Adjustment may choose not to consider primary or acces-

sory buildings in the existing neighborhood that have been granted variances based on unusual physical circumstances or conditions of such properties.

2. For purposes of a variance only, at a minimum, "existing neighborhood" shall mean:
  - a. For variances to buildings in the rear 35% of a zone lot: Any similar building located on a zone lot on the same face block or on an adjacent face block (i.e., across a rear property line or rear alley).
  - b. For variances to buildings in the front 65% of a zone lot: Any primary building located on a zone lot on the same face block or the face block across a public street from the subject building.
  - c. The Board of Adjustment may consider similar buildings located beyond the same face block, opposite face block, or adjacent face block from the subject building if the Board deems doing so reasonable and necessary to make its determination of compatibility with the existing neighborhood.

**D. Nonconforming or Compliant Uses in Existing Structures**

A variance to increase the floor area occupied by a nonconforming or compliant use in an existing structure may be granted only if the Board of Adjustment finds the following conditions to exist:

1. The use is a nonconforming or compliant use, as defined in this Code, and such use is in full compliance with all requirements under this Code applicable to nonconforming or compliant uses and is authorized to continue in operation and to exist;
2. The structure in which an increase in floor area is sought was in existence on the date on which the nonconforming or compliant use became nonconforming or compliant, and is in existence at the time of the hearing;
3. On the date on which the use became nonconforming or compliant, the use was in occupancy and in operation on a portion of the floor area of the structure in which an increase in floor area is sought;
4. The applicant does not propose or intend to enlarge the existing structure, does not propose or intend to increase the floor area of such structure, and that any authorized increase in occupancy of floor area by the nonconforming or compliant use will not involve remodeling, changing or altering any load-bearing member of such structure; and
5. That, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this Code will result in unnecessary hardship.

**E. Requirements for All Variance Approvals**

If granted, the variance:

1. Would not authorize the operation of a primary use other than those uses specifically enumerated as allowed primary uses for the zone district in which the property is located.
2. Would not grant a change to either (a) a waiver or condition attached to an approved rezoning, or (b) an approved PUD District plan that would constitute an "amendment" under Section 12.3.7.2 of this Code, or (c) an approved GDP that would constitute an "amendment" under Section 12.3.7.2 of this Code,.
3. Would not, other than allowed in subsection A. above to accommodate persons with disabilities, relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure.
4. Would not substantially impair the intent and purpose of this Code.

5. Would not substantially impair the intent and purpose of the applicable zone district.
6. Would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property.
7. Would be the minimum variance that would afford relief and would be the least modification of the applicable provisions of this Code.
8. Adequately addresses any concerns raised by the Zoning Administrator or other city agencies in their review of the variance application.

#### **12.4.7.7 Limitations as to Variances for Signs**

No variance from the provisions of Division 10.9, Signs, of this Code on permitted signs shall be granted or authorized by the Board of Adjustment, which would result in any of the following:

- A. Any variance from the provisions of Section 10.10.17, Outdoor General Advertising Devices;
- B. An existing roof sign that is higher than 32 feet above grade or a new or existing projecting sign that is higher than 32 feet above grade;
- C. A new roof sign;
- D. A new projecting sign that exceeds 20 square feet in sign area in a Residential Zone District or in the MX-2x, MS-2x, or O-1 zone districts; or that exceeds 50 square feet in sign area in the MX-2, MX-2A, MX-3, MX-3A, MS-2, MS-3, I-MX, M-IMX, or I-A, zone districts; or that exceeds 80 square feet in sign area in all other zone districts;
- E. A new or existing projecting sign where more than 1 other sign is maintained or is to be maintained for the same primary use on the same building front;
- F. A new or existing ground sign that is higher than 32 feet above grade, except that a variance permitting the maintenance of an existing ground sign that is not higher than 35 feet above grade may be granted where said ground sign and all other signs for the same primary use comply with all other applicable provisions of Division 10.9, Signs, of this Code;
- G. A new or existing sign with a sign area larger than that which is permitted under the provisions of Division 10.9, Signs, of this Code for the primary use in the zone district in which the primary use is or will be maintained, except that a variance permitting the maintenance of an existing sign with a sign area up to 50 percent larger than the maximum sign size permitted under the provisions of Division 10.9, Signs, for the primary use in the zone district in which the use by right is maintained may be granted where no other signs are maintained for the same primary use on the same building front and where the total area of signs maintained for the same primary use does not exceed that permitted under the applicable provisions of Division 10.9, Signs.
- H. A greater total area of signs than that which is permitted under the provisions of Division 10.9, Signs, for the primary use in the zone district in which the primary use is or will be maintained.

