

Item 6

**GENERAL INFORMATION**

Applicant: City of Bloomington

Location: City-wide

Request: Consider ordinance amendments to the Bloomington City Code establishing new nonconformity standards, adding or modifying definitions pertaining to nonconformity and multiple miscellaneous related amendments to Chapters 14, 16, 17, 19, and 21 of the City Code (see title in attached draft ordinance for listing of amendments)

**PROPOSAL**

As part of the Zoning Ordinance Update Project, the City Council directed staff to undertake an update of the nonconformity standards in the City Code to bring standards in line with recent changes in State law that promote a preservation of property rights when laws governing uses change. A nonconformity is any use, structure, site characteristic or parcel of land existing lawfully at the effective date of a code amendment, which has been continued since that time but which is not permitted to become established under the terms of the code amendment.

Based on input from the Planning Commission, City Council and staff, a draft ordinance updating the nonconformity standards and dated November 15, 2007 was previously forwarded to the Commission with the Agenda Cover Sheet. A draft dated November 29, 2007 has subsequently been prepared containing additional updates by staff and is attached to this report.

**ANALYSIS**

- **Nonconformity Terminology, Concepts and Standards**
  - What does it mean if a property becomes nonconforming?
    - Any lawfully established use of a building or premises which on the effective date of a new Zoning Code provision or amendment that does not comply with the use regulations of the zoning district in which the property is located becomes lawfully nonconforming.
    - Any use that was previously illegally installed is not lawfully nonconforming or a legally grandfathered use.

- Examples of each of the types of nonconformities are provided below in Table A.

### **Table A**

#### **EXAMPLES OF TYPES OF NONCONFORMITIES**

**Structures** - Building Setbacks, Building Height, Building Size

**Site Characteristics** - Landscaping, Screening, Fences, Parking, Driveway Surfaces, Storm Water Facilities, Lighting, Trash Facilities, Sidewalks

**Uses** - Single Family Residential use in Industrial District

**Lots** - Lot Area, Lot Width, Lot Depth, Lot Frontage

Note: Table A represents examples of possible types of nonconformities, not a complete listing.

- **Recent State Law Changes**

Recent changes in State law overall promote a higher level of property rights in respect to nonconformity standards pertaining to nonconforming structures, site characteristics, uses, and lots.

- What are the significant recent changes in nonconformity requirements in State law? Can a property owner make repairs, or do maintenance, restoration, or improvements to their property if it is nonconforming? ...or if a lawfully nonconforming property is destroyed?
  - A lawfully nonconforming use or occupation of a property may now be continued through repair, replacement, restoration, maintenance or improvement, unless:
    - (1) The nonconformity or occupancy is discontinued for a period of more than one year; or
    - (2) If the property is 50% or more destroyed, and a building permit has been obtained within 180 days, it is possible that they may be continued subject to the discretion of the City, and conditions needed to mitigate newly created impacts on adjacent property; or
    - (3) If the property is less than 50% destroyed, then the use may be continued, irrespective of the 180 day rule so long as the discontinued use or occupancy is not greater than one year.
- What happens if the nonconforming use is discontinued for a period of time?

- A lawfully nonconforming use may be discontinued for a period up to one year. If the use is discontinued for a period of more than one year, any subsequent use or occupancy must be conforming.
  - If a property becomes nonconforming, does it need to be brought into conformance before it can be sold?
    - A lawfully nonconforming property may be sold for use in its nonconforming state, however, if the nonconforming use is discontinued for more than one year, any subsequent use or occupancy must be conforming
- **Key Issue for Discussion**

Expansion of Nonconformities:

- Can a property be expanded if it is nonconforming?
  - Any nonconformity, including the lawful use or occupation of land or premises may be continued, but not expanded, unless a municipality permits an expansion by ordinance. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to protect the public health, welfare, or safety.
- Is it appropriate for the City to keep tight control on the expansion of nonconforming uses, i.e. not permitted, or permitted in very limited cases with a CUP or variance?
  - A summary of existing zones in the City of Bloomington where expansion of nonconforming uses is permitted with the issuance of a conditional use permit (CUP) is attached in Table B.
  - Table C, also attached, provides an overview of the known existing properties that would be impacted by the decision on whether to retain current provisions in the Code to permit expansion of nonconforming uses with the issuance of a conditional use permit (CUP). The analysis is based upon a parcel by parcel review of available GIS data. Table C also provides recommendations by staff on whether to retain or delete permitted expansions with a CUP.

