TOWN PLANNING COMMISSION MEETING
AGENDA DOCUMENTATION

PREPARATION DATE: November 13, 2015
MEETING DATE: November 18, 2015

SUBMITTING DEPARTMENT: Planning
DEPARTMENT DIRECTOR: Tyler Sinclair
PRESENTER: Alex Norton/ Paul Anthony

SUBJECT: P15-088 – Nonconformities Revisit

REQUESTED ACTION

Amend the text of the Land Development Regulations to reconsider updates made to Division 1.9, Nonconformities, on January 1, 2015.

APPLICABLE REGULATIONS

Section 8.7.1 LDR Text Amendment

LOCATION

The proposed amendment would apply Town-wide.

BACKGROUND

What is a nonconformity?

By definition a nonconformity is an existing, legally permitted development or use that would not be permitted if applied for under the current regulations. As a result, special standards are needed to regulate the maintenance, alteration, replacement, or expansion of legally existing development and uses because the current regulations do not otherwise address their existence. LDRs in most communities have provisions to address nonconformities.

It is important to note that "nonconforming" does not mean illegal. Nonconforming status provides rules to landowners to allow the limited alteration, modification, and expansion of existing a use or development that would otherwise not be allowed to do anything because it does not comply with the current regulations. There has been some comment in past hearings on the LDR updates that "nonconforming status" precludes lending. However, in conversations with staff, lenders have said nonconformities play very little role in the financing of residential property and almost no role in financing of commercial projects. Similarly, title insurers in the community have told staff that nonconformities do not affect an owner's ability to secure title insurance.

How did we get here?

On October 20, 2014 the Board of County Commissioners and Town Council adopted restructured LDRs, effective January 1, 2015. The LDR restructure included updates to the administrative standards, including the standards governing nonconforming development and use. At the time of adoption of the LDR restructure, the Board and Council committed to revisiting the updates 6 months after they became effective to address any unanticipated consequences.

In the "1994" LDRs that were restructured and updated, the Nonconformities Division covered only nonconforming uses and nonconforming structures. Nonconforming signs and boundary adjustment of nonconforming lots were addressed elsewhere in the "1994" LDRs. This made it difficult to relate nonconforming provisions to each other and left ambiguity in addressing non-structural existing development (e.g., driveways, fences, landscaping, etc.) that did not meet the standards of the LDRs. The LDR restructure brought all nonconforming standards into a single division and ensured that all nonconformities were addressed.

The intent of the 2014 update was to encourage easier and more consistent application of the nonconforming standards. Since the updated nonconforming standards became effective, application of the modified language has raised new questions about the appropriate approach to regulating nonconformities. Because these questions about how to approach nonconformities are of a policy nature staff has separated the nonconformity amendments from other more technical updates to the 2014 LDR restructure. Those other updates will be addressed at a future date.

PROJECT DESCRIPTION

The purpose of this amendment is to reconsider some of the nonconforming provisions introduced on January 1, 2015. As expected, implementation has revealed a number of issues that have consistently arisen with the new standards on nonconforming development and use. This amendment is a chance to review those issues and reconsider the approach in Division 1.9, Nonconformities. A similar amendment to revisit other issues that have come to light in implementation of the LDR restructure is forthcoming, but focus on nonconformities was prioritized as questions related to changes in the nonconforming regulations have been the most frequent issue with the restructured LDRs.

The nonconformities provisions made effective January 1, 2015 were reviewed and adopted jointly by the Town and County. This revisit of the nonconformities is also being reviewed by the Town and County; however the revisit is being reviewed by each jurisdiction in parallel rather than as joint bodies. This parallel review is due to logistics and the fact that different examples apply in each jurisdiction. Staff will ask the same questions of each jurisdiction and try to keep content as consistent as possible, but acknowledges that there are some different issues in the Town and County that may warrant special attention. A schedule of the review is below. Both the Board of County Commissioners and Town Council will have the benefit of Town and County Planning Commission review before they consider adoption.

- November 9: County Planning Commission
- November 18: Town Planning Commission
- December 1: Board of County Commissioners
- December 7: Town Council (additional readings to follow)

STAFF ANALYSIS

Division 1.9, Nonconformities, is divided into sections consistent with the overall restructuring of the LDRs. There is a section for nonconforming physical development, nonconforming use, and

nonconforming development options and subdivisions. In addition, there is a special section for nonconforming signs separate from the general standards for nonconforming physical development.

The key issues below break down the amendment by type of nonconformity and ask four questions for each type:

- ***Should a nonconformity be allowed to be replaced?*** If the owner of a nonconformity intentionally removes it entirely, should it be allowed to be replaced as it was?
- ***Should a nonconformity be allowed to be altered?*** All nonconformities are allowed to be maintained (i.e., keep in current condition), but at a certain point alterations become so extensive that they are more akin to replacement than maintenance. The purpose of this question is to define that threshold.
- ***Should a nonconformity be allowed to expand?*** Allowing continuation of a nonconformity can include allowing expansion of that nonconformity, especially as it relates to use.
- ***Should a nonconformity be allowed to be subdivided?*** Subdivision can represent an opportunity to incentivize resolving a nonconformity. It can also represent decreased likelihood that a nonconformity will ever be resolved because when multiple owners become involved resolution becomes more difficult.

In the context of each type of nonconformity there are different specifics, but in revisiting the update to the nonconforming standards these are the big questions. Each key issue includes a list of examples of the types of situations that would be considered nonconforming so that as you think about the above questions you can understand the real implications.

