



Memorandum

To: David Vehaun, City Manager

From: Bill Meyer, Planning & Development Director

**Subject: Request to Sponsor Zoning Code Amendments –
Re-establishment of Certain Nonconforming Uses**

Date: May 18, 2012

Staff is requesting that the City Council sponsor Zoning Ordinance amendments to allow for certain small scale non-conforming uses to be re-established through a Special Exception process. A second issue involves the ongoing status of nonconforming single family homes in commercially zoned areas.

Issue Statement

The general intent of zoning regulations is to phase out nonconforming uses when they cease to operate for any significant period of time. However, there is a special set of small scale neighborhood commercial uses that may deserve special consideration. These are properties that are in middle of residential districts, but contain distinctly non-residential structures, such as small neighborhood stores. When these stores are vacant for an extended period and lose their nonconforming (grandfathered) status, an owner is often left with an unusable structure, and the neighborhood can be left with the ongoing issues of a vacant building as well.

Because of the small size of most of these uses and their location surrounded by residential zoning, these properties are not appropriate candidates for rezoning, which would generally be considered "spot zoning".

Our research has shown there to be approximately 37 properties that fit this description in the City, and many of these owners are not aware of the precarious zoning status of their properties.

A similar situation exists with approximately 95 existing single family homes that are in the middle of commercial or industrial districts that do not permit such uses. These homes can not legally be expanded, and could not be reconstructed if destroyed. Up until 2006, homes were permitted either by right or by special exception in virtually all zoning districts, but today are not permitted in the LC, CC and GC commercial districts, or in one of the three industrial districts. Some mechanism to allow for these viable homes to continue and be expanded if desired seems appropriate.

Proposed Amendments

Staff would propose a tightly drawn mechanism that would allow for these isolated properties to have their historic use re-established by way of the Special Exception process through the Zoning Board of Appeals (ZBA). Through a list of specific criteria and the neighborhood input of the public hearing process, we should be able to ensure that the rights of both the property owner and neighbors are balanced, with a positive outcome for the neighborhood.

To address the single family issue, we propose to allow single family homes by special exception in all of the commercial districts and all but the IH (Industry Heavy) industrial districts. Criteria would be set for Special Exception consideration to ensure some minimum level of compatibility while acknowledging the non-residential character of the area.

We plan to send letters to the owners of the known nonconforming properties, to make them aware of their status and the intent to provide a potential remedy to their current situation.

We have attached an initial draft with recommendations that help to explain the overall direction of this proposal. The specifics will obviously be massaged as the staff completes its drafting and the Planning Commission holds its hearings and makes its recommendation. We request the Council's sponsorship, and any initial thoughts on the direction of this amendment.

8-200 NONCONFORMING USES

8-200(A) General

Nonconforming uses are declared generally incompatible with the permitted uses in the district in which these are located and with the provisions of this Ordinance. Nonconforming uses shall be subject to the following standards.

8-200(B) Change of Use

A nonconforming use shall not be changed to any other nonconforming use.

8-200(C) Expansion and Enlargement

(1) Area Occupied by Nonconforming Use

A nonconforming use shall not be enlarged, expanded in area occupied or intensified, except that a nonconforming use may be enlarged into any area of the same structure in which it is located, which was manifestly arranged or designed for such use prior to the date the use became a nonconformity.

(2) Structure Devoted to Nonconforming Use

A structure devoted to a nonconforming use shall not be enlarged, extended, moved, or structurally altered unless the area enlarged, extended, moved or structurally altered contains a use permitted in the zone district in which the structure is located.

8-200(D) Abandonment and Re-Establishment

(1) General

Except for Retail Sales and Services uses existing in Neighborhood Office (NO) district on March 1, 2006, a nonconforming use shall not be re-established after vacancy, abandonment, or discontinuance for any six (6) consecutive months. Efforts to renovate or repair the use is not considered a vacancy, abandonment, or discontinuance if the renovation or repair is completed within six (6) consecutive months from commencement, and the use is re-established within three (3) months from the time the renovation or repairs are completed.

(2) Retail Sales and Services Uses in the Neighborhood Office (NO) District

Any Retail Sales and Services use lawfully established and existing in the Neighborhood Office (NO) district on March 1, 2006, shall be allowed to remain and recommence operations following a period of vacancy, abandonment, or discontinuance of six (6) months or longer. The structure housing such a use may be renovated or expanded in accordance with the standards in Section 3-300(B)(2), *Neighborhood Office District*, and Section 8-600, *Correction of Other Nonconformities*. In the event the structure housing such a nonconforming Retail Sales and Service use is intentionally destroyed or demolished such that the cost of restoration or reconstruction exceeds fifty-one percent (51%) of the structure's assessed value prior to the demolition or destruction, the use occupying the rebuilt or reconstructed portion of the structure shall conform to the Neighborhood Office (NO) district standards.

