



MEMORANDUM

PLANNING DIVISION
COMMUNITY & ECONOMIC DEVELOPMENT

To: Salt Lake City Planning Commission

From: Everett Joyce, 801-535-7930

Date: May 8, 2013

Re: Petition PLNPCM2009-00167: Additional Text Modifications to Chapter 38 Nonconforming Uses and Noncomplying Structures

ACTION REQUIRED: Review and consider additional text modifications to Chapter 38 based on additional Department comments.

RECOMMENDATION: That the Planning Commission approve the **Planning Staff's** additional text modifications and have the staff incorporate these changes as part the recommended text changes for Petition PLNPCM2009-00167 that the Planning Commission forwards to the City Council.

BACKGROUND/DISCUSSION: After publication of the staff report the Planning Staff received additional Department comments from the **Attorney's Office on the proposed text changes to Chapter 38. The Planning** staff has reviewed the comments and has recommended additional text changes from those identified in the staff report. The additional changes are highlighted in yellow and are provided in Attachment A. None of these recommended changes are significant or contextual changes they are for clarity purposes. Attachment B contains the Department comments.

Attachment A
Planning Staff Recommended Additional Text Changes
(Highlighted in yellow)

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, noncomplying structures, noncomplying lots and legal conforming dwellings as defined in Chapter 21A.62 Definitions. While nonconforming uses, noncomplying structures and improvements may continue, this chapter's purpose is to limit enlargement, alteration, restoration, or replacement which would increase the level of nonconformity or noncompliance.
1. Nonconforming uses include legal ~~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; ~~and~~.
 2. Noncomplying structures and improvements include legally ~~legally~~ constructed ~~noncomplying principal and accessory~~ buildings, structures and property improvements, that do not comply with the applicable bulk and/or yard area regulations and design standards of this title such as setbacks and parking in the zoning districts in which ~~such~~ the buildings or structures are located.
 3. This chapter also provides standards for legal complying lots and dwellings. The legal complying status permits continued use and or replacement of structures subject to the standards of this chapter.

21A.38.050020: AUTHORITY TO CONTINUE:

Except as provided in this chapter, a nonconforming use, noncomplying structure, noncomplying lot or legal conforming dwelling may continue unaffected by any change in ownership be continued by the present or a future property owner.

21A.38.040: NONCONFORMING USES

- A. **Nonconforming Regulations For Nonconforming Parking, Signs, Landscaping, Airport Flight Path Protection Overlay, Riparian Corridor Overlay And Sexually Oriented Businesses:**

Nonconforming regulations Regulations for nonconforming parking, signs and landscaping are regulated by the provisions set forth in chapters 21A.44, 21A.46 and 21A.48 of this title. Nonconforming regulations for the airport flight path protection overlay and the riparian corridor overlay are set forth in section 21A.34.040 and

21A.34.130 of this title. Nonconforming sexually oriented businesses are also subject to section 21A.36.140.C and 5.61.065 of this title.

B. Nonconformity Of Taverns, Social Clubs, Dining Clubs, Brewpubs Or Microbreweries:

A legally existing tavern, social club, dining club, brewpub, or microbrewery 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 requirements of state law.

C. Terminating The Non-Conformance Of A School District Or Charter School:

A nonconforming status of a school district's or charter school's legal nonconforming status use or structure may be terminated 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.

D. 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 shall not considered as increasing or enlarging a nonconforming use.

E. Determination Of Nonconforming Use Status:

1. 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.
2. Determination Of Nonconforming Status: The zoning administrator shall determine the nonconforming use or noncomplying structure status of properties based upon the evidence submitted and information available pursuant to the provisions of this chapter.

