

PLANNING COMMISSION STAFF REPORT

Petition PLNPCM2009-00167 Zoning Text Amendment Chapter 21A.38 Nonconforming Uses & Noncomplying Structures and Chapter 21A.62 Definitions January 13, 2010



Planning and Zoning Division
Department of Community and
Economic Development

Applicant: Salt Lake City
Council

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Master Plan Designation:
City Wide

Council District: City Wide

**Applicable Land Use
Regulations:**

- Chapter 21A.38
- Chapter 21A.62

Notification

- Notice mailed on December 30, 2009
- Agenda posted on the Planning Division and Utah Public Meeting Notice websites and in the newspaper December 30, 2009

Attachments:

- A. Proposed Text Amendment
- B. Task Force Meeting Comments
- C. Department Comments
- D. August 26, 2009 Planning Commission Minutes

Request

The Planning Commission reviewed this request at their August 26, 2009 meeting. Staff presented to the Commission the purpose of the proposed changes relating to nonconforming uses and noncomplying structures regulations. (Attachment D).

This is a request by the Salt Lake City Council to amend the Zoning Ordinance to modify regulations relating to Nonconforming Uses and Noncomplying Structures. The purpose of the proposed changes are to accomplish the following:

- Simplify and clarify the regulations
- Ensure consistency with State Law (LUDMA)
- Revise the regulations for changing one nonconforming use to another nonconforming use.
- Incorporate language for in-line additions.
- Incorporate language for environmental devices/structures for nonconforming uses and noncomplying lots and structures.
- Incorporate and establishing a review process by the Administrative Hearing Officer for all new nonconforming uses at an Administrative Hearing.
- Incorporate that all abandonment or loss of a nonconforming use be heard and approved or denied at an Administrative Hearing.
- Clarify definitions.

Staff Recommendation

Based on the analysis and findings listed in the staff report, Staff recommends that the Planning Commission transmit a favorable recommendation to the City Council to adopt the proposed zoning text amendments relating to Nonconforming Uses and Noncomplying Structures.

Alternative Motions

Motion in Support

	<ol style="list-style-type: none"> 1. Based on the findings in the staff report and the public comment, I move to transmit a favorable recommendation to the City Council to adopt the proposed zoning text amendments relating to Nonconforming Uses and Noncomplying Structures. <p>Motion in Opposition</p> <ol style="list-style-type: none"> 1. Based on the public comment and the following findings, I move that the Planning Commission transmit a motion to the City Council to not amend the proposed zoning text amendments relating to Nonconforming Uses and Noncomplying Structures. 2. I move to table the decision until a future date of the Planning Commission and direct staff to submit the following information (Planning Commission to identify).
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Background

Historical Zoning and Nonconforming Uses

Nonconforming uses and structures have existed ever since the first zoning emerged in the 1920s. With the advent of Euclidian zoning and its distinct doctrine of separation of land uses, it has been widely held that for this zoning approach to be successful, nonconformities have to be eliminated. It was considered that nonconformities reduced the effectiveness of what a community is trying to accomplish through its comprehensive plan, as implemented by its local zoning regulations. This only holds true to the extent that specific uses were made nonconforming as a means to eliminate the uses rather than as a means to control the creation of additional similar uses by leaving regulations in place.

Between 1940-1960 Salt Lake City's land use policy and zoning supported higher density residential land uses to mix within the lower density neighborhoods of the community. During the 1970's and 1980's numerous down zonings occurred to prohibit further higher density residential development within many neighborhoods. These down zoning actions created a significant number of nonconforming dwellings. Other zoning text and mapping changes through time have created nonconforming nonresidential land uses throughout the City.

A variety of aspects can make a property and use nonconforming or noncomplying. The premise of nonconformities is non-compliance with requirements of a particular use or zoning standard. The fact that a use is non-compliant does not mean elimination of the use is necessary to protect the character and integrity of the community. It is important to note that the mere presence of nonconforming uses does not necessarily mean that it is a mistake or that it requires a remedy.

In recent years, the zoning concept of separate distinct land uses has been modified by many cities that have developed mixed use, neo-traditional and smart growth codes that actually reflect urban development patterns that existed prior to the past 70 years of traditional Euclidean zoning.

Proposed

The proposed changes to Chapter 38 and Chapter 62 are to provide a simplification of existing regulations and allow greater public participation through the public hearing process in determining new nonconforming uses, interpretations and abandonment of nonconforming uses.

Below is a summary of the proposed text amendments relating to Nonconforming Uses and Noncomplying structures. Attachment A of the Staff Report provides the full text changes that are being proposed to help clarify the existing regulations.

Citation	Existing Regulation	Proposed Regulation	Purpose of Amendments
21A.38.010; Purpose Statement and Intent	Lacked a definition of a purpose statement	Created a purpose statement definition of nonconforming uses and noncomplying structures	To define the purpose of Chapter 38
21A.38.40 (B) Continuation of Noncomplying Structure	Very lengthy and difficult to understand	Shortened paragraph	To clarify
21A.38.50 (B) Rebuttal of Presumption of Abandonment	Allows Staff to make determination	Requires an Administrative Public Hearing	To allow greater public notification and participation
Section 21A.38.70 Reoccupation or Enlargement Of A Structure With A More Intensive Nonconforming Use	Nonconforming use could expand up to 50%	Administrative Hearing Officer approve or deny new conforming use as a conditional use	To allow greater public participation and provide a more thorough review of new nonconforming use
Section 21A.38.70 (D) Change Of Nonconforming Use To Another Nonconforming Use	Current regulations are not clear on what a “similar land use type is” and most of the analysis relates to whether the parking requirement increases. Currently a staff function	Allow Hearing Officer to approve or deny new nonconforming use as a conditional use	To allow greater public participation and provide a more thorough review of new nonconforming use
Section 21A.38.70 (E) Destruction Of Structure With Nonconforming Use	Based on 50% rule of voluntary destruction	Does not allow %. If use is voluntary, the structure with nonconforming use is gone	Makes more restrictive and removes the percentages when it comes to removal
Section 21A.38.80 Noncomplying Structures	Does not address changes or improvements for energy devices	Allows energy improvements to a building that is noncomplying without constituting an enlargement of the noncompliance	To encourage energy improvements

Section 21A.38.80 (C) In-Line Addition	Absent from Salt Lake City Zoning Ordinance	Recognizes an inline addition for all buildings that do not comply with setbacks	To codify
Section 21A.38.80 (D) Damage Or Destruction of Noncomplying Structure	Too lengthy and confusing	Removes the percentages for what is considered damage or destruction	To simplify
Section 21A.38.90 Noncomplying Lots	Restricts what can be done with a noncomplying lot	Recognizes the noncompliance and allows the lot to function as a legal lot	To simplify
Section 21A.38.160 Terminating The Nonconformance Of A School District Or Charter School	Does not exist	Comply with State Statute	To codify
Section 21A.38.170 American with Disabilities Act (ADA)	Does not exist	Recognizes ADA improvements do not constitute enlargement of noncompliance	To codify

Analysis

Public Comments

On June 8, 2009, the Zoning Amendment Project Task Force reviewed Chapter 38, nonconforming uses and noncomplying structures and Chapter 62 definitions. The members were asked to discuss the complexities of this particular chapter and evaluate what staff was proposing in order to help simplify the existing regulations. The Committee was very responsive and assisted staff with incorporating and establishing a review process for the Administrative hearing officer to review all new nonconforming uses and abandonment or loss of a nonconforming uses.

On July 8, 2009, the Business Advisory Board reviewed Chapter 38, nonconforming uses and noncomplying structures. The committee was very supportive of the proposed changes and were grateful that some of the language in the text was being simplified.

