

Is your Property Non-  
Conforming  
(Grandfathered)?



Your House is about to  
Expire!

City of Albuquerque  
Code Enforcement Division  
Planning Department  
(505) 924-3850

If your property is Non-Conforming (Grandfathered) to the Comprehensive City Zoning Code you need to apply for Status Established Building with the Zoning Hearing Examiner by March 27, 2012.

**NONCONFORMING.** A structure or use of structure or land which does not conform to this article and which was in conformity with any zoning ordinance in effect at the time it was created.

**STATUS ESTABLISHED BUILDING.** A building nonconforming as to use which is approved to maintain its nonconforming use status. Such approval shall apply only to a building for which the existing use is prohibited upon expiration of its nonconformance amortization period. Such approval shall not be available to nonconforming uses that resulted from Zoning Code text amendments. Approval of a status established building can only occur on or before the expiration of its nonconformance amortization period.

### § 14-16-4-13 STATUS ESTABLISHED BUILDING REVIEW PROCEDURES.

(A) **Application and Fee.** (1) Request for review of a premises nonconforming as to use for approval of status established building(s) is initiated by application to the City on prescribed forms. Each application shall be accompanied by an accurate site plan of the property and other documentation necessary for verification. Documentation may include affidavits and historical documents, including property surveys, County Assessor and building permit records, Sanborn Insurance maps, City Directory citations, aerial photos, and other information as may be required by the City. Each application shall include sufficient copies of materials and include evidence of ownership or interest in property, and shall be complete and accurate. Incomplete or inaccurate information may be grounds for deferral or denial. (2) An affidavit shall accompany each application for review of premises seeking status established building approval for any structure to be used for residential purposes. That affidavit shall state that the property owner asserts that the structure is suitable and safe for human habitation. (3) An application fee of \$90.00 shall accompany each application for review of a premises. Application fees for applications that are withdrawn shall not be refunded.

(B) **Hearing and Decision.** (1) A duly filed application for status established building shall be decided upon the record at or after a public hearing by the City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-6-1 et seq. ROA 1994) who shall serve in the position of "Hearing Officer for Status Established Buildings". (2) Notice of a hearing for approval of a status established building and the procedure for such hearings shall be as specified in § 14-16-4-2(B) of this Zoning Code as it pertains to the Hearing and Decision on SPECIAL EXCEPTIONS, with the exception that all references in that section to "Zoning Hearing Examiner" or "Hearing Examiner" shall be replaced by "Hearing Officer for Status Established Buildings," and all references to "special exception(s)" shall be replaced by "status established building(s)". In addition, applicants for status established building shall post and maintain one or more signs, as provided and where instructed by the Planning Director, for at least 30 days before the date of the hearing.

(C) **Criteria for Decision.** A status established building shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the applicant for status established building is able to demonstrate to the satisfaction of the Hearing Officer that: (1) the current use of the building is nonconforming; (2) the subject property is clearly identified by a site plan and the improvements upon it are accurately depicted; (3) the continuance of the use, if approved, will not be contrary to the public health, safety or welfare of the community; (4) the use, as currently operated and/or maintained, did not, and the continuance of the use is not likely to, significantly interfere with the enjoyment of, or be injurious to, other land in the vicinity; (5) no significant public purpose would be served by requiring removal of the use; (6) the use, if continued, will not be damaged by surrounding structures or activities; and (7) continuance of the use does not create a significant disparity between the existing zoning and the status established building.

The following factors shall be evaluated in determining whether there is a significant disparity between existing zoning and the status established building: (a) the scale, height and overall density of the building; (b) the noise, air or other pollution generated by the use; (c) the traffic and traffic congestion generated by the use; (d) parking needs and availability; (e) usable open space; (f) lighting generated by the use; (g) access to the building; (h) existing landscaping; (i) any other factor deemed relevant by the Hearing Officer.

(D) The Hearing Officer may, when approving a status established building, impose conditions necessary to meet the criteria for granting a status established building that are tailored to the specific impact the conditions are intended to mitigate, including, but not limited to, density, intensity of use, parking, open space, and landscaping/buffering.

(E) **Appeal, Fees, Hearing, and Decision.** (1) The appeal procedure for status established buildings shall follow the appeal procedures, including notification, specified for Special Exceptions as specified in § 14-16-4-4 APPEAL of this Zoning Code. Appeal of a decision of the Hearing Officer for a status established building application is to the Board of Appeals. (2) The filing fee for an appeal is \$55. (3) Appeal shall be made to the City on prescribed forms accompanied by a copy of the file of the decision of the Hearing Officer and information detailing the reason for appeal.

CITY of ALBUQUERQUE  
NINTH COUNCIL

COUNCIL BILL NO. C/S R-303 ENACTMENT NO. 95-1991

SPONSORED BY: Tim Kline

RESOLUTION

1  
2 AMENDING THE 1986 "UNIVERSITY NEIGHBORHOODS SECTOR DEVELOPMENT PLAN"  
3 SU-2/SF LAND USE CATEGORY TO PROVIDE THAT DWELLING STRUCTURES LEGALLY  
4 BUILT AND OCCUPIED PRIOR TO 1978 MAY BE RETAINED EVEN WHERE THERE ARE  
5 MULTIPLE DWELLINGS ON A LOT.

