

Staff Report
**ZONING TEXT AMENDMENTS FOR DEFINITIONS OF
“PRE-EXISTING” AND “TWO-FAMILY DWELLING, IF PRE-EXISTING”**
April 11, 2017

BACKGROUND:

As part of the adopted “Planning and Housing Department Work Plan Priorities,” **the City Council directed that staff prepare a text amendment to add definition to the meaning of “Two-Family Dwelling, Permitted, Y, if pre-existing” and determine how to address previous single-family conversion homes that are non-conforming.** For consistency, it is also necessary to define the term “pre-existing,” since it applies to two-family dwellings, single-family attached dwellings, and apartment dwellings, as found in Table 29.703(2), Urban Core Residential Medium Density (UCRM) Zone Uses of the *Municipal Code*.

Planning and Rental Inspection staff are frequently asked questions about a single-family rental property that may have previously been a two-family dwelling, and whether it could be converted or reestablished as a two-family dwelling. Most commonly this is a question at the time of purchase of a home by a potential investor, or at the time of listing of the home by a realtor. Often the records for these properties are scarce, which makes it difficult to provide consistent interpretations.

Interpreting current Zoning Ordinance language that relies upon the phrase, “Yes, if pre-existing” for two-family homes is confusing, since we are now 17 years past the time when the ordinance was adopted and it is difficult to determine how the intent for the wording of “pre-existing” was intended to be applied. Under the current language, a two-family home, if determined to be pre-existing physically in 2000, may stop being rented for any length of time and could be reestablished as two rental units. Staff believes that in most neighborhoods reestablishing a duplex would be a surprise to a neighborhood and would affect the availability of homes that could provide for home ownership versus rental investment potential.

The proposed amendment narrows the meaning of the phrase to clarify the intent of the standard for pre-existing as similar to a traditional non-conforming use that is only permitted if it has been continuously used as a two-family home, and that if the use has ceased, it is not eligible to be reestablished despite its use in 2000. The amendment addresses former single-family conversions, defining them consistent with the previous 1999 standards as not a two-family home. The proposed amendment preserves the intent of allowing established two-family homes as permitted uses if they are continually used as a two family home, but ensures that their reuse is consistent with current expectations and that unexpected two-family uses do not appear within established neighborhoods.

Zoning Regulations in 1999. Prior to the adoption of the current Zoning Ordinance (Chapter 29) in 2000, there were a number of different residential zoning districts that had various standards for one and two-family homes. Each district had limitations on construction of new two-family homes or on the conversion of one-family homes to two-family homes. Many of these areas were rezoned to RL or to UCRM as part of the 2000 rezoning.

One of the most prevalent zoning districts for single-family homes was R1-6 (Low-Density Zoning District). This district treated two-family dwellings as a permitted use if constructed or under construction prior to November 1, 1983, and **if originally designed and built pursuant to a zoning and building permit as a two-family dwelling, and not a single-family dwelling converted to a two-family dwelling as evidenced by the plans on file with the Chief Building Official.**

Two-family dwellings also were a permitted use in “R-2” (Low-Density Residential) districts, which were established to accommodate single and two family dwellings within new subdivisions. Even there, however, no permit could be issued to convert a single-family structure to a two family use within existing areas, except by means of a Special Use Permit issued by the Zoning Board of Adjustment.

In 1985, the City Council adopted zoning regulations to allow for the **retroactive conversion of single-family dwellings that had been used for an additional rental unit.** This was done in response to numerous buildings and parts of buildings that were rented as dwelling units which were built, remodeled, converted and occupied at various times, over many years, without proper City permits in violation of various Codes and Ordinances, including zoning regulations. Approximately 370 properties were subject to the retroactive conversion permit process in the 1980’s.