An Open House was held on July 16, 2009 to gather public input. One person attended the meeting to see what changes were being proposed to Chapter 38. The person did not state any objection to the proposed changes.

On August 8, 2009, the Zoning Amendment Project Task Force reviewed Chapter 38 and Chapter 62. This meeting was to discuss the July 16, 2009 Open House input. The Committee requested that staff incorporate criteria when reviewing a nonconforming use.

On September 21, 2009, the Board of Adjustment reviewed the proposed changes to Chapter 38. The Board did not object to the proposed changes.

On November 9, 2009, the Zoning Amendment Project Task Force reviewed Chapter 38 and Chapter 62. Staff presented proposed criteria when evaluating a nonconforming use change. Overall the committee was satisfied with the criteria, but felt that it was not strong enough to deny such a change from one nonconforming use to another.

City Department Comments

The proposed text amendments were sent to all pertinent City Departments and Divisions for their review and input. Planning Staff has received comments from the following Division (Attachment C).

Transportation – Did not see any undo impact to the transportation corridor system per the proposed changes to simplify the text.

Attorney's Office – The Attorney's office was supportive of the proposed text amendment changes.

Analysis and Findings

In reviewing this legislative action request, the Planning Commission is required to use the following zoning amendment standards:

Section 21A.50.050. A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the city council and is not controlled by any one standard. However, in making its decision concerning a proposed amendment, the city council should consider the following factors:

a. Whether the proposed amendment is consistent with the purposes, goals, objectives, and policies of the adopted general plan of Salt Lake City;

Discussion: Most of the city's master plans do not contain specific policy regarding nonconforming uses and noncomplying structures and are older than the State revisions to nonconforming uses.

Finding: The proposed text amendment is a change in current zoning allowances for nonconforming uses and noncomplying structures and is consistent with the city master plans.

b. Whether the proposed amendment is harmonious with the overall character of existing development in the immediate vicinity of the subject property;

Discussion: The proposed text amendment is not site specific. The proposed nonconforming text establishes additional criteria that specifically address the processes of nonconforming uses and noncomplying lots and structures.

Finding: The proposed text amendment when applied, support harmony and consistency with the existing overall development character of areas where nonconforming reconstruction activities would occur.

c. The extent to which the proposed amendment will adversely affect adjacent properties;

Discussion: The proposed text amendment is not site specific. There are standards for review and approval that are designed to minimize potential adverse impacts upon adjacent properties.

Finding: The proposed standards will help ensure minimization of adverse impacts on adjacent properties.

d. Whether the proposed amendment is consistent with the provisions of any applicable overlay zoning districts which may impose additional standards; and

Discussion: The proposed text amendment is city-wide and not associated with any overlay zoning districts.

Finding: The proposed text amendment is city-wide and not associated with any specific geographic area. Submittal of individual site applications will include the review of applicable overlay zoning districts.

e. The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, schools, storm water drainage systems, water supplies, and wastewater and refuse collection.

Discussion: The proposed amendment is not site specific. Submittal of individual site applications requires review for adequacy of public facilities and services.

Finding: The adequacy of public facilities and services criteria does not directly relate to the proposed text amendment.

Attachment A
Proposed Text Amendment

Chapter 21A.38

NONCONFORMING USES AND NONCOMPLYING STRUCTURES

21A.38.010 Purpose Statement And Intent:

A. **Purpose:** The purpose of this chapter is to regulate the continued existence of nonconforming uses and noncomplying structures as defined in this title. While nonconforming uses, noncomplying structures and improvements may continue, this chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the development standards prescribed by this Code, and

1. Legal nonconforming principal and accessory uses, which do not conform to the use regulations of this title in the zoning districts in which such uses are located;
2. Legally constructed noncomplying buildings, structures and property improvements that do not comply with the applicable bulk and/or yard area regulations of this title in the zoning districts in which such buildings or structures are located.

B. **Intent:** The intent of this chapter is to allow continued use of legal nonconforming uses and noncomplying structures, while at the same time protecting existing conforming development and furthering orderly development and improvement of the community. Certain nonconformities are permissible as is their continued use so long as in their particular location they are not detrimental to the surrounding neighborhood.

1. Uses of nonconforming and noncomplying buildings, structures or land which are compatible and complement existing or planned development patterns should be allowed to continue. Improvement for better integration into the surrounding neighborhood should be sought as much as possible.

2 Nonconforming and noncomplying situations which hinder the attainment of the city's master plan, create a nuisance, or are a hazard to a community or neighborhood, should be eliminated or brought into compliance with the provisions of this title. (Ord. 15-05 § 1, 2005)

21A.38.020 Scope Of Regulations:

~~This chapter applies to nonconforming uses, noncomplying structures and noncomplying lots. (Ord. 15-05 § 1, 2005)~~

21A.38.03020 Determination Of Nonconforming Use Status:

A. **Burden Of Owner To Establish Legality Of Nonconforming Use:** The burden of establishing that any nonconforming use lawfully exists under the provisions of this title shall, in all cases, be the owner's burden and not the city's. Building permits, business

licenses and similar documentation may be considered as evidence establishing the legality of use.

B. Determination Of Nonconforming Status: The zoning administrator shall determine the nonconforming use or noncomplying structure status of properties pursuant to the provisions of this chapter. (Ord. 15-05 § 1, 2005)

21A.38.04030 Nonconforming Parking, Signs And Landscaping:

Nonconforming parking, signs and landscaping, as accessory uses, are regulated by the provisions set forth in chapters 21A.44, 21A.46 and 21A.48 of this part. (Ord. 15-05 § 1, 2005)

21A.38.05040 Authority To Continue:

A. Continuation Of Nonconforming Use: A nonconforming use that lawfully occupies a structure or lot may be continued so long as it remains otherwise lawful, subject to the standards and limitations in this chapter.

B. Continuation Of Noncomplying Structure: ~~A noncomplying structure that was legally constructed on the effective date of any amendment to this title, that makes the structure not comply with the applicable bulk regulations and/or with the standards for front yards, side yards, rear yards, buffer yards, lot area, lot coverage, height, floor area of structures, driveways or open space for the district in which the structure is located may be used and maintained, subject to the standards and limitations in this chapter.~~ (Ord. 15-05 § 1, 2005) A non-complying structure that was lawfully constructed prior to a contrary change in this Code may be used and maintained, subject to the standards and limitations of this chapter.

21A.38.06050 Ordinary Repair And Maintenance And Structural Safety:

Normal maintenance and incidental repair may be performed on a complying structure which contains a nonconforming use or on a noncomplying structure. This section shall not be construed to authorize any violation of section 21A.38.080 or 21A.38.090 of this chapter. This section shall not prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of the building official who declares a structure to be unsafe and orders its restoration to a safe condition. (Ord. 15-05 § 1, 2005)

21A.38.07060 Abandonment Or Loss Of Nonconforming Use:

A. Abandonment Of Nonconforming Use: A nonconforming use of land or of a structure in a district that is discontinued or remains vacant for a continuous period of (1) one year shall be presumed to be abandoned and shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of the structure or site must conform with the regulations for the district in which it is located.

B. Rebuttal Of Presumption Of Abandonment: The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the ~~zoning administrator~~ Administrative Hearing Officer, that during such period the owner of the land or structure:

- 1) has been maintaining the land and structure in accordance with the building code and did not intend to discontinue the use, or
- 2) has been actively and continuously marketing the land or structure for sale or lease, with the use, or
- 3) has been engaged in other activities evidencing an intent not to abandon.