#### **I. Variances for Signs for Religious Assembly Uses**

Notwithstanding the limitations set forth in this Section 12.4.7.7 on limitations as to permitted signs, the Board of Adjustment shall have the power to grant variances from the provisions of Division 10.9 of this Code on permitted signs for signs that identify religious assembly uses when such signs are located on the same zone lot as the religious assembly use.

#### **12.4.7.8 Expiration**

- A. A variance authorizing construction shall expire unless substantial construction has started within 3 years and is completed within 5 years from the date the variance was granted. Upon the completion of construction, the variance shall run with the land.

- B. For variances unrelated to construction, the variance shall run with the land unless the Board of Adjustment specifies otherwise as a condition of the variance.
- C. A variance shall automatically lapse and have no further effect if the Zoning Administrator finds that redevelopment of the subject property makes compliance with this Code possible without the previously approved variance.

## **SECTION 12.4.8 APPEAL OF ADMINISTRATIVE DECISION**

### **12.4.8.1 Applicability and Initiation**

- A. Any person aggrieved or any officer or department of the City may appeal to the Board of Adjustment from any administrative order, requirement, or any decision or determination made by a Community Planning and Development administrative official in the enforcement of this Code.
- B. Such appeal shall be filed within the time provided by the rules of the Board of Adjustment and must specify the particular grounds upon which the appeal is taken.

### **12.4.8.2 Appeal and Fees**

All appeals of an administrative order or decision shall be filed in writing according to the rules of the Board of Adjustment. The appellant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

### **12.4.8.3 Effect of Appeal – Stay of Enforcement Proceedings**

An appeal to the Board of Adjustment of a cease and desist order issued by Community Planning and Development shall stay all enforcement proceedings of the cease and desist order unless the Zoning Administrator certifies that, by reason of the facts stated in the certificate, a stay in the Zoning Administrator's opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted, after due notice to Community Planning and Development, by the Board of Adjustment or a court of proper jurisdiction.

### **12.4.8.4 Action by Zoning Administrator**

Upon receipt of a notice of appeal, the Zoning Administrator shall transmit to the Board of Adjustment all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed from was based.

### **12.4.8.5 Public Hearing and Decision by Board of Adjustment**

Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve or deny the appeal based on the review criteria below, and to that end the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

### **12.4.8.6 Presumption and Review Criteria**

#### **A. Presumption**

Any order or decision of an administrative official authorized to act under this Code shall be presumed to be correct unless the preponderance of the evidence introduced before the Board of Adjustment supports a contrary determination or finding.

#### **B. Review Criteria**

The Board of Adjustment shall consider whether or not the action by the administrative officer complied with the applicable portions of this Code when approving or denying an administrative appeal.

## DIVISION 12.5 COMPLIANT USES

### SECTION 12.5.1 DEFINITION

See Article 13 for definition of "Use, Compliant," and "Use, Conforming."

### SECTION 12.5.2 EFFECT

#### 12.5.2.1 Right to Continue

Compliant uses are legal uses for all purposes under this Code, and may continue to operate indefinitely.

#### ~~Applicability of Code to Expansions and Enlargements~~

~~A compliant use may only be expanded or enlarged if the use, including the expansion or enlargement, complies with all applicable use limitations and standards in this Code.~~

#### 12.5.2.2 General Allowance and Limitation on Expansion

Provided it continues to comply with all provisions of this Division, any compliant use may continue in operation on the same land area and on the same floor area in a structure that was occupied by the compliant use on the date the use first became a compliant use. Except as authorized in this Division 12.5, the land area or the floor area in a structure devoted to the operation and maintenance of a complaint use shall not be increased. Continuance authorized in this Division shall not be construed to permit an increase in the number of dwelling units, a reduction of the ratio of land area to the number of dwelling units, or any change whatsoever in any aspect of and feature of or in the character of the compliant use.

#### 12.5.2.3 Zoning Administrator Authority to Allow Limited Expansions

##### A. Zoning Administrator Authority in Special Cases Only

The Zoning Administrator may authorize, upon application in specific cases, an exception permitting an increase in either or both the land area or the floor area in a structure or structures occupied by a compliant use as are necessary and essential to enable the owner of the use to comply with lawful requirements of the federal, state, or municipal governments.

