



## Albany Development Code Amendments Task Force

# AGENDA

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### **Wednesday, October 21, 2020**

This meeting will be conducted remotely.

At 12:00 p.m., join the meeting from your computer, tablet, or smartphone.

by clicking the link below:

<https://global.gotomeeting.com/join/305380381>

You can use your microphone or dial in using your phone.

Call: +1 (872) 240-3212 (long distance charges may apply)

Access code/Meeting Id: 305-380-381

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF MINUTES
4. PRELIMINARY DRAFT NONCONFORMING SITUATIONS CODE AMENDMENTS, (APG Project Team)
5. ADJOURNMENT

Due to Governor Brown's Executive Orders limiting public gatherings during the COVID-19 pandemic, this meeting is accessible to the public via phone and video connection. Remote access information is listed at the top of this agenda.

[cityofalbany.net](http://cityofalbany.net)





MEMORANDUM

DATE October 14, 2020  
TO ADC Amendments Task Force  
FROM Cathy Corliss and Kate Rogers, APG  
CC David Martineau and Jeff Blaine, City of Albany

Status of ADC Amendments Project and Housing Options Project

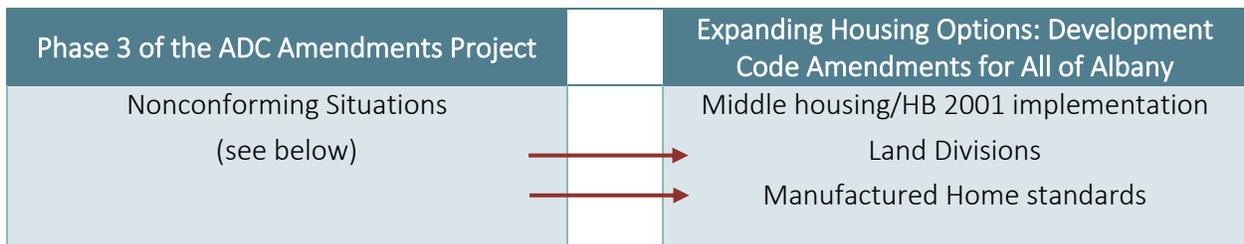
Development Code amendments associated with Phases 1 and 2 of the ADC Amendments Project were adopted by Albany City Council in October 2020. The amendments focused on establishing a two-track system for review of residential applications, establishing clear and objective standards and criteria for residential development, and improving the overall functionality of the design standards applicable to commercial and institutional development. The Code amendments take effect January 1, 2021.

Phase 3 of the ADC Amendments Project was initiated in September. Around the same time, the City also initiated a project to work on compliance with Oregon House Bill 2001 (HB 2001). HB 2001, which was passed by the state legislature in 2019, requires Oregon cities with populations over 25,000 to allow “middle housing” in some parts of the City. In addition to continuing the ADC Amendments Project, Angelo Planning Group (together with SERA Architects and Cogito) will be assisting the City with HB2001 implementation.

Phase 3 includes three topic areas: (1) nonconforming situations, (2) land divisions, and (3) manufactured home development standards. Consideration of updates to the land divisions and manufactured homes regulations overlaps with Albany’s other planning effort for housing; whereas the nonconforming situations regulations, which generally have had more impact on nonresidential property, require a separate discussion.

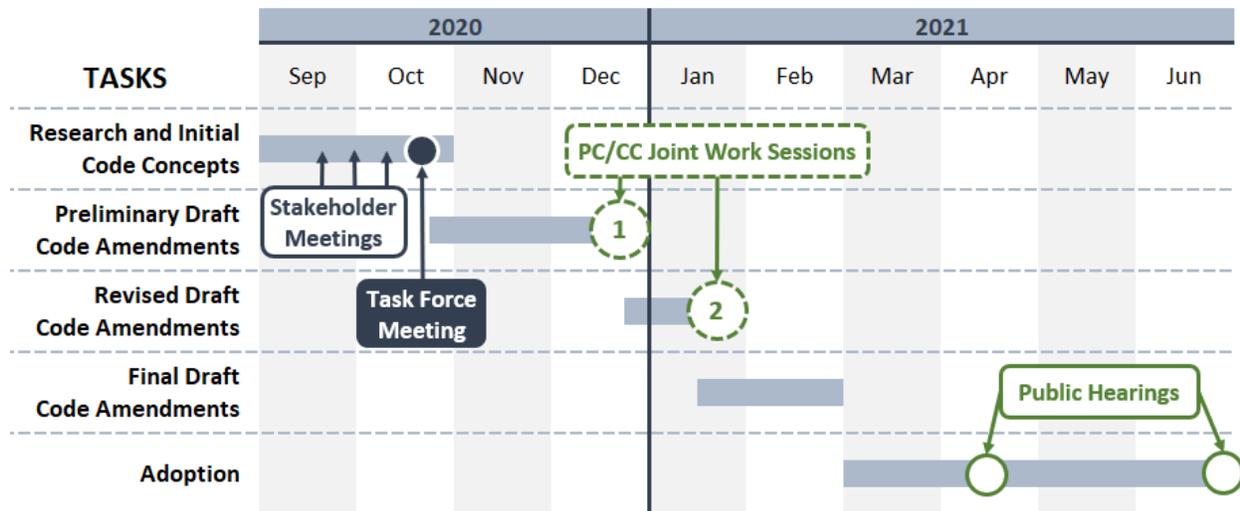
To manage these two separate, but somewhat overlapping, projects, the topic of land divisions and manufactured homes code amendments will be discussed together with the “middle housing” code amendments. Altogether the housing work will be referred to by the following project title:

