

10.5 NONCONFORMITIES CREATED BY EMINENT DOMAIN PROCEEDINGS

10.5.1 Authority to Gain Certificate of Conformity

A structure, lot, or parcel of land that is rendered or will be rendered nonconforming because of eminent domain proceedings initiated by a governmental authority, or by the sale of a parcel of land under the threat of eminent domain proceedings shall be considered conforming under the terms of this Ordinance through the receipt of a Certificate of Conformity, pursuant to the terms of this Section. A Certificate of Conformity may authorize the relocation of existing conforming or nonconforming structures with modifications to development standards.

10.5.2 Applicability

Either the Condemnor or Condemnee may submit an application requesting a Certificate of Conformity, pursuant to the terms of this Section.

10.5.3 Procedure

A) **Application**

A Condemnor or Condemnee may submit an application requesting a Certificate of Conformity to the Planning Director either before or after the first negotiation/appraisal of the Condemnor or the Order of Taking in the eminent domain proceeding, or after the sale of a parcel of land under the threat of an eminent domain proceeding. The application shall include the following:

- 1) *Legal description of the land.* A legal description of the land subject to the eminent domain proceeding, or sold under the threat of an eminent domain proceeding;
- 2) *Location.* The name and address of the owner of the land;
- 3) *Name and address of Condemnor.* The name and address of the Condemnor, and the name and address of the Condemnor's representative;
- 4) *Proof of eminent domain proceeding* If relevant, proof of the actual or impending eminent domain proceeding;
- 5) *Survey of land.* A certified survey of the land, no greater than one year old, subject to the eminent domain proceeding or sold under the threat of an eminent domain proceeding that demonstrates the extent of the condemnor's acquisition, and all principal and accessory structures on the land;
- 6) *Site plan.* A site plan of the land subject to the eminent domain proceeding or sold under the threat of an eminent domain proceeding at a scale of not less than 1" = 30', showing: (1) the location of all structures

and improvements on the land; and (2) the extent of the condemnor's acquisition;

- 7) *Explanation.* An explanation of why the Certificate of Conformity should be granted;
- 8) *Proof of notification.* Proof that notification of the application has been provided to the other party (Condemnor or Condemnee, whichever is relevant); and
- 9) *Fee.* The application fee.

B) ***Determination of Sufficiency, Review and Decision***

After receipt of an application requesting a Certificate of Conformity, the Planning Director shall determine whether it is sufficient within 10 days. If it is determined the application is not sufficient, notice shall be served on the applicant specifying the deficiencies. The Planning Director shall take no further action on the application unless the deficiencies are remedied. Within 20 days after the application is determined to be sufficient, the Planning Director shall review and grant, grant with conditions, or disapprove the application, pursuant to the standards established in Sec. 10.5.3(C), *Standards*.

C) ***Standards***

An application requesting a Certificate of Conformity shall be granted if the following standards are met.

- 1) If the condemnation action has not been decided by a court of law, the amount of severance and business damages resulting from the eminent domain proceedings are substantial, and the loss of business damages would be minimized by the issuance of a Certificate of Conformity;
- 2) A site plan can be designed for the land which is consistent with the use requirements of this Ordinance, minimizes to the greatest degree practicable any nonconformities of parking, loading, landscaping, lot size, and yard requirements; and
- 3) The structure or lot can function adequately for its designated land use pursuant to the site plan proposed in Sec. 2.3.6, *Site Plan* that minimizes nonconformities while ensuring compatibility.