F. Abandonment Or Loss Of Nonconforming Use:

G. Termination Of A Nonconforming Use By Amortization:

The appeals hearing officer 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 appeals

hearing officer 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 9a, of the Utah Code Annotated and shall mail written notice to the owner and occupant of the property:

1. Initiation Of Termination Procedure: Appeals hearing officer 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 appeals hearing officer. The zoning administrator's report shall determine the legality of the nonconforming use, provide a history of the site and outline the standards for determining an amortization period.
2. 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 appeals hearing officer shall mail the report and plan to the owner and occupant(s) of the nonconforming use, giving notice of the appeals hearing officer's intent to hold a hearing to consider the request in accordance with the standards and procedures set forth in chapter 21A.10 of this title.
3. Appeals Hearing Officer Review: The appeals hearing officer shall hold a noticed hearing within a reasonable time, following the procedures established in chapter 21A.10 of this title, on the request for amortization of the nonconforming use. Upon the conclusion of the hearing, the appeals hearing officer shall determine whether the nonconforming use should be amortized within a definite period of time.
4. Standards For Determining Amortization Period: The appeals hearing officer shall determine the appropriate amortization period upon the consideration of evidence presented by the zoning administrator and the owner of the nonconformingly-used property that is sufficient to make findings regarding the following factors:
 - a. The general character of the area surrounding the nonconforming use;
 - b. The zoning classification and use(s) of nearby property;
 - c. The extent to which property values are adversely affected by the nonconforming use;
 - d. 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;
 - e. The amount of financial loss, if any, that would be suffered by the owner upon termination of the use; and

f. The extent to which the amortization period will further the public health, safety and welfare.

5. Appeal: Any person adversely affected by a final decision of the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

H. Modifications To Nonconforming Uses:

Except as provided in this section, a nonconforming use may be extended within the existing building where the nonconforming use occupied only a part of the building through the same building, provided no structural alteration to the exterior walls or roofline of the building is proposed or made for the purpose of the extension. No nonconforming use may be changed to another nonconforming use, moved, enlarged or altered except as provided in this section and no nonconforming use of land may occupy additional land.

1. Change Of Nonconforming Use To Another Nonconforming Use: Any change of an existing nonresidential nonconforming use to another nonconforming use that is listed as a permitted use in the Small Neighborhood Business District in section 21A.26.025.B Uses or the Neighborhood Commercial District in section 21A.26.080 Table of Permitted and Conditional Uses for Commercial Districts is permitted. Any other change of a nonconforming use to another nonconforming use is subject to determination by the Appeals Hearing Officer as to the new use being a similar land use type as the existing use as defined in Chapter 21A.62 Definitions and subject to the site being able to provide required off street parking within the limits of existing legal hard surfaced parking areas on the site.

Within a mixed use development no existing nonconforming use may be allowed to expand into any residential portion of the development.

2. Enlargement of a Structure with a Nonconforming Use: Alterations or modifications to a portion of a structure that are directly related to a legally with a legal nonconforming use may be approved by special exception, subject to the provisions of chapter 21A.52 of this title, if the floor area does not increase by more than twenty five percent (25%) of the gross floor area, or one thousand (1,000) gross square feet, whichever is less and subject to the site being able to provide required off street parking within the limits of existing legal hard surfaced parking areas on the site. An approved expansion shall be documented through an updated zoning certificate for the property. Any expansion to the nonconforming use portion of a structure beyond these limits is not permitted.

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

4. Exterior Or Interior Remodeling Or Improvements To Structure: Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed for energy efficiency, accessibility or life safety improvements if the parking requirement is not increased as a result of the remodeling or improvements. Other improvements may be allowed provided they do not increase the parking requirement as required by this title.
5. Deterioration or Destruction Of Structure With a Nonconforming Use: Restoration of a deteriorated, damaged or destroyed structure and continuance of a nonconforming use shall be subject to the following:
 - a. If a building or structure that contains a nonconforming use is allowed to deteriorate to a condition that the structure is rendered uninhabitable as determined by the building official and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable; the nonconforming use will cease to be legal. ~~be lost.~~
 - b. 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.
 - c. If a property owner has voluntarily demolished seventy five percent (75%) or more of the perimeter wall length and area dimensions of the exterior walls and/or total floor area of a structure, the structure shall not be restored.
 - d. 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 reasonably pursued in a time frame determined by the building official after such calamity.