##### B. Procedure and Required Findings

All applications for an allowance under this Section 12.5.2.3 shall be reviewed according to the procedures stated in Section 12.4.1, Zoning Permit Review. In addition to the review criteria stated in Section 12.4.1, the Zoning Administrator shall grant an allowance only upon finding the following conditions exist:

1. That the use is a complaint use as defined in this Code, and is in full compliance with all requirements of this Code applicable to compliant uses, and
2. That the allowance for expansion is necessary and essential to enable the owner of the use to comply with lawful requirements of federal, state or municipal governments.

##### C. Allowance Personal to Owner

Every allowance authorized by this Section 12.5.2.3 shall be personal to the applicant and shall not be transferable, and shall run with the land only after construction of any authorized structure or structures and only for the life of such structure or structures.

#### 12.5.2.4 Board of Adjustment Authority to Grant Variances for Expansion

The Board of Adjustment is authorized under its power to grant variances to permit an increase in the floor area occupied by a compliant use in an existing structure, subject to the procedures and applicable criteria stated in Section 12.4.7, Variance.

## SECTION 12.5.3 TERMINATION OF COMPLIANT USES

### 12.5.3.1 **[Moved]** **By Changes in Use**

#### A. **To a Conforming Use**

Changing a compliant use to a conforming use shall terminate the rights of the compliant use, and any re-establishment of the compliant use shall comply with all applicable use limitations and standards in this Code unless terminated as provided herein.

#### B. **To a Temporary Use**

Changing a compliant use to a temporary use properly permitted under the provisions of this Code shall not terminate the rights of the compliant use.

### 12.5.3.2 **By Abandonment**

Abandonment of a compliant use shall terminate immediately the right to operate such compliant use.

### 12.5.3.3 **By Vacancy**

Vacancy for a period of 12 or more successive calendar months of the structure or that part of a structure occupied by the compliant use shall terminate immediately the right to operate such compliant use.

### 12.5.3.4 **By Change to a Conforming Use**

Changing any compliant use to a conforming use shall terminate the compliant use and the compliant use shall not be reestablished.

### 12.5.3.5 **By Destruction, Damage or Obsolescence of Structure Housing Compliant Use**

#### A. **Involuntary Destruction or Damage**

The right to operate and maintain any compliant use shall terminate and shall cease to exist whenever the structure in which the compliant use is operated and maintained is damaged or destroyed, from any cause whatsoever, and the cost of repairing such damage or destruction exceeds 50 percent of the replacement cost of such structure on the date of such damage or destruction; provided, however, that the right to operate and maintain a compliant residential use located in a Residential Zone District or a compliant use located in the C-CCN Zone District shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which the use is operated.

#### B. **Obsolete or Substandard Structure**

The right to operate and maintain any compliant use shall terminate and shall cease to exist whenever the structure in which the compliant use is operated and maintained becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds 50 percent of the replacement cost of such structure on the date that the Zoning Administrator determines such structure is obsolete or substandard; provided, however, that in determining the replacement cost of any structure, there shall not be included therein the cost of land or any factors other than the structure itself.

#### C. **Voluntary Demolition**

Nothing in this subsection shall be deemed to permit the reconstruction or reestablishment of all or any part of a compliant use whenever the structure in which the compliant use is operated and maintained has been voluntarily demolished.

## SECTION 12.5.4 DETERMINATION OF COMPLIANT STATUS

Compliant status shall be determined by the Zoning Administrator.

## DIVISION 12.6 COMPLIANT STRUCTURES

### SECTION 12.6.1 DEFINITION

See Article 13 for definition of "Structure, Compliant," and "Structure, Conforming."

### SECTION 12.6.2 EFFECT

#### 12.6.2.1 Right to Continue

Compliant structures are legal structures for all purposes under this Code, and may continue to be occupied, operated, and maintained, unless terminated as provided herein.

#### 12.6.2.2 Expansions, Alterations, Enlargements to Compliant Structures

##### A. Applicability

1. This Section 12.6.2.2 applies to any compliant structure in all zone districts.
2. This Section 12.6.2.2 applies to any compliant structure that was rebuilt under Section 12.6.2.3, Voluntary Demolition and Reconstruction.

##### B. General Allowance

1. Subject to all limitations of this Division 12.6, any compliant structure may be occupied, operated, and maintained in a good state of repair.
2. Subject to all limitations of this Code and additional limitations in Section 12.6.2.2.D-F below, a compliant structure may be altered or enlarged so long as no existing non-compliant element of the structure is increased and no new non-compliant element or nonconformity is created.