6 WHEREAS, the Council, the Governing body of the City of  
7 Albuquerque, has the authority to adopt plans and planning boundaries  
8 for physical development within the planning and platting jurisdiction  
9 of the City as authorized by New Mexico Statutes and by the City  
10 Charter as allowed under home rule provisions of the Constitution of  
11 the State of New Mexico; and

12 WHEREAS, the existing SU/2/SF Zone regulates legally built  
13 multi-family structures, according to the City Zoning Code,  
14 Non-Conforming Regulation; and

15 WHEREAS, the proposed SU-2/SF Zone will amend the existing zone  
16 allowing multi-family structures legally built prior to 1978, to become  
17 legal but will not allow them to be expanded either in area or in  
18 number of dwelling units; and

19 WHEREAS, the amendment will be noted as exception number 3 to the  
20 Single Family (SF) Zone in the 1986 "University Neighborhood Sector  
21 Development Plan" (page 69); and

22 WHEREAS, on October 25, 1990, the Environmental Planning  
23 Commission recommended that the 1986 "University Neighborhoods Sector  
24 Development Plan" be amended essentially as contained herein; and

25 WHEREAS, the City's reasons for this amendment include not only  
26 the findings of the Environmental Planning Commission but also the

Underscored Material - New  
[Bracketed Material] - Deletion

Underscored Material - New  
[Bracketed Material] - Deletion

1 explanation added to page 18 of the sector plan under the title "Single  
2 Family Zoning."

3 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
4 ALBUQUERQUE:

5 Section 1. That on page 69 of the 1986 University Neighborhoods  
6 Sector Development Plan the SU-2/SF land use category description is  
7 amended by adding an exception 3 as follows:

8 "3. Where there is more than one dwelling per lot, dwelling  
9 structures legally built and legally occupied as dwellings prior to  
10 October 11, 1978 are legal and may continue in the same use for the  
11 useful life of the structure, but may not be expanded either in area or  
12 in number of dwelling units; if such a structure is damaged or  
13 destroyed by fire, flood, wind, or other calamity or act of God, it may  
14 be restored to its original condition provided such work is started  
15 within six months of the damage and is prosecuted diligently to  
16 completion. It is the burden of the owner to show that a structure is  
17 allowed under this exception."

18 Section 2. That on page 18 of the 1986 "University Neighborhoods  
19 Sector Development Plan," the title "Recommendations:" is amended to  
20 "1986 Recommendations:" and the following subsection is inserted before  
21 that title:

22 "Single Family Zoning

23 An authoritative 1957 map (Sanborn), showed a mix of residential  
24 building types along Silver Avenue between Sycamore Street and just  
25 west of Yale, the area now zoned SU-2/Single Family (SF): there appear  
26 to have been 58 single family houses on separate lots, 12 other houses  
27 not on their own separate lots, 11 duplexes, 3 apartment buildings, and  
28 a fraternity house. Thus two-thirds of the lots were developed with  
29 one house. When the City established zoning in 1959, it mapped this  
30 segment of Silver Avenue like the surrounding area as Medium Density  
31 Residential (R-3), which allowed all the above uses.

32 The 1978 Sector Development Plan approved a zone change from R-3  
33 to SU-2/Single Family for this segment of Silver, thus making

Underscored Material - New  
(Bracketed Material) - Deletion

1 duplexes, apartments and fraternities non-conforming uses. This was  
2 intended to further policies listed in the City Comprehensive Plan  
3 encouraging "preservation of older neighborhoods" and "a mixture of low  
4 and high density housing." Planners and residents had found that  
5 Silver Avenue was the first landscaped-median parkway in Albuquerque,  
6 built in the 1920s. Its physical character - narrow landscaped street  
7 median, 1920s Southwestern Revival style and numerous small bungalow  
8 style homes - was found to deserve preservation. This segment of  
9 Silver Avenue had not had the heavy influx of new apartment buildings  
10 found elsewhere in the neighborhood, so it was felt feasible to retain  
11 the old character of development on this street segment. Zoning to  
12 assure continuation of the lower density character satisfied the  
13 neighborhood residents' desire to (1) stop further intrusion of  
14 apartments into the unusual land use mixture then existing, (2)  
15 preserve the historic appearance, and (3) increase social stability.

16 The 1986 Sector Plan retained the Single Family category for the  
17 same portion of Silver Avenue. The plan identified the parkway as  
18 qualifying for a historic district (subsequently approved by the  
19 federal government) and also recommended that a Historic Overlay Zone  
20 be considered (not enacted). This segment of Silver is the only  
21 sizable area in the sector plan area which has a concentration of  
22 architectural styles recognized as significant by the state and  
23 national historic registers. Thus this area should continue to be  
24 treated differently than other areas in the University Plan: zoned as  
25 Single Family.

26 The Single Family zoning category limits principal uses to one  
27 house per lot; a 1990 survey found that just over 50 percent of the  
28 lots were developed with one house. Multi-family dwellings in the  
29 area, and in fact all principal uses except houses, must terminate that  
30 use by 2018. Some 76 percent of the 29 multi-family buildings have  
31 been determined to be historic contributing buildings in the Historic  
32 District. The 1991 amendment allows most pre-1978 dwellings to  
33 continue for the useful life of the structure in the Single Family

Underscored Material - New  
[Bracketed Material] - Deletion

1 category, even when there are multiple dwellings on a lot. This  
2 eliminates a City zoning requirement which would eliminate valuable  
3 historic buildings. This special treatment will help to preserve and  
4 stabilize existing uses and streetscape, described in both the 1978 and  
5 1986 plans as being of significant and unique value to the community."

6 PASSED AND ADOPTED THIS 3rd DAY OF June, 1991.  
7 BY A VOTE OF 7 FOR AND 0 AGAINST.

8 Yes: 7  
9 Excused: Chapman, Gallegos

10 Michael Brasher  
11 Michael Brasher, President  
12 City Council

13 APPROVED THIS 11<sup>th</sup> DAY OF June, 1991

14 Louis E. Saavedra  
15 Louis E. Saavedra, Mayor  
16 City of Albuquerque

17  
18 ATTEST:

19 Karen Acuna  
20 City Clerk  
21

22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33