

Section 12.23 Nonconforming Building and Uses

In order for a building or structure to maintain its' nonconforming status, at least 25% of the original building/structure shall remain (*25% of the building's foundation including the portion of the walls and ceiling/ floor joists supported by that portion of the foundation must remain*)

Once any portion of the building is removed or lifted off the foundation, the nonconforming status for that portion is permanently lost. The replacement or any new portion shall conform to the latest Zoning requirements.

The following nonconforming provisions can only be applied to an existing structure meeting the above minimum 25% criteria.

A. Non-conforming with respect to LOT AREA (Yards, Density and Residential Floor Area):

When the building does not comply with the current requirements of subsection C of the applicable zone, it is nonconforming to LOT AREA.

For example:

- An apartment building in the RD1.5 zone with a density of less than 1500 sq. ft. is non-conforming as to Density requirements.
- A single family home with the existing "residential floor area" greater than the maximum permitted by code.

1) Non-conforming with respect to Density:

- * Repair, alteration or internal remodeling for any building nonconforming to density is permitted.
- * For RA, RE, RS and R1 Zones, any buildings (not limited to just a single family dwelling) nonconforming to "Residential Floor Area" regulation can be remodeled provided that at least 50% of the perimeter length of the contiguous exterior walls and 50% of the roof are retained. * However, any building nonconforming to the "Residential Floor Area" regulation **shall not be added to** or enlarged in any manner.
- * Buildings in the OS, A, R, P, PB, C or PF zones, can be enlarged provided that the enlargement **meets the FAR ratio requirement and all other provisions of the Code and** does not create any additional dwelling units or guest rooms.

2) Non-conforming as to Yards:

i) Repair, alteration or internal remodeling only for any building nonconforming to Area:

Retain* at least 50% of the perimeter length of the existing nonconforming portion of the exterior walls. For any existing exterior wall nonconforming to yards retaining less than 50%, the entire existing wall shall be corrected to meet the current yard requirements.

(Since the last code revision, the existing rafters or ceiling joists sitting on the exterior wall is no longer required to stay for nonconforming yard)

ii) Addition or Expansion in floor area of an existing building:

Any building nonconforming to yards can be added to or enlarged. Any addition or enlargement does not exceed the maximum height* or length (see attached memo for defining “visual bulk”) of adjoining nonconforming portion may project into the same yard provided that:

- a. Addition or enlargement can’t encroach into the yard farther than the nonconforming portion
- b. Addition or enlargement shall not be encroaching more than 50% of the latest code required yards.

(* The new exterior wall does not have to be mirroring of the nonconforming portion but the total surface area of the new portion cannot be greater than the existing non-conforming portion).

Exception on “prevailing front yard” for single family dwellings –

Since the “prevailing front yard” is constantly increased or decreased depending on the neighboring lots of the entire block, for a single family dwelling subjected to the “prevailing front yard”, the existing front yard will be the code’s required front yard for that lot. Therefore, any additions behind the existing house will not be subject to the nonconforming yard provision per Section 12.23A1(a) (read attached memo). Any additions in front of the house, shall comply with the “prevailing front yard”.

B. Non-conforming as to Height provision (Building Height and FAR ratio):

- A building nonconforming to Height can be enlarged provided that the total additions do not exceed 50% of the ground floor area of the building. (The addition conforms to all current regulations of the zone including the height).
- A building nonconforming to the FAR ratio can’t be further added to or enlarged without a City Planning entitlement action.

C. Non-conforming Use of Buildings:

When the building doesn’t comply with the current requirements of sub-section C of the applicable zone, the building is non-conforming as to USE.

For examples:

1. A legal existing hotel in an R3 zone lot.
 2. A legal existing accessory living quarters in an R1 lot of less than 10,000 sq.ft.
- Nonconforming Use in Manufacturing Zones –
 - a) Residential Uses in the M3 zone shall not be permitted to remain beyond five years.
 - b) A residential building in M zones (other than M3) shall not create more units or guest rooms; nor it can be redesigned or rearranged for other types of residential uses.
 - Discontinuance of Manufacturing Use in A or R zones.

- Commercial Use in A or R zone requires Planning action as set forth in Section 12.24X.27

Under Section 12.23B (9) for Discontinuance of Use”*A building or structure or portion or a building or structure, which contains a non-conforming use which is discontinued for a continuous period of one year, shall only be occupied by a use that conforms to the current use regulations of the zone and other applicable current land use regulations*”.
For example: A restaurant was closed for more than one year, can they re-open?

Use: Verify restaurant use is still permitted in the zone. All Planning cases for the existing restaurant shall be reviewed and approved by City Planning such as CUP for alcohol.

Parking: The building can still enjoy the nonconforming parking when a minimum 25% of the building is still remaining. However, for any portion of the existing building that is no longer covered and open to the sky, the nonconforming parking for that portion is lost. When the new use requires more parking than the existing one, more parking shall be provided for the differences.

D. Non-conforming Parking:

For Residential projects:

To maintain the non-conforming parking, at least 25% of the structure shall remain.

Non-residential projects:

In addition to the 25% of the structure to remain, the existing rafters, ceiling joists or floor joists roofed over the existing floor area must remain. Once the existing floor area is no longer covered and opened to the sky, the nonconforming parking is lost and the required parking per the latest code shall be provided.

Section 12.23A3(c) Nonconforming Buildings - Enlargements. .

Q- This Code Section allows additions and enlargements to buildings nonconforming as to yards provided that, among other conditions, such additions or enlargements do not exceed the height or length of the nonconforming portion of the building. This question is one about the term “enlargement” and whether raising the roof of a building without expanding its exterior perimeter such as increasing the roof pitch for the purpose of adding a mezzanine is an enlargement.

A - Webster’s defines the term as “to increase in bulk or extent”. Clearly, a neighbor adjacent to a building which is located in a required yard would be further impacted by the increase in bulk due to the raising of the roof of that portion of the nonconforming building which extends into the same required yard. Therefore, any enlargement of a building nonconforming as to yards is subject to the same limitation as additions. As such, the enlargement cannot exceed the height or length of that portion of the building which encroaches into a required yard and must be constructed so that the “visual bulk” of the enlargement is not greater than that of the existing nonconforming portion. See the illustrations where existing nonconforming buildings are added to or enlarged.

(Z. E. memo 7-16-96)

