

COUNCIL ACTION FORM

SUBJECT: PROPOSED TEXT AMENDMENTS FOR UPDATING NONCONFORMING USE AND NONCONFORMING STRUCTURE STANDARDS

BACKGROUND:

Zoning Ordinance standards are a combination of health and safety requirements and design standards for the benefit of the general welfare of the community. The City establishes zoning standards to implement the vision and goals defined in its Comprehensive Plan for community development. Zoning includes standards for the use of property that are considered compatible and desirable for specific areas of the City and improvement standards to ensure minimum levels of health and safety, environmental protection, design compatibility, and density of use that are appropriate to reach the goals of the City.

Nonconformities are situations related to uses, structures, lots, and site improvements where the conditions of a specific property do not match the standards of the Zoning Ordinance. If the conditions were legally established prior to the City adopting zoning regulations it is considered a legal nonconformity, which grants certain allowances for the nonconformity to continue as is. The City's nonconformity standards are found in Article III of the Zoning Ordinance and are intended to balance individual property owner interest with the goals of the City to progress towards consistency with current requirements. To that end, the City has specific standards related to each of the four nonconformity types.

City Council has directed staff to update and clarify the standards related to nonconformities as a result of recent decision by the Iowa Court of Appeals to limit the interpretation of intensifying a nonconforming use to specifically residential density and commercial floor area. Staff proposes to address three primary issues within Article III of the Zoning Ordinance for Nonconformities to clarify the City's approach to managing nonconformities. Included with this report is Attachment A- Section 29.307 Nonconformities and Attachment B-Nonconformity FAQ. The proposed changes are described below.

1) Nonconforming Uses (29.307(2))

The City allows for any use of a structure or lot that was legally established to continue. However, there are limits on expanding, changing, or restarting a nonconforming use. The nonconformity standards are intended to address both uses within a building and outdoors.

The intent of the current language found in 29.307 (2) (a) is to restrict an increase in intensity of use and enlargement. The current language has been found to be ambiguous about how to apply the intent of this requirement to residential and commercial uses where internal remodeling may increase the intensity of use. **Staff proposes modifications to this section clarifying what is defined as an increase in intensity**

and the approval process for enlargement of a use. The proposed language clarifies that an increase in intensity can apply to any condition on a property, not just the indoor use of a building. It also clarifies that an expansion of up to 125% of the area is permissible for some uses with a special use permit.

Section 29.307 (2)(a)(i)- Movement, Alteration, and Enlargement

- a. No increase of intensity of use is permitted except in conjunction with the allowances of subsection b and c. Increase of intensity means any of the following: i. increase to the amount of floor area for a non-Household Living use, ii. an increase in the horizontal or vertical dimensions of a non-Household Living use (both indoor or outdoor), iii. a change in operation of a non-Household Living use that requires corresponding improvements to the site, an increase in the amount of building coverage for a manufactured home, single or two-family dwelling as Household Living, iv. an increase in the number of apartment dwelling units, SRO, and other self-contained dwelling units as Household Living, and v. an increase in the number of bedrooms for an apartment dwelling unit, SRO, and other self-contained dwelling units as Household Living.
- b. The building area, floor area, or dimensions of a nonconforming use may not be enlarged, expanded or extended to occupy parts of another structure or portions of a lot that it did not occupy on the effective date of this Ordinance, unless the enlargement, expansion or extension complies with all requirements for the zone, does not create an additional nonconformity, and is approved for a Special Use Permit by the Zoning Board of Adjustment, pursuant to the procedures of Section 29.1503, excluding 29.1503(4)(b)(vii) of the Review Criteria General Standards, and subject to subsection c.
- c. Any building or structure containing a nonconforming use may be enlarged up to 125% of the floor area existing on the effective date of this ordinance, provided that the expanded building or structure complies with all density, coverage and spatial requirements development standards of the zone in which it is located. An increase in intensity of operations, dimensions, dwelling units, or apartment bedrooms shall not be specially permitted.

The enlargement of a nonconforming use that has the effect of making a structure nonconforming, ~~other than as described in subsection b. above,~~ shall not be specially permitted pursuant to Section 29.1503, but rather shall be construed as a request for a variance, subject to the procedures of Section 29.1504.