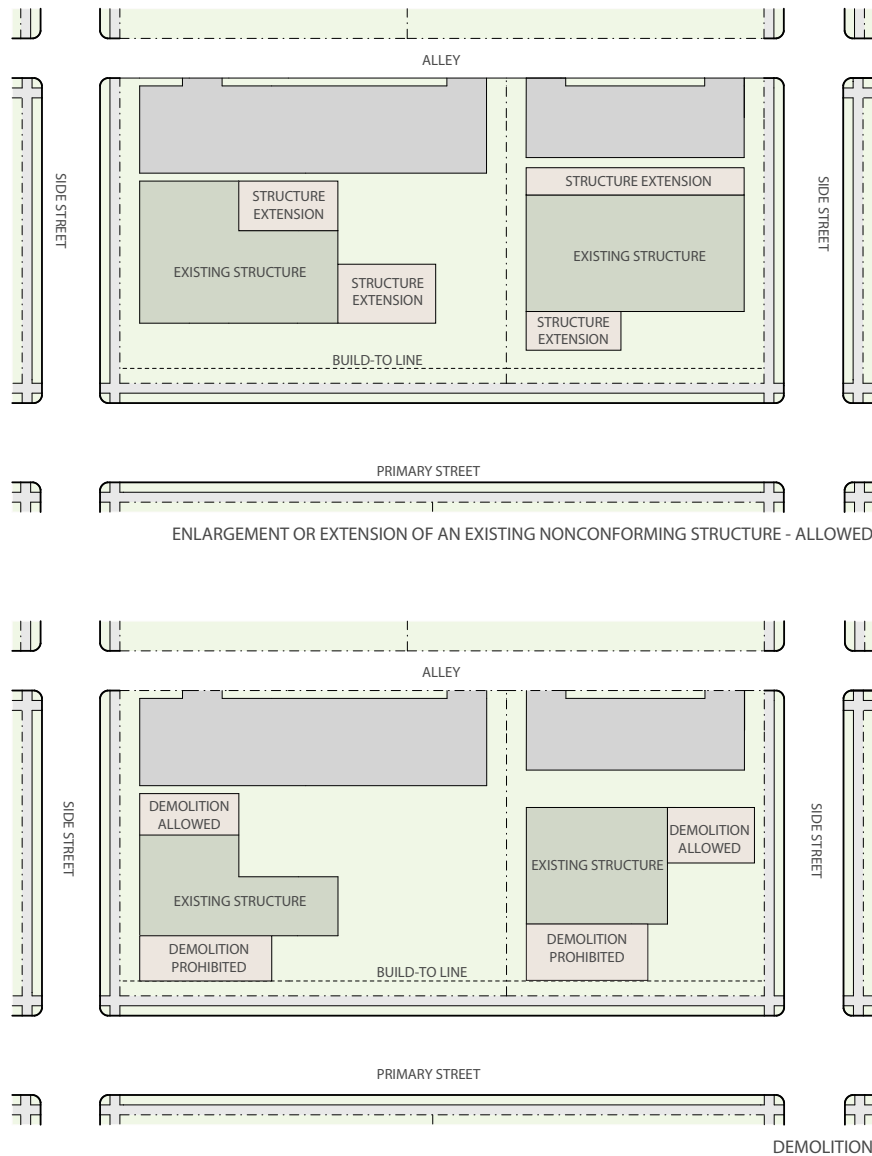
~~A compliant structure shall be expanded or enlarged in full compliance with this Code except as described in Section 12.6.2.2 D-F, below.~~

##### C. Documentation Required

In addition to the general submittal requirements under this Code and pursuant to the Denver Building and Fire Code, an application to permit expansions, alterations, or enlargements to a compliant structure according to Section 12.6.2.2.D-E below shall include the documentation described in Section 12.6.2.3.B.2 below.

##### D. Compliance with Required Build-to Standards

Compliant structures that do not meet the requirements of the Primary or Side Street build-to standards may be altered without fully complying with the Primary or Side Street build-to standards provided that, if some portion of the compliant structure meets the build-to requirement, no alteration (including demolition) is allowed that would reduce the amount of that existing facade meeting the build-to requirement. For any expansion or enlargement that does not fully comply with the Primary or Side Street build-to standards, and that expands the building's gross floor area by more than 25% cumulatively after June 25, 2010, shall comply with perimeter parking lot landscaping standards for surface parking located between the building and the Primary Street set forth in Division 10.5. See figures below illustrating permitted alterations to compliant structures that do not meet Primary or Side Street build-to standards.