*Expanding Housing Options: Development Code Amendments for All of Albany.*



## Nonconforming Situations Process

Nonconforming situations is a distinct topic and one which is not commonly understood. Therefore, public engagement efforts are focused on seeking input from those with more expertise and experience with the Development Code. This is where we'd like the Task Force to focus its efforts. We are also seeking input from key stakeholders and will review Code concepts and draft Code amendments at joint work sessions with the Planning Commission and City Council. Final Code amendments are expected by June 2021. See below for the project schedule.



Meanwhile, the Expanding Housing Options project will be a more public-facing process with additional opportunities for community members to weigh in via open houses, public surveys, small group meetings, etc. The Task Force is also encouraged to participate in this effort, though there won't be any additional Task Force meetings. Task Force members have already been added to the interested parties list for the Expanding Housing Options project, so you should receive project updates via email.

Since the meeting on October 21 will be the last meeting of the Task Force, on behalf of the whole project team we wish to extend our sincere thanks for your time and contributions to this project.



CITY OF ALBANY  
ALBANY DEVELOPMENT CODE AMENDMENTS TASK FORCE

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**MINUTES**

Wednesday, December 11, 2019  
Ralston Room, Albany Fire Department, Station 11

Approved: DRAFT

**CALL TO ORDER**

12:05 p.m. (00:00 on audio)

David Martineau called the meeting to order at 12:05 p.m.

**ROLL CALL**

**Members present:**

Candace Ribera, Wayne Scheler, Cordell Post, Joann Zimmer, Larry Preston, Dan Watson, Rich Kellum, Janet Steele, John Pascone, Dave Reece, and Bill Ryals (arrived at 12:15 p.m.)

**Members absent**

Chris Equinoa, excused.

**Staff present**

David Martineau, Planning Manager; Jeff Blaine, P.E., Public Works Engineering and Community Development Director (arrived at 12:15 p.m.); Ron Irish, Transportation Systems Analyst; Kate Rogers, Angelo Planning Group; Cathy Corliss, Angelo Planning Group; Shelley Shultz, Contracting Assistant; Seth Sherry, Economic Development Manager (arrived at 12:38 p.m.)

**Audience members**

Hayden Wooton, Reece & Associates.

**APPROVAL OF MINUTES**

12:05 p.m. (01:20 on audio)

Cordell Post moved to approve the September 4, 2019, and the September 18, 2019, minutes as presented; Rich Kellum seconded, motion carried.

**PRELIMINARY DRAFT COMMERCIAL & INSTITUTIONAL CODE AMENDMENTS**

12:06 p.m. (01:55 on audio)

Cathy Corliss, Angelo Planning Group, gave overview of the implementation schedule; Phase 2 is just wrapping up and second draft is being written to consolidate the language from both phases into one package of code amendments.

Martineau asked how many in the group have used the ADC Task Force website for information and/or review; only three people responded - Scheler, Ribera, and Watson.

She then began presentation on the Preliminary Draft of Commercial & Institutional Code Amendments for review and discussion (see agenda packet).

**8.310 Purpose**

12:13 (08:20 on audio)

- Purpose statement has been updated to remove references to “commercial districts” for clarity and consistency with applicability
- New language regarding adjustments has been added

**8.315 Applicability** 12:16 p.m. (12:05 on audio)

The key change in this section was to exempt utility substations and other facilities that do not have on-site personnel.

**8.330 Building and Entry Orientation** 12:17 p.m. (13:05 on audio)

- Purpose statement was updated and new reference to Crime Prevention Through Environmental Design (CPTED) principles
- Narrowed to apply to new buildings (excluding accessory buildings)
- Existing buildings only required to “not decrease conformance.”

**8.330(1) Main Entry** 12:20 p.m. (16:00 on audio)

- Replaced more general term (“oriented to”) with more objective language (“facing or within 45 degrees”)
- Replaced more general terms (“clearly defined” and “highly visible”) with a menu of options

Discussion ensued about door orientation to street. Corliss discussed ways to present proposed amendment package to council in such a way that council will be willing to consider changes.

**8.330(2) Building Orientation** 12:36 p.m. (32:00 on audio)

- Existing exceptions have been clarified and new exceptions have been added including:
  - constraints caused by site dimensions
  - preservation of trees over 8 inches in diameter
  - topographic constraints

**8.330(3) Parking Lot Buffer** 12:37 p.m. (33:00 on audio)

- New standard would only apply when parking is located in front of a building
- Already a requirement for arterial street frontages
- Balance community interest in pedestrian comfort with reduced applicability of standard

Concern was expressed about the difference between maintenance and re-construction. These standards only apply to new construction. Re-construction requires site plan review while normal maintenance and repairs would not require any review.