C. Calculation Of Period Of Discontinuance: Any period of such discontinuance caused by government actions, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance pursuant to subsection A of this section. (Ord. 15-05 § 1, 2005)

21A.38.08070 Moving, Enlarging Or Altering Nonconforming Uses Of Land And Structures:

No nonconforming use may be moved, enlarged or altered and no nonconforming use of land may occupy additional land. ~~except as provided in this section.~~

~~A. — **Enlargement:** A nonconforming use may not be enlarged, expanded or extended to occupy all or a part of another structure or site that it did not occupy on the effective date of any amendment to this title that makes the use nonconforming. A nonconforming use for the purposes of this section may be extended within the same structure or as an addition to the same structure, provided the enlargement does not increase the need for additional hard surface parking than is existing on the property.~~

Reoccupation Or Enlargement Of A Structure With A More Intensive Nonconforming Use: The Administrative Hearing Officer may approve a nonconforming use with another nonconforming use, only if all of the following conditions are met:

1. The proposed use is compatible to the neighborhood in terms of development intensity.
2. The traffic generated by the proposed use is similar to that generated by the existing nonconforming use.
3. The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.

~~Whenever expansion of a nonconforming use exceeds fifty percent (50%) of the original use at the time the use became nonconforming; a nonconforming use expansion requires additional off street parking than existing on the site; or a nonconforming use changes to a more intensive nonconforming use, such expansions shall only be approved as a conditional use subject to the requirements of part V, chapter 21A.54, "Conditional~~

Uses", of this title and applicable specific conditional use standards and/or site and design review standards provided in this section:

a. Specific Conditional Use Standards: The planning commission may grant a conditional use permit for the enlargement of a structure containing a nonconforming use, provision of additional parking area for a nonconforming use or the reoccupation of a structure with a nonconforming use that is more intensive, excepting uses which are only permitted as a conditional use in the heavy manufacturing district (M-2) of this title located within any residential, mixed-use, commercial or nonresidential zoning district, subject to consideration of the following standards:

- i. The condition and economic life of the building is such that near future demolition is not likely to occur;
- ii. The use provides reuse of buildings with architectural or historic value;
- iii. The use supports walk to work or live-work opportunities;
- iv. The use provides an appropriate scale of neighborhood or community level of services;
- v. The enlargement will not create any additional noncompliance with zoning standards except for building modifications for life safety concerns;
- vi. The enlargement and reuse of the structure would not substantially change the character of the neighborhood; and/or
- vii. The use is not in conflict with any other current, local or state development standards (i.e., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition).

b. Site And Design Review Standards: Whenever an expansion or intensification of a nonconforming use is located within residentially-zoned property or abuts residentially-zoned property the following site and design review standards shall be reviewed as part of the conditional use approval process:

i. **Building Orientation:** The development shall orient to the street, not an interior courtyard or parking lot. The primary access shall be oriented to the pedestrian and have at least one operable building entrance that faces a public street. Residential uses shall meet the standards for subsections 21A.24.010H, "Side Entry Buildings", and 21A.24.010I, "Front Facade Controls", of this title;

ii. **Facade:** For nonresidential uses, street-oriented facades shall maintain detailing and glass in sufficient quantities to facilitate pedestrian interest and interaction:

(A) **Minimum First Floor Glass:** The first floor elevation facing a street of all new building additions or buildings in which the property owner is modifying the size of windows on the front facade, shall not have less than forty percent (40%) glass surfaces. All first floor glass shall be nonreflective. Display windows that are three-dimensional and are at least two feet (2') deep are permitted and may be counted toward the forty percent (40%) glass requirement. Exceptions to this requirement may be authorized by

the planning commission as part of the conditional use site and design review procedure, if the planning commission finds:

- (1) The requirement would negatively impact the historic character of the building;
- (2) The requirement would negatively impact the structural stability of the building; or
- (3) The ground level of the building is occupied by residential uses, in which case the forty percent (40%) glass requirement may be reduced to twenty five percent (25%).

(B) Maximum Length: Architectural detailing shall emphasize the pedestrian level of the building. The maximum length of any blank wall uninterrupted by windows, doors, art or architectural detailing at the first floor level shall be fifteen feet (15');

iii. Parking Lots: Parking lots shall be appropriately screened and landscaped to minimize their impact on the neighborhood. Lightproof fencing is required adjacent to residential properties. Parking lot lighting shall be shielded to eliminate excessive glare or light into adjacent neighborhoods. The poles for parking lot lighting are limited to sixteen feet (16') in height from finished grade;

iv. Screening: Dumpsters and loading docks shall be appropriately screened or located within the structure. All building equipment and service areas, including on-grade and roof mechanical equipment and transformers that are readily visible from the public right of way, shall be screened from public view. These elements shall be sited to minimize their visibility and impact, or enclosed as to appear to be an integral part of the architectural design of the building; and

v. Signs: Signage for residential uses shall meet sign standards for subsection 21A.46.080B, "Sign Regulations For Multi-Family Residential Districts", of this part. Signage for nonresidential uses shall emphasize a pedestrian scale and shall meet the sign standards of subsection 21A.46.090A4, "Sign Type, Size And Height Standards For The CN Districts", of this part. Exceptions to this requirement may be authorized by the planning commission as part of the conditional use site and design review procedure, if the planning commission finds that maintaining the nonconforming sign does not negatively impact the neighborhood character.

e. Limitations On Development: Any conditional use authorized for the reoccupation or enlargement of a structure with a more intensive use shall be limited to the following criteria:

- i. No additional lot area may be added to the subject nonconforming property;
- ii. No enlargement of a nonconforming principal structure shall involve the razing of more than fifty percent (50%) of the existing building footprint; and
- iii. Any nonconforming property with an existing mix of residential and nonresidential uses with more than two (2) existing dwelling units shall provide for a mixed use development with no reduction in the number of dwelling units.

B. Exterior Or Interior Remodeling Or Improvements To Structure: Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed provided the improvements do not increase the parking requirement.

C. Relocation Of Structure: A structure containing a nonconforming use may not be moved unless the use shall thereafter conform to the regulations of the zoning district into which the structure is moved.

D. Change Of Nonconforming Nonresidential Use To Another Nonconforming Use: The Administrative Hearing Officer may approve a substitution of a nonconforming use with another nonconforming use, only if all of the following conditions are met:

1. The proposed use is compatible to the neighborhood in terms of development intensity.
2. The traffic generated by the proposed use is similar to that generated by the existing nonconforming use.
3. The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.

~~Upon application to the zoning administrator, a nonconforming use may be changed to another nonconforming use of the same or similar land use type as defined in part VI, chapter 21A.62 of this title. Whenever any nonconforming nonresidential use is changed to a less intensive nonconforming nonresidential use, such use shall not be changed back to a more intensive nonconforming nonresidential use. For purposes of this section, a more intensive nonresidential use is determined when the existing hard surfaced parking available on site does not provide the required number of parking stalls. Whenever any nonconforming nonresidential use is changed to a conforming use, such use shall not later be changed to a nonconforming use.~~

E. Destruction Of Structure With Nonconforming Use: ~~No structure containing a legal nonconforming use may be reconstructed for a nonconforming use, except in the manner provided in subsections E1 and E2 of this section or unless required by law. Restoration of a damaged or destroyed structure with a nonconforming use shall be started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.~~

If a building or structure that contains a nonconforming use is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable; and that the nonconforming use will be lost if the structure is not repaired or restored within one (1) year; or the property owner has voluntarily demolished seventy five (75%) or more of the exterior walls and/or total floor area of a structure, or if a building or structure that contains a nonconforming use is voluntarily razed, or is required by law to be razed, the nonconforming use shall not be resumed, and the building or

structure shall not be restored unless it is restored to accommodate a conforming use within a complying structure. If a building or structure that contains a nonconforming use is involuntarily destroyed in whole or in part due to fire or other calamity and the structure or use has not been abandoned, the nonconforming use may be resumed and the building or structure may be restored to the condition prior to the destruction, provided such work is reasonable pursued of such calamity.