21A.38.140080: APPEAL:

Any person adversely affected by an administrative **final** decision of the zoning administrator on a determination of the status of for a nonconforming use or noncomplying structure, may appeal that decision to the appeals hearing officer pursuant to the provisions in chapter 21A.16 of this title.

Chapter 21A.62 Definitions

LAND USE TYPE (SIMILAR LAND USE TYPE): Use tables within subsections of title 21A list various land use types for permitted and conditional uses for the Residential, Commercial, Manufacturing, Gateway and Special Purpose categories. Land uses shall be considered to be similar land use types, if the uses are listed as a permitted or conditional use in the same subsection of the use tables within subsections of title 21A and the uses have similar off-street parking requirements as defined in Chapter 44 Off Street Parking and Loading.

Attachment B

City Attorney's Office Department Comments

Chapter 21A.38 **NONCONFORMING USES AND NONCOMPLYING STRUCTURES**

Comment [PCN1]: Please don't take my numerous comments personally--I realize that much of the language that I criticize is the existing language.

SECTION:

- 21A.38.010: Purpose Statement And Intent
- ~~21A.38.020: Scope Of Regulations~~
- ~~21A.38.030: Determination Of Nonconforming Use Status~~
- ~~21A.38.040: Nonconforming Parking, Signs And Landscaping~~
- 21A.38.0520: Authority To Continue
- 21A.38.0630: Ordinary Repair And Maintenance And Structural Safety
- 21A.38.0740: ~~Abandonment Or Loss Of Nonconforming Uses~~
- ~~21A.38.080: Moving, Enlarging Or Altering Nonconforming Uses Of Land And Structures~~
- 21A.38.0950: Noncomplying Structures
- 21A.38.1060: Noncomplying Lots
- ~~21A.38.110: Nonconforming Accessory Uses And Noncomplying Accessory Structures~~
- 21A.38.12070: Legal Conforming Single-Family Detached Dwellings, Two-Family Dwellings, And Twin Homes
- ~~21A.38.130: Reserved~~
- 21A.38.14080: Appeal
- ~~21A.38.150: Termination By Amortization Upon Decision Of Board Of Adjustment~~
- ~~21A.38.160: Nonconformity Of Taverns, Brewpubs, Microbreweries Or Private Clubs~~

21A.38.010: PURPOSE STATEMENT AND INTENT:

A. **Purpose:** The purpose of this chapter is to regulate the continued existence of nonconforming uses, noncomplying structures, noncomplying lots and legal conforming dwellings as defined in Chapter 21A.62 Definitions. While nonconforming uses, noncomplying structures and improvements may continue, this chapter's purpose is to limit enlargement, alteration, restoration, or replacement which would increase the level of nonconformity or noncompliance discrepancy between existing conditions and the development standards prescribed by this Code.

Comment [PCN2]: This omitted language does not appear in the current code. I'm assuming that it was proposed but then rejected. Please only show existing code language and that which is proposed to be added or deleted.

1. Nonconforming uses include legal ~~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; ~~and~~
2. Noncomplying structures and improvements include legally ~~Legally~~ constructed ~~noncomplying principal and accessory~~ buildings, structures and property improvements, that do not comply with the applicable bulk and/or yard area regulations and design standards of this title in the zoning districts in which ~~such~~ the buildings or structures are located, such as setbacks and parking.

Comment [PCN3]: This phrase has potential to confuse. It might be better inserted between "of this title" and "in the zoning districts". Just a thought.

3. This chapter also provides standards for legal complying lots and dwellings. The legal complying status permits continued use and or replacement of structures subject to the standards of this chapter.

