

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

October 11, 2017
Marine View Building, 230 S. Franklin Street, 4th Floor
3:15 PM

- I. ROLL CALL
- II. APPROVAL OF AGENDA
- III. APPROVAL OF MINUTES
 - A. Draft Minutes, September 20, 2017
- IV. AGENDA TOPICS
 - A. Continuation of Nonconformities
- V. COMMITTEE MEMBER COMMENTS AND QUESTIONS
- VI. ADJOURNMENT

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, September 20, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:

Dan Miller, Paul Voelckers, Dan Hickok (Alternate)

Members Absent:

Carl Greene, Kirsten Shelton

Staff Present:

Laura Boyce (CDD), Beth McKibben (CDD), Rob Steedle (CDD), Marjorie Hamburger (CDD)

Public Present:

I) Call to Order

Meeting called to order at 3:21 pm.

II) Approval of Minutes

August 16, 2017 Draft Minutes

MOTION: *by Mr. Hickok to approve the August 16, 2017 minutes.*

The motion passed with no objection.

III) Agenda Topics

a) Language for Nonconformities

Ms. McKibben explained that document before the committee was a patchwork of concepts - some from existing code, some from Homer and Anchorage and Portland, OR. There are a number of categories and processes for nonconforming situations. A nonconforming situation could be any one or a combination of these things.

Is it the intent of these meetings to convert this document into Title 49 language, asked Mr. Voelckers? We will plan to repeal and replace from 49.30.500, said Ms. McKibben, rather than try to amend what we have. The idea is to put in new language. We also want to provide a process to determine legally nonconforming status and we need to discuss which decisions can be done administratively or need to happen through the Planning Commission process.

Discussion of Proof of Nonconforming Situation (Lines 33-80)

Mr. Steedle said this puts the burden on the applicant or the property owner to demonstrate nonconforming status and there is not a definition of this at present.

What about the purchase of the triplex on Sixth Street recently, does this situation apply, asked Mr. Hickok? Did the bank not get confirmation on the legally nonconforming status? So we don't know if the buyer made the

purchase of the building considered as nonconforming, asked Mr. Hickok. I don't know, said Ms. McKibben. He may have found a workaround with owner financing, said Mr. Voelckers. But this language we are drafting could provide a process for an owner to show us, in the future, said Ms. McKibben.

Lines 37, Option A and Option B present an option for whose decision it should be. Mr. Hickok asked what the director wants. Mr. Steedle said he did not have an opinion but thinks this determination could be handled administratively. Mr. Voelckers said he liked having it be a director decision with the option for an appeal to the Planning Commission or if the determination gets too complicated. Mr. Steedle says he would rather keep the noise away from the Planning Commission and direct things to them that are necessary only. It is also cleaner if things happen at the director level, said Mr. Voelckers. But something can be said for making decisions in the public eye, said Mr. Steedle. This could be where the appeal comes in if the neighbors are unhappy, for example.

We have tried to make it a trend for more applications to be approved at the director level, said Ms. McKibben. We are trying to be more responsive.

Ms. McKibben said the language concerning evidence of nonconformity is borrowed from other code, and she thinks it is pretty good. There is in this document a lot of clarifying language that is not currently in our code, such as on Line 63 (Ownership). Other language here is not addressed in our code but she thinks is useful such as Line 69 (Change to conditional use). We have the opportunity to talk about maintenance (Line 73). Do we need to define it, asked Ms. McKibben? I put in some language borrowed from Anchorage, she said. She has not talked to building official yet but thinks it would be good to run this language by him.

Mr. Miller said there can be a situation, for example rebuilding a staircase where the stairs could be built to the new standards even though the building as a whole is nonconforming. Do you think we should have language here about such a situation, asked Ms. McKibben? I think most people would want or need to do this when replacing their staircase but doing so might affect the nonconforming status of their building, replied Mr. Miller. You are correct, said Ms. McKibben, if a building owner was going to reconstruct stairs, this should be done to code, and so should we say here that repair or maintenance should be done to code? I think it is implicit, said Mr. Steedle, and a building official would determine this requirement so it is not needed to be spelled out here. Mr. Voelckers said he likes the last section (Lines 75-80) where it says fixing a rotten stair, for example, does not interfere with nonconforming status. However, while it mentions a percentage, it is not specific about the 10 percent. What if someone breaks a project into smaller chunks and has ten 10% projects? This is of concern, said Mr. Voelckers.