**8.345 Façade Design, Articulation, and Windows** 12:49 p.m. (44:25 on audio)

- Deleted 8.340, General Building Design, and updated Section 8.345 (which currently applies only to the downtown zones) to all commercial and institutional development
- Better defines which facades are regulated
- Uses a clearer and more objective menu-based approach

**8.345 Required Ground-Floor Window Percentages by District** 12:51 p.m. (46:15 on audio)

Corliss directed the Task Force members to the table on slide 12 of presentation; there was some discussion about changing the required percentage of windows for new construction. Corliss suggested Task Force members fill in their questionnaires with their recommendations.

**8.350 Street Connectivity and Internal Circulation** 12:59 p.m. (53:45 on audio)

- The purpose statement has been expanded
- Connectivity between sites has been clarified

- Requirement to “mimic a local street network” has been reworked to try to make it clearer and easier to interpret
- Effectively limit the applicability to large sites
  - Those with more than one acre-size+ parking areas or with drive aisles longer than 100’
- 8.350(3)(iv) - The requirement to continue the adjacent public street pattern where possible was retained
- 8.350(4) - The standard prohibiting traffic aisles between the building and the street has been retained, but edited for clarity

Scheler questioned the use of word “may” in the Draft Amendments commentary, Subsection 2 of 8.350, referring to street and access requirements; the group agreed that the word offers discretion and flexibility when needed. Corliss asked the group to add their comments to their questionnaires.

### 8.360 Pedestrian Amenities

1:05 p.m. (01:00:35 on audio)

- Purpose updated to clarify the intent and to remove unnecessary language
- Standards would apply to new buildings or expansions or modifications, not “improvements”
- Sliding scale and weighted “menu” to provide flexibility and give preference to higher-benefit amenities
- 8.360(3) was updated to clarify when bioswales can be counted as part of a pedestrian amenity
- 8.360(4) updated to define the term “near” transit stops as being within 50 feet
- Also allow amenities located in the public right-of-way (if approved by the City Engineer) to count towards the on-site requirement

Corliss suggested Task Force members email feedback on the table on slide 16 to Martineau with their suggestions.

### 8.370 Pedestrian and Bicycle Connections

1:13 p.m. (01:09:00 on audio)

- Purpose updated to clarify intent to comply with State TPR
- New definitions for “direct and convenient” and “major transit stop” and updated definition of “impractical”
- Added references to bicycle connections
- Clarified that only the building’s main entrance or entrances required to connect to the nearest sidewalk
- Removed the requirement for the on-site circulation system to connect to streets and driveways on abutting sites (must connect to walkways)
- New standard that defines the physical improvements that are required for pedestrian and bicycle connections
  - Pedestrian and bicycle accessways shall be constructed of concrete, asphalt, brick or masonry pavers, or other hard surface, and not less than five feet wide

### 8.380 Large Parking Areas

1:22 p.m. (01:17:10 on audio)

- New language added to purpose related to pedestrian walkways
- New applicability based on current practices for parking lot “reconstruction”
- “Pods” deleted; standards for “subareas” clarified and simplified

### 8.390 Compatibility Standards

1:28 p.m. (01:23:35 on audio)

- (1) replaced with light shielding standard similar to Hillsboro’s
- (2) and (3) no change except new subtitles
- (4) and (5) replaced with specific screening and placement standards for mechanical equipment, trash collection areas, etc., similar to the city of Tigard’s
- (6) propose to delete as largely redundant to the loading standards in Article 9

Reece asked for clarification on a question Post had asked earlier regarding parking lot repairs - can potholes and striping be fixed without site plan review? Martineau said that is considered maintenance. Tearing up pavement and new curbing would require additional review. Blaine suggested adding to “parking lot” items as this is outside the scope of the current project.

**NEXT MEETING DATE:** 1:35 p.m. (1:31:20 on audio)

The next meeting regarding the ADC amendments is the joint Planning Commission/City Council meeting scheduled for January 13, 2020. Regular ADC Amendments Task Force meetings will resume in June of 2020.

**ADJOURNMENT** 1:35 p.m. (1:31:20 on audio)

There being no other business, the meeting was adjourned at 1:35 p.m.

