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| **Date:** | June 10, 2015 |
| **To:**  | Land Use Subcommittee |
| **From:**  | Rich Faith, Senior Land Use Planner |
| **Re:** | Nonconforming Uses and Nonconforming Developments |
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BACKGROUND

At the February 25th CAC meeting, staff presented a background report on policy issues related to farm, forest, rural economy and land use. Among the preliminary policy issues listed in that background report was nonconforming uses. It was noted that planning staff had raised this as an issue because the nonconforming use standards are relatively discretionary and should be clarified or possibly tightened up. The following question was posed: Should there be relatively more or less flexibility to alter or expand existing nonconforming uses?

This issue did not rate very high with the CAC when members voted to prioritize the list of policy issues. Consequently, it has not gotten much attention and there has been virtually no discussion at the CAC or subcommittee meetings on this topic.

The purpose of this memorandum is to provide additional background information about nonconforming uses, some considerations related to them, and to propose policies to help guide revisions to the zoning code if desirable.

What is a Nonconforming Use?

The County Zoning Code defines nonconforming use as:

A legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the zoning district in which it is located. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming.

It’s important to point out that nonconforming use refers to a use, a structure or other physical improvement. In some cases, the activity or use being conducted on the property is permitted, and therefore conforming, but the structure or other improvement to the site might not comply with current zoning regulations and standards, and is thus a nonconforming development. An example of a nonconforming use would be commercial business in a rural residential zone where the business is not a permitted use. Examples of nonconforming developments would be an unpaved parking lot when current standards require a hard surface and a structure that doesn’t meet current building setback standards. There are many cases of nonconforming developments in the rural county by virtue of the site development not meeting current zoning standards.

ISSUES FOR CONSIDERATION

1. Setting Limits on Expansion of a Nonconforming Use

As currently written, the nonconforming use section places a lot of discretion in the hands of the planning staff in determining whether or not to approve a nonconforming use alteration, expansion or replacement. The guiding principles in approving the alteration are that the change in the use, structure, or physical improvement will not impose a greater adverse impact on the neighborhood, or that the alteration, expansion or replacement is required for the use to comply with State or County health or safety requirements. The planner may authorize alteration, expansion or replacement of a nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. Some jurisdictions do not require a land use permit in cases where the expansion or alteration of a nonconforming development will not increase the degree of nonconformity (ie. increase the degree of a nonconforming setback).

One way to better ensure that a nonconforming use expansion is reasonable and will not cause adverse impact on the neighborhood is to set a limit on the size or area of the expansion. As an example, expansion of a nonconforming use could be limited to no more than 20% of the existing floor area of the structure where the use is located, or in those cases not involving structures, no more than 10% of the land area of the use. The County’s nonconforming use provisions do not establish any limitation on the size of an expansion, so conceivably a use could be doubled or tripled in size as long as a finding is made that it will not cause any greater adverse impact on the surrounding area.

A nonconforming use could be restricted to a one-time expansion to prevent the use from growing incrementally over time and becoming more firmly entrenched within the neighborhood. The code could also be revised so that a land use permit is unnecessary whenever an addition or alteration to a nonconforming use does not increase the degree of nonconformity. An example of this would be an addition on the backside of a structure that does not meet the front yard setback standard.

2. Termination if Destroyed

A common purpose of nonconforming use zoning code standards is to eliminate the nonconforming use over time and under reasonable circumstances in order that the property can ultimately be converted to a conforming use. A typical way this is accomplished is through code provisions that prohibit reconstruction of a nonconforming use that is damaged by any cause to the extent that reconstruction costs would equal or exceed 75% of its real market value. In such a case, the nonconforming use would be considered terminated and cannot be reestablished.

The county zoning code currently allows a nonconforming use that is destroyed or significantly damaged to be reestablished subject to certain time limitations. Zoning regulations set a one- year time limit to submit an application for repairing or replacing a nonconforming use and two years to restart the use, but there is nothing that prohibits a destroyed use from being reestablished.

DRAFT POLICIES

Based on the above discussion related to nonconforming uses and nonconforming developments and the desire for some direction on these questions, staff offers the following policies for the CAC’s consideration:

1. The purpose of nonconforming use regulations should be to permit legal nonconforming uses, structures, or physical improvements to continue until they are terminated or significantly damaged.

2. Zoning regulations shall provide for the continuance of nonconforming uses~~. They shall also allow restoration or replacement of non-conforming uses~~ in accordance with Oregon Revised Statutes 215.130~~(6), and their alteration, expansion or replacement when such alteration, expansion or replacement would not create a greater adverse impact on the neighborhood, or are necessary for the use to comply with State or County health or safety requirements.~~ *(MCCP , Policy 1)*

3. An addition or expansion of a nonconforming use should be limited to a percentage of the structure’s existing floor area, or limited to a percentage of the use’s land area when expansion does not involve a structure.

4. A nonconforming use should not be allowed to increase in size more than once.

5. If a nonconforming use is significantly damaged or destroyed by fire, other casualty or natural disaster, the use should be considered terminated and should not be allowed to be reestablished.