Discussion of Nonconforming Lots and Lot Fragments in ??? Zones (Lines 82-113)

I think nonconforming status should not be specific to a particular zone but borough wide, said Ms. McKibben. Mr. Voelckers said the first sentence in this section (line 84-85) should be broader. Mr. Miller asked about Line 86. Wouldn't a lot already have gone through the land use review process to establish use and so it wouldn't have to meet a minimum lot size if it is determined to be nonconforming? Ms. Boyce could not recall a specific use that requires a specific land size (minimum lot size requirement). She said that in Homer there was a minimum lot size for use, but Juneau doesn't have one so this could be eliminated in that sentence. Mr. Voelckers agreed.

Regarding district standards, Juneau does not have any so this can be taken out said Ms. McKibben. Basically we can keep the same policy we have now - if you can meet all the requirements. And the lot needs to go through the process of determining that it is legally nonconforming, said Ms. McKibben. It might be that for different categories of nonconforming, some are determined administratively while others are brought before the Planning Commission.

Ms. McKibben said that Line 92 contains a concept staff suggests - that lots sharing ownership must be combined into one lot. Should the language say one conforming lot, asked Mr. Voelckers? What if there are five lots? Does the committee want to consider when nonconforming lots have common ownership that the lots should be required to be combined, asked Ms. McKibben? North Douglas Highway and 9 Mile Road is an example, said Ms. Boyce. Is there anything external to this section that says a legally nonconforming lot can have a house on it, asked Mr. Voelckers? Yes, said Ms. McKibben, and if you want to make this come forward there is merit. She suggested committee members think about it.

In the Casey Shattuck area, an owner could have two nonconforming lots and today could build two houses, one on each lot, said Mr. Steedle. But the rub is that we want to encourage the development of more housing, he said, and so if code requires the owner to combine the two lots and then only be able to build one house, that is in conflict. Mr. Voelckers said that if someone can meet setbacks, we have had the attitude to allow for a build and sometimes give a variance regarding the setbacks. Ms. McKibben said all this is fine, but it is a discussion we need to have. Ms. McKibben recalled a property owner of 4 legal lots on Douglas Island, with one single family home w/accessory apartment. But with a density change, the 4 lots only have one tax id number and one parcel number which is of concern to the CBJ assessors.

Ms. McKibben suggested removing "must be" in Line 94- keep the language simple. She next suggested taking out everything after the "OR". Commissioners agreed saying that less is more.

Ms. McKibben said that Line 96 is a concept from existing code. Mr. Miller questioned the 75% replacement cost concept. He said what if something happens and the house is destroyed to 76%, why shouldn't the owner be allowed to rebuild if they are willing and have the money? He said he does not see the reason. If an unintentional event happened and they want to rebuild, even if it might cost 120% of the replacement cost, why not allow them to do that if it was a legally nonconforming use? Mr. Miller was also concerned with the definition of catastrophic damage. He said he has been in situations where an owner sets out to replace a window and then discovers a ton of rot. This is a catastrophic event although initially was simply considered "maintenance", said Mr. Miller. Stepping away from the discussion of percentage, said Ms. McKibben, we want nonconformities to go away over time and be replaced with things that conform. This code provides more opportunities to extend nonconforming situations. But that is the concept behind percentages. Committee members might want to think about this as we go though, said Ms. McKibben.

Mr. Miller said that in the neighborhoods downtown, for example, with nonconforming use, these lots and buildings are completely a part of the fabric of the neighborhood. Mr. Voelckers agreed but reminded members that with the Planning Commission's reworking of the zoning in these historic neighborhoods, whole swaths of nonconforming situations might disappear. If we get the underlying zoning right, then there will be less need for nonconforming determinations, he said.

Ms. McKibben said a home that unintentionally burns to the ground could be rebuilt, according to this language. But poor maintenance would not be supported.

Do we need to say explicitly (Line 97) that something can be rebuilt, asked Mr. Voelckers? The language implies this for a catastrophic situation but maybe it is not explicit. Mr. Voelckers said his point regarding Lines 96-97 is that it talks about structures destroyed due to a reason other than a catastrophic one. But the language does not address what is allowed if it is. Mr. Miller suggested it should say if it IS a fire. The word "other" is what is wrong, said Mr. Voelckers. Take out the word "other" and add "such as". If there is a shed or garage, could they

rebuild that, asked Mr. Hickok? Yes, that is current code, said Ms. McKibben, but the committee may want to think about that.

Mr. Steedle said we need to get back to the point about percentage brought up by Mr. Miller. The Alternative Development Overlay District (ADOD) is only temporary, but it would not have helped Trinity Church. Lines 96-97 do not cite a percentage, is this correct asked Mr. Miller? Lines 103-104 discuss intentional damage and I am ok with the percentage there, said Mr. Miller.

Line 103 concerns intentionally damaged dwellings; everyone is fine with this said Ms. McKibben. What about negligence, when things just rot asked Mr. Voelckers? This is a can of worms, said Mr. Miller. Many people just don't know about rot until it is discovered, said Mr. Hickok. I think the phrase "exclusive of the foundation" has to go, said Mr. Miller.

Discussion of Nonconforming Structures (Lines 115-141)

It says here that nonconforming structures can continue and I've added the concept discussed in the July meeting about additions to buildings not encroaching into setbacks, said Ms. McKibben. This is about it being okay to fill in a little cut, as discussed previously, said Mr. Hickok. Yes, when infill doesn't aggravate the nonconformance, is not further into setback, etc. said Mr. Voelckers. Ms. McKibben said this language is trying to articulate this concept but would be improved with an explanatory drawing. I am advocating for more illustrations in our code book, she said. Line 123 is better than Line 121, said Mr. Voelckers. I can get Lisa to help me with a drawing, said Ms. McKibben.

Ms. McKibben pointed out Line 124 which allows for additional stories on a building, which is in code. An applicant would apply for an upfill CUP. We are not suggesting a change, but this should be referred to in the language, said Ms. McKibben. There should be language about this being permissible as long as it doesn't negatively impact the neighbors; also language for the footprint infill. Mr. Voelckers suggested that this could be a CUP process so that neighbors could have the opportunity to comment. But this would come up in a building permit review, said Mr. Miller. Maybe this should rise to the Planning Commission level, suggested Mr. Voelckers.

Ms. McKibben moved onto Line 127 which discusses structures damaged by any means. The language here says it is not to be reconstructed except for the provisions of this code. What does this talk about, asked Mr. Steedle? This breaks down into lots, structures and uses, and I think that is good, said Mr. Voelckers. Mr. Miller said he received a call from a woman who came to town to move her father into a home. The father had been living on 4th street for 40 years, there was lots of trash, and the woman needed help to move things. When Mr. Miller arrived, he pointed out things that had gone unnoticed; the house was basically falling down the hill. Now it is up for sale, and someone is going to buy it, said Mr. Miller. But to fix it right it will be considered more than a 75% rebuild. This is an example of someone who wants to live in a particular building and location and wants to put the money in to fix it up, but they might get shot down. Ms. McKibben said that the current policy is we would allow for a rebuild in the existing footprint except for encroachments into the right-of-way. Do you want to keep that, she asked? But the 75% thing is still there, said Mr. Miller.

Mr. Voelckers asked for a nonconforming structure example. Ms. McKibben said the variance requested recently on Twelfth Street is one where the setbacks did not conform for a complete rebuild on the property.

Mr. Voelckers asked Mr. Miller his thoughts. Mr. Miller said maybe it doesn't really matter and the structures in our town are important enough that if they are legally nonconforming then it is ok. The potential is that a legally nonconforming structure, damaged by any mean (not just catastrophic), any new building except one built on

encroachments is ok; this is what I am hearing, said Ms. McKibben. Mr. Voelckers said the thing he is concerned about is the neighbors. Maybe we are bending over backwards to accommodate a homeowner but the structure has been problematic for years for the neighbors, he said. Also there is a concern about health and well-being. Mr. Hickok said he doesn't like the idea of property owner losing out. Ms. McKibben said to get back to Mr. Voelckers' reminder, we have the ADOD process and active plans to work towards a new zoning district which will more accurately reflecting the historic nature of the neighborhoods. These are things to think about, she said, and a decision is not needed today. We will flag this topic to come back to later.

Ms. Boyce asked if height is a factor for a nonconforming structure. Mr. Miller said for a building that is already in place, neighbors can't be purchasing property with the intention that this tall building will someday come down.

Just have a situation with the recent fire on Sixth Street where the house will need to be totally rebuilt, said Mr. Steedle.

Line 134 – no disagreement here. Density or use is governed somewhere else in the code.

Discussion on Nonconforming Uses (Lines 143-215)

Nonconforming use is a big, tough area, said Ms. McKibben. Beginning with Line 150 is a whole new concept, the change of use in the same category, borrowed from Portland. Portland has code for off-site impacts while we do not, said Ms. McKibben. I like the language, she said, so staff has the ability to document in some way showing we have done an evaluation of this in our review.

For Line 147, I would suggest that they don't operate between 11 and 6, said Mr. Voelckers. What about the conex containers we just approved with noise happening beyond the operating hours, asked Mr. Hickok. Ms. McKibben said, if this was a nonconforming use, then it would go before the Planning Commission. And then it would no longer be nonconforming, with a CUP, said Mr. Miller.

Mr. Voelckers suggested matching the operating hours to the noise ordinance.

For changes of use (Line 165) the example is the conversion of a storefront in a D5 zone, and my suggestion here is that these are reviewed on a case-by-case basis, said Ms. McKibben. An example is AmeriGas which is situated in a residential district, said Ms. McKibben in response to a query from Mr. Hickok.

Ms. McKibben explained that at Line 172, expansions, there is current code here with Portland language in italics, below. This could be simplified, she said. I thought we already decided not to allow expansion for nonconforming uses, said Mr. Hickok. Mr. Voelckers said what if AmeriGas wants to add more tanks on their property? We would want to decide that on a case by case basis, he suggested. How does that compare to Rainbow Foods expanding their grocery to more parts of the building (interior)? Ms. McKibben postulated about a small, nonconforming grocery in a residential district. This fits with CBJ policies about walkability for the neighborhood. Maybe more eyeballs will be on it if it goes through the Planning Commission process, said Mr. Steedle. I think Juneau is lucky because other communities have things like a strip club that are more emotional and controversial, so this is a great time to get this language into place, said Mr. Voelckers.

The intent for language beginning with Line 195 is to reinstate use. Ms. McKibben said it is interesting because the language is used in other communities but the intention is not explained. What if AmeriGas closes for a time to repair the building? I don't know what would be permissible, said Ms. McKibben. It is tricky and worth thought, said Mr. Voelckers. Maybe pull the director into the question to determine if there is legitimate reason

versus gaming the system, said Mr. Voelckers. Maybe proof goes back to the owner, suggested Mr. Miller. There are other concepts in Lines 199 and 200), is the committee okay with them, said Ms. McKibben? Mr. Voelckers said in Line 196 it says used discontinued for 365 days, does this apply here as well? How many people in Juneau know about filing a change of use application, asked Mr. Steedle? I think idea is legitimate, said Mr. Miller, but the reality is what if owners have a little grocery store which is accepted by the neighborhood and no one has ever said it is nonconforming. But then another large, cheaper grocery store opens nearby and the small store owners replace groceries with bicycles. Should they lose their ability to make a living when competition opens nearby driving them to sell bicycles instead of groceries, asked Mr. Miller? It seems difficult to determine what "different" use is; we might need more definition of changed use, said Mr. Voelckers.

Less than 365 days is considered unfriendly to property owners, said Ms. McKibben. But changing to a different thing is instantaneous, said Mr. Voelckers. I like the part about asking permission to reestablish, said Mr. Voelckers. This might clarify the variety of things that cause a stoppage – selling, moving, whatever – he said.

In Line 206 it was suggested to add an example.

Discussion on Nonconforming Residential Densities (Beginning Line 217)

It was decided that the committee will pick up here next time they meet.

IV) Next Meeting

Wednesday, October 11, 3:15 pm

VI) Adjournment

The meeting adjourned at 4:41 pm.

1

2 **Purpose**

3 When a zoning ordinance or other land use regulation is adopted or amended, or when the zoning
4 district designation applicable to a lot changes, then as a result a previously lawful lot, structure, density
5 or use may no longer be allowed. Such previously lawful lot, structure, density or use shall be
6 considered a nonconforming lot, structure, density or use. Such nonconformities may continue, subject
7 to the requirements of this chapter and any other provisions of this Code that expressly apply to
8 nonconforming lots, structures, density or uses.

9 This chapter provides methods to determine whether situations have legal nonconforming status. This is
10 based on whether they were allowed when established, and if they have been maintained over time.
11 This chapter also provides a method to review and limit nonconforming situations when changes to
12 those situations are proposed. The intent is to protect the character of the area by reducing the negative
13 impacts from nonconforming situations. At the same time, the regulations assure that the uses and
14 development may continue and that the zoning regulations will not cause unnecessary burdens.

15 Nonconforming situations that have a lesser impact on the immediate area have fewer restrictions than
16 those with greater impacts. Nonconforming nonresidential uses in residential zones are treated more
17 strictly than those in commercial or industrial zones to protect the livability and character of residential
18 neighborhoods. In contrast, nonconforming residential developments in residential zones are treated
19 more liberally because they do not represent a major disruption to the neighborhood and they provide
20 needed housing opportunities.

21 **Types of Nonconforming Situations**

22 A specific site may be nonconforming because it contains either a nonconforming use, an allowed
23 residential use that exceeds the allowed density, a nonconforming structure, a nonconforming lot or a
24 combination of these. Nonconforming uses, nonconforming residential densities, and nonconforming
25 structure and nonconforming lot are defined in Chapter 49.80, Definitions.

26

27 **Applicability**

28 The nonconforming situation regulations apply only to those nonconforming situations which were
29 allowed when established or which were approved through a land use review. Additionally, they must
30 have been maintained over time. These situations have legal nonconforming status. Nonconforming
31 situations which were not allowed when established or have not been maintained over time have no
32 legal right to continue and must be removed.

33 **Proof of nonconforming situation**

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It is the responsibility of the owner to produce evidence proving the nonconforming situation was allowed when established and has been continuously maintained or used over time. *(Director approval or Planning Commission approval????)*

(option A) Upon presentation of such proof at a public hearing, the Planning Commission may formally approve each nonconforming situation. If approved by the Commission, it shall adopt a written decision that includes a complete description of every approved nonconforming situation.

(Option B) Upon presentation of such proof the Director may formally approve each nonconforming situations. If approved, the Director shall issue a written decision that includes a complete description of every approved nonconforming situation.

No permit may be issued under 49.15 for any activity on a lot prior to *Director/Commission* approval of all nonconforming situations existing on the lot.

Standard evidence that the situation was allowed when established is:

1. Building, land use, or development permits;
2. Zoning codes or maps;
3. Recorded plats

B. Situation maintained over time. Standard evidence that the use has been maintained over time includes but is not limited to:

1. Utility bills;
2. Income tax records;
3. Business licenses;
4. Listings in telephone, business;
5. Advertisements in dated publications;
6. Building, land use, or development permits;
7. Insurance policies;
8. Leases;
9. Dated aerial photos;
10. Insurance maps that identify use or development, such as the Sanborn Maps; or
11. Land use and development inventories prepared by a government agency.

Ownership. The status of a nonconforming situation is not affected by changes in ownership.

Change to a conforming situation. A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the nonconforming rights are lost and a nonconforming situation may not be re-established.

Change to conditional use. A nonconforming use may change to a conditional use if approved through a conditional use review. Once an approved conditional use occupies the site, the nonconforming rights are lost and a nonconforming use may not be re-established.

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Maintenance. Normal maintenance and repair of nonconforming situations is allowed. *(do we need to define what this is?)*

Example language from Anchorage: ...ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Nonconforming Lots, and Lot Fragments in ??? Zones

A lot rendered substandard in size by the adoption of this title may nonetheless be used provided all the following can be met:

The use does not have a minimum lot size greater than the minimum lot size required by the underlying zoning district;

Any district-specific standards, use-specific standards, and dimensional and design standards, such as setbacks, parking, open space, landscaping, etc. are met; and

The lot is accepted as legally nonconforming

If an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, each lot *may be developed with single-family dwellings OR must be combined into one lot.* *(1st statement is current. It needs discussion)*

When a nonconforming lot or lot fragment contains a dwelling unit that is damaged or destroyed for any reason other than fire or other catastrophe beyond the owner's control the structure may be rebuilt to the same footprint on the original location with the exception of encroachments into public rights-of-way or adjacent property. *(it would be prudent to add some language somewhere that lack of maintenance does not qualify –we have used catastrophic or do you think the underlined language gets to that? Or Reasonably foreseeable” It was the intent)*

When a nonconforming lot or lot fragment contains a dwelling unit that is intentionally damaged or demolished *(current code has “so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building shall not be rebuilt, unless the building and its intended use comply with this title. The determination of whether a building is destroyed to the extent described shall be made by the building official.” Other examples have no percentage (Portland OR) many have “to an extent of more than fifty percent of its replacement cost at time of the damage”), the structure may be rebuilt if it complies with the development standards that would apply to new development on the site. (QUESTION in addition to percentage – is there value in keeping the “exclusive of foundation”. My research shows it unique. Extra*

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words can cause confusion. Does it add value?) (thinking the intended use should come out and be addressed in the nonconforming density section)

Nonconforming structures

Nonconforming structures. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

A nonconforming structure may be enlarged or altered, but only if it does not increase its nonconformity except that additions that do not encroach into setbacks beyond existing the existing structure may be permitted. (I'm not in love with this language but the concept is what you were looking for does this get there? additions that do not increase the depth of encroachment into a setback are permissible)

A nonconforming structure may add additional stories in accordance with 49.25.430(4)(M).

If a nonconforming structure is moved for any reason for any distance whatsoever it shall thereafter conform to the code provisions applicable in the zone in which it is located after it is moved;

If a nonconforming structure or nonconforming portion of a structure is *damaged by any means???* to an extent of more than XX?? percent of its replacement cost at time of the damage, it shall not be reconstructed except in conformity with the provisions of this code. *(we need to discuss policy here....current code allows for residential uses in nonconforming structures to be reconstructed on existing footprint (except for encroachments into public ROW and adjacent properties) when damaged (75%) by means beyond the control of the owner...)* The extent of building damage shall be determined by the building official.

If at any time a nonconforming structure is abandoned or brought into conformity with this title, the structure shall thereafter conform to all the regulations of the zone in which it is located.

Tenant improvements or renovations within an existing structure shall not be considered an enlargement or an alteration as described in subsection XX above.

This subsection shall not be construed to allow the expansion of a nonconforming density or use of structure, which is governed by section XXXX.

A nonconforming structure may not be enlarged, altered or reconstructed until proof of nonconforming situation is established *(language needs massaging)*

Non-conforming uses

Continued operation. Nonconforming uses may continue to operate. Changes in operations, such as changes in ownership, hours of operation and the addition or subtraction of accessory uses, are allowed. However, nonconforming uses in residential zones may not extend their hours of operation into the period of 11 pm to 6 am.

Change of use in the same use category. A change to a different use in the same use category, such as a change from one type of Sales and Rental Goods, Merchandise or Equipment use to another type of Sales and Rental Goods, Merchandise or Equipment use, is allowed by right, provided that the use complies with associated district-specific, dimensional, and development and design standards such as

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setbacks, parking, landscaping, etc. *(the Portland code refers to a section of code specific to “off site impacts”. CBJ doesn’t have a comparable section. Off site impacts could be noise, dust, odor, traffic, visual impacts...the language I thru in sort of makes sense but doesn’t seem to grasp all of those off site impacts.....consider language....provided the director determines the use will not increase off site impacts such as, but not limited to noise, odor and traffic??)*

For changes of use within the same use category which do not comply with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc. *or the director determines that an increase in off site impacts can reasonably be anticipated,* the change may be allowed through a nonconforming situation review.

Change of use in a different category. A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming situation review. In RR, D1, D3, D5, D10, D15 and D18 zones, a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density may be allowed through a nonconforming situation review. *An example of this is conversion of a storefront in a D5 zone (nonconforming use) to a triplex (allowed use, nonconforming residential density).*

Expansions. A use made nonconforming by the adoption of the ordinance codified in this title may be extended throughout any portion of a completed building manifestly designed or arranged to accommodate such use.

But may not, except as provided in section 49.30.800, be extended to other buildings or to land outside the original building. (what do we think of this current policy? Below in italics is Portland OR policy.

Expansion of nonconforming uses and development is generally limited to the area bounded by the property lines of the use as they existed two years before the use became nonconforming. The property lines are the lines nearest to the land area occupied by the nonconforming use and development and its accessory uses and development, moving in an outward direction. Property lines bound individual lots, parcels, and tax lots; a site or ownership may have property lines within it. See Figures 258-1 and 258-2. The applicant must provide evidence to show the location of property lines as they existed two years before the use became nonconforming.

The standards stated below apply to all nonconforming uses in OS and R zones.

Expansions of gross building area or exterior improvements, when proposed within the property lines as they existed two years before the use became nonconforming, may be approved through a nonconforming situation review. The development standards of the base zone, overlay zone, and plan district must be met.

Expansion of gross building area or exterior improvements beyond the property lines as they existed two years before the use became nonconforming, is prohibited.

Loss of nonconforming use status.

Discontinuance. If a nonconforming use is discontinued for 365 consecutive days, or discontinued for any period of time without a present intention to reinstate the nonconforming use, the nonconforming use rights are lost. If a nonconforming use ceases operations, even if the structure or materials related

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to the use remain, the use has been discontinued. If a nonconforming use changes to another use without obtaining all building, land use, and development permits that would have been required at the time of the change, the legal nonconforming use has been discontinued. A nonconforming use that has been discontinued for more than 365 continuous days may request re-establishment through a nonconforming situation review. Re-establishment of a nonconforming use that has been discontinued for 1 or more years is prohibited.

Accidental destruction. When a structure containing a nonconforming use is damaged by fire or other causes beyond the control of the owner, the re-establishment of the nonconforming use is prohibited if the repair cost of the structure is more than 75?? percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials. The extent of building damage shall be determined by the building official.

for any reason other than fire or other catastrophe beyond the owner's control???

Intentional destruction. When a structure containing a nonconforming use is intentionally damaged by fire or other causes within the control of the owner, the reestablishment of the nonconforming use is prohibited.

Nonconforming Residential Densities

Changes to dwellings.

Generally. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site.

Sites that exceed maximum residential density standard. On sites that exceed the maximum residential density standards reconstruction of the non-conforming dwelling units may be approved through a nonconforming situation review. The development standards of the base zone overlay zone, and plan district must be met.

Nonconforming densities may not be enlarged, altered or reconstructed until proof of nonconforming situation is established *(language needs massaging)*

Discontinuance and damage.

Building unoccupied but standing. Nonconforming residential density rights continue even when a building has been unoccupied for any length of time. *Big policy question!!*

Accidental damage or destruction. More than one dwelling unit. When there is more than one dwelling unit on a site, and when the site is nonconforming for residential density, the following applies if a structure containing dwelling units is damaged or destroyed by fire or other causes beyond the control of the owner:

If the structure is rebuilt within 5??? years, nonconforming residential density rights are maintained;

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237 If the structure is not rebuilt within 5??? years, the nonconforming residential density rights are
238 lost, and the site is considered vacant;

239 If the repair cost is more than 75??? percent of the cost of the replacement of the entire
240 building, exclusive of foundations, using new materials, then such building shall not be rebuilt. The
241 extent of building damage shall be determined by the building official.

242 **One dwelling unit.** When there is only one dwelling unit on a site, and when the site is nonconforming
243 for residential density, the following applies if the structure containing the dwelling unit is damaged or
244 destroyed by fire or other causes beyond the control of the owner: *needs discussion about applicability*
245 *in I and WI zoning districts*

246 If the repair cost is 75??? percent of the cost of the replacement of the entire structure,
247 | exclusive of foundations, using new materials, nonconforming residential density rights are maintained
248 and the structure may be rebuilt. The extent of building damage shall be determined by the building
249 official.

250 If the repair cost is more than 75???, percent of the cost of the replacement of the entire
251 structure, exclusive of foundations, using new materials, nonconforming residential density rights are
252 maintained and the structure may be rebuilt within 5 years if it complies with the development
253 standards (except for density) that would apply to new development on the site. The extent of building
254 damage shall be determined by the building official.

255 If the repair cost is more than 75?? percent of the cost of the replacement of the entire
256 structure, exclusive of foundations, using new materials, nonconforming residential density rights are
257 maintained and the structure is not rebuilt within 5 years, the nonconforming residential density rights
258 are lost, and the site is considered vacant. The extent of building damage shall be determined by the
259 building official.