Respectfully submitted,

Reviewed by,

Shelley Shultz  
Contracting Assistant

David Martineau  
Planning Manager



MEMORANDUM

## Nonconforming Situations – Issues and Initial Code Concepts Albany Development Code Amendments Project

DATE October 14, 2020  
TO ADC Amendments Task Force  
FROM Cathy Corliss and Kate Rogers, APG  
CC David Martineau and Jeff Blaine, City of Albany

According to Albany’s 2017 Code Audit, the City’s existing standards and procedures for nonconforming situations (Albany Development Code (ADC) Sections 2.300 through 2.370) have been a source of friction for quite some time. Current standards for nonconforming situations were updated in 2014 in response to the Business-Ready Task Force effort but continue to create challenges for both staff and applicants. The Code Audit identified several issues that should be addressed with future Code amendments; some of these have to do with the usability and clarity of the code, but others are more substantive issues. The purpose of this memo is to summarize some of the broader policy concepts and concerns and to identify potential options to consider in addressing these issues. The memo focuses on the more substantive policy issues, rather than specific revisions related to the clarity or organization of the Code. Such issues will also be addressed as part of Phase 3 of the Albany Development Code Amendment Project but first we want to consider the broader concepts.

### What are “nonconforming situations?”

“Nonconforming situations” is a general term used to describe land uses, lots, or developments that were lawfully created and complied with zoning regulations in place at the time they were established but which, because of subsequent changes in those regulations, no longer comply. The specific types of nonconforming situations that are defined in the current Code are described below. The Code also uses other terms, such as “nonconforming sites,” which are not defined.

| Types of Nonconforming Situations (Article 22 definitions)   | Examples   |
|--|--|
| <b>Nonconforming Use</b> – Any use that lawfully existed on the effective date of this Code but which, due to the requirements adopted herein, no longer complies with the schedule of permitted uses and which has not been deemed terminated under the provisions of this Code. Uses allowed | For example, a land use that was permitted at the time it was established, but that is no longer permitted in that location, such as a bar (nightclub) |

|  |   |
|--|---|
| <p>in districts by Conditional Use Permit but were existing on the effective date of this Code without a Conditional Use Permit shall also be considered as nonconforming.</p>   | <p>located in an area of the City that has since been rezoned to residential.</p>   |
| <p><b>Nonconforming Development</b> -- Any physical development of land that lawfully existed on the effective date of this Code but which, due to the requirements adopted herein, no longer complies with the site development standards of this Code for the zoning district in which the development is located.</p> | <p>For example, site improvements (parking lots, walkways, landscaping, etc.) that no longer meet the current development standards, such as a parking lot built at a time when interior landscaping wasn't required.</p> |
| <p><b>Nonconforming Building</b> -- Any building that lawfully existed prior to the effective date of this Code but due to the requirements adopted herein, no longer complies with the height, yard, area, and/or coverage regulations, off-street parking requirements, or other provisions of this Code.</p>          | <p>For example, a building setback 30 feet from the street in a zone where there is now a maximum setback of 10 feet.</p>   |
| <p><b>Nonconforming Lot</b> – A lot or parcel of land that lawfully existed on the effective date of this Code or that was legally created after the effective date of this Code, but which in either case does not conform to the lot area and lot dimension standards for the zone in which it is located.</p>         | <p>For example, an historic lot created before the City or County adopted land division standards, and which is smaller than the current minimum lot size for the zone.</p>   |

**Nonconforming Situations can continue to operate**

The purpose of regulating nonconforming situations, per ADC Section 2.300 is "to permit such nonconforming situations to continue, but not to encourage their perpetuation." The regulations acknowledge that while a nonconforming use or development may no longer be allowed under the current Code, landowners have made investments in their businesses and buildings, and it would be unfair and unreasonable to require existing nonconforming sites to immediately become compliant or else be removed.

The Code allows legal nonconforming situations to continue to be operated, maintained and repaired, to change hands, and to be expanded under certain circumstances. While some clarifications are needed, the general approach to the ongoing use of nonconforming situations appears to be working. However, the rules for what happens when a nonconforming situation is discontinued for a period of time have been problematic.

**What happens when Nonconforming Situations are discontinued for a period of time?**

Most jurisdictions' development codes (including Albany's) have special regulations for discontinued nonconforming situations—i.e., nonconforming uses or development that have ceased operating or nonconforming developments that have sat vacant for an extended period of time. These regulations generally seek to find a balance --- providing some flexibility with regard to Code compliance (while trying to move toward conformance) --- and establishing some time limits

to provide predictability to the neighbors. Finding the right balance is a policy decision and as discussed in the sections that follow, the decision may be different for nonconforming uses vs. nonconforming development.

|  |   |   |
|--|---|---|
| ← Too restrictive?   |  | Too lenient? →  |
| Always require 100% conformance with the Code when nonconforming activities are reinstated |   | Allow nonconforming activities to be reinstated regardless of the number of years that have passed since it last operated |