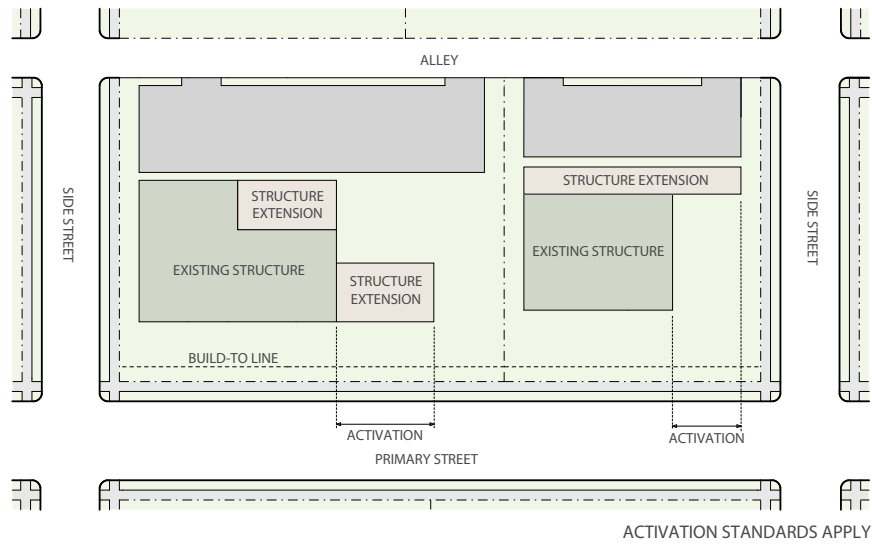


**FIX LABELING OF ALL GRAPHICS!!!**

**E. Compliance with Required Ground Story Activation Standards**

Compliant structures that do not meet the Ground Story Activation standards of this Code may be expanded without fully complying with the Ground Story Activation standards; however, any addition to the structure located within 80 feet of the Primary Street or Side Street where a Ground Story Activation standard applies must meet the Ground Story Activation standard and no alteration may be made that further reduces the structure's compliance with the transparency requirement.





**F. Limited Continuation of ~~Nonconforming-Non-Compliant~~ Side Setback**

**1. Exception for Additions to Compliant Structures**

Requirements as to side setback lines may be modified to permit, subject to the procedure outlined below, an addition to a compliant structure located in a Residential Zone District and used solely for residential purposes if such compliant structure meets the following conditions:

- a. The dimension of the structure that causes the structure to be compliant as to side setback exists for at least one-half of the sidewall length of the structure.
- b. The length of the proposed addition shall not exceed the length of the existing compliant sidewall.
- c. No wall or roof of the proposed addition to be built within the required side setback area shall be higher than the existing wall or roof to which it is attached, except that an existing roof structure may be removed and replaced to provide alignment with the wall or roof of the proposed addition.

**2. Procedure**

- a. The procedures of Section 12.4.2, Zoning Permit Review with Informational Notice, shall be used to process a request for ~~continuing a non-compliant side setback enlargement of a compliant structure~~ except as provided in subsection 2.a. below.
- b. The procedures of Section 12.4.2, Zoning Permit Review with Informational Notice, for ~~continuing a non-compliant side setback enlargement of compliant residential structures~~ shall not be required if the residential structure is located on a zone lot containing less than 3,500 square feet, and the side setback area in question is adjacent to an alley, and the applicant is seeking an exception under Section 12.6.2.2.F.1 above. In such a case, the compliant residential structure may be expanded in the side setback area subject to review under Section 12.4.1, Zoning Permit Review, provided the structure and any proposed addition meet the requirements of Section 12.6.2.2.F.1 above.

### 12.6.2.3 Voluntary Demolition and Reconstruction - CC, MX, MS and I-MX Zone Districts

#### A. Applicability

1. This Section 12.6.2.3 applies only in the CC, MX, MS, and I-MX zone districts.
2. This Section 12.6.2.3 applies only to structures that were conforming on June 24, 2010 and shall not apply to structures that were nonconforming on June 24, 2010.
3. This Section 12.6.2.3 shall not apply to any additions or expansions built under Section 12.6.2.2.
4. A compliant structure that has been rebuilt per this Section 12.6.2.3 may thereafter be voluntarily demolished and rebuilt per this Section 12.6.2.3, or in full compliance with all applicable zone district standards.