1. Destruction Of Structure To The Extent Of Fifty Percent: If a structure that contains a legal nonconforming use is destroyed to the extent of fifty percent (50%) by fire or natural calamity, or is voluntarily razed, the nonconforming use may be resumed, and the structure restored. The determination of the extent of damage or destruction under this subsection shall be determined by the building official and based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction. The estimate shall be based on the current issue of "Building Standards" published by the International Conference of Building Officials.

2. Destruction Of Structure Greater Than Fifty Percent: If a structure that contains a legal nonconforming use is destroyed, greater than fifty percent (50%), by fire or natural calamity, the nonconforming use may be resumed, and the structure may be restored to accommodate the nonconforming use subject to subsections E2a and E2b of this section.

a. Nonconforming Residential Uses: The zoning administrator may authorize the reconstruction and reestablishment of a legal nonconforming residential structure subject to consideration of the following:

- i. Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition); and/or
- ii. The reconstruction will not increase the number of units.

b. Nonconforming Nonresidential Uses: The board of adjustment may authorize as a special exception the reconstruction and reestablishment of a legal nonconforming nonresidential use structure subject to consideration of the following:

- i. Reconstruction plans shall be reviewed to consider the feasibility of site redesign to better meet underlying zoning district standards without a reduction in type or intensity of use of the property;
- ii. Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition);
- iii. The reconstruction and reuse of the structure would not change the character of the neighborhood by using construction materials which did not exist previously on the building. Other building materials should not be used, unless the materials are compatible with the neighborhood; and/or

~~iv. Consideration of the enforcement history of the property regarding any continual public nuisance generated by the nonconforming use activity. (Ord. 14-06 § 1, 2006; Ord. 15-05 § 1, 2005)~~

21A.38.09080 Noncomplying Structures:

No noncomplying structure may be moved, enlarged or altered, except in the manner provided in this section or unless required by law. For purposes of this section, the addition of a solar energy device/improvement to a building is not a structural alteration.

A. **Repair, Maintenance, Alterations And Enlargement:** Any noncomplying structure may be repaired, maintained, altered or enlarged, except that no such repair, maintenance, alteration or enlargement shall either create any new noncompliance or increase the degree of the existing noncompliance of all or any part of such structure.

B. **Moving:** A noncomplying structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

C. **In-Line Addition:** Additions or extensions to existing residential or commercial buildings, which are noncomplying as to yard area only may be allowed provided:

1. The addition follows the existing building or foundation line.

2. The maximum exterior wall height adjacent to the interior side yard shall meet the required setback and zone height of the district.

C D. Damage Or Partial Destruction Of Noncomplying Structure:

If a noncomplying structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure will be lost if the structure is not repaired or restored within one (1) year; or the property owner has voluntarily demolished a majority of the non-complying structure or the building that houses a non-complying structure is voluntarily razed or is required by law to be razed, the structure shall not be restored unless it is restored to comply with the regulations of the zone in which it is located. Demolition of a non-complying structure includes any act or process that destroys or removes seventy five (75%) or more of the exterior walls and/or total floor area of a structure. If a non-complying structure is involuntarily destroyed in whole or in part due to fire or other calamity and the structure or use has not been abandoned, the structure may be restored to its original condition, provided such work is reasonable pursued of such calamity.

~~1. **Restoration:** If a noncomplying structure is damaged or destroyed by fire or natural calamity, the structure may be restored, or, if a noncomplying structure is voluntarily~~

razed to the extent of seventy five percent (75%), the structure may be restored if restoration is started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.

2. Destruction Of Noncomplying Structure With Nonconforming Use: No legal nonconforming structure containing a nonconforming use may be reconstructed, except in the manner provided in subsections C2a and C2b of this section or unless required by law. Restoration of a damaged or destroyed noncomplying structure with a nonconforming use shall be started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.

a. Destruction Of Structure To The Extent Of Fifty Percent: If a noncomplying structure that contains a nonconforming use is destroyed to the extent of fifty percent (50%) by fire or natural calamity, or is voluntarily razed or destroyed by other means, the nonconforming use may be resumed, and the structure restored. The determination of the extent of damage or destruction under this subsection shall be determined by the zoning administrator and based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction. The estimate shall be based on the current issue of "Building Standards" published by the International Conference of Building Officials (ICBO).

b. Destruction Of Structure Greater Than Fifty Percent: If a noncomplying structure that contains a legal nonconforming use is destroyed, greater than fifty percent (50%), by fire or natural calamity, the nonconforming use may be resumed, and the structure may be restored to accommodate the nonconforming use subject to subsections C2bi and C2bii of this section.

i. Nonconforming Residential Use: The zoning administrator may authorize the reconstruction and reestablishment of a legal noncomplying residential structure with a nonconforming residential use subject to consideration of the following:

(A) Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition); and/or

(B) The reconstruction will not increase the number of units.

ii. Nonconforming Nonresidential Uses: The board of adjustment may authorize as a special exception the reconstruction and reestablishment of a legal noncomplying structure with a nonconforming nonresidential use subject to consideration of the following:

~~(A) Reconstruction plans shall be reviewed through the site plan review process to consider the feasibility of site redesign to better meet underlying zoning district standards without a reduction in type or intensity of use of the property;~~

~~(B) Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition);~~

~~(C) The reconstruction and reuse of the structure would not change the character of the neighborhood by using construction materials which did not exist previously on the building. Other building materials should not be used, unless the materials are compatible with the neighborhood; and/or~~

~~(D) Consideration of the enforcement history of the property regarding any continual public nuisance generated by the nonconforming use activity. (Ord. 14-06 § 1, 2006; Ord. 15-05 § 1, 2005)~~

21A.38.10090 Noncomplying Lots:

~~A lot that is noncomplying as to lot area or lot frontage that was in legal existence on the effective date of any amendment to this title that makes the existing lot noncomplying shall be considered a legal complying lot, subject to the underlying zoning regulations. Legal complying lots in residential districts shall be approved for the development of a single-family dwelling regardless of the size of the lot subject to complying with all yard area requirements of the R-1/5,000 district. Legal complying lots in residential districts shall be approved for any permitted use or conditional use allowed in the zoning district, other than a single-family dwelling, subject to complying with all lot area and minimum yard requirements of the district in which the lot is located. Legal complying lots in nonresidential districts shall be approved for any permitted use or conditional use allowed in the zoning district subject to complying with all yard requirements of the district in which the lot is located. (Ord. 15-05 § 1, 2005)~~

21A.38.110100 Nonconforming Accessory Uses And Noncomplying Accessory Structures:

~~The continued existence of a nonconforming accessory use and a noncomplying accessory structure shall be subject to the provisions governing principal nonconforming uses and noncomplying structures set forth in sections 21A.38.080 and 21A.38.090 of this chapter. (Ord. 15-05 § 1, 2005)~~

21A.38.120110 Legal Conforming Single-Family Detached Dwellings, Two-Family Dwellings, And Twin Homes:

~~Any single-family detached dwelling, two-family dwelling, or twin home, except those located in M-1 and M-2 zoning districts, that is in legal existence, shall be considered legal conforming.~~

Subject to complying with all other current, local or state development standards, legal conforming status shall authorize alterations, extensions/additions, and replacement of the single-family detached dwelling, two-family dwelling, or twin home.

In ~~zoning districts other than the~~ M-1 and M-2 zones, which do not allow detached single-family dwelling units, two-family dwelling units or twin homes, the replacement structure may exceed the original footprint of the existing structure by twenty five percent (25%) when the structure has been destroyed by fire, voluntary demolition or natural calamity. Replacement structures which exceed twenty five percent (25%) of the original footprint, or the replacement of a single-family detached dwelling, two-family dwelling or twin home in an M-1 or M-2 zoning district may be allowed as a conditional use subject to the provisions of chapter 21A.54 of this title.

