

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

September 20, 2017

Marine View Building, 4th Floor Conference Room, 230 S. Franklin Street
3:15 PM

- I. ROLL CALL
- II. APPROVAL OF AGENDA
- III. APPROVAL OF MINUTES
 - A. August 16, 2017 Draft Minutes, Title 49 Committee Meeting
- IV. AGENDA TOPICS
 - A. 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, August 16, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:

Dan Miller, Paul Voelckers, Kirsten Shelton, Dan Hickok (Alternate)

Members Absent:

Carl Greene

Staff Present:

Laura Boyce (CDD), Beth McKibben (CDD), Marjorie Hamburger (CDD), Tim Felstead (CDD)

Public Present:

I) Call to Order

Meeting called to order at 3:19 pm.

II) Approval of Minutes

July 19, 2017 Draft Minutes

Mr. Voelckers commented that on page 4, 3rd paragraph add "Commissioners liked the notch infill as not further increasing the encroachment. This sort of infill should not be dismissed outright."

MOTION: *by Mr. Miller to approve as amended the July 19, 2017 minutes.*

The motion passed with no objection.

III) Old business:

a) Review of Title 49's Nonconforming Development Policies

Ms. McKibben is not totally prepared to dive deep into the use discussion. She has an example of nonconforming code from Portland, OR that she thinks represents the direction our code want to go. It has very clear parameters, although it might be more complicated than we want. She said this will help with challenges in this section of code for example to separate use from density. She pointed out other concepts that she finds useful in this example and will share this document with the committee members at a later meeting.

She also recently learned that different lending institutions will take on different amounts of risk. Most strict, for example, is the HUD 180 loaning program. Ms. McKibben talked about Aurora Arms as an example, and she found evidence of a loan that was processed in 2011 and flew through with no problem. If we say the building can be rebuilt to the existing footprint, the loan goes through. Mr. Miller noted that yes, it could be a single-family rebuild.

Mr. Miller said there have been many changes from 2011 to today with housing loans. Now there is much more paperwork and scrutiny and this has been gaining steam since 2008.

Ms. McKibben said the American Planning Association (APA) service told her they had not seen many communities revising their sections of nonconforming code since the Great Recession. Ms. McKibben said we need to focus on the issues to make a code that works for the community and not just focus on the lending institutions. If this is clear, likely it will improve things for the lenders.

Mr. Voelckers asked if committee members want a copy of the Portland model. Ms. McKibben said for her, reading through it gave her a framework for thinking through concepts. She handed paper copies to the attending members. She suggested they read this for homework. The way the language is framed, what is ok to continue and what is not will help to group things into various kinds of uses, she said.

Mr. Voelckers suggested the committee have two weeks to read the document and then give their comments to Ms. McKibben so that the topic can come back at the September committee meeting.

IV) New Business

a) Review of Planned Unit Development Code (PUD)

Mr. Felstead came in to talk about a developer who wants to build in the West Montana Creek PUD. Each plat says 1 dwelling unit per lot. He explained that we don't include accessory apartments counting towards density. There is nothing in the staff reports that says allowed or not allowed, he said, and it was not talked about in the minutes for permits for the PUD.

Ms. McKibben said whether an accessory apartment is allowed or not is one question. Another question is do they need a permit or not. The density of the entire property is a D3 density.

Mr. Voelckers asked what these apartments trigger for parking. One additional space, replied staff. As part of a review we would insure 3 parking spaces for each property with an apartment, said Ms. Boyce. Montana Creek lots are designed like a D5 neighborhood in a D3 zoning area, said Mr. Felstead. Ms. McKibben said housing is clustered in these lots.

Ms. Boyce has no qualms about saying it is an over the counter permit because overall this meets density requirements. But planners are all over the place with this, she said. Mr. Felstead has done forensic planning on this topic, said Ms. McKibben. What we can't discern is whether one dwelling per lot included accessory apartments or not. We don't know the intention from the past, said Ms. McKibben. They count as dwelling units but not density, said Ms. Boyce.

Mr. Miller said the reason is we took full acreage and figured out how many lots could fit in there. We were not using zoning as the framework. Then we were blindsided by the flood plain trigger for rezoning and so it was determined that the wetlands there could not be built upon, he said. We were forced into the PUD situation; trying to make the best of it. The question never came up when Mr. Miller built the first houses in that area. No clients wanted an accessory apartment at that time, although he said he thought it would have been allowable, said Mr. Miller.