- (ii) Exterior or Interior Remodeling or Improvements to Structure. Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be permitted, provided that any proposed enlargement, expansion or extension shall be subject to the provisions set forth in the above paragraph. An increase in intensity is not permitted in conjunction with remodeling or other improvements to the structure.

2) Section 29.307 (2)(b) and (2)(c) Change of Use and Abandonment

In addition to the limitations on the increase in intensity and enlargement of a nonconforming use, the City defines change of use and abandonment of a nonconforming use. These standards fulfill the purpose of the ordinance to not allow for a nonconformity to be reestablished once it has ceased. Abandonment is defined within the ordinance and is a rebuttal presumption by a property owner and can be appealed to the Zoning Board of Adjustment. **Staff proposes to address the ambiguity of intentionally changing the use to a conforming use compared to abandonment. Secondly, staff recommends clarifying the terminology of abandonment associated with calamities to match nonconforming structures.**

Section 29.307(2)(b) clearly states that once a nonconforming use has changed to a more conforming use it may not revert to a nonconforming use. However, under 29.307(2)(c) the discussion of abandoned uses is inconsistent with the standards of section (b). Staff proposes to modify the abandonment section to more closely align with section (b) and remove the intentional change of use from the abandonment process.

29.307(2)(b) Change of a to Another Nonconforming Use. Except as provided in this Section, a nonconforming use may be changed only to a use that conforms to the Ordinance. Once changed to a conforming use, no use may revert to or be reestablished as a nonconforming use.

29.307 (2)(c) Abandonment.

(i) Effect of Abandonment. Once abandoned, a nonconforming use shall not be reestablished or resumed. Any subsequent use or occupancy of the structure or lot must conform with the regulations of the district in which it is located.

(ii) Evidence of Abandonment. A nonconforming use shall be presumed abandoned when any of the following has occurred:

a. The owner has in writing or by public statement indicated intent to abandon the use;

~~b. A less intensive or less nonconforming use has replaced the nonconforming use;~~

c. The building or structure has been removed through the applicable procedures for the condemnation of unsafe structures;

d. The owner has physically changed the building or structure or its permanent equipment in such a way as to clearly indicate a change in use or activity to something other than the nonconforming use; or

e. The use has been discontinued, vacant or inactive for a continuous period of at least one year.

(iii) Notice. Upon the occurrence of any of the events described in Section 3(b) above, the Zoning Enforcement Officer shall document such event and shall issue a notice to the property owner by certified mail, return receipt requested, stating that the property owner's intent to abandon the Nonconforming Use is presumed, and that the Nonconforming Use will be terminated unless the property owner submits an Answer within 30 days of the date the notice was issued. However, no

notice of abandonment is required when a property owner has initiated a change of use or received approvals for changes to the property use or improvements.

The final section of 29.307(2)(c) addresses calculating abandonment related to no fault of a property owner. However, the current language is open ended and staff proposes to add 18 months to the standard, which is similar to the language of reconstructing a nonconforming structure that was damaged due to a disaster.

(vi) Calculation of Period of Abandonment. Any period of discontinuance or cessation of use caused by government actions, fire or natural calamities, and without any contributing cause by the owner of the nonconforming use, shall not be considered in calculating the length of discontinuance pursuant to this Section for up to 18 months from the date of the event.

3) Nonconforming Structures Remodeling (29.307(3)).

Nonconforming structures are addressed independent of use. Nonconforming structures are issues related to site development standards for buildings and structures, such as setbacks, lot coverage, floor area ratios, etc. They do not address standards related to parking, landscaping, fences, other site improvements.

Individuals are allowed to maintain and in some instances expand nonconforming structures. **The current ambiguity relates to the term remodeling, and to what degree can a building be altered before there is an expectation of conformance to the current standards. Remolding is an undefined term with the ordinance.**

There are two options that would be most appropriate for the City of Ames. The first option is to define the extent of the physical change in regards to percentage of change, for example replacing walls or roofs. The second option would be in relation to changes regarding a percentage of the value, as is the case for the destruction of a nonconforming structure. The current damage standard references damage equal to less than 70% of the assessed value and allows for the structure to be reconstructed by right without fully complying with current standards. Note that voluntary removal or replacement of a structure does not qualify for the 70% rule, only damage as result of something outside the control of the property owner, such as fire or disaster.

Staff proposes the first option to define remodeling in regards to the extent of changes to a structure rather than value.

Remodeling- An alteration to a nonconforming structure is classified as remodeling if, either the majority of the exterior walls or the roof is maintained through-out construction. In the event only an element of the structure (e.g. one wall) is non-conforming the remodeling of that feature must maintain 50% or more of its structural support and wall assembly to be considered remodeling and not rebuilding of the structure. Nothing within this definition is intended to restrict the adding or changing of window and door openings or changes to exterior siding and roof materials in relation to the percentage limitations.

The Planning and Zoning Commission reviewed the proposed changes at its October 17th meeting. There were no comments from the public regarding the proposed changes. The Commission voted 4-0 to recommend the Council proceed with changes to the nonconformities section of the Zoning Ordinance.

ALTERNATIVES:

1. The City Council can direct staff to proceed with finalizing text amendments for nonconforming uses, discontinuance of a nonconforming use, and defining remodeling of a nonconforming structure and publish public hearing notice for consideration of an ordinance by the City Council.
2. The City Council can recommend modified language for a zoning text amendment.
3. The City Council can decline to proceed with amending the Zoning Ordinance.

CITY MANGER'S RECOMMENDED ACTION:

The City's current nonconforming language is intended to balance managing nonconformities with property owner's interests to continue the use of their property. Due to the ambiguity of current terminology of enlargement and increase in intensity it is difficult to administer the City's expectations regarding a wide range of nonconformities, including commercial and residential uses as well as indoor and outdoor activities. Staff's proposed changes are designed to more clearly articulate the scope of the limitations regarding nonconforming uses. The changes preserve a small allowance to enlarge floor area of a use that currently exists in the ordinance. The additional changes also help to clarify certain allowances for changes of use, abandonment, and remodeling. With City Council's direction to proceed, staff will work with the City Attorney's office to finalize a draft ordinance and publish notice for a public hearing for the City Council to approve changes.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1.

Attachment A

Sec. 29.307. NONCONFORMITIES.

(1) General.

(a) Purpose. It is the general policy of the City to allow uses, structures and lots that came into existence legally, in conformance with then-applicable requirements, to continue to exist and be put to productive use, but to mitigate adverse impact on conforming uses in the vicinity. This Section establishes regulations governing uses, structures and lots that were lawfully established but that do not conform to one or more existing requirements of this Ordinance. The regulations of this Section are intended to:

(i) Recognize the interests of property owners in continuing to use their property;

(ii) Promote reuse and rehabilitation of existing buildings; and

(iii) Place reasonable limits on the expansion of nonconformities that have the potential to adversely affect surrounding properties and the community as a whole.

(b) Unsafe Situations. Nothing in this Section shall be construed to permit the continued use of a building or structure found to be in violation of building, basic life safety or health codes of the City. The right to continue any nonconformity shall be subject to all applicable housing, building, health and other applicable life safety codes.

(c) Repair and Maintenance. Normal maintenance and incidental repair may be performed on a conforming structure that contains a nonconforming use or on a nonconforming structure. Nothing in this Section shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an order of the Building Official.

(d) Accessory Uses and Structures. Nonconforming accessory uses and nonconforming accessory structures shall be subject to all provisions that govern Principal Uses and structures.

(e) Determination of Nonconformity Status.

(i) Whether a nonconformity exists shall be a question of fact to be decided by the Zoning Enforcement Officer, subject to appeal to the Zoning Board of Adjustment.

(ii) The burden of establishing that a nonconforming use or nonconforming structure lawfully exists under this Zoning Code, shall in all cases be the owner's burden and not the City's.

(f) Reversion Prohibited. No nonconforming use, building, structure and/or lot, if once changed to conform with the Ordinance shall thereafter be changed so as to be nonconforming again. No nonconforming use, building, structure and/or lot, if once changed to more nearly conform with the Ordinance, shall thereafter be changed so as to be less conforming again.

(2) **Nonconforming Uses.** Any use of any structure or lot that was conforming or validly nonconforming and otherwise lawful at the enactment date of this ordinance and is nonconforming under the provisions of this Ordinance or that shall be made nonconforming by a subsequent amendment, may be continued so long as it remains otherwise lawful, subject to the standards and limitations of this Section.

(a) Movement, Alteration and Enlargement.

(i) Enlargement.

a. A nonconforming use may not be increased in intensity and may not be enlarged, expanded or extended to occupy parts of another structure or portions of a lot that it did not occupy on the effective date of this Ordinance, unless the enlargement, expansion or extension complies with all requirements for the zone, does not create an additional nonconformity, and is approved for a Special Use Permit by the Zoning Board of Adjustment, pursuant to the procedures of Section 29.1503, excluding 29.1503(4)(b)(vii) of the Review Criteria General Standards, except as described in subsection b. following.

b. Any building or structure containing a nonconforming use may be enlarged up to 125% of the floor area existing on the effective date of this ordinance, provided that the expanded building or structure complies with all density, coverage and spatial requirements of the zone in which it is located.

c. The enlargement of a nonconforming use that has the effect of making a structure nonconforming, other than as described in subsection b. above, shall not be specially permitted pursuant to Section 29.1503, but rather shall be construed as a request for a variance, subject to the procedures of Section 29.1504.

(ii) Exterior or Interior Remodeling or Improvements to Structure. Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be permitted, provided that any proposed enlargement, expansion or extension shall be subject to the provisions set forth in the above paragraph.

(iii) Relocation of Structure. A structure containing a nonconforming use shall not be moved unless the use and structure will comply with all of the regulations that apply in the new location. The Zoning Board of Adjustment may authorize a structure containing a nonconforming use to be moved to another location on the same lot, provided that they determine that such a move will not have the effect of increasing the degree of nonconformity.

(b) Change to Another Nonconforming Use. Except as provided in this Section, a nonconforming use may be changed only to a use that conforms to the Ordinance. Once changed to a conforming use, no use may revert to a nonconforming use.

The Zoning Board of Adjustment may grant a Special Use Permit to allow a change from one valid nonconforming use to a different nonconforming use, provided it is determined that:

(i) The proposed use is in the same section 29.501(4) category of use as the current use;

(ii) No structural alterations will be made in the building or structure containing the use that increases any nonconformity;

(iii) The proposed use will have no greater impact on the surrounding area than the existing nonconforming use;

(iv) Adequate parking exists for the proposed use, based on parking standards in the Ordinance; and

(v) The proposed use is compatible with surrounding land uses, based on the hours of operation and the ability to mitigate noise and light impacts by incorporating buffering between the proposed use and surrounding land uses where necessary.

(Ord. No. 3983, 2-10-09)

(c) Abandonment.

(i) Effect of Abandonment. Once abandoned, a nonconforming use shall not be reestablished or resumed. Any subsequent use or occupancy of the structure or lot must conform with the regulations of the district in which it is located.

(ii) Evidence of Abandonment. A nonconforming use shall be presumed abandoned when any of the following has occurred:

a. The owner has in writing or by public statement indicated intent to abandon the use;

b. A less intensive or less nonconforming use has replaced the nonconforming use;

c. The building or structure has been removed through the applicable procedures for the condemnation of unsafe structures;

d. The owner has physically changed the building or structure or its permanent equipment in such a way as to clearly indicate a change in use or activity to something other than the nonconforming use; or

e. The use has been discontinued, vacant or inactive for a continuous period of at least one year.

(iii) Notice. Upon the occurrence of any of the events described in Section 3(b) above, the Zoning Enforcement Officer shall document such event and shall issue a notice to the property owner by certified mail, return receipt requested, stating that the property owner's intent to abandon the Nonconforming Use is presumed, and that the Nonconforming Use will be terminated unless the property owner submits an Answer within 30 days of the date the notice was issued.