The replacement structure shall not project into a required yard beyond any encroachment established by the structure being replaced. All replacement structures in nonresidential zones are subject to the provisions of section 21A.36.190, "Residential Building Standards For Legal Conforming Single-Family Detached Dwellings, Two-Family Dwellings And Twin Homes In Nonresidential Zoning Districts", of this part. When replacing a legal conforming single-family detached dwelling, two-family dwelling or twin home, the number of new parking stalls provided shall be equal to or more than the number of parking stalls being replaced. (Ord. 15-05 § 1, 2005)

21A.38.130120 Reserved:
(Ord. 15-05 § 1, 2005)

21A.38.140130 Appeal:

Any person adversely affected by a decision of the zoning administrator on a determination of the status of a nonconforming use or noncomplying structure may appeal the decision to the board of adjustment pursuant to the provisions in part II, chapter 21A.16 of this title. (Ord. 15-05 § 1, 2005)

21A.38.150140 Termination By Amortization Upon Decision Of Board Of Adjustment:

The board of adjustment may require the termination of a nonconforming use, except billboards, under any plan providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of the owner's investment in the nonconforming use, if any, as determined by the zoning administrator. The board of adjustment may initiate a review for amortization of nonconforming uses upon a petition filed by the mayor or city council, in accordance with the following standards and procedures and consistent with the municipal land use development and management act, title 10, chapter 9, of the Utah Code Annotated and shall mail written notice to the owner and occupant of the property:

A. **Initiation Of Termination Procedure:** Board of adjustment review of a use determined to be nonconforming pursuant to the provisions of this section, for the purpose of establishing an amortization plan for termination of the use, shall first require a report from the zoning administrator to the board of adjustment. The zoning administrator's report shall determine the nonconforming use, provide a history of the site and outline the standards for determining an amortization period.

B. **Notice To Nonconforming User:** Upon receipt of the report of the zoning administrator, recommending the establishment of an amortization plan for a nonconforming use, the board of adjustment shall mail the report and plan to the owner and occupant(s) of the nonconforming use, giving notice of the board of adjustment's intent to hold a public hearing to consider the request in accordance with the standards and procedures set forth in part II, chapter 21A.10 of this title.

C. **Board Of Adjustment Review:** The board of adjustment shall hold a noticed public hearing within a reasonable time, following the procedures established in part II, chapter 21A.10 of this title, on the request for amortization of the nonconforming use. Upon the conclusion of the hearing, the board shall determine whether the nonconforming use should be amortized within a definite period of time.

D. **Standards For Determining Amortization Period:** The board of adjustment shall determine the appropriate amortization period upon the consideration of evidence presented by the zoning administrator and the owner of the nonconforming use that is sufficient to make findings regarding the following factors:

1. The general character of the area surrounding the nonconforming use;
2. The zoning classification and use(s) of nearby property;
3. The extent to which property values are adversely affected by the nonconforming use;
4. The owner's actual amount of investment in the property on the effective date of nonconformance, less any investment required by other applicable laws and regulations;
5. The amount of loss, if any, that would be suffered by the owner upon termination of the use; and
6. The extent to which the amortization period will further the public health, safety and welfare.

E. **Appeal:** Any person adversely affected by the decision of the board of adjustment may, within thirty (30) days after the decision, present to the district court a petition specifying the grounds on which the person was adversely affected. (Ord. 15-05 § 1, 2005)

21A.38.160150 Nonconformity Of Taverns, Brewpubs, Microbreweries Or Private Clubs Social Clubs:

A legally existing tavern, brewpub, microbrewery, ~~private club~~ social club, ~~as defined in chapter 6.08 of this code~~, shall not be deemed nonconforming for purposes of expansion, reconstruction or licensing (as long as the use is permitted in the base zoning district) if the only reason for such nonconformity is due to the subsequent location of a school,

church or park within the spacing requirements as specified under ~~city ordinances. (Ord. 15-05 § 1, 2005)~~ requirements of State Law.

21A.38.160 Terminating the Non-Conformance Of A School District Or Charter School:

A non-conforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period of one (1) year.

21A.38.170 Americans with Disabilities Act (ADA):

To accommodate and encourage compliance with the Americans with Disabilities Act (ADA) accessibility guidelines, the enlargement of structures to accommodate ramps, elevators, and bathrooms that meet the minimum ADA accessibility guidelines and improve accessibility for persons with disabilities are not considered as increasing or enlarging the nonconforming use or structure.

Chapter 21A.62 DEFINITIONS

21A.62.010: DEFINITIONS GENERALLY:

For the purposes of this title, certain terms and words are defined and are used in this title in that defined context. Any words in this title not defined in this chapter shall be as defined in "Webster's Collegiate Dictionary". (Ord. 26-95 § 2(31-1), 1995)

21A.62.020: ADDITIONAL DEFINITIONS:

Additional definitions relating to specific portions of this title are found in chapters 21A.34 and 21A.46 of this title. (Ord. 26-95 § 2(31-2), 1995)

21A.62.030: RULES FOR GENERIC DEFINITIONS:

- A. Purpose Of Generic Definitions: Certain terms in this chapter are defined to be inclusive of many uses in order to eliminate overly detailed listings of uses in the zoning districts established by this title. These terms are referred to in this title as "generic" definitions. Examples of generic definitions used in this title are "retail goods establishment", "commercial indoor recreation" and "light manufacturing".
- B. Components Of Generic Definition: A generic definition has three (3) components: 1) a brief listing of examples of uses intended to be included within the scope of the definition; 2) an identification (where appropriate) of certain uses which are not meant to be included by the term; and 3) a statement that for the purposes of each zoning district, any other uses specifically listed within the particular zoning district shall not be construed as falling within the generic definition.
- C. Uses Not Listed Or Not Within Scope Of Generic Definition: A use which is not specifically listed on the table of permitted and conditional uses for a zoning district, or which does not fall within a generic definition as defined in this chapter, or as interpreted by the zoning administrator pursuant to chapter 21A.12 of this title, is prohibited. (Ord. 26-95 § 2(31-3), 1995)

21A.62.040: DEFINITIONS OF TERMS:

CHANGE OF USE: The replacement of an existing use by a new use, or a change in the nature of an existing use which does not increase the size, occupancy, or site requirements. A change of ownership, tenancy, name or management, or a change in product or service within the same use classification where the previous nature of the use, line of business, or other function is substantially unchanged is not a change of use. (~~See also definition of Land Use Type (Similar Land Use Type).~~)

~~**LAND USE TYPE (SIMILAR LAND USE TYPE):** "Land use types" shall be considered to be similar land use types if both uses are allowed in the same zoning district or in the same or more~~

restrictive zoning district within the commercial zoning category or in the same or more restrictive district within the manufacturing zoning category and the change from one land use type to another similar land use type does not increase the parking requirement. If the proposed land use type is a conditional use it will be subject to the conditional use process.

Attachment B
Task Force Comments

2009 Zoning Text Amendment Project

June 8, 2009

Task Force Meeting

Members Present

Ray Whitchurch, Ron Jarrett, Esther Hunter, Betsy Burton, Mike Akerlow, Jerrold Green, Barbara Green, Vasilios Priskos, Michael Polacek, Helen Peters, Judi Short, Cindy Cromar, Grace Sperry, Lou Richardson III, Dave Richards, Virginia Hyhon

Staff Present

Wilf Sommerkorn, Planning Division, Kevin LoPiccolo, Planning Division and Mike Akerlow, Economic Development

Discussion of Non-Conforming Use and Non-Complying Lot and Structure Regulations.