Comment [PCN4]: Not sure why we need to or should discuss legal complying lots and dwellings in a chapter governing nonconforming/noncomplying.

B. **Intent:** The intent of this chapter is to allow continued use of legal nonconforming uses, ~~and noncomplying structures~~ and legal conforming dwellings, while at the same time protecting existing conforming development ~~and furthering orderly development and improvement of within~~ 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. Nonconforming uses that are determined to create a nuisance or are a potential hazard to a community or neighborhood may be eliminated through amortization.

~~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.~~

21A.38.020: SCOPE OF REGULATIONS:

~~This chapter applies to nonconforming uses, noncomplying structures and noncomplying lots.~~

21A.38.030: 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.~~

21A.38.040: 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 title.~~

21A.38.05020: AUTHORITY TO CONTINUE:

Except as provided in this chapter, a nonconforming use, noncomplying structure, noncomplying lot or legal conforming dwelling may be continued by the present or a future property owner.

Comment [PCN5]: This is a bit awkward. Might want to say something like "may continue, unaffected by any change in ownership."

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.~~

21A.38.06030: 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 ~~or on a legal conforming dwelling~~. This section shall not be construed to authorize any violation of ~~section 21A.38.080 or 21A.38.090~~ of the standards 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.

Comment [PCN6]: Again, I think it is out of place and unnecessary to discuss what you can do with a legal complying structure in this chapter. Consider this comment repeated each time that issue arises hereafter.

21A.38.040: NONCONFORMING USES

A. **Nonconforming Regulations For Parking, Signs, Landscaping, Airport Flight Path Protection Overlay, Riparian Corridor Overlay And Sexually Oriented Businesses:**

Nonconforming regulations for parking, signs and landscaping are regulated by the provisions set forth in chapters 21A.44, 21A.46 and 21A.48 of this title. Nonconforming regulations for the airport flight path protection overlay and the riparian corridor overlay are set forth in section 21A.34.040 and 21A.34.130 of this title. Nonconforming sexually oriented businesses are also subject to section 21A.36.140.C and 5.61.065 of this title.

Comment [PCN7]: "nonconforming regulations"? I think you mean "regulations for [legal] nonconforming parking, signs..."

Comment [PCN8]: Ditto

B. **Nonconformity Of Taverns, Social Clubs, Dining Clubs, Brewpubs Or Microbreweries:**

A legally existing tavern, social club, dining club, brewpub, or microbrewery 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 requirements of State Law.

Comment [PCN9]: Lowercase "s" and "l"

C. **Terminating The Non-Conformance Of A School District Or Charter School:**

A nonconforming status of a school district or charter school use or structure may be terminated 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.

Comment [PCN10]: A school district's or charter school's legal nonconforming status may be terminated...

D. 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 a nonconforming use.

Comment [PCN11]: "shall" instead of "are"

E. Determination Of Nonconforming Use Status:

1. 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.
2. 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.

Comment [PCN12]: Suggestion: "The zoning administrator shall determine the legality of nonconforming uses and noncomplying structures based upon the evidence submitted and information available."

F. Abandonment Or Loss Of Nonconforming Use:

1. 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 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.
2. Rebuttal Of Presumption Of Abandonment: The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the zoning administrator, 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.
3. 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 1 of this section.

Comment [PCN13]: Not sure why "in a district" is here. It reads like we are talking about discontinuance of a district.

Comment [PCN14]: I thought we were moving toward eliminating the subjective intent language.

G. Termination Of A Nonconforming Use By Amortization:

The appeals hearing officer 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 appeals hearing

officer 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 9a, of the Utah Code Annotated and shall mail written notice to the owner and occupant of the property:

Comment [PCN15]: Land Use Development and Management Act

Comment [PCN16]: Eliminate "Annotated".

1. Initiation Of Termination Procedure: Appeals hearing officer 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 appeals hearing officer. 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.