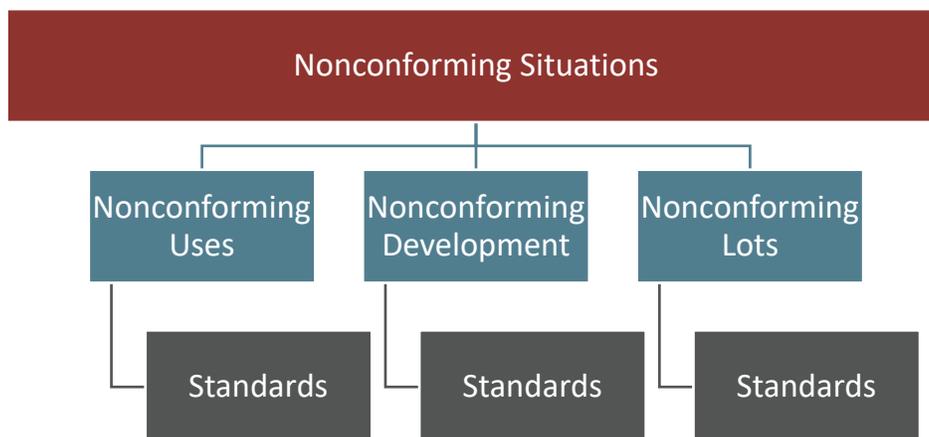
## Key Issues

Following are the key issues with Albany’s Nonconforming Situations regulations that we believe should be addressed as a part of the Code update. We’d like input from the Task Force on our initial concepts for addressing these issues.

### A. Overall Organization

As noted above, the current Code defines and uses a number of different terms to describe nonconforming situations (nonconforming uses, site, development, building). This makes it somewhat complicated and confusing. The Code also tends to combine nonconforming development (and buildings) together with nonconforming uses in terms of applying the standards. Standards that might be appropriate for nonconforming uses don’t always make sense for nonconforming developments (including buildings and physical site improvements) which are relatively common in comparison to nonconforming uses and may have less impact.

**Initial concept:** Clarify the two main categories: nonconforming uses and nonconforming development (which would include all physical site improvements, e.g., buildings, parking, landscaping, walkways, etc.) and have a different approach and separate standards for each, as discussed below in more detail in **Section B** (Nonconforming Uses) and **Section C** (Nonconforming Development). Nonconforming lots would remain a separate category (see **Section D**).



**Task Force Question:**

1. Do you agree with this initial concept?

**B. Nonconforming Uses****B.1. Time allowed for reinstatement**

The current Code allows discontinued nonconforming uses to be reinstated within one year of being discontinued. An additional two-year extension is possible with Type II discretionary review. If the nonconforming use is dependent on a building or structure that has been substantially damaged to the extent that repair or restoration of the building or structure would cost more than 70 percent of its fair market value, it is also considered terminated.

The issue with these provisions is that they can make it difficult to put vacant buildings back into productive use. Often a building that was originally intended for a use that is now prohibited may not be suitable for a conforming use—for example, a commercial building cannot be used for residential dwellings without significant renovations. The current one-year time limit may be too restrictive, and requiring a Type II review to obtain an extension is cumbersome and potentially unnecessary. However, allowing nonconforming uses to be reinstated regardless of the number of years that have passed since it last operated may not provide neighbors with sufficient predictability. For example, what if an historic use like a tannery suddenly restarted after being out-of-business for decades?

**Initial concept:** Allow discontinued nonconforming uses to be reinstated within 3 years through a Type I review (rather than Type II). The applicant would need to provide documentation that the timeframe has been met (e.g., provide utility bills).

**Task Force Questions:**

2. If a nonconforming use is discontinued, when should it be allowed to be reinstated (i.e., what do you think is the right amount of time)?
3. Should uses that are destroyed or substantially damaged (restoration would cost more 70% of fair market value) be allowed to restart if within the allowed timeframe?
4. Are there other extenuating circumstances that you think should be taken into consideration?

**B.2. Expansion of/changes to nonconforming uses**

The current Code allows legal nonconforming uses to be changed to another nonconforming use in the same category through Type I review. For example, a site used for metal fabrication

could be repurposed for food processing because they're both considered Manufacturing and Production. With Type II Nonconforming Use Review, the Code allows nonconforming uses to:

- Be expanded (with limits in terms of area and number of expansions); or
- Change to a different use in a category not otherwise permitted in the base zone. This provision was added as part of the Business Ready Task Force initiative in 2014, and was intended to promote the reuse of vacant industrial buildings by allowing, for example, commercial uses in industrial zones.

**Initial concept:** Keep the existing nonconforming use review for expansions and changes of use within the same category. Clarify that the “change to a use not permitted in the base zone” provision allows changes to commercial uses in industrial zones only, which is consistent with the original legislative intent (i.e., it was not intended to allow a nonconforming use to change to any and all prohibited uses).

**Task Force Question:**

5. Do you agree with this initial concept?

## C. Nonconforming Development

As noted above in **Section A**, after reorganization, the standards for “nonconforming development” would apply to nonconforming buildings as well as all other site improvements such as parking lots, landscaping, etc.

### C.1. Time allowed for reinstatement

In some ways the current Code language treats nonconforming “buildings, structures, and land” the same as nonconforming uses when it comes to reinstatement:

- Allows discontinued nonconforming developments to be reinstated within 1 year; an additional 2-year extension is possible with Type II discretionary review.
- If the nonconforming development is dependent on a building or structure that has been substantially damaged to the extent that repair or restoration of the building or structure would cost more than 70 percent of its fair market value, it is considered terminated.