260 Nonconforming densities may not be enlarged, altered or reconstructed until proof of
261 nonconforming situation is established (*language needs massaging*)

262 **Intentional damage, destruction or demolition.** When a structure that is nonconforming for residential
263 density is intentionally damaged, destroyed or demolished by fire or other causes within the control of
264 the owner, the nonconforming residential density rights are lost, and the new development must meet
265 all development standards for the site.

266 **Nonconforming parking.** A building may be replaced or reconstructed under this subsection with the
267 same number of off-street parking spaces as were provided for the original building. *Current code*

268 **Nonconforming signs.** 49.45.400

269 **Nonconforming Situation Review**

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270 **Procedure.** A nonconforming situation review is processed.....(*still thinking*).

271 **Approval criteria.** The request will be approved if the Planning Commission finds that the applicant has
272 shown that all of the following approval criteria are met:

273 With mitigation measures, there will be no net increase in overall detrimental impacts (over the
274 impacts of the last legal use or development) on the surrounding area taking into account factors such
275 as:

- 276 a. The hours of operation;
- 277 b. Vehicle trips to the site and impact on surrounding on-street parking;
- 278 c. Noise, vibration, dust, odor, fumes, glare, and smoke;
- 279 d. Screening *ANYTHING ELSE?*
- 280 e. The amount, location, and nature of any outside displays, storage, or activities; and
- 281

282 If the nonconforming use is in a D1, D3, D5, D10SF, D10, D15 or D18 zone, and if any changes are
283 proposed to the site, the appearance of the new use or development will not lessen the residential
284 character of the area. This is based on taking into account factors such as:

- 285 a. Building scale, placement, and facade;
- 286 b. Parking area placement;
- 287 c. Buffering (screening?) and the potential loss of privacy to abutting residential uses;
- 288 and
- 289 d. Lighting and signs
- 290

291 **Definitions**

292 **Nonconforming building or structure.** A building or structure that does not meet one or more height,
293 setback, building coverage, or other dimensional requirements for the land use district in which it is
294 located.

295 **Nonconforming lot.** A lot which legally existed prior to the adoption, revision, or amendment of this
296 Code does not comply with current minimum lot size, lot depth, lot width requirements or other lot
297 requirements of the district in which the lot is located.

298 **Nonconforming Residential Density.** A residential use that is an allowed use in the zone and that was
299 constructed at a lawful density, but which subsequently, due to a change in the zone or zoning
300 regulations, now has greater density than is allowed in the zone.

301 **Nonconforming Situation** means a nonconforming lot, use or structure, density or any combination
302 thereof.
303

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304 **Nonconforming Use.** A use that was allowed by right when established or a use that obtained a required
305 land use approval when established, but that subsequently, due to a change in the zone or zoning
306 regulations, the use or the amount of area devoted to the use is now not permitted under the current
307 zone designation.

308 **Abandon** means (a) with respect to a use, the cessation of such use for any length of time, combined
309 with intent to indefinitely cease such use, or (b) with respect to a structure, the cessation of occupancy
310 of such structure for any length of time, combined with intent to indefinitely cease occupancy of such
311 structure.

312 **Change** means, with respect to a nonconforming use, that the nonconforming use has been converted
313 to a different use for any period of time, regardless of intent. *(Note to law- how does this relate to*
314 *"change of use" in current definitions?)*

315 **Discontinued** means that a nonconforming use has ceased, and has not substantially resumed, for a
316 period of 12 consecutive months, regardless of intent. *We use 365 consecutive days do we care?*

317 **Occupy or occupancy** means actual physical occupancy of a structure or lot, regardless of intent.

318 **Primary use** means the primary activity actually conducted in a serious, substantial, and ongoing
319 manner on a lot or in a structure, and for which the lot or structure is actually and primarily occupied
320 and maintained, regardless of intent.

321 **Substantially resumed** means substantial and continuous resumption of the use as the primary use for a
322 period of at least 60 consecutive days. Activity that does not meet this standard is not sufficient to
323 interrupt a period of discontinuance. *(Note to law –current code definitions Substantial damage and*
324 *substantial improvement???)*

325 **Use** means activity actually conducted on a lot or in a structure, and for which the lot or structure is
326 actually occupied and maintained, regardless of intent.

327