(3) Nonconforming Uses in the Limited Commercial (LC) District

Any use lawfully established and existing in the Industry General (IG) district on March 1, 2006, and subsequently rezoned to the Limited Commercial (LC) district on January 31, 2007, shall be subject to the following provisions through January 31, 2012:

- (a) Such a use shall be allowed to remain and recommence operations even after a period of vacancy, abandonment, or discontinuance of six (6) months or longer.
- (b) Such a use can only be changed to a use permitted in the Limited Commercial (LC) district.
- (c) If such a use is replaced by a conforming use under the Limited Commercial (LC) district, it can not be subsequently changed back to the previous or any other nonconforming use.
- (d) The structure housing such a use may be renovated or expanded in accordance with the standards of this Code and Section 8-600, *Correction of Other Nonconformities*. In the event the structure housing such a nonconforming use is intentionally destroyed or demolished such that the cost of restoration or reconstruction exceeds fifty-one percent (51%) of the structure's assessed value prior to the demolition or destruction, the use occupying the rebuilt or reconstructed portion of the structure shall conform to the Limited Commercial (LC) district standards.
- (e) After January 31, 2012, the above provisions shall expire, and the use shall be subject to all of the requirements of Article 8: *Nonconformities*, of this Code.

(4) Certain Nonconforming Uses in Residential Districts

A nonconforming use in an established residential district may be permitted to be reestablished by Special Exception under the following criteria:

- (a) The proposed use is permitted by right in the NC (Neighborhood Commercial) zoning district, and the proposed use is no more intense than the historical use of the property.
- (b) The existing structure is specialized to nonconforming use such that conversion to the conforming use would not be economically feasible. Historical nonconforming uses in converted residential structures would generally not be seen as meeting this standard.
- (c) No functional expansion of the use is permitted. Modifications for code compliance and aesthetic enhancement are permitted
- (d) There is a demonstrated history of compatibility with the surrounding neighborhood including, but not limited to a lack of documented complaints, calls for police service, or other operational concerns such as traffic, parking, or similar impacts.
- (e) Reestablishment of use may be permitted for a trial period to determine if impacts are mitigated to the extent anticipated.

TABLE 4-100(B): TABLE OF ALLOWED USES

P = Permitted Use C = Conditional Use S = Special Exception A = Allowed in PD/NMU District
Blank Cell = Prohibited

Applicable Use Specific Standards Listed in Column on Far Right

USE CATEGORY	USE TYPE	RESIDENTIAL								BUSINESS								PLANNED DEVELOPMENT					ADDITIONAL REQUIREMENTS					
		SF-2	SF-3	SF-4	SF-5	SF-8	MF-8	MF-15	MHP	RH	OI	NO	DTWN	NC	LC	CC	GC	MUC	NMU	IG	IH	IB		PD-R	PD-C	PD-MEC	PD-TND	PD-PEP
RESIDENTIAL USES																												
Household Living	Dwelling, single-family detached	P	P	P	P	P	P	P	P	P	P	P	P	S	S	S	P	A	S		S		A			A	A	
	Dwelling, single-family attached				S	C	P	P		P	P	P	S	P	P	P	P	A					A			A	A	4-300(A)(1)(c)
	Dwelling, multiple family				S	S	P	P		S	S	P	S	S	P	S	P	A					A	A	A	A	A	4-300(A)(1)(d)
	Dwelling, Live/work						P	P		P	P	P	P	P	P	P	P	A			S		A	A	A	A		4-300(A)(1)(b)
	Upper story dwelling above a non-residential use				P	P	P	P		P	P	P	P	P	P	P	P	A			P		A	A	A	A		
	Dwelling, mobile/manufactured home								P																			
	Manufactured/mobile home park								P																			4-300(A)(1)(a)
Group Living	Dormitory					S	S		P		P		S										A	A	A	A		4-300(A)(2)(a)
	Fraternity or sorority house					S	C		P								S	A					A				A	
	Group home (Type A)			S	S	S	S	S	S	S	S	S	S	S		S	S	A					A			A		4-300(A)(2)(b)
	Group home (Type B)					S	S	S	S	S	S	S	S		S	S	A						A			A		
	Rooming house							P			S	P		P		S	S	A								A		4-300(A)(2)(c)
PUBLIC AND INSTITUTIONAL USES																												
Community Services	Community center, Senior center, Youth club facility	S	S	S	S	S	P	P	S	P	P	P	S	P	P	P	P	A					A	A		A		
	Museums, art galleries, art centers, and cultural facilities		S	S	S	S	S	S		P	C	P	C	P	P	P	P	A	S		C		A	A		A	A	
	Library		S	S	S	S	P	P		P	P	P	C	C	P	P	P	A					A	A		A	A	
Day Care	Adult day care center					P	P		P	P	P	P	P	S	S	S	A			S		A	A	A	A			
	Child day care center (7 or more persons)					P	P	S	P	P	P	P	P	S	S	S	A			S		A	A	A	A	A	4-300(B)(2)(a)	
	In home day care (up to 6 persons)	C	C	C	C	C	C	S	P	P	P		P				P	A					A			A		4-300(B)(2)(b)