(iv) Answer. The Answer shall indicate the property owner's intention to resume the Nonconforming Use and shall describe the actions the property owner intends to take within 90 days of submission of the Answer to resume the Nonconforming Use. Answers must be on forms provided by the Zoning Enforcement Officer.

a. If an Answer is submitted within 30 days of the issuance of the Notice, but the Nonconforming Use is not resumed within the 90 days following submission of an Answer, the Nonconforming Use shall be terminated at the end of that 90-day period. Once a Nonconforming Use is terminated,

subsequent uses of the property must conform to this Ordinance.

b. If no Answer is submitted within 30 days of the issuance of the Notice, the Nonconforming Use will be terminated.

(v) Overcoming Presumption of Abandonment. The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the Zoning Board of Adjustment, that during the 12-month period in question, the owner of the land or structure has been:

a. maintaining the land and structure in accordance with the Building Code and did not intend to discontinue the use;

b. actively and continuously marketing the land or structure for sale or lease; or

c. engaged in other activities that would affirmatively prove there was no intent to abandon.

(vi) Calculation of Period of Abandonment. Any period of discontinuance or cessation of use caused by government actions, fire or natural calamities, and without any contributing cause by the owner of the nonconforming use, shall not be considered in calculating the length of discontinuance pursuant to this Section.

(d) Special Use Permit Provision. Any existing use that is permitted as of right on the effective date of this Ordinance, but that under the provisions of this Ordinance is permissible only by Special Use Permit, if otherwise lawful, shall not be deemed a Nonconforming Use. Any expansion of such existing use shall be permissible only by Special Use Permit in accordance with Section 29.1503.

(e) Variance Provision. Any use of land or a structure that is not a permitted use in the district in which it is located but which is allowed by the granting of a variance pursuant to Section 29.1504 shall be deemed a Nonconforming Use.

(3) **Nonconforming Structures.** A nonconforming structure that lawfully occupies a site on the effective date of this Ordinance that does not conform with the Zone Development Standards of the underlying Zone or the General Development Standards of this Ordinance may be used and maintained, subject to the standards and limitations of this Section.

(a) Maintenance and Repair. Maintenance, remodeling and repair of a nonconforming structure shall be permitted without a variance or a Special Use Permit, provided that such maintenance, remodeling or repair does not increase the degree of nonconformity.

(b) Occupancy by a Conforming Use. A nonconforming structure may be occupied by any use allowed in the Zone in which the structure is located, subject to all other applicable use approval procedures and conditions.

(c) Restoration of a Damaged Nonconforming Structure.

(i) Any nonconforming structure damaged to the extent of 70% or less of its assessed value by fire, wind, tornado, earthquake, or other natural disaster may be rebuilt, provided such rebuilding does not increase the intensity of use, as determined by the number of dwelling units (for residences) or floor area or ground coverage (for nonresidential uses), does not increase the nonconformity, complies with all other legal requirements, and is completed within 18 months from the time of damage. The structure shall not be rebuilt closer to the property line than the original structure or the applicable district setback lines, whichever is closer.

(ii) Any nonconforming structure damaged to the extent of more than 70% of its assessed value may not be rebuilt, repaired, or used unless the rebuilt structure conforms with all regulations of the district in which it is located or unless the Zoning Board of Adjustment approves the reconstruction by granting a Special Use Permit after determining that restoration will be made to the fullest extent possible in conformance with applicable zoning standards.

(d) Enlargement and Expansion. A nonconforming structure may not be enlarged, expanded or extended unless the enlargement, expansion, or extension conforms to the requirements of this ordinance.

(e) Relocation. The Zoning Board of Adjustment may authorize a structure containing a nonconforming use to be moved to another location on the same lot, provided that it determines that such a move will not have the effect of increasing the degree of nonconformity.

(f) Detached Garage. If a property owner enlarges, expands or extends a principal building on a site in a residential zoning district in conformance with the applicable development standards, and if such

expansion, extension or enlargement shall result in a conforming detached garage in the rear yard or a detached garage in the rear yard that is lawfully nonconforming as to setback becoming a detached garage in the side yard that does not meet the applicable side yard setback requirements, such enlargement, expansion, or extension may continue none the less without a variance from the Zoning Board of Adjustment under the following circumstance. The conforming or lawfully nonconforming detached garage in the rear yard shall have occupied the site prior to the effective date of this Ordinance.