Comment [PCN17]: Determine the legality of the nonconforming use? Not clear what this means/entails.

2. 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 appeals hearing officer shall mail the report and plan to the owner and occupant(s) of the nonconforming use, giving notice of the appeals hearing officer's intent to hold a hearing to consider the request in accordance with the standards and procedures set forth in chapter 21A.10 of this title.

3. Appeals Hearing Officer Review: The appeals hearing officer shall hold a noticed hearing within a reasonable time, following the procedures established in chapter 21A.10 of this title, on the request for amortization of the nonconforming use. Upon the conclusion of the hearing, the appeals hearing officer shall determine whether the nonconforming use should be amortized within a definite period of time.

Comment [PCN18]: I think this combination of words is a little weird. Perhaps you could go with "publicly-noticed" or just leave "noticed" out altogether since 21A.10 requires the notice anyway.

4. Standards For Determining Amortization Period: The appeals hearing officer 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:

Comment [PCN19]: Perhaps I'm getting too deep into the semantics, but I think since nonconforming uses run with the land and not the owner, we might want to refer in some manner to the owner of the nonconformingly-used property instead of the owner of the nonconforming use.

a. The general character of the area surrounding the nonconforming use;

b. The zoning classification and use(s) of nearby property;

c. The extent to which property values are adversely affected by the nonconforming use;

d. 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;

e. The amount of loss, if any, that would be suffered by the owner upon termination of the use; and

Comment [PCN20]: Financial loss?

f. The extent to which the amortization period will further the public health, safety and welfare.

Comment [PCN21]: Are we concerned about the amortization period furthering the public HSW or the amortization itself?

5. Appeal: Any person adversely affected by a final decision of the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

H. Modifications To Nonconforming Uses:

Except as provided in this section, a nonconforming use may be extended through the same building, provided no structural alteration to the exterior walls or roofline of the building is proposed or made for the purpose of the extension. No nonconforming use may be changed to another nonconforming use, moved, enlarged or altered except as provided in this section and no nonconforming use of land may occupy additional land.

Comment [PCN22]: Extended within an existing building where the nonconforming use occupied only a part of the building

1. Change Of Nonconforming Use To Another Nonconforming Use: Any change of an existing nonresidential nonconforming use to another nonconforming use that is listed as a permitted use in the Small Neighborhood Business District in section 21A.26.025.B Uses or the Neighborhood Commercial District in section 21A.26.080 Table of Permitted and Conditional Uses for Commercial Districts is permitted. Any other change of a nonconforming use to another nonconforming use is subject to determination by the Appeals Hearing Officer as to the new use being a similar land use type as the existing use as defined in Chapter 21A.62 Definitions and subject to the site being able to provide required off street parking within the limits of existing legal hard surfaced parking areas on the site.

Within a mixed use development no existing nonconforming use may be allowed to expand into any residential portion of the development.

Comment [PCN23]: I thought we were getting away from this. Forgive me for stepping into the policy discussion, but wouldn't good planning policy dictate that nonconforming uses eventually go away? When a city changes the zoning, isn't that a pretty good indication that, moving forward, the property should be used in accordance with what the new zoning allows?

2. Enlargement of a Structure with a Nonconforming Use: Alterations or modifications to a portion of a structure that are directly related to a legally nonconforming use may be approved by special exception, subject to the provisions of chapter 21A.52 of this title, if the floor area does not increase by more than twenty five percent (25%) of the gross floor area, or one thousand (1,000) gross square feet, whichever is less and subject to the site being able to provide required off street parking within the limits of existing legal hard surfaced parking areas on the site. An approved expansion shall be documented through an updated Zoning Certificate for the property. Any expansion to the nonconforming use portion of a structure beyond these limits is not permitted.

Comment [PCN24]: Not sure what "are directly related" is supposed to mean.