Members present would prefer that any new nonconforming use be heard at an Administrative Hearing instead of the Planning Commission. The members felt that as long as there is a public hearing associated with a new nonconforming use, the administrative approach would serve the purpose to notify the community. The committee also would like to have incorporated into the review process that all abandonment or loss of a nonconforming use be heard at an administrative hearing versus a staff level for a determination.

At the meeting the Task Force members discussed the proposed amendment to the Nonconforming and Noncomplying regulations of the Zoning Ordinance. The discussion of the revised regulations includes the following:

- Simplify and clarify the regulations
- Ensure consistency with State Law (LUDMA)
- Revise the regulations for changing one nonconforming use to another nonconforming use.
- Incorporate language for in-line additions for single-family dwellings
- Incorporating language for environmental devices/structures for nonconforming uses and noncomplying structures.
- Incorporating and establishing a review process by the Planning Commission for all new nonconforming uses. Task Force members agreed to have this handled through an Administrative Hearing Officer.
- Incorporate that all abandonment or loss of a nonconforming use be heard and approved or denied at an Administrative Hearing.

We deferred the issue of non-conforming medical clinics. The Task Force was informed that the Planning Division was reviewing this issue.

OPEN HOUSE

Nonconforming Uses and NonComplying Lots

ATTENDANCE ROLL

July 16, 2009

Please print clearly, as this information will be attached to the subsequent staff report. Thank you.

PRINT NAME <u>CRISTINA CORONADO</u> ADDRESS <u>201 S. Main Street, Suite 800</u> ZIP CODE <u>84111</u> <u>coronadoc@ballardspahr.com</u>	PRINT NAME _____ ADDRESS _____ ZIP CODE _____
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Memorandum to File

Community & Economic Development
Office of the Director

To: File

From: Cheri Coffey, Planning Manager

Date: August 8, 2009

Re: PLNPCM2009-00167. 2009 ZAP Project- Revisions to Chapter 21A.38-
**Nonconforming Uses and Non-Complying Lots and Structure
regulations**

This petition was initiated as part of the 2009 Zoning Amendment Project to address issues relating the Non-conforming / Non-complying chapter of the City Zoning Ordinance.

Issue: Revise Chapter 38 and other pertinent sections of the zoning ordinance addressing Non-conforming Uses and Non-complying structures

- Comply with LUDMA regulations
- Address in-line additions
- Address expansion
- Address changes of use
- Address options to terminate non-conforming / non-complying status
- Provide a comprehensive, in-depth refinement of existing regulations.

Response:

- A. On April 19, 2005 the City Council adopted amendments to the non-conforming regulations allowing for 100% of a non-conforming use to be rebuilt if it was destroyed by natural calamity. In May, 2006, the City Council adopted amendments to the non-conforming regulations to allow expansion and intensification of use of non-conforming uses through a conditional use process. At the time, the City Council requested the Planning Staff develop specific criteria to ensure the expansion or intensification of a non-conforming use would be compatible in the specific area it was proposed. This issue has not yet been addressed. Examples of criteria that may be appropriate include:
- 1) Lot size
 - 2) Setback distances (from residential)

- 3) Building Size
- 4) Parking /traffic impacts
- 5) Housing Impacts

In addition to this request, the Planning Staff has identified other issues that should be addressed relating to non-conforming and non-complying regulations that relate to the issues that were identified through the Conditional Use amendment process.

These issues include the following:

- B. Ability to make energy savings types of improvements to an existing structure that would exceed the 50% value threshold;
- C. How non-conforming uses / non-complying structures relate to sustainability goals (reuse of existing structures, embodied energy, improve walkability of the site, etc.)
- D. Amortization of non-conforming uses (there may be some uses that have such negative impacts to the community that it would be beneficial to have them relocate to a site where they would be conforming).
- E. Identification of rezoning options; What existing non-conforming uses should be made conforming by rezoning the properties (such as small neighborhood commercial buildings that were originally built for commercial uses, but are now zoned residential.)
- F. Specify in the zoning ordinance that in-line additions, both horizontally and vertically, can be reviewed and create a definition of what constitutes an in-line addition. From a technical standpoint, these types of issues would be reviewed as variances by the Board of Adjustment, but historically have been allowed by a list of duties delegated to staff from the Board of Adjustment.
- G. Amend the language relating to non-complying structures so it is clear that a non-complying lot can accommodate any use allowed in the underlying zoning district as long as it can meet the setback requirements (or obtain a variance from the Board of Adjustment). The intent of the ordinance is that at a minimum a single-family dwelling could be built on a non-complying lot. Some have interpreted the text to say that only a single-family dwelling use can be located there even if it is in an existing structure (possibly built for things other than single-family use.)
- H. Clarify the term "similar land use type" and provide more criteria of what constitutes a "similar land use type." Currently, the emphasis is on whether the amount of parking required is greater than the last non-conforming use on the site. There are more intensive uses that may require less parking, in addition, the City Council has recently adopted amendments to the parking regulations which have decreased the amount of required parking for some uses. Staff recommends developing more criteria for the determination of similar land use type and that more emphasis be placed on the land use tables to determine what is a more intensive use. As an example, if the new use is allowed in the same or a less intensive land use zone (CN rather than CB

zone), than it would be considered a "similar land use type." Additional criteria could also be used for making this determination. It is also staff's recommendation that the interpretation should ultimately rest with the Planning Commission, rather than the Board of Adjustment, because it is a use issue.

- I. Reformat the chapter to better differentiate (and lessen the confusion) between non-complying and non-conforming provisions. The existing layout of the chapter causes confusion and misinterpretation. In addition, there are provisions relating to non-conforming uses and non-complying lots / structure provisions in other sections of the zoning ordinance which should be relocated to the non-conforming / non-complying chapter of the Zoning Ordinance.
- J. State law was recently modified to include provisions that exempt the placement of solar devices as a structural alteration. This should be included in the ordinance. Staff will also analyze how to incorporate this and ensure that historic preservation issues relating to the placement of solar panels are addressed.
- K. On Use Interpretations, should the final decision making body after the Zoning Administrator be the Planning Commission rather than the Board of Adjustment since the issue relates to land use? What do other cities do?

2009 Zoning Text Amendment Project

August 10, 2009

Task Force Meeting

Members Present

Alene Bentley; Cindy Cromer; Sydney Fannesbeck; Barbara Green; Jerry Green; Esther Hunter; Bruce Jensen; Jeremy King; Bill Nighswonger; Helen Peters; Vasilios Priskos; Dave Richards; Lon Richardson; Steven Rosenberg; Judi Short; Grace Sperry; Ray Whitchurch

Staff Present

Wilf Sommerkorn, Planning Director; Cheri Coffey, Planning Manager; Ray Milliner, Principal Planner; Mike Akerlow, Economic Development Division

Review of Summary Notes

Staff clarified that the underlined verbiage in the notes that were handed out in the meeting represent comments that were submitted to staff, from Task Force members, clarifying what they said at the July 13, 2009 meeting.

There was a request to clarify the notes relating to density and the proposed planned development regulations. Staff agreed to make the changes.

General Discussion on ZAP Process

There was a request for staff to notify the Task Force members of what issues staff agreed to and therefore, incorporated into the final recommendation of the various ZAP petitions. Staff agreed that the staff reports can be written to better identify the input from the Task Force and how staff addresses the issues raised by the Task Force. Staff also agreed to send Task Force members a website link to the staff reports once they are posted for the various ZAP petitions.

There was a request for staff to speak up in the Task Force meetings to let the Task Force members know when a suggestion is or is not feasible.

