

Item 2

GENERAL INFORMATION

Applicant: City of Bloomington

Location: City Wide

Request: Nonconformity Training

PROPOSAL

With the City undertaking a series of rezonings, the Planning Commission has requested staff to provide a refresher on nonconformities highlighting the primary issues and the applicable requirements based on State law and the City Code. Attachments have been provided for reference, to include applicable City Code and State law provisions, and an information summary of frequently asked questions (FAQs).

planning\pc\reports\sNonconformities PC Study 2.11.10.

CITY OF BLOOMINGTON CODE

SEC. 21.504. NONCONFORMITY.

(a)**Purpose and Intent.** It is the purpose and intent of this section to:

- (1)allow nonconforming structures, uses, site characteristics and lots to continue to exist and be put to reasonable and productive use;
- (2)encourage such nonconformities to be brought into compliance when reasonable to do so;
- (3)establish the requirements under which nonconformities may be operated and maintained;
- (4)diminish the impacts of nonconformities on adjacent properties by limiting the expansion of nonconformities;
- (5)clarify the level of site modifications that may occur before nonconformities are required to be brought into compliance with current standards; and
- (6)comply with Minnesota Statutes Section 462.357, Subd. 1e, as amended from time to time.

(b)**Definitions.** The following terms and accompanying definitions are used in the context of nonconformities. Where the terms are used elsewhere in the Code outside of the context of nonconformities, their meaning may have an alternate definition as otherwise defined in their respective section of the Code.

- (1)**Destroyed structures** - For the purposes of nonconformities, a structure is destroyed if its total assessed market value (including structures and land) is diminished by greater than 50 percent as determined by the most recent valuation of the City Assessor.
- (2)**Discontinued** - For the purposes of nonconformities, the cessation of a use, or removal of a structure or site characteristic for a continuous period of more than one year.
- (3)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 certain site characteristics such as a 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.
- (4)**Improvement** - Where a nonconforming use is made more compatible with the use of adjacent properties, efficient, and/or more aesthetically pleasing. For the purposes of nonconformities, an "improvement" does not include an "expansion".
- (5)**Legally conforming** - The status of any land use, structure, physical form of land development, lot of record or sign that complies with the current City Code and received any required approvals.

- (6)**Maintenance** - Normal repair, restoration, and improvement including cosmetic changes. For the purposes of nonconformities, “maintenance” does not include new construction or expansion of a use or structure.
- (7)**Nonconforming lot** - A lot lawfully established prior to the effective date of the City Code, or subsequent amendments to it, which fails to meet requirements for lot area, and/or width, depth, lot frontage, or other requirement of the existing City Code.
- (8)**Nonconforming site** - A site lawfully established prior to the effective date of the City Code, or subsequent amendments to it, which fails to meet requirements of the existing City Code.
- (9)**Nonconforming site characteristics** - A site characteristic lawfully established prior to the effective date of the Code, or subsequent amendments to it, which fails to meet requirements of the existing City Code. For the purposes of nonconformities, “site characteristics” are physical improvements to the site beyond structures, and may include but are not limited to: impervious surface coverage, storm water facilities, parking and parking lots, driveway surfaces, screening, fences, landscaping, sidewalks, patios, man-made water features such as ponds or swimming pools, and similar features.
- (10)**Nonconforming structure** - A structure that was legally conforming at the time it was constructed but which does not comply with the current City Code.
- (11)**Nonconforming use** - A use that was legally conforming at the time it was established but which does not comply with the current City Code.
- (12)**Nonconformity** - Any use, structure, site characteristic or parcel of land which existed lawfully at the effective date of a zoning ordinance or subdivision ordinance, has been continued since that time but which would not have been permitted to become established under the terms of the City Code as now written.
- (13)**Nonconformity, legal** - A nonconformity that was legally conforming at the time it was established and received all required approvals.
- (14)**Nonconformity, illegal** - A nonconformity that was not legal at the time it was established or did not receive all required approvals.
- (15)**Operational Characteristics** - “Operational characteristics” include but are not limited to hours of operation, where a vehicle may park, electronic sign operating characteristics, use of outdoor loud speakers, auto dealer test drive routes, unloading of auto dealer vehicles, noise, traffic generation, exterior storage, odors, lighting operation and similar operational activities.
- (16)**Repair** - For the purposes of nonconformities, “repair” means to restore to good condition by replacing or reassembling broken, worn out or malfunctioning components. Repair does not include expansion.
- (17)**Replacement** - Construction that provides a substitute substantially equivalent to the pre-existing conditions that preceded damage or destruction.
- (18)**Restoration** - For the purposes of nonconformities, “restoration” means to restore or repair to good condition by replacing or reassembling broken, worn out or malfunctioning components. Restoration does not include expansion.