KEY ISSUE 1: ***Nonconforming Physical Development (Sec. 1.9.2)***

Examples of Nonconforming Physical Development

- Building built too close to property line
- Building built too close to creek
- Building that exceeds allowed height
- Property with not enough landscape surface area
- Property that does not meet landscaping requirement
- Fence that is too tall
- Parking stalls that are too small

Discussion

Replacement

Since 1994 it has been the standard that if you fully replace a nonconforming physical development it must be brought into compliance. For example if you raze and a nonconforming building, the new building must meet all standards. There always has been, and continues to be (Sec. 1.9.2.C), an exemption that allows for replacement after natural disaster. In addition staff has proposed an amendment to Subsection 1.9.B.B.2 that would exempt historic structures from the nonconforming limitations on alterations, with the intent of encouraging such structures to be preserved.

Alteration

The standards regarding alteration of a nonconforming physical development have been the most commonly commented on section of the new nonconforming standards. Since 1994 there has been a requirement that an alteration of greater than 50% of the value of a nonconforming structure requires that the structure be brought into

compliance. Effective January 1, 2015 the Board and Council applied that standard to all physical development, not just structures (see Sec. 1.9.2.B.2), and added a threshold for what level of work required bringing an entire site into compliance (see Sec. 1.9.2.B.3).

Whether the restructured LDRs brought the 50% value standard to light or there just happened to be more redevelopment since January, there have been a number of questions raised about the practicality of the standard in light of construction costs in this community. Because construction is so expensive, the value of a structure once built is significantly less than the cost to build it — especially since most nonconforming structures are older and were built before 1994. Put another way, the cost to replace most nonconforming buildings is greater than 100% of the value of a building. As a result, the current 50% standard allows little alteration before removal of a nonconformity is required. Consistent with the community's policy to reuse existing buildings, and given local construction costs, this application proposes that Subsection 1.9.2.B.2 be amended to allow alteration of 100% of the value of a nonconforming physical development in a 4-year period without requiring the nonconformity to be resolved where 50% in a 2-year period is currently allowed. Staff believes that allowing for alteration of 100% of the value in a 4-year period is more reasonable than 50% in a 2-year period. It allows more flexibility to reuse an existing physical development, while encouraging that projects to be done all at once with less disturbance to neighbors from construction, rather than phased over time.

The creation of a new and clear threshold for when an entire site must be brought into compliance was needed because, without a standard in the "1994" LDRs, implementation was inconsistent. The issue that has been raised in implementation of the standard since January 1 is that requiring movement or demolition of a nonconforming building simply to allow compliant improvements unrelated to the nonconforming building is overly burdensome on the applicant. For example should building a new house require moving the nonconforming but functional garage or ARU that is too close to the side yard? Staff agrees that the impacts from moving an existing building are often greater on the owner and environment than the benefit from the improved compliance. As a result, this proposal would amend Subsection 1.9.2.B.3 to allow physical development totaling 100% of the value of all improvements on the site in a 4-year period without requiring the entire site to be brought into compliance and exempts existing nonconforming buildings from having to be moved or demolished. The current LDRs allow 50% in a 2-year period with no exemption for existing nonconforming buildings.

Since January, County staff has also identified a need to clarify that alteration of a nonconforming physical development must happen in a finite period of time. For example, an owner cannot claim that a nonconforming fence is being altered if the fence was partially removed in 2006 and no effort to replace the removed portion of the fence has been made since. While this may be an issue with greater frequency in the County, it is a good clarification for the Town LDRs as well. As a result, the proposal would add subsection 1.9.2.B.4 to clarify that an alteration must be completed or in process within a year of commencement.

Expansion

Since 1994 it has been the standard that nonconforming physical development cannot

be expanded unless the expansion meets the LDRs. For example, a building that is too close to a side setback cannot be expanded within the side setback (it can be expanded outside of the side setback). Or a property with not enough landscape surface area cannot add additional parking spaces. Staff has not received comment on this issue and does not believe this question needs to be revisited.

Subdivision

The "1994" regulations were silent on the issue of subdividing a site with nonconforming physical development. While this issue is more problematic in the County with regard to PRD subdivisions, this issue is applicable to the Town as well. For example, we do get applications to subdivide a lot into two lots where an existing structure (e.g., garage) is too close to a setback. In general, the practice in the County and Town before 2015 was that if the proposed subdivision did not make the nonconformity worse, the nonconformity was allowed; but where possible, nonconformities were resolved through conditions of approval. This approach lacked consistent application. In addition, in the standards made effective January 1, 2015 the Board and Council required that a subdivision or development option resolve the nonconforming physical development. Since January 1, 2015 there have been instances where this standard has potentially proved overly burdensome. For example: should a landowner have to move a building away from a property line that is not proposed to change in order to complete a by-right subdivision? Staff does not believe the resolution of the nonconformity outweighs the burden on the applicant. The proposed amendment would split up Subsection 1.9.2.D.2 and amend it to prohibit condominiumization of a nonconforming building, but allow a site with nonconforming physical development to subdivide or be included in a development option without requiring a nonconforming building to be moved. Resolution of nonconforming site development or other physical development would still be required.

KEY ISSUE 2: ***Nonconforming Use (Sec. 1.9.3)***

Examples of Nonconforming Use

- Existing use that is not allowed in the zone (e.g., an Accessory Residential Unit (ARU) in the NC Zone)
- Existing use that is allowed as a conditional use but doesn't have a CUP
- A use that does not meet use standards, e.g.
    - A 14,000 square foot individual retail use
    - 3 detached single family units on an NC lot
    - A restaurant with too little parking

Discussion

Replacement

Since 1994 it has always been the standard that if you let a nonconforming use lapse for greater than one year the use is abandoned and must meet all regulations to be replaced. For example, a nonconforming restaurant in a residential zone that closes must be reopened as a new restaurant within one year to retain the nonconforming status of the property. Staff has not received comment on this issue and does not believe this question needs to be revisited. As a result, the only amendments made to the replacement provisions are editorial to establish consistent language.