The Planning Director was asked to clarify whether the proposed amendments to address non-conforming medical clinics would be presented to the ZAP Task Force. Mr. Sommerkorn responded that the Planning Staff will need to think about how to deal with

The cost of development vs. the cost of utilities has to be looked at. If the development is millions of dollars, then \$50,000 is not a big deal. If the cost of the development is \$500,000 then \$50,000 is a big expense in the project.

The streets downtown are full of utilities, vaults etc

If not allowed in public right of way, then all existing utility boxes are considered non complying. They can continue but expansion rules are changing.

Public input should be allowed on City boxes (traffic boxes etc). They can interfere with abutting property owners such as blocking the doors to businesses.

Discussion relating to proposed amendments to Conditional Use Regulations

Administrative Conditional Uses

- Don't need to go to community council but do require notice to abutting property owners

Results of using criteria over the last year

Concentration issues

- Although use is mitigated, the uses that were approved before weren't mitigated so there is an impact when they are concentrated in an area.
- What does mitigated mean? Does it mean that 75% of the impacts are mitigated? 100% of the impacts are mitigated?

Clarify the criteria. An example would be to have a specific measurement of the noise that cannot be violated. That way it is easier to determine if it will really mitigate the impact and it can be enforced more easily.

Housing is a conditional use in commercial zones. Relook at the use tables and determine what should be permitted, conditional use or not allowed.

Hard to work through issues (to mitigate impacts when applicant already did the work) Retroactive approval (boarding house issue).

When department sign-off on project they should note what standards they are using. What do they base their criteria on? (Best professional practices or adopted regulations for City.

The concentration of use is in a specific geographic area.

Need to change ordinance and not allow the use if there are too many and they have a negative impact as a whole.

Have to be able to say something specific relating to concentration such as the roads can't handle more traffic in the area.

Need to ensure zoning implements the plan if the master plan calls for residential but not enough housing, then that is a problem.

The zoning needs to be supported by the uses in the area.

In some areas, you can't rely on the zone because the zoning doesn't match what's on the ground or in the plan.

What is revocation process for a Conditional Use?

- It is a very difficult process, hard to revoke.
- Having it go to the mayor to initiate revocation is political. Put the authority in a less political agency such as the attorney's office.
- Why not have the process be similar to other revocations? Where else in the City does there need to be a reliance on mayor to do something like this? Look at business license revocation process and possibly mimic it

Not requiring a process for expansions of less than 1,000 square feet is not consistent with nonconforming regulations.

Changing from one conditional use to a different type of conditional use needs public input process.

The whole nature of business is changing.

In some cases it may be ok to allow without process. In other cases it is not appropriate to not have a process.

The underlying zoning can help provide density and intensity, but where allow incremental change of use, it intensifies the use without input.

Impacts of smoking outdoors is an issue. Need to have indoor accommodations and separate ventilation. *This would violate State Law.*

MEMORANDUM

451 South State Street, Room 406
Salt Lake City, Utah 84111
(801) 535-7757



Planning and Zoning Division
Department of Community Development

TO: Board of Adjustment

FROM: Kevin LoPiccolo, Planning Division

DATE: September 21, 2009

SUBJECT: Nonconforming uses Noncomplying Structures (Chapter 38)

This is a request by the Salt Lake City Council to amend the Zoning Ordinance to modify regulations relating to Nonconforming Uses and Noncomplying Structure. The purpose of the proposed changes is to accomplish the following:

- Simplify and clarify the regulations
- Ensure consistency with State Law (LUDMA)
- Revise the regulations for changing one nonconforming use to another nonconforming use.
- Incorporate language for in-line additions.
- Incorporating language for environmental devices/structures for nonconforming uses and noncomplying lots and structures.
- Incorporating and establishing a review process by the Administrative Hearing Officer for all new nonconforming uses at an Administrative Hearing.
- Incorporate that all abandonment or loss of a nonconforming use be heard and approved or denied at an Administrative Hearing.



Communication to ZAP Task Force

Community & Economic Development
Office of the Director

To: Zoning Amendment Project Task Force Members

From: Kevin LoPiccolo, Planning

Date: September 28, 2009

CC: Wilf Sommerkorn, Planning Director; Cheri Coffey

Re: Amendments to Section 21A.38 - Nonconforming Uses and Noncomplying Lots and Structure regulations.

On June 8, 2009, the ZAP Task Force reviewed and commented on proposed changes to chapter 21A.38 of the Zoning Ordinance. Issues relating to the proposal were discussed and changes to the draft were made. The following items were discussed at this meeting and staff has made the following proposed changes to Chapter 38.

- Simplify and clarify the regulations.
- Ensure consistency with State Law.
- Revise the regulations for changing one non-conforming use to another non-conforming use through an administrative hearing process.
- Revise the regulations for abandonment of use/building to be heard at administrative hearing process.
- Add language for in-line additions for single-family dwellings.

We understand that regulations to non-conforming uses and non-complying structures and lots affect businesses and neighborhoods in many ways. They are very complex and have implications for property owners who own non-conforming uses as well as owners of property in the surrounding area. The Planning Staff hopes that they have addressed these concerns.

I have attached the proposed ordinance change and minutes from the last ZAP meeting of June 8, 2009.

2009 Zoning Text Amendment

November 9, 2009

Task Force Meeting

Members Present

Jeff Bair, Cindy Cromer, Barbara Green, Jerry Green,, Helen Peters, Vasilios Priskos, Dave Richards, Lon Richardson, Judi Short, Ray Whitchurch

Staff Present

Wilf Sommerkorn Planning Director; Cheri Coffey, Planning Manager; Kevin LoPiccolo, Planning Programs Supervisor

Review of Summary Notes

The members of the Task Force had no comments on the Summary Notes from the October 26, 2009 meeting???

NonConforming Uses / NonComplying Structures

Without having a small neighborhood business zoning district adopted at the same time you change the non-conforming regulations, the property owner is stuck. You are closing the door on potential for expansion where right now you can expand up to 50% of the structure without going through a process.

How do you address incremental expansion?

People like small neighborhood walkable shops. You need to provide the ability to expand.

Perhaps you can create a Special "Legal" conditional use that the Planning Commission can recognize.

The use is not the issue. The standards are the issue.

The expansion of the use has been abused over the years.

Is there a way to use historic landmark process to address this? Perhaps you could expand if the property is in an historic district where they have commercial guidelines.

The HLC could review the project if you want to expand. Those outside the historic district have to wait to expand until at some future date when the Small Neighborhood Commercial Project has been adopted and new zoning is in place.

Find guidelines that have to be met to expand or intensify.

Currently you are allowed 50% expansion. The proposed language is much more restrictive.

If you don't let some viable use in the building, it becomes vacant and then dilapidated.

If you say 50% for expansion, that is what the people will shoot for.

Should this ordinance be held off until the Small Neighborhood Business project is complete and rezones non-conforming uses to a zone that makes them conforming? (There is no guarantee that this will happen).

To not allow expansion is problematic. Allowing the expansion through an approval process with public input is ok.

How likely is incremental creep anyway?

Perhaps rather than a % of expansion, it could be a specific square footage and limited to one time expansion.

Presentation on Sustainability Regulation Project-Bundle 1

General Comments

1. Outside consultants oftentimes means that the product will be a boiler plate ordinance that is not tailored to Salt Lake City.
2. Why is the magic number throughout these ordinances 25 lots? What is the rationale behind that?
3. Sustainability Codes should not supersede all other regulations. (Preservation, Compatible Infill are all important).
4. Consultants need to look at what the unintended consequences will be to these regulations.

Accessory Dwelling Units

1. Can't apply this city-wide to all single family neighborhoods.
2. The City cannot enforce owner occupancy.
3. Accessory Dwelling Units shouldn't be allowed at all.