#### B. General Rules for Reconstruction After Voluntary Demolition

A compliant structure that is voluntarily demolished may be reconstructed either:

1. In full conformance with all applicable zone district standards; or
2. According to Section 12.6.2.3.C, below.

#### C. "As Was" Reconstruction of Compliant Structures

After voluntary demolition, a compliant structure may be reconstructed as it existed on June 24 2010~~[the day before the effective date of this Code]~~ in compliance with the following conditions:

1. The area and dimensions of the zone lot on which the replacement structure will be constructed are the same that existed on June 24, 2010.
2. The applicant provides an improvement location survey prepared by a Qualified Professional describing the area and dimensions of the zone lot and the compliant structure's dimensions and location relative to zone lot lines. Documentation shall also include the dimensions and location of surface parking serving the compliant structure, dimensions and location of other structures and landscape features,, and existing exterior elevation drawings of the compliant structure that describe dimensions of building height and all exterior features and fenestration.
3. All provisions of this Code shall apply except where compliance is not possible because of the location or dimensions of the replacement structure, required vehicle access to the zone lot, accessory parking spaces, or due to existing gas tank location and the impracticality of moving such tanks. For any reconstruction that does not fully comply with the Primary or Side Street Build-To standards, a garden wall shall be provided within 0' to 15' from the zone lot line for 100% of the Primary and Side Street frontage, excluding required vehicle access points and any portions of building located within the 0' to 15' range. The Zoning Administrator may approve an alternative to the required garden wall when on-site circulation constraints prevent installation of a garden wall, provided the alternative results in separating pedestrian activity from on-site vehicle circulation areas.
4. The applicant shall obtain a zoning permit within one year of receiving a demolition permit for the compliant structure.

### 12.6.2.4 Voluntary Demolition and Reconstruction - All Other Zone Districts

A compliant structure located in a zone district not subject to Section 12.6.2.3 above, and which is voluntarily demolished, shall be reconstructed only in full compliance with all applicable zone district standards.

**12.6.2.5 Involuntary Destruction or Damage to Structure**

A compliant structure that is involuntarily damaged or demolished in any manner and from any cause may be reconstructed as it previously existed. Any expansion or extension of such structure shall be subject to the standards governing expansions, alterations and enlargements in Section 12.6.2.2. above.

**SECTION 12.6.3 DETERMINATION OF COMPLIANT STATUS**

Compliant status shall be determined by the Zoning Administrator.

## DIVISION 12.7 NONCONFORMING USES

### SECTION 12.7.1 DEFINITION

- 12.7.1.1 Nonconforming use means any use which, at the time the use was first permitted or initiated, was lawfully operated, and has since that time been continuously lawfully operated, but which use is not a permitted use under this Code and is not a "compliant use" under Division 12.5 of this Code.
- 12.7.1.2 Nonconforming outdoor general advertising devices (billboards) and other nonconforming signs shall be subject to the nonconforming sign provisions in Division 12.9 of this Article instead of the nonconforming use standards stated in this Division 12.7.

### SECTION 12.7.2 LIMITED CONTINUANCE OF NONCONFORMING USES ALLOWED

#### 12.7.2.1 General Allowance and Limitation on Expansion

Provided it continues to comply with all provisions of this section, any nonconforming use may be continued in operation on the same land area and on the same floor area in a structure that was occupied by the nonconforming use on the date the use first became a nonconforming use. Except as authorized in Section 12.7.2.2 below, the land area **and/or** the floor area in a structure devoted to the operation and maintenance of a nonconforming use shall not be increased. The continuance authorized hereunder shall not be construed to permit increase in the number of dwelling units, a reduction of the ratio of land area to the number of dwelling units, or any change whatsoever in any aspect of and feature of or in the character of the nonconforming use.

#### 12.7.2.2 Zoning Administrator Authority to Allow Limited Expansions

##### A. Zoning Administrator Authority in Special Cases Only

The Zoning Administrator may authorize, upon application in specific cases, an exception permitting an increase in either or both the land area or the floor area in a structure or structures occupied by a nonconforming use as are necessary and essential to enable the owner of the use to comply with lawful requirements of the federal, state, or municipal governments.

##### B. Procedure and Required Findings

All applications for an allowance under this Section 12.7.2.2 shall be reviewed according to the procedures stated in Section 12.4.1, Zoning Permit Review. In addition to the review criteria stated in Section 12.4.1, the Zoning Administrator shall grant an allowance only upon finding the following conditions exist:

1. That the use is a nonconforming use as defined in this Code, is in full compliance with all requirements of this Code applicable to nonconforming uses, and is not a nonconforming use which, by the provisions of this Code, is to be terminated by operation of law; and
2. That the allowance for expansion is necessary and essential to enable the owner of the use to comply with lawful requirements of federal, state or municipal governments.

##### C. Allowance Personal to Owner

Every allowance authorized by this Section 12.7.2.2 shall be personal to the applicant and shall not be transferable, and shall run with the land only after construction of any authorized structure or structures and only for the life of such structure or structures.