(Ord. No. 3606, 1-23-01; Ord. No. 3961, 7-15-08)

(4) **Nonconforming Lots.** Lots of record lawfully existing on the effective date of this Ordinance which do not meet the requirements of this Ordinance for lot size and minimum frontage shall be deemed Nonconforming Lots and shall be governed by the following:

(a) **Use of Nonconforming Lots.** Any Nonconforming Lot may be built upon so long as all use, density and coverage standards and all spatial standards other than minimum lot size and minimum frontage requirements are met.

(b) **Vacant Lot.** If the lot or parcel was vacant on the date on which this Ordinance became applicable to it, then the owner may use the property as permitted by the applicable Zone, provided that the use shall comply with applicable dimensional requirements of this Ordinance to the maximum extent practicable. If the applicable Zone permits a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable setback requirements while others would not, then only the uses or intensities that would conform with the applicable setback requirements shall be permitted. Otherwise the owner may seek a variance from such requirements from the Zoning Board of Adjustment.

(c) **Lot with Building or Structure.** If the lot or parcel contains a building or structure on the date on which this Ordinance become applicable to it, then the owner may continue the use of that building or structure and may reasonably expand the structure in any way that does not increase the degree of nonconformity; an increase in building size shall not be deemed to increase the degree of nonconformity unless it increases the encroachment on a required setback or height limitation. Remodeling of a structure within the existing building footprint or expansion in compliance with this Section shall not require a variance but shall be reviewed by the Zoning Enforcement Officer as though the lot were conforming.

(d) **Lot Merger.** If 2 or more adjoining lots of record, at least one of which is undeveloped, are in the same ownership and any of these lots are made nonconforming by this Ordinance or any amendment thereto, the parcels of land involved shall be considered a single lot for purposes of applying this Ordinance and no portion of said lot shall be divided off, sold, or used in any manner which violates the lot size and frontage requirements of this Ordinance.

(5) **Other Nonconformities.**

(a) **Examples of Other Nonconformities.** The types of other nonconformities to which this Section applies include:

- (i) Fence height or location;
- (ii) Lack of buffers or screening;
- (iii) Lack of or inadequate landscaping;
- (iv) Lack of or inadequate off-street parking; and
- (v) Other nonconformities not involving the basic design or structural aspects of the building, location of the building on the lot, lot dimensions or land or building use.

Development that is consistent with a Site Development Plan approved before the date that this Ordinance became effective shall be deemed to be in conformance with this Ordinance to the extent that it is consistent with the approved plan and to the extent that such plan or conditions imposed thereon directly addresses the specific issue involved in the determination of conformity. However, redevelopment of a site with a prior Site Development Plan approval must conform to the current zoning standards for issuance of a new certificate of compliance.

(b) **Policy.** Because nonconformities such as those listed above involve less investment and are more easily corrected than those involving lots, buildings and uses, it is generally the policy of the City to eliminate such other nonconformities as quickly as practicable. Practicable improvements take in to account current conditions, planter dimensions, building spacing and scope of improvements proposed for a property. Front yard landscaping, parking lot landscaping and screening shall be reviewed in each instance where new or redevelopment

is proposed with a Site Development Plan. Although full compliance may not be achievable, all sites must advance towards compliance with current requirements in terms of location of plantings and quantity of plantings.
(Ord. No. 4329, 12-12-17)

(c) Increase Prohibited. The extent of such other nonconformities shall not be increased without a variance.

Attachment B

Nonconformity Frequently Asked Questions

1. What is a Nonconformity? A Nonconformity is a situation where a use, structure, lot dimension, or site improvement that was lawfully established previously does not conform to the City's current zoning standards. The Zoning Ordinance (Chapter 29 of the Ames Municipal Code) includes definitions for each situation and standards that attempt to balance allowing for property owners to continue using their property within reasonable limits and ensuring compatibility with the intended zoning standards.

