

ARTICLE 11 – NONCONFORMITIES

11.01 PURPOSE & APPLICABILITY

After the effective date of this Ordinance, pre-existing land or structures, or uses of land or structures which would be prohibited under the regulations for the district in which it is located, shall be considered as nonconforming. It is the intent of this UDO to transition these nonconformities into conformity with the provisions of this UDO, to discourage the continued existence of uses and structures that are incompatible with the current UDO, and to define the circumstances under which existing nonconformities may continue.

11.02 NONCONFORMING USES AND STRUCTURES

A. MAINTENANCE AND REPAIR.

Normal maintenance or repair of nonconforming structures, or structures where nonconforming uses are located, may be performed to an extent not exceeding 50% of the current assessed value of the structure per year. Such maintenance and repair shall not be allowed to increase the usable space of the nonconforming structure or use, except pursuant to this section.

B. ABANDONMENT AND DISCONTINUANCE.

1. A nonconforming use or structure shall be presumed to be discontinued and abandoned, shall lose its nonconforming status, and shall not be reestablished or resumed and thereafter be used only for conforming purposes under any of the following circumstances:
 - a. The owner has indicated intent to abandon the use or structure, delivered in writing to the Administrator.
 - b. A nonconforming use is discontinued for a consecutive one-hundred & twenty (120) day period or for a total of one-hundred & twenty (120) calendar days in a twelve (12) month period.
2. A nonconforming structure is abandoned for a consecutive one-hundred & twenty (120) day period or for a total of one-hundred & twenty (120) calendar days in a twelve (12) month period.
3. When a use of land or structure made nonconforming by the adoption of this UDO is vacant or discontinued at the effective date of this UDO, the defined time periods begin at that date.
4. All of the buildings and activities on the lot shall be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section.

C. NONCONFORMING USES.

1. A nonconforming use may be changed, modified, or expanded to any permitted uses in the subject district. The affected property may not then revert to a nonconforming use.
2. A nonconforming use may be extended through any portion of a completed building that, when the use was made nonconforming, was designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or land.

D. NONCONFORMING STRUCTURES.

1. A nonconforming structure damaged by fire, flood, or other extraordinary circumstance may be repaired, reconstructed, and used as before if the damage does not exceed sixty percent (60%) of its replacement value. Repairs and reconstruction should be done within twelve months from date of damage.
2. If the value of damage of a nonresidential structure exceeds fifty percent of the replacement value, the building or structure may only be reconstructed in a conforming manner.
3. If the value of damage of a residential structure exceeds fifty percent of the replacement value, the building or structure may be repaired, reconstructed, and used as before, providing construction is completed within twelve months of date of damage.

11.03 NONCONFORMING LOTS AND SITES

This section applies to undeveloped nonconforming lots of record, which are defined as lots that have no substantial structures on it.

A. GOVERNMENT ACQUISITION OF LAND.

Government acquisition of land, such as right-of-way or other government use, shall not render a lot nonconforming.

B. USES.

When a nonconforming lot can be used in conformity with all regulations applicable to a conforming use, except that the lot is smaller than the minimum specified for that use, then the lot may be used as if it were conforming.

C. CONTIGUOUS NONCONFORMING LOTS.

If, on the effective date of this UDO, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then the provisions of this section cannot be taken advantage of and the undeveloped lots shall be considered as one lot and be recombined. This shall not apply if a majority of the developed lots on either side of the street and within five-hundred (500) feet of the undeveloped lot are also nonconforming. The Administrator shall undertake a yearly review of nonconforming lots to determine candidates for combination under this section.

D. SETBACKS.

When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements located in *Article 6 – General Development Standards* cannot reasonably be complied with, then a permit issued for the proposed to allow deviations from the setback requirements if it finds that:

1. The property cannot reasonably be developed for the use proposed without such deviations;
2. These deviations are necessitated by the size or shape of the nonconforming lot; and
3. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

E. SETBACK HARDSHIP.

Compliance with applicable building setback requirements is not reasonably possible if a building serving the minimal needs of the proposed use cannot practicably be constructed and located on the lot in conformity with setback requirements. Financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

11.04 NONCONFORMING SITE ELEMENTS

A. SITE ELEMENTS APPLICABILITY TABLE.

The following table summarizes the requirements that shall be met when there are changes to existing development and/or to nonconforming structures or uses. A “✓” indicates that compliance with all applicable standards is required.

	Dimensional Standards	Building Design Standards	Buffers, Screening, & Landscaping	Parking Lot Landscaping	Outdoor Lighting	Signage ^(d)	Sidewalks
Existing Development:							
Change of Use (from residential to nonresidential or mixed use)		✓	✓	✓	✓	✓	✓
Parking Area Expansion:							
Less than 12 Spaces or <40% of Paved Area				✓(a)	✓(a)		
Expansion of ≥ 40% of Paved Area or 12 Spaces or more			✓	✓	✓	✓	✓
Structure or Building Expansion/Reconstruction:							
< 50% of Existing Floor Area	✓(a,b)	✓(a)			✓(a)	✓	
≥ 50% of Existing Floor Area	✓(a,b,c)	✓(c)	✓	✓	✓	✓	✓

(a) – For expanded/reconstruction portion only.

(b) – Exception: Maximum front setbacks should be met to the extent practical as determined by the Administrator.

(c) – For expansions, reconstruction areas, and all other walls facing public streets.

(d) – See also Section 11.05, Signs, below.

11.05 NONCONFORMING SIGNS

It is the intent of this section to provide a reasonable time for the elimination of nonconforming signs and sign structures. The provisions of this section shall apply to nonconforming signs. Nonconforming signs may remain in use, subject to the regulations of this section and all other applicable requirements.

A. NORMAL MAINTENANCE AND REPAIR.

1. Nonconforming signs may be repaired or renovated as long as the cost of such work does not exceed, within a twelve-month period, fifty (50) percent of the value of such sign. A zoning permit or building permit for such renovation or repair may also be required. Proof of value is required at the time of permit.
2. The message or face of a nonconforming sign may be changed, so long as a change in use has not occurred. If a change in use occurs, the sign must be brought into full conformity with this UDO.

B. ENLARGEMENT OR ALTERATION.

1. No nonconforming sign shall be enlarged or altered in any manner that results in a greater degree of nonconformity.
2. No modification of the structure of any nonconforming sign shall be permitted, except to bring the sign into conformity.

C. DISCONTINUATION.

1. If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction or other enterprise or activity no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within 90 days after such abandonment by the sign owner, property owner or other person having control of the property.

11.06 NONCONFORMING PLANS OR DEVELOPMENT APPROVALS

A. SITE-SPECIFIC PLANS.

Any site-specific plan for the development of property and/or construction of a building which has received final approval by the City of Eden for development and/or construction, but does not conform to this Ordinance, may be developed and/or constructed in accordance with the Ordinance, rules, and regulations in effect at the time that it was approved, including any conditions imposed upon approval.

B. AMENDMENTS AND MODIFICATIONS.

Any amendment or modification to an approved site specific plan, which would have required approval pursuant to the Ordinance, rule or regulation by which the plan was originally approved, shall be reviewed and considered in accordance with the terms and provisions of this Ordinance as if it were an amendment or modification to a plan originally approved under this Ordinance.