The issue with applying these provisions to nonconforming development is that, while a use can be easily changed, buildings and site improvements cannot. Many older buildings are nonconforming with current development standards (e.g., for number of parking spaces, landscaping, etc.), and bringing them into conformance may not be possible or may be prohibitively expensive.

There are many examples of buildings that have been reused for new purposes (known as “adaptive reuse”), where they may not meet all the current development standards but still contribute positively to the neighborhood—such as a former auto repair shop turned into a restaurant (see images below). Relaxing these standards would add more flexibility for property and business owners. The current Code does provide some flexibility for nonconforming site improvements (e.g., parking lots, etc.) by allowing sites that have lost their nonconforming status to make incremental improvements towards full compliance.



*Adaptive reuse example: Auto repair shop converted into restaurant space in NE Portland  
(Sources: Google Streetview and Guerrilla Development)*

**Initial concept:** Do not apply the 3-year time limit to nonconforming development. Allow vacant developments to be reused by conforming uses at any time, provided Building Code requirements for occupancy type, etc. can be met when the building is re-occupied. If a nonconforming use wanted to occupy a nonconforming development, it would still be subject to the nonconforming use time limit.

**Task Force Question:**

6. If a nonconforming development is no longer in use (i.e., vacant), when should it be allowed to be re-occupied assuming Building Code requirements for the new occupancy type can be met?
7. Should buildings or other improvements that are destroyed or substantially damaged (restoration would cost more 70% of fair market value) be required to comply with the current Code when they are rebuilt?
8. Are there other extenuating circumstances that you think should be taken into consideration?

**C.2. Expansion of/changes to nonconforming development**

The current Code allows changes to nonconforming development if those changes conform to the base zone development standards of the site. Expansions of nonconforming buildings are subject to Type II Nonconforming Use Review and limitations related to the number and area of expansions.

Currently, sites that are nonconforming with current development standards and that have lost their nonconforming status are required to comply with or move the site towards compliance with the current Code. When the cumulative value of one or more building improvements, expansions or site modifications exceeds \$25,000, excluding the costs associated with voluntarily bringing the site into compliance with applicable development standards, 10% of the cost of all improvements proposed thereafter must be allocated toward bringing the site into conformance with current standards (unless all the standards can be met at a lesser cost). For example, if an applicant proposes \$100,000 worth of improvements, they must spend \$7,500 toward incremental upgrades (the 10% is applied after the \$25,000 is subtracted). The Code (Section 2.370) lists the required site improvements in order of priority in which they must be met—such as access to public streets, front yard landscaping, parking lot improvements, etc. (see text box to the right)

#### ***Prioritized List of Improvements per Section 2.370***

- (a) If the site is within the Willamette River Greenway, funds will be used to enhance the natural areas closest to the waterfront in accordance with the criteria in Section 6.540.*
- (b) Access to public streets in accordance with Section 12.100.*
- (c) Front yard landscaping standards in accordance with Article 9, unless there is not enough physical room and a Minor Variance is approved;*
- (d) Buffering and screening standards in accordance with Article 9, unless there is not enough physical room and a Minor Variance is approved;*
- (e) Parking space and lot improvement standards in accordance with Sections 9.120 and 9.130;*
- (f) Parking lot landscaping improvement standards in accordance with Section 9.150;*
- (g) Screening of refuse containers; and*
- (h) Other improvements necessary to bring the site into compliance with the standards of this Code.*

The intent of these provisions is that when significant investments are being made in nonconforming properties, a reasonable portion of those investments should go toward bringing the site “up to code.” However, \$25,000 is a rather low threshold to meet, and is likely to be triggered by a large portion of building permits.

#### **Initial concepts:**

- Continue to allow changes to nonconforming development (buildings and other site improvements such as parking lots) that conform to the base zone development standards of the site.
- Allow expansions and alterations (including following substantial damage) of nonconforming buildings that do not conform to the current Code through Type II review, if they move toward conformance.
- Increase the dollar threshold for when incremental improvements are required and update the list of required improvements, but keep the 10% maximum. Make sure it's

clear that improvements needed to meet certain requirements, such as ADA or stormwater quality, are not included toward the dollar threshold.

**Task Force Questions:**

9. Should nonconforming buildings be allowed to be expanded or rebuilt if the new improvements don't comply with the current Code?
10. If incremental site improvements are required, what are the appropriate threshold and cap?
11. The current Code provides the following list of improvements that must be implemented in the following order of priority. Please identify which three items you think are the highest priority when making improvements to a nonconforming development or write in up to three additional items.

#### **D. Nonconforming lots**

Nonconforming lots that are legally established lots of record may be developed under the current Code. Any new structure built on the lot must conform to the development standards (such as setbacks, lot coverage, etc.) for the applicable zoning district. Thus, nonconforming lots are typically not significantly impacted by their nonconforming status.

**Initial concept:** No substantive change to current Code.

**Task Force Question:**

12. Do you agree that nonconforming lots should continue to be allowed to be developed if the development standards for the zone can be met?