A more in-depth explanation of the types of nonconformities and standards that apply to each type of nonconformity is included within **Section. 29.307. NONCONFORMITIES** of the Ames Municipal Code.

2. Am I allowed to continue my Nonconforming Use? (Section 29.307.1 and 29.307.2)

A nonconforming use is allowed to continue as long as it remains otherwise lawful and in accordance with the requirements of the Nonconformities section of the Zoning Ordinance. The use may continue upon sale or transfer of the property or business to another owner. If the use ends, changes, or is abandoned and the property is used for a more conforming use then the Nonconformity cannot be reestablished. If the use is abandoned for one year it may not be reestablished; however, an owner can appeal to the Zoning Board of Adjustment to demonstrate the use has not been abandoned.

3. Am I allowed to expand my Nonconforming Use? (Section 29.307.2(a))

In most situations the nonconforming use cannot be expanded. The nonconforming use cannot increase in intensity, but under certain conditions it may be modified. A nonconforming use may not be increased in intensity and may not be enlarged, expanded or extended to occupy parts of another structure or portions of a lot that it did not occupy on the effective date of this Ordinance, unless the expansion is approved by a Special Use Permit and the expansion meets all standards of the Zoning Ordinance. Any expansion is limited to an increase of 125% of the floor area.

4. Am I allowed to change to another Nonconforming Use? (Section 29.307.2(b))

A nonconforming use may be changed to another use in the same category of use with the approval of a Special Use Permit. For example, a Trade Use may be approved to change from retail to an entertainment use with approval of a Special Use Permit and conformance to the relevant standards of the Zoning Ordinance for the proposed new use.

5. Am I allowed to expand my Nonconforming Structure? (Section 29.307.3 (d))

Yes, if the structure includes a conforming use and the expansion meets the requirements of the Zoning Ordinance. For example, an addition to a structure for a conforming use would need to meet standards such as setbacks, lot coverage, floor area ratio (minimum and maximum), height (minimum and maximum), quantity of parking spaces, and open space and landscape requirements. The existing nonconforming elements of a structure would not need to be brought into conformance with the addition.

6. Am I allowed to remodel my existing Nonconforming Structure? (Section 29.301.3(b))

Yes, maintenance, remodeling and repair of a nonconforming structure shall be permitted without a variance or a Special Use Permit, provided that such maintenance, remodeling or repair does not increase the degree of nonconformity. In some situations remodeling allows for partial demolition and reconstruction of a structure, for example removing a front façade to install a new storefront window and entry.

7. Am I allowed to rebuild if my building is damaged by a fire or other natural causes? (Section 29.301.3(c))

Yes, a structure may be rebuilt without conforming to the current standards if the damage to the overall structure is less than 70% of its assessed value. Construction must be complete within 18 months from the time of the damage.

Additionally, a structure that is damaged in excess of 70% of its assessed value may be rebuilt if a Special Use Permit is approved by the Zoning Board of Adjustment and that the proposed restoration conforms to the fullest extent possible with the current zoning standards.

8. Am I allowed to reconstruct my parking lot and replace landscaping without complying with zoning? (Section 29.301.5)

Site improvements are categorized as “Other Nonconformities” and distinguished from Nonconforming Uses and Nonconforming Structures, even though they are often related to the other situations. Other Nonconformities are required to be improved as practicable based upon the scope of a project. For example, if a parking lot is reconstructed it must either comply with the current zoning standards for dimensions, landscaping, etc. or, if there is a lack of space to meet all the standards, the project must remedy as many of the nonconformities as can be accomplished without causing a new nonconformity.

10. What does the term Pre-existing Use mean compared to Nonconforming Use?

The term Pre-existing distinguishes a use from Nonconforming by allowing for a continuously operated Pre-existing use to continue its operations and have no predefined limitations on the expansion or other modifications of the use, other than complying with zoning development standards. Pre-existing also prohibits establishment of any new uses of that type. A Pre-existing designation is subject to a 12 month discontinued use standard similar to the 12-month abandoned use nonconforming standard. There is no allowance to change to another Pre-existing use as is permissible for certain nonconforming uses.