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

4. Exterior Or Interior Remodeling Or Improvements To Structure: Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed for energy efficiency, accessibility or life safety improvements if the parking requirement is not increased as a result of the remodeling or improvements. Other

Comment [PCN25]: Lowercase z and c.

improvements may be allowed provided they do not increase the parking requirement as required by this title.

5. Deterioration or Destruction Of Structure With a Nonconforming Use: Restoration of a deteriorated, damaged or destroyed structure and continuance of a nonconforming use shall be subject to the following:
 - a. If a building or structure that contains a nonconforming use is allowed to deteriorate to a condition that the structure is rendered uninhabitable as determined by the building official and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable; the nonconforming use will be lost.
 - b. 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.
 - c. If a property owner has voluntarily demolished seventy five percent (75%) or more of the perimeter wall length and area dimensions of the exterior walls and/or total floor area of a structure, the structure shall not be restored.
 - d. 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 reasonably pursued in a time frame determined by the building official after such calamity.

Comment [PCN26]: The nonconforming use will cease to be legal. "Lost" is just a little awkward here.

~~21A.38.070: 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 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, 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.~~

~~21A.38.080: 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.~~

~~1. Reoccupation Or Enlargement Of A Structure With A More Intensive Nonconforming Use:~~

~~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 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:~~

- ~~(1) The condition and economic life of the building is such that near future demolition is not likely to occur;~~
- ~~(2) The use provides reuse of buildings with architectural or historic value;~~
- ~~(3) The use supports walk to work or live-work opportunities;~~
- ~~(4) The use provides an appropriate scale of neighborhood or community level of services;~~
- ~~(5) The enlargement will not create any additional noncompliance with zoning standards except for building modifications for life safety concerns;~~
- ~~(6) The enlargement and reuse of the structure would not substantially change the character of the neighborhood; and/or~~
- ~~(7) The use is not in conflict with any other current, local or state development standards (i.e., floodplain hazard protection, fault line hazards, ground water 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:~~

~~(1) 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;~~

~~(2) 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:~~

~~(i) The requirement would negatively impact the historic character of the building;~~

~~(ii) The requirement would negatively impact the structural stability of the building; or~~

~~(iii) 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');~~

~~(3) 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;~~

~~(4) 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~~

(5) Signs: Signage for residential uses shall meet sign standards for subsection 21A.46.080B, "Sign Regulations For Multi-Family Residential Districts", of this title. 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 title. 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:

- (1) No additional lot area may be added to the subject nonconforming property;
- (2) No enlargement of a nonconforming principal structure shall involve the razing of more than fifty percent (50%) of the existing building footprint; and
- (3) 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: 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 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.

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:~~
- (1) ~~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~~
 - (2) ~~The reconstruction will not increase the number of units.~~
- b. ~~Nonconforming Nonresidential Uses: The planning commission may authorize as a special exception the reconstruction and reestablishment of a legal nonconforming nonresidential use structure subject to consideration of the following:~~
- (1) ~~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;~~
 - (2) ~~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);~~
 - (3) ~~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~~

~~(4) Consideration of the enforcement history of the property regarding any continual public nuisance generated by the nonconforming use activity.~~

21A.38.09050: NONCOMPLYING STRUCTURES:

No noncomplying structure may be moved, enlarged or altered, except in the manner provided in this section or unless required by law. Modifications to a noncomplying structure that is subject to the Historic Preservation Overlay District requirements shall also meet the applicable supplemental regulations and standards of section 21A.34.020 H Historic Preservation Overlay.

Repair, Maintenance, Or Alterations And Enlargement: Any noncomplying structure may be repaired, maintained, ~~or altered or enlarged~~, except that no such repair, maintenance, ~~or 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. For purposes of this subsection, the addition of a solar energy device to a building is not a structural alteration, small solar energy collection systems are subject to section 21A.40.190 of this title.

A. Enlargement: A noncomplying structure may be enlarged if such enlargement and its location comply with the standards of the zoning district in which it is located. Horizontal in-line additions or extensions to existing noncomplying building portions is considered not creating a new nonconformance and are subject to special exception standards and approval of Chapter 21A.52.030.15 of this title. Vertical in-line additions or extensions to existing noncomplying building portions is considered creating a new nonconformance and are not permitted.

B. Determination of Noncomplying Structure Status: The zoning administrator shall determine the noncomplying structure status of properties pursuant to the provisions of this chapter.

C. 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 a noncomplying structure.

D. 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.

E. Replacement or Reconstruction of a Noncomplying Structure: The replacement or reconstruction of any existing noncomplying portion of a principal structure or full replacement of a noncomplying accessory structure are subject to special exception standards of Chapter 21A.52.030.19 of this title.

F. ~~C.~~ Deterioration, Damage Or Partial Destruction Of Noncomplying Structure:

Restoration of a deteriorated, damaged or destroyed noncomplying structure shall be subject to the following:

1. If a noncomplying structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable as determined by the building official and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable, the noncomplying structure status will be lost and requires either complete demolition or compliance with the standards of the zoning district in which the structure is located.
2. If a property owner or authorized representative voluntarily demolishes a non-complying structure or the non-complying structure 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 percent (75%) or more of the perimeter wall length and area dimensions of exterior walls and/or total floor area of a structure.
3. 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 with respect to building footprint, setback height and other noncomplying dimensional standards of the zoning district in which the structure is located, provided such work is started within one(1) year, unless a longer timeframe is approved by the building official, after such calamity.

A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

~~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 C2b(1) and C2b(2) of this section.~~
- (1) ~~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.~~
- (2) ~~Nonconforming Nonresidential Uses: The planning commission 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.~~

21A.38.100060: 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 and is subject to the regulations of this title. ~~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.~~

Any noncomplying lot not approved by the city that was created prior to January 13, 1950 may be approved as a legal noncomplying lot subject to the lot meeting minimum zoning requirements at the time the lot was created and documented through an updated Zoning Certificate for the property.

Any noncomplying lot not approved by the city that was created on or between January 13, 1950 to April 12, 1995 may be approved as a legal noncomplying lot subject to the lot meeting minimum zoning and subdivision requirements at the time the lot was created and documented through an updated Zoning Certificate for the property

Noncomplying lots may be combined to create a conforming lot or more conforming lot subject to any maximum lot size standards of the zoning district in which the lot is located.

~~21A.38.110: 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.38.120070: LEGAL CONFORMING SINGLE-FAMILY DETACHED DWELLINGS, TWO-FAMILY DWELLINGS, AND TWIN HOMES:

Any legally existing single-family detached dwelling, two-family dwelling, or twin home located in a zoning district that does not allow these uses, 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~~ Legal conforming status shall authorize ~~alterations, extensions/additions, and replacement of the single-family detached dwelling, two-family dwelling, or twin home structure to the extent of the original footprint.~~

A. Alterations, Additions Or Extensions Or Replacement Structures Greater Than the Original Footprint. In zoning districts other than M-1 and M-2, which do not allow detached single-family dwelling units, two-family dwelling units or twin homes, any

alterations, extensions/additions or the replacement of the structure may exceed the original footprint by twenty five percent (25%) of the existing structure subject to the following standards:

1. Any alterations, extensions/additions or the replacement structure shall not project into a required yard beyond any encroachment established by the structure being replaced.
2. Any alterations, additions or extensions beyond the original footprint which are noncomplying are subject to special exception standards of Chapter 21A.52.030.15 of this title.
3. 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 title.

Any alterations, additions or extensions or replacement structures which exceed twenty five percent (25%) of the original footprint, or alterations, additions or extensions or 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.

~~In zoning districts other than M 1 and M 2, 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, 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 title.~~

- B. **Off Street Parking.** 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. The maximum number of outdoor parking stalls shall be four parking stalls per dwelling unit.