There is a plat note that says zoning allowances allowed for the entire PUD parcel can be transferred over to the smaller sub lots, said Mr. Felstead. This means each small PUD lot is effectively bigger in terms of zoning allowance since it can 'borrow' lot area from the large conservation lot. Each lot is effectively 12,000sq ft. in size in terms of zoning rights. This was my interpretation as well, said Ms. Boyce. This was the first PUD I took from start to finish, said Mr. Miller, so not every eventuality was thought through.

When we changed the code so that accessory apartments could be permitted over the counter if conventionally conforming, I noticed Low Pete offering these options to clients, said Ms. McKibben.

About PUD, is the only issue regarding setbacks is that they only have to stay within 10 feet from another building, asked Mr. Voelckers? Montana Creek subdivision is a little different, said Ms. McKibben. So, I think we can do it as a single blob with 8 units. A subdivision within a PUD is not the same, said Ms. McKibben. Mr. Voelckers argued that setbacks are still minimal.

I threw my hat into the ring to be a commissioner after this experience and seeing how tough it was, said Mr. Miller. Forty percent is a big huge number and stops a lot of PUDs, said Mr. Miller. Land is priceless in Juneau. He said it only can work if there are so many wetlands that already can't be built on, for example.

What if a PUD was four 8-plexes, asked Mr. Voelckers? Montana Creek West has something like that, said Mr. Miller. But then, said Mr. Voelckers, this may color our perception of accessory apartments. Multi-family can't have them, said Ms. Boyce, only a single-family dwelling. A 12-unit PUD on North Douglas collectively owns the land; dwellings are not sitting on their own lots, so they can't have accessory apartments.

Mr. Miller stated that common wall dwellings are single-family and duplexes are not. This has to do with the situation of the structure on the lot and where the lot line runs. Mr. Miller asked, if there is a single owner and the lot is big enough, why not allow an accessory for a duplex?

Changes made for these apartments has been great these past years, said Ms. McKibben

Mr. Voelckers asked committee members if they have enough info about PUDs and accessory apartments to make some suggestions.

Plat notes added to Montana Creek were required by the Planning Commission, said Mr. Felstead. Ms. Boyce pointed out that 49.15.12 talks about number of dwellings in a PUD. Mr. Voelckers asked if it was the thought to amend PUDs with some language that would help clarify something like Montana Creek. We probably want to deal fast with this particular question, said Mr. Voelckers. Ms. McKibben said that staff at CDD hopes to find an answer but planners are not all of one mind. The hope is that someone would have history in order to help clarify the intent.

Mr. Miller hopes to fix PUD code to make it friendlier. Mr. Voelckers said he thinks we should allow accessory apartments because this quacks like D5 zoning in terms of lot size. Who knows where the note came from as this was started some years ago, he said. Ms. Shelton said her gut tells her it makes sense to allow accessory apartments. Allowed outright or with a Conditional Use Permit (CUP), asked Ms. McKibben. It would be so for anyone else with the minimum lot size to receive a permit over the counter, said Ms. McKibben. Mr. Voelckers clarified that this is a single case we are approving now, but not setting precedent. Yes, however this means the next time someone in Montana Creek West asks, we would say yes to that as well said Ms. McKibben.

Mr. Felstead said planners would look at lot size in combination with the common space of the entire development - this is still at D3 density. Mr. Miller examined the comparison of D3 and D5 and overall density. Ms. Boyce is concerned that people who bought into the development might have thought that it would only be a single-family community, not understanding the situation that accessory apartments would not be considered adding density.

If we brought this to the Planning Commission, we could notice everyone in the PUD about this, said Ms. Boyce. PUDs are the beginning of a subdivision, is this correct asked Mr. Hickok? A clustered subdivision, said Ms. Boyce. Give some flexibility suggested Mr. Miller. Ms. McKibben gave examples of how the zoning flexes under a PUD such as putting 4-plexes in a D3 zone. Mr. Voelckers said it is a progressive way to work with difficult lots or afford residents more green space.

So, this should go before the Planning Commission, asked Ms. Boyce? Mr. Miller said it will probably be the residents immediately outside of the Montana Creek PUD who will be most concerned; that was the biggest meeting I've ever seen. But he thinks this is the best way to go nevertheless. Maybe beginning with a public hearing would have an eye towards moving to an over the counter permit process, but for this first time let the public have their say, said Mr. Voelckers. This would then say this new rule would apply to existing PUDs, said Mr. Miller. One option is to go through a CUP for this one and have the Commission say that the CUP is not necessary, said Mr. Felstead. Have a public hearing and have the Commission make an interpretation, he suggested. Commissioners in attendance nodded their heads, and Ms. Boyce stated she liked this idea. We should err on the side of over-noticing and explaining at this point. Who pays for the CUP, asked Mr. Felstead? We will need to talk to Mr. Steedle (Department Director), said Ms. McKibben. We will vet that option, she said. So it appears we are of a mind to get to a process that involves the Planning Commission, stated Mr. Voelckers. Staff can game it out, he said.

Ms. Boyce brought up another situation related to PUDs. Rich Harris has a condo project with units owned individually but the land is owned collectively, she said, sort of a cottage housing concept. The project is under construction already, but the developer wants to make it a PUD. However he can't make the 25-foot greenbelt requirement and a few others requirements, yet Ms. Boyce wants help reviewing the project to see if the developer can make this work somehow. There is some "shall" language in the code that makes it hard to modify, she said.

Mr. Voelckers said that the Planning Commission should figure out what is right for PUDs first and then see if Mr. Harris' project can be accommodated.

Mr. Miller stated that he has a laundry list of modifications concerning PUDs. There should be discussion about prioritizing things to be fixed in code from the builders' perspective, he said.

- 40% common open space is fine if underlying D1 zoning but 30% for D3 – Mr. Miller feels the code ought to start lessening the percentage sooner than it does at present. Once the developer gets into planning a multi-family project, it gets easier to set aside more land again. There ought to be some scale to make PUDs a more useful option for development.
- 25 foot buffer – ought to be more flexibility with this requirement.

Mr. Voelckers asked if the PUD is in a D3 or D5 zone, can it be developed as though it were D18. Yes, said Ms. Boyce. It is the underlying district that sets the tone, said Mr. Miller. If D1 and 10 acres, a developer would need a 25 foot buffer all around and 40% greenspace, leaving 6 acres to build the 10 dwellings. A developer buys land, pays for road, sewer, etc. and then gives this to the city to maintain, said Mr. Miller. It becomes unfriendly for the developer to lose all that land to recoup expenses. Ms. Boyce thinks the sliding scale is an interesting idea.

Mr. Miller said when he did Montana Creek West, the selling point was having less road to build and he could save development costs with the same amount of lots and houses because it was more dense. The level of difficulty for the construction went up, however. Also the design was more difficult.

What about the requirement for building separation of 10 or 6 feet, asked Mr. Voelckers, side setback for D10-SF is 3 feet in code, why not here?

We are hoping there is enough existing language to make a process flexible but now with the “shalls” this makes it less so, said Ms. Boyce. There is a need for language to be clearer between PUD and subdivisions, she said. PUD talks about a density bonus up to 15 %, but another section of code offers a 50% bonus. On the to-do list is work on the bonus section, said Ms. McKibben.

Maybe there is opportunity for mitigated judgements like a fence. Probably we will have to address the utility hook ups, said Ms. McKibben. The high school house-build is an example of a lot with multiple units owned by a Land Trust and with only a master water meter for all the properties. Housing Trust doesn’t want to function that way and allow for individual meters. There needs to be an avenue to have a discussion with utilities to see what flexibility there can be in such a situation. When not subdividing, what are options for utilities, asked Ms. McKibben?

V) Next Meeting

Wednesday, September 20, 3:15 pm

VI) Adjournment

The meeting adjourned at 4:34 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**

Draft Language re: Nonconformities
Title 49 Committee
September 20, 2017

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.

Draft Language re: Nonconformities
 Title 49 Committee
 September 20, 2017

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*

Draft Language re: Nonconformities
 Title 49 Committee
 September 20, 2017

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

Draft Language re: Nonconformities
 Title 49 Committee
 September 20, 2017

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

Draft Language re: Nonconformities
 Title 49 Committee
 September 20, 2017

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;

Draft Language re: Nonconformities
Title 49 Committee
September 20, 2017

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**

Draft Language re: Nonconformities
Title 49 Committee
September 20, 2017

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

Draft Language re: Nonconformities
Title 49 Committee
September 20, 2017

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