#### **E. Special Status List properties in the Waterfront (WF) Zone**

The purpose of the Special Status List is to recognize existing buildings in the WF zone that pre-date the current zoning (applied in 2006) that were typically designed for industrial uses and may not readily convert to non-industrial uses permitted in the WF zone. There has been some confusion about the relationship between the “Special Status List properties” and the nonconforming situations requirements. Special Status List properties can have additional uses that are not otherwise permitted in the WF Zone. These uses require conditional use approval, but they are not considered nonconforming uses on those properties. So, for example, if someone wanted to locate an indoor firing range in the WF zone, they could apply for it as a conditional use on the Special Status property even if it's not otherwise allowed in the zone.

A lawfully established use that is not listed under additional uses for Special Status list properties or otherwise permitted in the WF zone would be regulated as a nonconforming use.

## ADDITIONAL BACKGROUND

As a part of our research into nonconforming situation regulations we evaluated the equivalent regulations in Bend, Corvallis, Portland and Salem. Some of the key findings are summarized below.

Some jurisdictions only apply provisions for loss of nonconforming status based on vacancy or discontinued use to nonconforming uses, not buildings or other development. For example:

- Bend and Salem both consider nonconforming use rights to be lost if the use is discontinued for one year (per Section 5.2.100 of the Bend Code and per Section 270.005.e of the Salem Development Code), but neither applies such provisions to nonconforming structures or development.
- Corvallis considers nonconforming uses to have lost their legal nonconforming status after the use is discontinued for more than 18 months (per Section 1.4.40.03 of the Corvallis Land Development Code), but it applies no such provision to nonconforming structures.
- Portland considers nonconforming use rights to be lost if the use is discontinued for three years (per Portland Zoning Code Section 33.258.050.E). The only type of nonconforming development that can lose its status in Portland is nonconforming exterior development (such as an exterior storage area), which will lose its nonconforming rights after being unused for two continuous years (PZC 33.258.070.E).

The chart below summarizes some of the options related to the expansion of nonconforming uses vs. nonconforming structures and development, using other cities’ codes as examples.

| Jurisdiction | Nonconforming Uses  | Nonconforming Structures and Development   |
|--------------|---|--|
| Albany       | One time 15-25% expansion allowed through Type II if criteria are met; sites that have not maintained nonconforming status must make nonconforming upgrades |  |
| Bend         | No expansion  | Can propose changes that reduce the nonconformity of a structure   |
| Corvallis    | No expansion  | May be enlarged provided new development complies with applicable standards  |
| Portland     | May expand to the area bounded by the property lines of the use under certain circumstances   | Depends on whether use is conforming or nonconforming, but generally expansions are allowed if applicant provides upgrades |
| Salem        | Can be expanded through Type III review into other portions of a building   | May be enlarged provided new development complies with applicable standards  |



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## Nonconforming Situations – Task Force Questionnaire

### Albany Development Code Amendments Project

Task Force Meeting, October 21, 2020

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We'd like input from the Task Force on our initial concepts for addressing key issues related to Albany's Nonconforming Situations regulations (Albany Development Code Sections 2.300 through 2.370). Please refer to the accompanying memo for additional information about the issues and initial Code concepts.

Please email your completed questionnaire to David Martineau: [david.martineau@cityofalbany.net](mailto:david.martineau@cityofalbany.net).

#### A. Overall Organization

**Initial concept:** Clarify the two main categories: nonconforming uses and nonconforming development (which would include all physical site improvements, e.g., buildings, parking, landscaping, walkways, etc.) and apply a different approach and separate standards for each category.

1. Do you agree with this initial concept? (*check one*)

- (a) Yes
- (b) No
- (c) Neutral / Don't know

Comments:

#### B. Nonconforming Uses

##### B.1. Time allowed for reinstatement

**Initial concept:** Allow discontinued nonconforming uses to be reinstated within 3 years through a Type I review (rather than Type II). The applicant would need to provide documentation that the timeframe has been met (e.g., provide utility bills).

2. If a nonconforming use is discontinued, when should it be allowed to be reinstated (i.e., what do you think is the right amount of time)? (*check one*)

- (a) Never, if a nonconforming use is discontinued, it should not be reinstated.
- (b) It can be reinstated if it was discontinued for 1 year or less (consistent with current Code).
- (c) It can be reinstated if it was discontinued for less than 3 years (initial concept).
- (d) It should always be able to be reinstated regardless of how long ago it was discontinued.
- (e) Other: *(please specify)*

Comments:

3. Should uses that are destroyed or substantially damaged (restoration would cost more 70% of fair market value) be allowed to restart if within the allowed timeframe? *(check one)*
- (a) Yes
  - (b) No
  - (c) Neutral / Don't know

Comments:

4. Are there other extenuating circumstances that you think should be taken into consideration? *(please specify)*

**B.2. Expansion of/changes to nonconforming uses**

**Initial concept:** Keep the existing nonconforming use review for expansions and changes of use within the same category. Clarify that the “change to a use not permitted in the base zone” provision allows changes to commercial uses in industrial zones only, which is consistent with the original legislative intent (i.e., it was not intended to allow a nonconforming use to change to any and all prohibited uses).