(c) Standards.

- (1) **Rights.** Pursuant to Minnesota Statutes, Section 462.357, Subd. 1e, any nonconformity, including the lawful use or occupation of land or premises existing at the time a City Code amendment created the nonconformity, may be continued with any necessary approvals, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless authorized by this Section.
- (2) **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.
- (3) **Termination of rights.**
 - (A) A legal nonconforming use must not resume where:
 - (i) The use is discontinued for a period of more than one year; or
 - (ii) The use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value and no building permit has been applied for within 180 days of when the property is damaged. The assessed market value (including buildings and land) must be determined by the most recent valuation of the City Assessor.
 - (B) Where any right to continue the nonconformity is terminated, any future use of land must comply fully with the City Code.
 - (C) Where nonconforming uses are removed or otherwise discontinued, requirements providing for expiration of variances, interim use permits, and conditional use permits are set forth in Section 19.23.01.

- (4)**Conformance Triggers.** Nonconformities must be brought into conformance upon the following events.
- (A)Nonconforming uses. Nonconforming uses must be brought into conformance with current 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; or
 - (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);
 - (v)Other events listed as specific triggers in the various City Code sections on site characteristic standards; or
 - (vi)A determination by the Issuing Authority that the site characteristic must be brought into conformance to protect the public health, safety, and welfare.
 - (E)Operational characteristics. Operational characteristics must be brought into conformance immediately upon a change in City Code unless otherwise specified in the City Code.
- (5)**Nonconforming signs.** Nonconforming signs are regulated as specified in Chapter 19, Article X. Sign Regulations.
- (6)**Unsafe situations.** Nothing in this Section should be construed to permit the continued use of a structure or site found to be in violation of building, basic life safety, or health codes of the City.

(Added by Ord. No. 2008-1, 1-14-2008; Amended by Ord. No. 2008-13, 4-21-2008)

2009 Minnesota Statutes

462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.

Subd. 1e. **Nonconformities.**

(a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

(d) Paragraphs (d) to (j) apply to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A municipality shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to paragraphs (d) to (j).

(e) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

- (1) all structure and septic system setback distance requirements can be met;
- (2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and
- (3) the impervious surface coverage does not exceed 25 percent of the lot.

(f) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section [115.55](#) and Minnesota Rules, chapter 7080, or connected to a public sewer.

(i) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(j) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

NONCONFORMITIES: FAQ's

What's Below:

- What does it mean if my property becomes nonconforming?
 - Can I make repairs, or do maintenance, restoration, or improvements to my property if it is nonconforming? ...or if my lawfully nonconforming property is destroyed?
 - What happens if the nonconforming use is discontinued for a period of time?
 - If my property becomes nonconforming, does it need to be brought into conformance before it can be sold?
 - Can I expand my property if it is nonconforming?
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A. What does it mean if my 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.
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B. Can I make repairs, or do maintenance, restoration, or improvements to my property if it is nonconforming? ...or if my lawfully nonconforming property is destroyed?

- A lawfully nonconforming use or occupation of a property may 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.
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C. 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. (See B above.)
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D. If my 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. (See B and C above.)
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E. Can I expand my property if it is nonconforming?

- A nonconforming property may not be expanded.
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*See Minnesota State Statute, Section 462.357