#### 12.7.2.3 Board of Adjustment Authority to Grant Variances for Expansion

The Board of Adjustment is authorized under its power to grant variances to permit an increase in the floor area occupied by a nonconforming use in an existing structure, subject to the procedures and applicable criteria stated in Section 12.4.7, Variance.

## DIVISION 12.8 NONCONFORMING STRUCTURES

### SECTION 12.8.1 DEFINITION

Nonconforming structure means any structure that was lawfully erected or altered in conformity with all applicable municipal ordinances, but which structure does not comply with all of the provisions of this Code established for conforming structures in the zone district in which the structure is located and is not otherwise a "compliant structure" under Division 12.6 of this Code.

### SECTION 12.8.2 CONTINUANCE AND ENLARGEMENT

#### 12.8.2.1 General Allowance to Continue and Enlarge Nonconforming Structures

- A. Subject to all limitations of this Division 12.8, any nonconforming structure may be occupied, operated, and maintained in a good state of repair.
- B. Subject to all limitations of this Code, any nonconforming structure may be altered or enlarged so long as no existing nonconformity is increased and no new nonconformity is created.

### SECTION 12.8.3 DETERMINATION OF NONCONFORMING STATUS

Nonconforming status shall be determined by the Zoning Administrator.

### SECTION 12.8.4 TERMINATION OF NONCONFORMING STRUCTURES

#### 12.8.4.1 Involuntary Destruction or Damage to Structure

The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure is damaged or demolished in any manner and from any cause whatsoever and the cost of repairing such damage or demolished exceeds 75 percent of the replacement cost of such structure on the date of such damage or demolished.

#### 12.8.4.2 Obsolescence of Structure

The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds 50 percent of the replacement cost of such structure on the date that the Zoning Administrator determines that such structure is obsolete or substandard.

#### 12.8.4.3 Determination of Replacement Cost

In determining the replacement cost of any nonconforming structure there shall not be included therein the cost of land or any factors other than the nonconforming structure itself.

#### 12.8.4.4 The Right to Reconstruct Certain Structures

Notwithstanding the provisions of subsections 12.8.4.1, 12.8.4.2, and 12.8.4.3, the right to operate and maintain any of the nonconforming structures listed below shall not be terminated regardless of the amount of damage, destruction or obsolescence; provided, however, that any such reconstructed nonconforming structures shall not be enlarged and/or extended beyond that which existed previously unless the enlargement and/or extension complies with all the provisions of this Code.

- A. A nonconforming structure containing a residential use or a residential care use located in a Residential Zone District, or
- B. A nonconforming structure located in the C-CCN Zone District; or
- C. A structure located in the D-C or D-TD zone district that became a nonconforming structure on October 14, 1994, as a result of (a) changes to the prior B-5 zone district changing the floor area premiums and maximum gross floor area of structures; or (b) the creation of the OD-2,

OD-3 and OD-4 overlay districts regarding maximum building height or sunlight preservation requirements; or

- D. A structure located in a Residential Zone District that became a nonconforming structure on June 26, 1998, as a result of the creation the OD-6, OD-7 and OD-8 overlay districts, or
- E. A residential structure located in a SU zone district that became a nonconforming structure July 21, 2008, as a result of the creation of the OD-10 overlay district.

#### **12.8.4.5 Voluntary Demolition**

Nothing in this Section 12.8.4 shall be deemed to permit the reconstruction or reestablishment of all or any part of a nonconforming structure that has been voluntarily demolished.

## DIVISION 12.9 NONCONFORMING SIGNS

### SECTION 12.9.1 NONCONFORMING ON-PREMISE SIGNS

#### 12.9.1.1 Declaration of Public Policy

It is reasonable that a time limit be placed upon the continuance of existing nonconforming signs. An amortization program permits the owner to plan during a period when the owner is allowed to continue the nonconforming signs while at the same time assuring that the district in which the nonconforming signs exist will eventually benefit from a substantial uniformity of permanent signs.

#### 12.9.1.2 Definition of Nonconforming On-Premise Signs

A nonconforming sign shall be any sign other than an outdoor general advertise device, which:

- A. On March 19, 1971, was lawfully maintained and had been lawfully erected in accordance with the provisions of any prior zoning ordinance but which sign does not conform to the limitations established by this Code on March 19, 1971, in the zone district in which the sign is located; or
- B. On or after March 19, 1971, was lawfully maintained and erected in accordance with the provisions of this Code effective March 19, 1971, but which sign, by reason of amendment to this chapter effective March 19, 1971, after the effective date, does not conform to the limitations established by the amendment to this chapter effective March 19, 1971, in the zone district in which the sign is located.

#### 12.9.1.3 Continuance of Nonconforming Signs

Subject to the termination hereinafter provided, any nonconforming sign may be continued in operation and maintained after March 19, 1971; provided, however, that no such nonconforming sign shall be changed in any manner that increases the noncompliance of such nonconforming sign with the limitations established by the this Code effective March 19, 1971, or any amendment to this Code in the zone district in which the sign is located; and provided further, that the right to continue in operation and maintain any nonconforming sign shall be conditioned on the use by right not having more signs than allowed for the particular zone district in which the use by right is located, and that no such nonconforming sign shall flash, blink, fluctuate, be animated or portable.

#### 12.9.1.4 Determination of Nonconforming Status

Nonconforming status shall be determined by the Zoning Administrator.

#### 12.9.1.5 Termination of Nonconforming Signs

The following actions shall result in the termination immediately of the right to maintain a nonconforming sign:

##### A. By Abandonment

Abandonment of a nonconforming sign shall terminate immediately the right to maintain such sign.

##### B. By Violation of this Code

Any violation of this Code shall terminate immediately the right to maintain a nonconforming sign.

##### C. By Destruction, Damage or Obsolescence

The right to maintain any nonconforming sign shall terminate and shall cease to exist whenever the sign is damaged or destroyed, from any cause whatsoever, or becomes obsolete or substandard under any applicable ordinance of the city to the extent that the sign becomes a hazard or a danger.

## SECTION 12.9.2 NONCONFORMING OUTDOOR GENERAL ADVERTISING DEVICES

### 12.9.2.1 Definition

A nonconforming outdoor general advertising device shall be any such device which:

- A. On ~~the effective date of this Code~~ June 25, 2010, was lawfully maintained and had been lawfully erected in accordance with the provisions of any prior zoning ordinance, but which sign does not conform to the limitations established by this Code; or
- B. On or after ~~the effective date of this Code~~ June 25, 2010, was lawfully maintained and erected in accordance with the provisions of this Code, but which device by reason of amendment to this Code after June 25, 2010~~the effective date thereof~~, does not conform to the limitations resulting from such amendment.

### 12.9.2.2 Determination of Nonconforming Status

Nonconforming status shall be determined by the Zoning Administrator.

### 12.9.2.3 Continuance

Subject to the termination hereinafter provided, any nonconforming outdoor general advertising device may be continued in operation and maintained after January 1, 2010; provided, however, that, after January 1, 2010, no such device shall be modified as defined in section 10.9.17.2.A.5. The burden of establishing such a device to be nonconforming under this section rests entirely upon the person claiming a nonconforming status for an outdoor general advertising device.

### 12.9.2.4 Termination

The following actions shall result in the termination immediately of the right to maintain a nonconforming outdoor general advertising device:

#### A. By Abandonment

Abandonment of a nonconforming outdoor general advertising device shall terminate immediately the right to maintain such device. If a message surface is vacant or contains obsolete advertising for any six consecutive month period, it shall be deemed to be abandoned. A "vacant" message surface shall mean a message surface that is void of any message content and shall not include a message surface displaying the name of the permit holder's business, a public service announcement or "for rent", "available for lease", or any similar message. "Obsolete advertising copy" shall mean advertising copy which pertains to an event or activity which has already occurred.

#### B. By Violation of this Code

Any violation of this Code, except for the failure to continuously display a city registration number on a device as required by section 10.9.17.2.3, shall terminate immediately the right to maintain a nonconforming outdoor general advertising device. In the event a city registration number which was displayed on a nonconforming outdoor general advertising device in conformance with section 10.9.17.2.3 becomes detached or unreadable, the permit holder shall have 90 days from receipt of notice of such violation to cure the violation.

#### C. By Destruction, Damage or Obsolescence.

The right to maintain any nonconforming outdoor general advertising device shall terminate and shall cease to exist whenever the device is damaged or destroyed, from any cause whatsoever and the cost of repairing such damage or destruction exceeds 50 percent of the replacement cost of such device on the date of such damage or destruction; or whenever the device becomes obsolete or substandard under any applicable ordinance of the city to the extent that the device becomes a hazard or a danger.



#### **12.9.2.5 Removal of Terminated Device**

The termination of a nonconforming outdoor general advertising device shall require its immediate removal. Furthermore, no terminated device shall receive credit pursuant to section 10.9.17.2.A.7 to be used for a new device.