The following provisions are proposed language to update the Code to (1) provide an explanation for what is meant by an expansion of a nonconformity, and (2) prohibit expansion of nonconformities, except in limited cases as noted.

o Proposed:

Expansion of a nonconformity includes:

- (A) an increase in: structure dimension(s), size, area, volume, height, width, number of units, and/or the land area of use;
- (B) placement of a structure or part thereof where none existed before;
- (C) addition of a site feature such as a deck, patio, fence, driveway, parking area and/or swimming pool;
- (D) a relocation of operations to a new location on the property not previously used unless the relocation reduces or eliminates the nonconformity;
- (E) an increase in intensity of use as compared to the original nature, function, or purpose of the nonconformity.

Expansion does not include improvement, maintenance, or restoration

Expansion prohibited. Nonconformities may not be expanded, unless expressly permitted as discussed below.

- (A) Nonconforming uses may expand upon issuance of a conditional use permit only when such expansion is expressly listed as a conditional use within the applicable zoning district.
- (B) Nonconforming lots may expand only upon approval of a variance or planned development zoning that allows the proposed level of nonconformity.
- (C) Nonconforming structures may expand only upon approval of a variance or planned development zoning that allows the proposed level of nonconformity, except as provided in Section 19.38.11. Bluff Development (BP-1) Overlay Districts (d) Development Prohibition, or Section 19.38.12. Bluff Development (BP-2) Overlay Districts (d) Development Prohibition.
- (D) Nonconforming site characteristics may expand only upon approval of a variance or planned development zoning that allows the proposed level of nonconformity.

• **Key Issue for Discussion**

Nonconformity Triggers:

- At what point must a site come into conformance with current standards? Historically, a 25% floor area expansion of a site has been a trigger for bringing site characteristics into conformance. Is a 25% threshold standard for site characteristics appropriate?
- Should the standard for legally nonconforming lots be more restrictive, i.e. require property owner to purchase additional adjacent property, or obtain a variance?

The following provisions are proposed language to update the Code to address when nonconformities must be brought into conformance with current standards.

o Proposed:

Conformance Triggers. Nonconformities must be brought into conformance upon the following events.

- (A) Nonconforming uses. Nonconforming uses must be brought into conformance with current use requirements of the City Code upon:
  - (i) Change of the use;
  - (ii) Discontinuance of the use; or
  - (iii) Destruction of the use, provided no building permit is applied for within 180 days of the date of destruction. The City may impose reasonable conditions on the building permit to mitigate newly created impacts on adjacent properties.
- (B) Nonconforming lots. Nonconforming lots must be brought into conformance with current lot requirements of the City Code upon:
  - (i) Subdivision or replatting of the lot.
- (C) Nonconforming structures. Nonconforming structures must be brought into conformance with current structure requirements of the City Code upon:
  - (i) Destruction or removal of the structure.
  - (ii) Relocating the structure.
- (D) Nonconforming site characteristics. Nonconforming site characteristics must be brought into conformance with current site characteristic requirements of the City Code upon:
  - (i) Redevelopment of the site or expansion of total floor area on the site by 25 percent or greater;
  - (ii) Destruction or removal of the site characteristic.
  - (iii) Issuance of a permit for a related site characteristic, if conformance is stipulated as a condition of permit approval;
  - (iv) Change of use of the site (only for use generated requirements, including but not limited to the number of parking spaces and trash storage requirements); or
  - (v) Other events listed as specific triggers in the various City Code sections on site characteristic standards.

## RECOMMENDATION

In Case 10000C-07, Staff recommends approval of the ordinance amendments of the Bloomington Code establishing new nonconformity standards, adding or modifying definitions pertaining to nonconformity and multiple miscellaneous related amendments to Chapters 14, 16, 17, 19, and 21 of the City Code.

**TABLE B**

Table B below provides an overview of the existing zones in the City that permit expansion of nonconforming uses with the issuance of a conditional use permit (CUP).

**EXISTING ZONES  
EXPANSION OF NONCONFORMING USES  
PERMITTED WITH CONDITIONAL USE PERMIT (CUP)**

<b>Zone</b>	<b>Expansion of Nonconforming Uses Permitted with CUP</b>
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**Zone RM-12 Multiple Family Residential District**

**Zone RM-24 Multiple Family Residential District**

**Zone RM-50 Multiple Family Residential District**

**Zone CR-1 Regional Commercial District**

**Zone HX-R High Intensity Mixed Use with Residential District \***  
**(\* Expansion of a nonconformity is permitted with conditions.)**

**Zone CS-0.5 Commercial Service District**

**Zone CS-1 Commercial Service District**

**Zone CO-0.5 Commercial Office District**

**Zone CO-1 Commercial Office District**

**Zone RO-24 Residential Office District**

**Zone RO-50 Residential Office District**

**Zone SC Conservation District**

**Note: The remaining 18 districts do not permit expansion of nonconformities with a conditional use permit.**

**TABLE C**

Table C below provides an overview of the known existing properties that would be impacted by the decision on whether to retain current provisions in the Code to permit expansion of nonconforming uses with the issuance of a conditional use permit (CUP). The analysis is based upon a parcel by parcel review of available GIS data.

**LEVEL OF NONCONFORMITY**

<b>Districts with Legally Nonconforming Uses with CUP</b>	<b>Known Nonconforming Uses</b>	<b>Staff Recommendation to Retain/Delete Permitted Expansion with CUP</b>
<b>RM-12 Multiple Family Residential Code Sec. 19.28.01</b>	<b>7 (1 SF Home-Bloomington Commons, 6 SF Homes-Hampshire Hills)</b>	<b>Delete expansion with CUP and rezone 6 SF Homes-Hampshire Hills to R-1</b>
<b>RM-24 Multiple Family Residential Code Sec. 19.28.02</b>	<b>2 (2 SF Homes)</b>	<b>Retain expansion with CUP</b>
<b>RM-50 Multiple Family Residential Code Sec. 19.28.03</b>	<b>0</b>	<b>Delete expansion with CUP</b>
<b>CR-1 Regional Commercial Code Sec. 19.31.01</b>	<b>0</b>	<b>Delete expansion with CUP</b>
<b>HX-R* High Intensity Mixed Use with Residential Code Sec. 19.29 (* Expansion of a nonconformity is permitted with conditions.)</b>	<b>3 (2 Hotels-Airport Hilton &amp; Embassy Suites, 1 Substation-Xcel)</b>	<b>Retain expansion with CUP</b>
<b>CS-0.5 Commercial Service Code Sec. 19.40.07</b>	<b>2 (Bally's Fitness Center, Cyrus Carpet)</b>	<b>Delete expansion with CUP</b>

**TABLE C Continued**

**LEVEL OF NONCONFORMITY**

<b>Districts with Legally Nonconforming Uses with CUP</b>	<b>Known Nonconforming Uses</b>	<b>Staff Recommendation to Retain/Delete Permitted Expansion with CUP</b>
<b>CS-1 Commercial Service Code Sec. 19.40.07</b>	<b>10</b> <b>(4 SF Homes &amp; Farm, Buildings-Kelly Farm, New Horizons Day Care, 2 Warehouses-Vaughn, Griffin Art Gallery, Alaskan Fur Company)</b>	<b>Delete expansion with CUP</b>
<b>CO-0.5 Commercial Office Code Sec. 19.40.08</b>	<b>0</b>	<b>Delete expansion with CUP</b>
<b>CO-1 Commercial Office Code Sec. 19.40.08</b>	<b>3</b> <b>(Cypress Manufacturing, Alpha Business Center, Polar Tech Manufacturing)</b>	<b>Delete expansion with CUP and reclassify Cypress and Polar Tech as conditional uses</b>
<b>RO-24 Residential Office Code Sec. 19.40.09</b>	<b>0</b>	<b>Delete expansion with CUP</b>
<b>RO-50 Residential Office Code Sec. 19.40.09</b>	<b>0</b>	<b>Delete expansion with CUP</b>
<b>SC Conservation Code Sec. 19.40.10</b>	<b>0</b>	<b>Delete expansion with CUP</b>

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