

STAFF REPORT

Land Use Planning Division



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PLANNING COMMISSION WORK SESSION

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CHAPTER 39 ZONING CODE AMENDMENTS RELATING TO FULL COMPLIANCE AND NONCONFORMING SITUATIONS

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1.0 Introduction

As part of the larger Zoning Code Improvement Project (ZCIP), the project team has taken on an accelerated project to update three particularly problematic areas of the Zoning Code:

1. Lot of Record
2. Full Compliance
3. Nonconforming Uses

At a work session at the last Planning Commission meeting of November 3rd, staff and the Commission discussed contemplated changes to the Lot of Record provisions. Now we are turning our attention to changes to the Full Compliance provisions and Nonconforming Uses provisions. The project team has provided preliminary amendments to these provisions (see Attachment A). The preliminary amendments are draft and will likely change after a more thorough internal review, so we suggest the commissioners focus their attention instead on the Code Audit findings (Attachment B).

Full Compliance Discussion:

County staff and the public have expressed frustration with the existing regulations related to full compliance. The project team proposes that the full compliance procedure, which has been a barrier to small structure upgrades, be “right-sized” to simplify the process for small projects. The May 2025 Multnomah County Code Audit Report (Attachment B) made the following findings:

- The Code states the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.
- Staff has identified this requirement as a barrier to development and as a source of frustration to applicants and MIG has identified it as unique requirement to Multnomah County. Community stakeholders also have cited this requirement as onerous and problematic.

- Consider elimination of the ‘Full Compliance’ requirements and address the development of properties with non-conforming structures, improvements, or uses in a ‘Non-Conforming Uses and Structures’ section and apply requirements similar to other jurisdictions.
- Requirements for compliance should take into consideration whether there is an ‘active’ code compliance case on the property and whether the proposal will remedy the violation.

Further, the Code Audit finds the “Full Compliance requirement (39.1250) conflicts with - Land Use Strategy 2.41-2: To ensure compliance, the County Zoning Code shall provide the County a method and degree of enforcement that best fits the type and circumstances of a given violation of the County Comprehensive Plan or Zoning Code.”

The proposed changes would make it easier for property owners maintain existing improvements outside of a flood hazard or geologic hazard zone.

Nonconforming Situations Discussion:

As noted in above, County staff and the public have expressed frustration with the existing regulations related to demonstration of full compliance. Part of the solution lies in updating the County’s existing code provisions applicable to nonconforming uses.

Findings from the Code Audit:

- Language is very “legalese” and unclear.
- Nonconforming use and the verification process could be described in simpler terms (39.8300 and 39.8305).
- Criteria for alternation, expansion, or replacement are not clear and objective.
- Consider allowing minor expansions of nonconforming residential uses without a permit in urban zones.

Differentiating Different Types of Nonconforming Situations

The current regulations define and regulate all types of nonconforming situations as “nonconforming uses.” The proposed approach would establish three different categories:

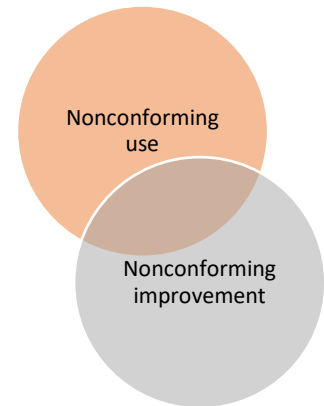
- **Nonconforming Lot of Record** - A lot of record which does not meet the current minimum area, dimension or access requirements of the district in which it is located.
- **Nonconforming Improvement** - A structure, building, or site improvement that was lawfully constructed in compliance with the applicable development and design standards in effect at the time of construction, but which no longer complies with the applicable development and design standards of the district in which it is located. An improvement shall be considered legally conforming if the nonconformance has been authorized by a permit (e.g., a variance or planned development).
- **Nonconforming Use** – A use or activity that was lawfully established in compliance with the zoning regulations in effect at the time it was established but which is no longer identified as an allowed, permitted (including permitted under prescribed conditions), primary, review, or conditional use within the district in which it is located. An established use that later requires an approval (e.g., conditional use) within the district in which it is located shall be considered nonconforming until such time as the required permit is obtained.

2.0 Nonconforming Lots of Record

Currently, the few standards and limitations applicable to nonconforming lots of record are included in MCC Part 3 (Lot of Record). The proposed approach would not make substantive changes to this approach.

3.0 Nonconforming Improvements

The most significant change in the proposed approach is separating the regulation of nonconforming improvements from that of nonconforming uses. Nonconforming improvements (buildings/structures/improvements) can house nonconforming uses, although more often the uses are conforming and just the improvements are nonconforming. Many existing sites do not conform to current development standards (e.g., for setbacks, landscaping, etc.). Bringing them into conformance may not be possible or may be prohibitively expensive. Further, as new development standards are adopted, more existing improvements can be made nonconforming. Requiring significant alterations to bring a site into conformance can be counter-productive to the County's economic development goals by undermining a property owner's interest in maintaining the site and making it difficult to attract new tenants. Encouraging the adaptive reuse and gradual conformance of nonconforming improvements can also help protect the environment by preserving the embodied energy of the improvements and reducing waste shipped to the landfill.



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.



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

Code Concepts for Nonconforming Improvements

1. The project team proposed to update and rename Section 39.8300- NONCONFORMING USES to NONCONFORMING SITUATIONS and to establish separate standards and procedures regulating the use, continuation, alteration, expansion, and replacement of nonconforming improvements and nonconforming uses.
2. Apply nonconforming improvement standards to sites with nonconforming improvements. Sites with both a nonconforming improvement(s) and a nonconforming use(s) would be subject to both sets of provisions.
3. Allow vacant nonconforming improvements to be reused by a conforming use at any time, provided the Building Code requirements for occupancy type, etc. can be met when the building is re-occupied. Do not subject nonconforming improvements to the two-year time limit (this means verification of nonconforming status will not be required).
4. Allow restoration or replacement due to fire or other casualty or natural disaster (except for structures designed for human occupancy in areas where there is evidence of substantial risk for rapidly moving landslides).
5. Allow alterations and expansions of nonconforming improvements when the alterations and/or expansions themselves conform to the development standards or help to move the site toward conformance. Do not require analysis of adverse impacts on the neighborhood.
6. Decisions on alteration, expansion or replacement of nonconforming improvements could continue to be processed as a Type II permit as described in Part 1 of the Zoning Code or it may be possible to apply the standards through a Type I (pending further evaluation).

4.0 Nonconforming Uses

Zoning code and map amendments that create nonconforming uses typically occur with less frequency than those that result in nonconforming improvements. Thus, nonconforming uses are usually less common than nonconforming improvements. However, nonconforming uses have the potential to produce greater offsite impacts (e.g., an industrial use in a residential zone).

Code Concepts for Nonconforming Uses:

1. Continue to apply the current requirements in MCC 39.8300 through 39.8315 (Nonconforming Uses) with some amendments for consistency with Statute and to clarify the process (see track changes in Attachment A, pages 6 through 9).
2. Continue to allow alteration, expansion or replacement only with an evaluation of adverse impacts.
3. Retain the two-year time limits on abandoned or discontinued uses.
4. Retain Type II process for decisions on alteration, expansion or replacement.



Attachments:

- A. Preliminary Draft Amendments to MCC Parts 1.B, 2 and 8.C - 12.1.25
- B. Code Audit Report 05.27.25