~~21A.38.130: RESERVED:~~

~~21A.38.140080: APPEAL:~~

~~Any person adversely affected by an administrative decision of the zoning administrator on a determination of the status of for a nonconforming use or noncomplying structure, may appeal~~

~~that decision to the appeals hearing officer may appeal the decision to the board of adjustment pursuant to the provisions in chapter 21A.16 of this title.~~

Comment [PCN27]: This change has already been made.

~~**21A.38.150: 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 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 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.

~~21A.38.160: NONCONFORMITY OF TAVERNS, BREWPUBS, MICROBREWERIES OR PRIVATE CLUBS:~~

~~A legally existing brewpub, microbrewery, private club, or tavern license, as defined in [title 6, 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 noneonformity is due to the subsequent location of a school, church or park within the spacing requirements as specified under city ordinances.~~

Other Related Code Changes

Chapter 21A36 General Provisions

Section 21A.36.020

21A.36.020: CONFORMANCE WITH LOT AND BULK CONTROLS:

- A. Conformance With District Requirements: No structure or lot shall be developed, used or occupied unless it meets the lot area, lot width, yards, building height, and other requirements established in the applicable district regulations, except where specifically established otherwise elsewhere in this title.

In any residential district, on a lot legally established prior to April 12, 1995, a single-family dwelling may be erected regardless of the size of the lot, subject to complying with all yard area requirements of the R-1/5,000 district. Legal conforming 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 area requirements of the district in which the lot is located.~~

Chapter 21A54 Conditional Uses

Section 21A.54.135

21A.54.135: ALTERATIONS OR MODIFICATIONS TO A STRUCTURE WITH A CONDITIONAL USE:

- A. ~~Nonconforming Conditional Use: Any modification to a legally nonconforming land use listed as a conditional use under current zoning regulations shall be approved subject to the provisions of this chapter if the floor area increases by more than twenty five percent (25%) of the gross floor area, or one thousand (1,000) gross square feet, whichever is less and/or the parking requirement increases as required by this title.~~ Alterations or modifications to a structure with an existing legal conditional use or with a previously permitted use that now is listed as a conditional use under current zoning regulations shall be approved subject to the provisions of subsections B and C of this section.
- B. Administrative Review: An alteration or modification to a structure with a an existing legal conditional use that increases the floor area by less than twenty five percent (25%) of the gross floor area or one thousand (1,000) gross square feet, whichever is less may be approved by the planning director without a public hearing.
- C. New Conditional Use Review Required: An alteration or modification to a structure with a an existing legal conditional use that increases the floor area by more than twenty five percent (25%) of the gross floor area or one thousand (1,000) gross square feet, whichever is less, shall be reviewed as a new conditional use pursuant to the requirements and standards of this chapter.

Chapter 21A.60 List of Terms

Section 21A.60.020

Noncomplying Nonconforming-Lot

Chapter 21A.62 Definitions
Section 21A.62.040

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.

LAND USE TYPE (SIMILAR LAND USE TYPE): Use tables within subsections of title 21A list various land use types for permitted and conditional uses for the Residential, Commercial, Manufacturing, Gateway and Special Purpose categories. Land uses shall be considered to be similar land use types, if the uses are listed as a permitted or conditional use in the same subsection of the use tables within subsections of title 21A and the uses have similar off-street parking requirements as defined in Chapter 44 Off Street Parking and Loading.

Comment [PCN28]: This first sentence doesn't really define the term. Also, I assume this considers the proposed changes in the land use tables overhaul ordinance.

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. The conversion of existing residential units to condominiums is not a change of use. (See also definition of Land Use Type (Similar Land Use Type).)

~~NONCOMPLYING NONCONFORMING LOT:~~ A parcel of land which was legally established on the effective date of any amendment to this title that made the lot noncomplying that has less lot area, frontage or dimensions than required in the district in which it is located.