The retroactive conversion permit process laid out a process for making a unit legally nonconforming and to receive letter of compliance for rental of the units. Many of those dwellings were in non-conformance with zoning regulations pertaining to lot area, setbacks, lot frontage, or building height. They were made lawful under the zoning regulations of Chapter 29 if the owner of the premises obtained a retroactive conversion permit, pursuant to Section 13.39 (Retroactive Conversion Permits) of the *Municipal Code*. **However, it was clear in the zoning ordinance that these uses were in fact non-conforming and could not be reestablished if destroyed or discontinued.** Such provisions stated that: *“If any such nonconforming use of a structure or land and structure in combination ceases for any reason for a period of one (1) year, any subsequent use of such structure shall conform to the district regulations for the district in which such structure is located. When vested nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall terminate the authorization for the nonconforming use of the land.”*

Proposed Definitions for “Two-Family Dwelling Pre-existing” and “Pre-existing”

The following proposed definitions for “Two-Family Dwelling Pre-existing”, and “Pre-existing” address uses that existed prior to adoption of certain zoning districts from 2000, but did not fit within the “Use Categories” for the particular new districts.

The pre-existing term classified uses as a permitted use on existing sites even if a new site could not have such a use. This was then distinguished from a traditional nonconforming use by the phrase “if pre-existing.”

Option 1- Proposed Definitions of Pre-existing

A. Two-Family Dwelling Pre-existing:

A two-family dwelling designed and built pursuant to a zoning and building permit as a two-family dwelling as evidenced by approved building/zoning permits on file with the Chief Building Official. However, a home subject to a retroactive conversion permit does not meet the definition of being a two-family dwelling.

The proposed definition recognizes that any property lawfully constructed as a two-family dwelling or converted to a two-family dwelling with a building permit or by special use permit would meet this definition. However, it specifically excludes retroactive conversions, which traditionally did not enjoy the benefit of being classified as a permitted use.

Additionally, standards would be added to reflect that if a two-family dwelling ceases to be used as two dwelling units for more than one year, it cannot be reestablished as a two-family unit. This prohibition would assist in ensuring properties that may in 2000 have been used as two units but ceased to be such by choice of the property owner could not now become a new two-family dwelling. Discontinuance would mean occupancy of the structure as a single dwelling unit, expirations of Letter of Compliance for use of the property as a two-family rental property, or physical alterations to the structure that make the structure a single-family dwelling.

B. Pre-existing

The term pre-existing is a term used for other uses in the Zoning Ordinance, such as social service providers, apartments and single-family attached. This is most commonly an issue in R-L, UCRM, RM and some commercial zoning districts due to the significant changes in zoning standards in 2000. *Pre-existing* would be defined as follows:

A legally established use that was a permitted use existing on a site at the time of adoption of Ordinance No. 3557, Enacting a New Chapter 29 (Zoning), in the year 2000. However, if the use was to cease for more than one year, it could not be reestablished.

This definition clarifies at what point in time a use must have existed and that it must be continuously used to have the benefits of being pre-existing rather than nonconforming.

Option 2- Remove the term “pre-existing”

The term pre-existing has additional benefits for property owners compared to the application of traditional nonconforming use standards that exist in Article 3 of the

Zoning Ordinance. Typically, a nonconforming use cannot be reestablished once it has been discontinued, and there are limits on the changes or expansion of the use. The phrase pre-existing has excluded such uses from the limits of Article 3. As an alternative to defining the term pre-existing, the term could be deleted from the Zoning Ordinance in its entirety (for all uses) and the City could apply its nonconforming use standards.

Planning and Zoning Commission Recommendation:

The Planning and Zoning Commission reviewed this text amendment at their meeting on February 15, 2017, and voted 4-0 to support the adoption of proposed definitions for “Two-Family Dwelling Pre-existing, and for “Pre-existing.”

Staff Comments:

If City Council determines that the proposed Option 1A and 1B definitions for “Two-Family Dwelling Pre-existing,” and “Pre-existing” appropriately address concerns identified in the administration of zoning regulations for such uses, direction should be provided to staff for preparation of a draft ordinance to make those changes. Staff would then publish notice for a public hearing on the amendment for May 9, 2017. Staff could also incorporate any changes directed by City Council prior to publishing the public hearing notice for a draft ordinance.

If the City Council prefers Option 2, staff will then prepare a text amendment that removes the phrase “pre-existing” from the use table of all base zones. Staff would also modify Article 3 as necessary to account for clarifying when a two-family dwelling or conversion has been discontinued and cannot be reestablished. Staff would then provide for notice for public hearing on the proposed changes as a draft ordinance.