Alteration

The issue with regard to alteration of a nonconforming use does not have to do with alteration of the use itself, but instead with alteration of the physical development occupied by the use. The Board and Council discussed this issue in 2014 and directed staff to allow a change of use from one nonconforming use to another, less intense nonconforming use. For example a property with a nonconforming amusement use could change to a nonconforming townhouse use if the townhouse use was found to be less intense. Staff has not received comment on this issue and does not believe this question needs to be revisited.

The issue with regard to alteration is related to alteration of the physical development supporting or housing the nonconforming use. The "1994" LDRs were ambiguous as to how alteration of a nonconforming structure affected a nonconforming use, and that confusion also led to inconsistent application of the standards on how alteration of a conforming structure affected a nonconforming use. In the standards made effective January 1, 2015, the Board and Council applied a standard that an alteration of 50% or more of the physical development occupied by the nonconforming use constituted abandonment of the nonconforming use, except that a mobile home can be replaced with a newer model (an exception that was carried over from the "1994" LDRs). As discussed above, the cost of construction and community desire to reuse existing buildings make the 50% standard a high bar to clear. The proposal would amend Subsection 1.9.3.E.1 to allow alteration of 100% of the value of the physical development occupied by a nonconforming use in a 4-year period before the use is considered abandoned.

Another issue related to alteration of a nonconforming use is the allowance of ARUs associated with the nonconforming use. The current regulations require that an ARU be accessory to an active, conforming use. The "1994" LDRs did not address the issue. Members of the public have raised questions as to why a nonconforming use can be continued and even expanded, but cannot house its employees/guests like any other nonconforming use. For example should a nonconforming landscaping business in a residential zone be allowed to house some employees on-site? The downside to allowing ARUs associated with a nonconforming use is that ARUs can add impact to a use that is already more intense than surrounding uses. That said, the idea behind ARUs is that they result in an overall reduction of impact versus housing located elsewhere in the community, and the recently adopted Housing Action Plan directs allowance of ARUs. The proposal would amend Subsection 6.1.11.A.2.a to remove the requirement that an accessory use be accessory to a conforming use.

Expansion

The Board and Council discussed expansion of nonconforming use in 2014 and directed staff to continue to allow 20% expansion of a nonconforming use so long as the expansion was achieved in compliance with all other LDRs. This is a continuation of the "1994" standard. Staff has not received comment on this issue and does not believe this question needs to be revisited. As a result, the only amendments made to the expansion provisions are editorial to establish consistent language.

Subdivision

The "1994" regulations were silent on the issue of subdividing a nonconforming use. The nonconforming standards effective January 1, 2015 state that subdivision of a

property with a nonconforming use constitutes abandonment of the nonconforming use. Staff has not received comment on this issue and does not believe this question needs to be revisited.

KEY ISSUE 3:	***Nonconforming Development Option or Subdivision (Sec. 1.9.4)***

Examples of Nonconforming Development Options or Subdivision

- Existing parcel or lot that is less than the minimum lot size
- Existing lot has structure in side setback

Discussion

Replacement

There is no provision that allows for the replacement of a nonconforming development option if it is abandoned entirely. If a subdivision is abandoned and recombined into a single parcel the owner does not retain rights to resubdivide unless they are doing so immediately for the purpose of adjusting boundaries. There never has been such an allowance and there has been no public comment to institute such an allowance, furthermore this is more of a County issue than a Town issue. Staff does not believe this question needs to be revisited.

Alteration

Boundary adjustment of nonconforming lots/parcels was explicitly addressed in the "1994" LRDs and continues to be allowed in the current LDRs. The provision allows for the adjustment of boundaries so long as one parcel becomes more conforming and the benefits outweigh the impacts. Staff has not received comment on this issue and does not believe this question needs to be revisited.

Use and physical development of a nonconforming lot/parcel was allowed implicitly in the "1994" LDRs and is allowed explicitly in the current LDRs. There has been some concern expressed that the presence of the allowance language might cause staff to interpret the regulations more restrictively. Staff cannot determine how an explicit allowance could cause more restrictive implementation than silence and has not proposed any modification to the provision.

One clarification that is needed is the application of affordable housing, exaction, roadway, and utility standards to exempt land divisions at the time of use or development. This has long been the policy of the County, but needs codification. While exempt land divisions are rare in the Town, it is helpful to learn from the County's experience and have the provisions in place before the question is asked. The proposal would amend Subsection 1.9.4.B.1 to clarify that a nonconforming lot/parcel created through exempt land division must meet housing, exaction, roadway, and utility standards at the time of use or physical development.

Expansion

Having a nonconforming development option does not, and has never, entitled an owner to additional nonconforming development beyond the original approval. A

development approved in the past can be built out to its original approval, but there is not any standard that allows expansion of that original approval without use of a current development option. Because this is more of a County issue (e.g., approval of a 3 unit PRD in 1998 where only 2 units would be allowed today would only allow a maximum of 3 units), than a Town Issue, the new proposed provisions related to this issue are not proposed to be included in the Town LDRs.

Subdivision

Subdivision of a nonconforming development option or subdivision is generally prohibited as discussed above related to expansion. Staff has not received comment on this issue in Town and does not believe this question needs to be revisited in Town.

COUNTY PLANNING COMMISSION DISCUSSION

The County Planning Commission reviewed a very similar set of amendments to the County nonconforming standards on November 9, 2015. The County Planning Commission made the following recommendations:

1. Delete any reference to noncompliance with an overlay constituting a nonconformity.
2. Give 18 months, instead of one year, to complete projects or get a permit and allow the Planning Director to extend that period due to uncontrollable circumstances.
3. Allow full replacement and 20% expansion of nonconforming physical development and consider allowing more than 20% expansion with specific, important thresholds (e.g. maximum scale of development) providing limitation.
4. Remove any requirement to resolve a nonconformity unless the application pertains to that nonconformity.
5. Ensure that it is clear that relief such as administrative adjustment or variance is available to resolve a nonconformity.
6. Allow subdivision of a nonconforming building into condominiums or townhomes
7. Fix the County utilities division to clarify that utilities, such as solar panels, that must be above ground to function do not have to be buried.

PUBLIC COMMENT

Neighbor notifications were not sent for this application because it applies Town-wide. Comments on nonconforming provisions are attached.

STAFF FINDINGS

Pursuant to *Section 8.7.1, LDR Text Amendment* of the LDRs, the advisability of amending the text of these LDRs is a matter committed to the legislative discretion of the Board of County Commissioners and is not controlled by any one factor. In deciding to adopt or deny a proposed LDR text amendment the Board of County Commissioners shall consider factors including, but not limited to, the extent to which the proposed amendment:

C.1: Is consistent with the purposes and organization of the LDRs

Complies. The proposed amendment is consistent with the purpose of the LDRs by implementing the Comprehensive Plan and providing predictable regulations that achieve desired future character as discussed above. While the proposed amendment is being reviewed separately by the Town and County,

each jurisdiction is discussing the same issues in order to maintain common structure and common content to the extent practical. The amendment is consistent with the organization of the LDRs by keeping to the physical development, use, and development option organization of the LDRs.

C.2: Improves the consistency of the LDRs with other provisions of the LDRs

Complies. The primary purpose of this amendment is to improve consistency of the LDR application on nonconforming properties with the overall implementation of the LDRs. The proposed amendments are related to the entire LDRs because they address existing nonconforming developments. There is no specific LDR section that is more impacted than another. Conversely, as the LDRs are updated, how the nonconforming regulations relate to updated LDRs will continue to be an issue that is analyzed. The intent of these amendments is that future conversations about LDR updates will include less concern about the impacts of making existing use and development nonconforming.

In implementing the nonconforming standards made effective January 1, 2015, the public and staff identified a number of nonconformity requirements that overburdened owners when weighed against the benefit they would have provided the public. By providing additional flexibility in these standards, as discussed above, the nonconforming standards strike a better balance between the desire to achieve desired future character and the recognition of the right to continue existing use and development.

C.3: Provides flexibility for landowners within standards that clearly define desired character

Complies. The amendment is designed to provide flexibility while still limiting the alteration, replacement, and expansion of nonconformities. The amendment does not provide unlimited flexibility by just exempting nonconformities, the amendment allows for more alteration, replacement, and/or expansion than is currently allowed, but still applies limits and requires compliance with the rest of the LDRs other than the standard that is nonconforming.

C.4: Is necessary to address changing conditions, public necessity, and/or state or federal legislation

Complies. The amendment is proposed to address the nonconforming standards made effective January 1, 2015. While those changes to the regulation achieved needed consistency in application of the entire LDRs, they had some unintended consequences. This amendment is necessary to ensure that as the nonconforming regulations change they are best suited to implement the community's comprehensive vision.

C.5: Improves implementation of the Comprehensive Plan

Complies. While nonconformity regulations touch each part of the Comprehensive Plan because the entire Comprehensive Plan informs the LDRs, the following policies inform the community's nonconforming policy at the broad level being discussed in this application.

Transitional and Conservation Subareas (pg. IV-6)

The proposed amendments to the nonconforming language would apply countywide so the geographically specific vision in the Character Districts is not applicable. However, it is important to note that two of the four subarea classifications utilized to describe the Character Districts – Transitional and Conservation – are based on a vision focused more on future character than the existing character. Part of focusing on future character is establishing the thresholds and expectations for existing development to follow the same rules as new development. This is, fundamentally, the nonconforming conversation.

Staff finds that the proposed amendments remain consistent with the intent of Transitional and Conservation subareas because they still set thresholds for the alteration, replacement, and expansion of nonconformities that direct property owners toward desired future character. All allowances proposed through these amendments are limited and include compliance with other LDRs. While the amendments are less strict in requiring development to comply entirely with the community's future vision, their flexibility may enable some improvements that might have been precluded if no project was ever pursued because of onerous nonconformity regulations.

Policy 3.3.b: Illustrate Our Vision through the Character Districts (pg. CV-2-10)

Policy 3.3.b. discusses the need to utilize the character districts to implement the policies of the Comprehensive Plan and describes how the character districts define existing and desired future character. As discussed above these amendments remain consistent with the policy of focusing on desired future character by establishing limits on alterations, replacements, and expansions of nonconformities that allow improvement of the rest of the property containing a nonconformity while still ensuring that the nonconforming character will not become the predominant character of the area.

Policy 3.3.c: Provide predictability in land use decisions (pg. CV-2-11)

Policy 3.3.c is the call for predictability in the LDRs through base zoning and incentives. This direction also applies to how the community treats existing nonconformities. Similar to the discussion of the character districts, staff finds that allowing limited flexibility in continuing with nonconformities may actually provide greater flexibility, because owners of nonconformities will be more likely to maintain and improve the rest of their site if the nonconforming regulations are not overly onerous. While the neighbor of a nonconformity may be less assured of resolution of the nonconformity because of these amendments, the neighbor still has the assurance that continuation of the nonconformity is regulated.

Policy 2.4.b: Renovate and reuse existing buildings (pg. CV-1-19)

Policy 2.4.b applies to nonconformities less broadly than the policies in Principle 3.3. Policy 2.4.b addresses the energy conservation in reusing existing buildings. The amendments are intended to avoid requirements that existing buildings be moved or demolished unnecessarily, and so are proposed partially in implementation of this Policy. While a nonconforming building could not be located where it is today if built anew, it would take far more energy and resource impact to move an existing building than to let it remain. Staff finds that this impact rarely justifies the benefit of the compliance achieved.

Policy 5.2.a: Provide a variety of housing options (pg. CV-3-5)

Policy 5.2.a also applies to nonconformities less broadly than the policies in Principle 3.3. Policy 5.2.a calls for a variety of housing types. Nonconforming buildings and Accessory Residential Units do provide housing opportunities that cannot be replicated. Not all of these housing opportunities house the workforce, but they are a piece of the puzzle and allowing more flexibility in altering, replacing, and expanding them might make it easier for workforce households to find housing.

Policy 6.3.d: Facilitate viable local business (pg. CV-3-14)

Policy 6.3.d also applies to nonconformities less broadly than the policies in Principle 3.3. Policy 6.3.d encourages the viability of local business. Allowing flexibility for local business in nonconforming situations is consistent with this Policy.

C.6: Is consistent with other adopted Town Ordinances

Complies. The proposed amendment is consistent with other Town Ordinances.

ALIGNMENT WITH COUNCIL'S STRATEGIC INTENT

The proposed amendments to the nonconformities will support many of the Council's statements of strategic intents, such as, "Encourage and utilize reduce, reuse & recycling practices;" "Support workforce housing;" "Focus and support development in Town;" and "Support historic preservation." This amendment will provide additional options for landowners to continue using functional nonconformities that will not detract from the character of the surrounding neighborhood or community.

FISCAL IMPACT

Not applicable.

STAFF IMPACT

Not applicable.

LEGAL REVIEW

Pending for Town Council.

ATTACHMENTS

1. Proposed Amendment (P15-088) dated November 10, 2015
2. Public comment

RECOMMENDATION

Staff recommends that the Planning Commission recommend **APPROVAL** of **P15-088**, amendments to the nonconformities regulations, dated November 10, 2015; finding pursuant to Section 8.7.1.C, Findings, that P15-088 is 1) Consistent with purposes and organization of the LDRs, 2) Improves the consistency of the LDRs with other provisions of the LDRs, 3) Provides flexibility for landowners within standards that clearly define desired character, 4) Is necessary to address changing conditions, public necessity and/or state or federal legislation, 5) Improves implementation of the Comprehensive Plan, and 6) Is consistent with other adopted county resolutions.

SUGGESTED MOTION

I move to recommend **APPROVAL** to the Town Council **P15-088**, amendments to the nonconformities regulations, dated November 10, 2015; finding pursuant to Section 8.7.1.C, Findings, that P15-088 is 1) Consistent with purposes and organization of the LDRs, 2) Improves the consistency of the LDRs with other provisions of the LDRs, 3) Provides flexibility for landowners within standards that clearly define desired character, 4) Is necessary to address changing conditions, public necessity and/or state or federal legislation, 5) Improves implementation of the Comprehensive Plan, and 6) Is consistent with other adopted county resolutions; subject to the list of modifications developed at this hearing.

Div. 1.9. Nonconformities

1.9.1. General Applicability (~~1/1/15~~1/1/16)

A. Purpose

There exist physical developments, uses, development options, subdivisions, and signs that were lawfully established before these LDRs were adopted or amended, which now do not conform to these LDRs. It is the intent of these LDRs to ~~permit~~ allow these nonconformities to continue until they are ~~removed~~ discontinued, but not to encourage their ~~perpetuation~~ expansion except under the standards established in this Division. The purpose of this Division is to establish standards to ~~regulate~~ allow the continued existence of those nonconforming physical developments, uses, development options and subdivision, and signs ~~that do not conform to the provisions of these LDRs~~.

B. Applicability

This Division applies to nonconformities. A nonconformity is a lawfully established physical development, use, development option, subdivision, or sign that does not comply with these LDRs.

C. Authority to Continue

Nonconformities are allowed to continue in accordance with the requirements of this Division.

D. Determination of Nonconformity Status

The burden of establishing that a nonconformity lawfully exists shall be the responsibility of the landowner ~~of the land on which the claimed nonconformity is located~~. The landowner shall provide to the Planning Director photos, permits, licenses, records, or other documentation that establishes the ~~existence and perpetuation of the nonconformity~~ date the nonconformity was established and the continuous existence of the nonconformity since establishment.

E. Nonconformity Runs With the Land

A nonconformity shall run with the land. No change of ownership or right to possession of land shall prevent the continuance of a nonconformity. Nor shall a nonconformity be relocated unless the relocation results in compliance with these LDRs.

F. Increase in Nonconformity

Except as authorized by this Division, no person shall engage in activity that increases a nonconformity.

G. Multiple Nonconformities

On a site with multiple nonconformities, the standards of this Division shall apply to each nonconformity separately, unless stated otherwise.

> **EXAMPLE:** In the case of a nonconforming use within a nonconforming physical development the nonconforming use shall be subject to the standards of Sec. 1.9.3. and the nonconforming physical development shall be subject to the standards of Sec. 1.9.2.

H. Life Safety

Life safety modifications to existing structures ~~buildings~~ or sites which are required by local, state, or federal government shall be exempt from the requirements in this Division.

> **EXAMPLE:** ~~Covered wheelchair ramps, lifts, and handicap accessible rest rooms, which are needed to meet requirements of the Americans with Disabilities Act (ADA)~~ A building with nonconforming setbacks is proposed for a change of use and an addition. Installation of required fire sprinklers in the existing portion of the building shall not be included in the calculation of compliance with 1.9.2.B regarding the value of the project, but the required fire sprinklers in the addition shall be included in calculating the value of the project.

I. Occupancy Prohibited

If a structure or site, or portion thereof, becomes physically unsafe or unlawful due to lack of repairs, maintenance, payment of taxes, or other reason and ~~a duly authorized official of~~ the Town declares occupancy of the structure or site to be prohibited, it shall ~~thereafter~~ be removed, rebuilt, redeveloped, reused, or repaired in conformance with these LDRs.

J. Government Acquisition

If a conforming physical development, use, or lot of record becomes out of compliance with these LDRs due to governmental acquisition of a portion of the lot of record for a public purpose, the physical development, use, or lot of record shall be considered conforming and future physical development, use, development options and subdivision of that lot of record shall comply with these LDRs to the maximum extent practicable.

1.9.2. Nonconforming Physical Development (~~1/1/15~~1/1/16)

A. Applicability

Nonconforming physical development is declared generally incompatible with the character of the zone or overlay in which it is located. This Section shall apply to lawful physical development (other than signs) that does not meet the physical development standards applicable to the zone or overlay. Physical development standards applicable to all zones are found in Article 5. Physical development standards applicable to specific zones are found in Subsection B of the zone-specific sections found in Article 2.-Article 4.

B. ~~Replacement,~~ Maintenance, Alteration, Replacement or ~~Enlargement~~ Expansion

~~Replacement,~~ Maintenance, alteration, replacement, or ~~enlargement~~ expansion of a nonconforming physical development shall only be permitted if all 4 of the following ~~3~~ standards are met.

1. No Increase in Nonconformity. ~~An alteration or enlargement~~ Maintenance, alteration, replacement, or expansion shall not increase the nonconformity. ~~Any new physical development proposed shall comply with all applicable standards of these LDRs.~~

   > **EXAMPLE:** An addition must meet all setbacks (and other standards) even if a portion of the structure being added to does not meet a setback.

2. Modification Value Requires Remedy of Nonconformity. A nonconforming physical development that is ~~replaced, altered, or enlarged~~ altered, replaced, or expanded by ~~50%~~100% or more of its fair market value over a ~~2~~4 year period shall be brought into compliance with all applicable standards of these LDRs. Except that, buildings included on the Teton County Historical Preservation Board (TCHPB) list of historically significant properties, or that are otherwise deemed in writing by the TCHPB to be historically significant, shall not be subject to this subsection.

   > **EXAMPLE:** A driveway worth $100,000 does not meet setbacks; if more than ~~$50,000~~$100,000 worth of work is done on that driveway in a ~~2~~4 year period the driveway must be relocated to meet setbacks.

3. Modification Value Requires Compliance of Entire Site. Physical development totaling ~~50%~~100% or more of the fair market value of all assessed improvements on the property over a ~~2~~4 year period shall require that all physical development on the site, except existing buildings, be brought into compliance with these LDRs.

> **EXAMPLE:** ~~On a~~ A site ~~with~~ has an existing cabin ~~worth $500,000~~ valued at $250,000 that does not meet setbacks, fencing that does not meet fencing standards, and more site development than is permitted. Construction of a new, seperate $1,000,000 home on the site would require that the fencing and site development be brought into compliance with these LDRs, but the existing cabin would not have to be relocated if no work was proposed on the cabin ~~to meet setbacks (the entirety of the site would have to meet all physical development standards)~~.

4. Complete Within 1 Year. Maintenance, alteration, replacement, or expansion of an existing nonconforming physical development pursuant to this Section shall be completed within one year of the date of commencement, or an application to complete the maintenance, alteration, replacement, or expansion shall be sufficient within one year of the date of comencement.

C. ~~Reconstruction~~ Replacement After Damage by Natural Disaster

A nonconforming physical development that is demolished or destroyed by a natural disaster or through any manner not willfully accomplished by the owner, regardless of the extent of the demolition or destruction, may be ~~rebuilt~~ replaced to the nonconforming condition that existed prior to the damage, provided an application to ~~repair or reconstruct~~ replace is submitted within one year of the date of demolition or destruction.

D. Use, Development Options, and Subdivision

1. A nonconforming physical development shall be used in compliance with these LDRs. Nonconforming use of a nonconforming physical development shall be subject to Sec. 1.9.3.

2. A nonconforming ~~physical development~~ building shall not be subdivided into condominiums or townhomes ~~or included in a development option~~, unless the subdivision ~~or development option~~ brings the physical development into compliance with these LDRs.

3. ~~Except that, a~~ A boundary adjustment pursuant to Sec. 8.5.5. of a site that includes nonconforming physical development ~~that does~~ shall not increase the nonconformity of the physical development ~~may be permitted~~.

4. A subdivision or development option on a site with nonconforming physical development shall require all physical development on the site, except existing buildings, comply with these LDRs.

1.9.3. Nonconforming Uses (~~1/1/15~~1/1/16)

A. Applicability

A nonconforming use is declared generally incompatible with the character of the zone or overlay in which it is located. This Section shall apply to:

1. A lawfully established use that is not allowed in the zone or overlay;

2. A lawfully established conditional or special use that does not have an approved Conditional Use Permit or Special Use Permit; and

3. A lawfully established use that does not comply with the use standards applicable to the zone or overlay. Use standards applicable to all zones are found in Article 6. Use standards applicable to specific zones are found in Subsection C of the zone-specific sections found in Article 2.-Article 4.

B. ~~Enlargement or~~ Expansion

1. A nonconforming use may only be ~~enlarged or~~ expanded a cumulative total of 20% in the floor area and site area occupied and/or the daily and annual duration of operation. The cumulative total is the sum of all ~~enlargements or~~ expansions from the date the use became nonconforming, including all expansions under prior LDRs if the use became nonconforming under prior LDRs and remains nonconforming.

2. An ~~enlargement or~~ expansion of a nonconforming use shall not create or increase nonconformity with use-based standards such as parking and employee housing.

3. An ~~enlargement or~~ expansion of a nonconforming use shall comply with all physical development, development option, and subdivision standards of these LDRs.

4. An ~~enlargement or~~ expansion of a use that is nonconforming because it does not have an approved CUP or SUP ~~shall require the~~ requires approval of a CUP or SUP ~~if the~~ upon 20% expansion ~~or enlargement meets the threshold to require a Development Plan~~.

C. Change in Use

A nonconforming use may be changed to another nonconforming use provided all 3 of the following standards are met.

1. The new use is a materially less intense nonconforming use. The determination of the level of intensity shall include, but is not limited to, consideration of traffic generated (amounts and type), impacts on access, parking demand, proposed level of activity, operational characteristics, and other potentially adverse impacts on neighboring lands.

2. The new use shall not create or increase nonconformities with use-based standards such as parking and employee housing.

3. The new use shall obtain a Conditional Use Permit pursuant to Sec. 8.4.2.

D. Discontinuance ~~or Abandonment~~

1. If a nonconforming use is operationally discontinued ~~or abandoned~~ for a period of more than one year, whether or not the equipment or furniture is removed, the use ~~may~~ shall not be reestablished or resumed, and any subsequent use of the site shall conform to these LDRs.

2. When government action other than those described in 1.9.1.I., a natural disaster, or any other action not considered a willful act of the owner or occupant can be documented as the reason for discontinuance ~~or abandonment~~, the nonconforming use may be discontinued for longer than one year provided an application to reconstruct or reestablish the use is submitted to the Planning Director within one year from cessation of the use, and reconstruction or reestablishment is completed within the time period established in the permit approved for the reconstruction or reestablishment.

3. Once a nonconforming principal use is discontinued, all associated accessory uses shall ~~cease operations~~ discontinue within one month or be permitted in association with another principal use.

E. ~~Renovation and Repair~~ Maintenance, Alteration, Replacement, and Expansion

1. ~~Renovation or repair~~ Alteration, replacement, or expansion of ~~50%~~100% or more of the fair market value of a structure or site improvements occupied by a nonconforming use in a ~~2~~4 year period shall constitute ~~abandonment~~ discontinuance of the nonconforming use, except that a nonconforming mobile home may be replaced by another mobile home if the replacement has improved structural and safety design.

2. Time spent ~~renovating or repairing~~ maintaining, altering, replacing, or expanding a structure or site devoted to the nonconforming use is not considered a discontinuance of the use, provided:

   a. All appropriate permits or approvals are obtained;

   b. The ~~renovation or repair~~ maintenance, alteration, replacement, or expansion is completed within 18 months after commencement ~~of the renovation or repair~~; and

   c. The use is reestablished within one month after completion of the maintenance, alteration, replacement, or expansion.

F. Subdivision of a Nonconforming Use Prohibited

Subdivision or Exempt Land Division of a structure or land containing a nonconforming use shall constitute ~~abandonment~~ discontinuance of the nonconforming use.

1.9.4. Nonconforming Development Options and Subdivisions

(~~1/1/15~~1/1/16)

A. Applicability

A nonconforming development option or subdivision is declared generally incompatible with the character of the zone or overlay in which it is located. This Section shall apply to:

1. Lawfully created developments or subdivisions that do not have the required development permits; and

2. Lawfully created lots of record that were intended to be buildable but do not meet the development option or subdivision standards applicable to the zone or overlay. Development option and subdivision standards applicable to all zones are found in Article 7. Development option and subdivision standards applicable to specific zones are found in Subsection D of the zone-specific sections found in Article 2.-Article 4.

B. Use and Physical Development of a Nonconforming Lot of Record

1. Economically viable use and physical development of a nonconforming lot of record is permitted if the nonconforming lot of record was intended to be buildable and the use or physical development does not increase the nonconformity; except that, use or physical development of a nonconforming lot of record created through Exempt Land Division pursuant to Section 8.5.4 shall require that the lot of record comply with all standards of these LDRs except the standards of Div. 7.2.

> **EXAMPLE:** A parcel is subdivided through Family Subdivision. Pursuant to state statute the new lots meet minimum lot size, but affordable housing and exaction requirements were not fulfilled at the time of the Family Subdivision. When an application for a building permit is submitted for one of the new lots, affordable housing and exactions requirements must be fulfilled, and road and utility standards must be met.

2. Use and physical development of a nonconforming lot of record shall comply with all applicable standards of these LDRs. ~~unless relief is granted from the standard pursuant to Div. 8.8.~~

C. Change of Nonconforming Lot of record

The boundaries of a nonconforming lot of record may be modified if the adjustment results in no increase in the nonconformity; except that, with regard to minimum lot size one nonconforming lot of record can be made more nonconforming in order to make another nonconforming lot of record less nonconforming if:

1. The benefit of the increased compliance of one lot of record outweighs the detriment of the increased noncompliance of the other lot of record, resulting in a greater overall compliance with the intent and/or standards of these LDRs;

2. The overall capability of the lots of record to safely accommodate physical development is not diminished, particularly by providing needed land area for water supply and wastewater systems; and

3. The acreage transferred from one lot of record to another does not allow for increased density on the subject lots of record.

D. Subdivision Prohibited

A nonconforming development option or lot of record shall not be subdivided unless the subdivision brings the development option or lot of record into compliance with these LDRs.

1.9.5. Nonconforming Signs (~~1/1/15~~1/1/16)

A. Applicability

A nonconforming sign is declared generally incompatible with the character of the zone in which it is located. This Section shall apply to any lawfully erected sign that does not comply with the requirements of Div. 5.6.

B. ~~Repair,~~ Maintenance, ~~Enlargement,~~ Alteration, Replacement, or ~~Alteration~~ Expansion

1. A nonconforming sign may be ~~repaired and~~ maintained.
2. A nonconforming sign shall not be ~~enlarged~~ expanded, replaced, reworded (other than readerboard signs), redesigned or altered in any way, except to conform to these LDRs. Businesses that change names shall be required to conform to these LDRs.

C. Historically Significant Signs

When a nonconforming sign is determined by the Planning Director to be historically significant, routine maintenance, including painting and replacement of lights, shall be permitted. Historically significant signs are signs designated by the Planning Director or Historical Society as having significant historical value to the Town.

D. Multiple Tenant Structures

Structures with a previously approved master sign plan shall be permitted to replace signs on structures and freestanding signs, provided the replacement signs maintain the sign size previously approved for each business. The replacement signs shall conform to all other standards of these LDRs.

E. Removal of Abandoned and Dangerous Nonconforming Signs

The classification and removal of abandoned, dangerous, and defective nonconforming signs shall be consistent with 5.6.1.H.

Div. 1.10. Severability (1/1/15)

The legislative intent of the Town Council in adopting these LDRs is that if any article, division, section, subsection, paragraph, clause, provision, or portion of these LDRs is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these LDRs shall not be affected.

2. Standards

   a. The use shall be removed from residential areas to the extent practical.

   b. Typical flight paths shall be identified, and must not cross residential areas or places of assembly such as schools or churches. Approaches shall be free of towers or other hazards.

   c. Providers of overhead utilities shall be given an opportunity to review the approach corridors and plans. Any marking of utility lines in the area requested by the providers shall be done at the developer's expense.

   d. In order to minimize noise and other negative impacts on the general public, commercial air tour operations are prohibited.

6.1.11. Accessory Uses (~~1/1/15~~1/1/16)

A. All Accessory Uses

1. **Definition.** An accessory use is a use that constitutes a minority of the use or character of the property and is secondary and subordinate to another use of the same property, but which is not an incidental use.

2. Standards

   a. An accessory use may only be permitted in association with an active~~, conforming~~ primary use designated for the accessory use.

   b. An accessory use must be abandoned upon abandonment of its primary use.

   c. An accessory use shall be subject to all dimensional limitations and other development standards applicable to its primary use unless otherwise provided in this Section.

   d. A property with an accessory use shall not be subdivided in any way that results in the accessory use being owned separately from its primary use.

B. Accessory Residential Unit (ARU)

1. **Definition.** An accessory residential unit (ARU) is a dwelling unit that is secondary to a principal use of the property. The intent is that accessory residential units provide workforce housing.

   a. Includes:

      i. employee apartment

      ii. caretaker's quarters

      iii. mother-in-law suite

      iv. guesthouse

Alex Norton

From: Harry Statter <hstatter@firewise.net>
Sent: Wednesday, September 23, 2015 9:23 AM
To: Alex Norton
Subject: Employee Housing on Non Conforming Uses

Alex - please consider this public comment. It is in reference to the land development regulation concerning the inability to build an ARU for employee housing if it involves doing so on a property with a non-conforming use.

Non-conformities are a product of paper planning and regulation. They are not always consistent with real world land usage. The dichotomy created between targeted land use practices as theorized and encouraged in the new LDRs, versus established land use patterns based on already built and established uses, has caused many to question the rationale in making a non-conformity with the simple swipe of a pen.

Today's market conditions require employers to either find or supply housing for their employees. In the example of our nursery/landscape use, we permitted our use and can operate our business, but cannot house our employees at it. How does this make any sense?

As a result of a swipe of the pen, we are now considered a non conforming use in this rural zoning district. This prevents us from housing our employees in ARUs. Now that we have been fortunate enough to find a home for a landscape business in the valley, our employees have to commute from Alpine or Victor/Driggs. That is senseless.

Please change the LDR that prevents building employee housing ARUs on properties that have a non-conforming use. Housing employees on site in our valley is important regardless of whether a use is conforming or not.

Thank you,

Harry Statter

Alex Norton

From: James Musclow <jcmusclow@contourproperties.com>
Sent: Tuesday, November 03, 2015 3:22 PM
To: Alex Norton
Cc: Geoff Fry; helenbfry@yahoo.com
Subject: non-conformig structures

Alex,
Thanks for your time today in discussing non-conforming structures in Teton County and pending amendments to the regulations.

I intend to seek authorization to speak on behalf of the Fry Survivor's Trust next Monday at the planning commission .

Please inform the commission of my intent to object to repairs capped at 50% value. As we know market value and market price are not even close in this valley. This fact coupled with the present construction boom and constant inflation of construction materials make any % limit questionable.

Best Regards,

James Musclow
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Post Office Box 1152
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O: 307.733.6400
M: 307.699.1108

Alex Norton

From: Hope Dana <hdana@plattdana.com>
Sent: Monday, November 09, 2015 2:44 PM
To: Alex Norton
Cc: George Putnam (george@plwllc.com); John Perkins
Subject: Writing in Support of Changes to Section 1.9.2.B

Dear Alex,

I'm writing to urge the approval by the Planning Commission of the proposed changes to the nonconformities regulations as they relate to alteration or repair of existing nonconforming structures -- up to 100% of the value over a 4 year period. I believe that this is a common sense solution to the very real issue of increased construction costs in the Valley that make the current 50% limit over 2 years not feasible.

My husband and I own a property in the Aspens with a nonconforming garage that was constructed in the early 1970's and is now deemed as too close by a few feet to an irrigation ditch. The garage has been in continuous use since it was constructed, but now as a part of our construction on the new house we would like to save the garage - though cosmetically replace the roof and siding (with no changes to either the foot print or envelope size).

To move the garage to a conforming location would have the impact of forcing a new build for an essentially existing sound structure while dramatically changing the character of the site, and requiring the removal of mature trees to make room for the new structure.

I appreciate your consideration on the matter. We have been working with George Putnam at PLW to find a workable solution to the situation. The proposed changes to Section 1.9.2. B would seem to solve the issues.

Thank you,

Hope Dana

plattdana

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