Attachment C
Department Comments

LoPiccolo, Kevin

From: Walsh, Barry
Sent: Tuesday, July 21, 2009 5:55 PM
To: LoPiccolo, Kevin
Cc: Young, Kevin
Subject: RE: Chapter 38

Categories: Other

July 21, 2009

Kevin LoPiccolo, Planning

Re: Review of proposed changes to Chapter 21A.38 zoning text for NONCONFORMING USES AND NONCOMPLYING STRUCTURES.

The division of transportation review comment and recommendations are as follows:

We see no undo impact to the transportation corridor system per the proposed changes to simplify the text, Subject to standard site development transportation issues for traffic access, staging, stacking, and parking as needed and referred to as 21A.44 and as per the purpose statement in that the continued use is "not detrimental to the surrounding neighborhood", "or are a hazard to", from a transportation view of traffic issues for vehicles or pedestrians in their function of: parking - circulation - access - or services.

Sincerely,

Barry Walsh.

Cc Kevin Young, P.E.
File.

From: LoPiccolo, Kevin
Sent: Tuesday, July 21, 2009 3:22 PM
To: Nielson, Paul; Butcher, Larry; Walsh, Barry
Subject: Chapter 38

I have attached a revised copy of Chapter 38 – Nonconforming uses/noncomplying structures for your review. I plan on bringing this to the Planning Commission on August 12, 2009.

I would appreciate any input on what has been changed. It would be great if I could get your comments by July 30, 2009.

Thanks,

Kevin LoPiccolo
Planning Program Supervisor

Attachment D
August 26, 2009 Planning Commission Minutes

SALT LAKE CITY PLANNING COMMISSION MEETING

In Room 326 of the City & County Building

451 South State Street, Salt Lake City, Utah

Wednesday, August 26, 2009

Present for the Planning Commission meeting were Chair Mary Woodhead and Commissioners Michael Gallegos, Angela Dean, Frank Algarin, Michael Fife, Prescott Muir, Tim Chambless, Matthew Wirthlin, Kathleen Hill, and Babs De Lay. Vice Chair McHugh was excused.

A field trip was held prior to the meeting. Planning Commissioners present were: Frank Algarin, Tim Chambless, Michael Fife, Kathleen Hill, Michael Gallegos, Prescott Muir, Matthew Wirthlin, and Mary Woodhead. Staff member present was: Nick Norris.

A roll is being kept of all who attended the Planning Commission Meeting. Chair Woodhead called the meeting to order at 5:45 p.m. Audio recordings of the Planning Commission meetings are retained in the Planning Office for an indefinite period of time. Planning staff members present at the meeting were: Wilford Sommerkorn, Planning Director; Cheri Coffey, Programs Manager; Paul Neilson, City Attorney; Nole Walkingshaw, Senior Planner; Nick Norris, Senior Planner; Lex Traugher, Senior Planner; and Tami Hansen, Senior Secretary.

6:37:15 PM PLNPCM2009-00167; Non Conforming & Non Complying Zoning Text Amendment – A request by the Salt Lake City Council to amend Chapter 21A.38 of the Salt Lake City Zoning Ordinance, relating to Non Conforming Uses and Non-Complying Lots and Structures regulations. The purpose of the petition is to simplify and clarify the existing regulations and to ensure consistency with State Law.

Chair Woodhead recognized Cheri Coffey as staff representative.

Ms. Coffey stated that the easiest way to understand non-conforming uses was the zoning was probably correct when built, but over time the zone changed in conformance to the master plan, and hopefully these non-conforming uses would eventually go away. She stated that the problem with that was there were private property rights, and recently State law stated that owners could rebuild a non-conforming use within 6 months if it was destroyed by a natural disaster.

She stated that in the past the Zoning Administrator had made a decision, which could be appealed to the Board of Adjustment and that board was then making a land use decision. Staff was trying to clean up this process and make it more public. She noted that because the Planning Commission was the land use board, these zoning changes should go through a public process and be decided by the Commission.

Ms. Coffey stated that there were a lot of non-conforming uses. Partly because the master plans were outdated and a lot of the neighborhoods were built before zoning regulations were created. Over the years downzones were made and now walkability and sustainability were factors and a lot of these uses were things the

neighborhood liked. It was difficult to get financing and insurance for these uses. Staff was looking at changing the zoning to make them conforming. She stated that in-line additions were also not addressed in the ordinance and needed to be made clearer. She stated that a non-complying structure was when the size or height of the structure did not comply with the underlying zone. A non-conforming lot was a parcel that did not have frontage or the minimum lot area that was required in the zone.

Ms. Coffey stated that non-complying lots in the past meant that you could only put a single-family home on the property; she stated that this was not the intent, the intent was that the minimum you could build would be a home, and now it would include you could build on the property whatever was allowed within the zone.

Commissioner De Lay stated that it was hard to get a loan or a refinance on a non-complying use. She inquired if staff had run this by any lenders to see if this was approved if they would be okay now.

Ms. Coffey stated they had not.

Commissioner De Lay stated that it would be a good idea to have a workshop that included residential and commercial lenders so that they could look at this text amendment and comment on whether or not changes needed to be made so they would actually lend money. She inquired if live/work spaces were part of this.

Ms. Coffey stated that she was working on the definitions and uses of some terms that would be placed in the table of the ordinance, so that specific uses were defined in the future.

Commissioner Dean stated that if the City was going to take a stricter stance on this, they needed to take a look at the map amendments and if the City can proactively rezone preferable properties to maintain the commercial diversity. She stated that it would be a clarifying tool for property owners as well.

Commissioner Fife inquired about changing from one non-conforming use to another, the amendment stated that the Zoning Administrator would make the decision on those, but it seemed like those petitions should come before the Planning Commission.

Ms. Coffey stated that was a decision for the Commission to make. She stated that the taskforce felt this would be a more streamlined process if it went through an Administrative hearing process, but if the Commission wants to see them, then they should recommend that.

7:02:54 PM **Public Hearing**

Chair Woodhead opened the public hearing portion of the petition.

The following person spoke or submitted cards in *support* of the petition: **Judy Short** (862 Harrison Street) stated that the City needed to find a way to retire non-conforming uses, which were not compatible with the City's long range plans and objectives. She stated that one way to make that easier would be to create small, low intensity mixed-use and business zones. She stated that staff could categorize what characteristics made a property non-conforming and redefine it in a way that a lot of those properties could become conforming with a few tweaks to what was allowed in the zoning district.

Commissioner De Lay stated that was a valid point, what were the number one reasons that most properties in the City were non-conforming.

Ms. Coffey stated that the short answer is that they are not compatible with the zone, but part of the problem was the City's master plans were outdated and some of the more current master plans did not have the zoning implemented when they were adopted. She stated that the ZAP taskforce looked at some uses that could be designated as mixed-use which would be appropriate.

Mr. Sommerkorn stated that there were a lot of non-conforming uses in the City, and could the zoning be modified to the point that a lot of them could be made conforming. He stated that was part of what the small neighborhood business study intended to look at.

Chair Woodhead stated that the City was lucky that a lot of these non-conforming uses had survived, when there was a tendency toward sameness in the past. She stated that the City needed to find a way to protect those mixed-uses and to make them better.

Commissioner Hill stated that staff had mentioned looking at where in the City it would be appropriate to drop particular commercial mixed-use areas in. She stated that overtime if density was strengthened in any area, neighborhoods could start strengthening these neighborhood cores.

Ms. Short stated that this was zoning for the future, where twice as many people would eventually occupy the same space and if the City still wanted open space there needed to be some creativity when looking at the zoning.

Chair Woodhead closed the public hearing.

The meeting adjourned at 7:12 p.m.

This document, along with the digital recording, constitute the official minutes of the Salt Lake City Planning Commission held on August 26, 2009.