5. Do you agree with this initial concept? (*check one*)

- (a) Yes  
 (b) No  
 (c) Neutral / Don't know

Comments:

## C. Nonconforming Development

### C.1. Time allowed for reinstatement

**Initial concept:** Do not apply the 3-year time limit to nonconforming development. Allow vacant developments to be reused by conforming uses at any time, provided Building Code requirements for occupancy type, etc. can be met when the building is re-occupied. If a nonconforming use wanted to occupy a nonconforming development, it would still be subject to the nonconforming use time limit.

6. If a nonconforming development is no longer in use (i.e., vacant), when should it be allowed to be re-occupied assuming Building Code requirements for the new occupancy type can be met? (*check one*)

- (a) Never, if a nonconforming development is no longer in use, it should not be used again without being brought into conformance with the Code.  
 (b) It can be re-occupied if it has only been vacant for 1 year or less (consistent with current Code).  
 (c) It can be re-occupied if it has only been vacant for less than 3 years.  
 (d) It should always be able to be re-occupied regardless of how long ago it was vacant (initial concept).  
 (e) Other: (*please specify*)

Comments:

7. Should buildings or other improvements that are destroyed or substantially damaged (restoration would cost more 70% of fair market value) be required to comply with the current Code when they are rebuilt? (*check one*)

- (a) Yes  
 (b) No  
 (c) Neutral / Don't know

Comments:

8. Are there other extenuating circumstances that you think should be taken into consideration? (*please specify*)

## C.2. Expansion of/changes to nonconforming development

### Initial concepts:

- Continue to allow changes to nonconforming development (buildings and other site improvements such as parking lots) that conform to the base zone development standards of the site.
  - Allow expansions and alterations (including following substantial damage) of nonconforming buildings that do not conform to the current Code through Type II review, if they move toward conformance.
  - Increase the dollar threshold for when incremental improvements are required and update the list of required improvements, but keep the 10% maximum. Make sure it's clear that improvements needed to meet certain requirements, such as ADA or stormwater quality, are not included toward the dollar threshold.
9. Should nonconforming buildings be allowed to expand or be rebuilt if the new improvements don't comply with the current Code? (*check one*)
- (a) No, the building should not be used again without being brought into conformance with the Code.
- (b) No, the expanded or rebuilt portion of a building should comply with current development standards (consistent with current Code).

- (c) Yes, but only for minor expansions or alterations of the building; major expansions or rebuilding after substantial damage should be required to comply with the Code.
- (d) Yes, it's ok to allow buildings to expand or rebuild as long as the development is moving toward conformance (initial concept).
- (e) Other: *(please specify)*

Comments:

10. If incremental site improvements are required, what is the appropriate threshold and cap?  
*(fill in both blanks in the sentence below)*

When the cumulative value of one or more building improvements, expansions or site modifications exceeds \$\_\_\_\_\_ (excluding the costs associated with voluntarily bringing the site into compliance with applicable development standards and excluding the cost of improvements needed to meet certain requirements, such as ADA or stormwater quality), \_\_\_\_\_% of the cost of all improvements proposed thereafter must be allocated toward improvements that bring the site into compliance with standards in this Code unless all of the listed standards listed can be met at lesser cost.

Comments:

11. The current Code provides the following list of improvements that must be implemented in the following order of priority. Please identify which three items you think are the highest priority when making improvements to a nonconforming development or write in up to three additional items. *(rank your top 3)*

**Rank:**

\_\_\_\_\_ (a) If the site is within the Willamette River Greenway, funds will be used to enhance the natural areas closest to the waterfront in accordance with the criteria in Section 6.540.

\_\_\_\_\_ (b) Access to public streets in accordance with Section 12.100.

- \_\_\_\_\_ (c) Front yard landscaping standards in accordance with Article 9, unless there is not enough physical room and a Minor Variance is approved.
- \_\_\_\_\_ (d) Buffering and screening standards in accordance with Article 9, unless there is not enough physical room and a Minor Variance is approved.
- \_\_\_\_\_ (e) Parking space and lot improvement standards in accordance with Sections 9.120 and 9.130.
- \_\_\_\_\_ (f) Parking lot landscaping improvement standards in accordance with Section 9.150.
- \_\_\_\_\_ (g) Screening of refuse containers.
- \_\_\_\_\_ Other: \_\_\_\_\_
- \_\_\_\_\_ Other: \_\_\_\_\_
- \_\_\_\_\_ Other: \_\_\_\_\_

Comments:

**D. Nonconforming lots**

**Initial concept:** No substantive change to current Code.

12. Do you agree that nonconforming lots should continue to be allowed to be developed if the development standards for the zone can be met? (*check one*)

- (a) Yes
- (b) No
- (c) Neutral / Don't know

Comments: