



## CITY OF KETCHUM | PLANNING & BUILDING

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### MEMORANDUM

TO: Planning and Zoning Commission  
FROM: Morgan Landers, AICP – Director of Planning and Building  
RE: 2025 Consolidated Land Development Code  
DATE: June 5, 2025

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This memorandum serves as a recap of the discussion on May 27, 2025, with the Planning and Zoning Commission regarding the proposed consolidated Land Development Code. Below is an overview of the discussion topics touched on and preliminary recommendations based on the discussion:

#### 1. Use Matrix (16.03.020.G)

- a. Bar/Lounge – Supportive of draft code with no change.
- b. Work/Live – Supportive of draft code with no change.
- c. Food Service – Commission proposes to add “Food Service” as P/C in LI-3.
  - i. Staff will revise 16.03.030.C.3.b to add LI-3 to the description of restrictions.
- d. Community Housing – supportive of adding as use by right in all use categories.

#### 2. Use Matrix (16.03.020.B and F)

- a. Commission felt these two provisions were duplicative and could cause confusion. Staff recommends deleting B and renumbering the list accordingly. In the Table of Permitted Uses, a blank cell notates when an itemized use is not permitted. With that information and the new provision for new and unlisted uses in F, there is no need to address prohibited uses in the introduction to the section. This was a carry-over from the previous code.

#### 3. Nonconformities (16.01.050)

- a. Commission felt that the language in subsection B.2 was still confusing. Staff agrees that this section needs continued clarification. Please see Attachment A for a revised redline of the nonconformities section revised by staff. The following changes are reflected in the redline:
  - i. The intro statement to subsection B is deleted as it is duplicative of subsection A.
  - ii. Under subsection B.2, the expansion of one-family dwellings in the CC district is separated from the overall statement about increasing the degree of nonconformity

- iii. Under subsection B.2, staff recommends the removal of the 50% clause for enlargements and alterations as the restriction is confusing, hard to administer, and results in design decisions that are trying to solve for a math problem rather than holistic design objectives. Policy BNE-1.6 of the Draft 2025 comprehensive plan, as recommended by the Commission, states “Adaptive Reuse: Encourage adaptive reuse of buildings as a preferred alternative to demolition to maintain community character and preserve existing housing and commercial space”. Staff believes that by providing more flexibility, the city will see the reuse of structures more so than full demolitions to comply with regulations.
- iv. Under subsection B.2, the current code provides for discretion by the Administrator as to what current code requirements of the underlying zone district apply. To date, the Administrator has not exercised this discretion, but staff recommends the provision remain until further discussions occur regarding nonconforming structures as part of the Phase 3 code rewrite. For future reference, attachment B is a short article from the American Planning Association on nuanced approaches to nonconformities. This article was written by Matt Goebel, the city’s code consultant. If the city revises the nonconforming building sections of the code to be more flexible, then the Administrator discretion may not be necessary in the future.
- v. see attached memo from APA National on nonconformities

#### **4. Parking Reductions (16.04.050)**

- a. Commission supports Transportation Demand Management reductions (16.04.050.J) approved by Administrator.
- b. The Commission supports Conditional Use Permits required for Shared Parking and Parking Demand Analysis reductions.
- c. Staff Recommends the following changes to clarify the above recommendations (see attachment C)
  - i. Section 16.04.050.H – *Parking Demand Analysis*, subsections 2, 3 and 5 are revised to clarify the Conditional Use Permit requirement and reduce confusion.
  - ii. Section 16.04.050.I – *Shared Parking*, subsections 1,3, and 4 are revised to clarify the CUP requirement and reduce duplication and confusion.
  - iii. Section 16.04.050.J – *Transportation Demand Management*, subsections 2,3, 4, and 6 for consistency with format of other parking sections and clarity.

#### **5. Demolition of Historic Structures (16.07.060.E)**

- a. The Commission discussed subsection 2.b which states “Any new construction following demolition shall be of similar size, scale, and general orientation of the original structure being demolished”. As a dual representative of the Historic Preservation Commission and PZ Commission, Matthew McGraw explained the HPC’s reasoning for the recommendation. Staff recommends further discussion of the item and encourages the PZ Commission to review the Historic

Preservation Handbook (Attachment D) which describes the “why” and benefits of historic preservation in the City of Ketchum. As discussed in the previous meeting, this may be an area where the HPC and PZ Commission make their recommendations to Council for final decision by Council. Staff would outline the positions of both groups and the rationale for consideration.

**6. Administration and Procedures (16.07.020)**

- a. The Commission is supportive of the required staff meeting. Staff recommends renaming from “Preapplication Staff Meeting” to just “Staff Meeting”.
- b. The Commission is generally supportive of the required neighborhood meeting. However, requests clarifying language to reflect that only one meeting is required if both Preapplication and final Design Review are required. The Commission also discussed only requiring the neighborhood meeting for larger developments. See attachment E for recommended revisions.

**7. Design Review (16.07.030.C.2)**

- a. The Commission noted that the applicability section in 16.07.030.C.2.b was confusing and seemed out of place. Staff agrees with the Commission and recommends the following (see Attachment F):
  - i. Add one provision to applicability cross referencing the actual applicability standards in 16.04.080.B and move the subsections on authority to the applicable process sections.
  - ii. Add a subsection under “Procedure – Application Submittal and Processing” titled “Process Determination” to address the role of the Administrator.
  - iii. Move the Administrator authority provisions to “(4) Review and Action: Administrative Approvals”
  - iv. Move the PZ Commission and City Council authority provisions to “(5) Review and Action: Public Hearing Approvals”
- b. On-site reviews – Currently, the Commission is required to conduct an on-site review prior to taking action on a Mountain Overlay Preapplication Design Review and Design Review applications (Sections 16.07.030.C.2.c.3.C and 16.07.030.C.1.c.3.B). Based on conversations with the city attorney, this provision is against state regulations and is proposed to be deleted.



City of Ketchum

## **ATTACHMENT A:**

# **Nonconformities - redline**

## 16.01.040. Transition from Prior Regulations<sup>14</sup>

### A. Development Approvals

Any development approved under regulations in effect prior to the effective date of this Code may be carried out under the terms and conditions of the approval and the development standards in effect at the time of approval, provided the approval has not expired and the development complies with any applicable standards of this Code.<sup>15</sup> If the prior approval expires, is revoked, or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this Code.

### B. Pending Applications

1. A development application that has been deemed complete pursuant to §16.07.020.C.3<sup>16</sup> prior to the effective date of this Code may be decided under the regulations in effect when the application was deemed complete, or may be reviewed and decided under this Code at the request of the applicant. Applications shall not be processed under a combination of prior regulations and this Code.
2. If a Preapplication Design Review is required and has been completed pursuant to the procedure in §16.07.030.C.1, a vested property right shall be created. The voluntary request for a Preapplication Design Review does not create a vested property right.<sup>17</sup>

### C. Prior Violations

If a development or activity in violation of the prior development regulations fully complies with this Code, it shall no longer be deemed a violation. Unpaid fees and/or penalties from prior enforcement of violations are still valid and shall remain the responsibility of the violator under the prior regulations

## 16.01.050. Nonconformities<sup>18</sup>

### A. Nonconforming Uses

A nonconforming use may be continued provided it meets the following standards:<sup>19</sup>

#### 1. Change of Use

A nonconforming use may be changed only to a conforming use.

#### 2. Expansion of Use<sup>20</sup>

A nonconforming use shall not be enlarged or expanded. Enlargement and expansions include any increase to floor area of the nonconforming use within an existing or new

<sup>14</sup> New.

<sup>15</sup> Deleted "regarding ongoing operations and maintenance."

<sup>16</sup> Added reference to common procedure for determining if an application is complete.

<sup>17</sup> New, to clarify current City Council interpretation.

<sup>18</sup> Current 17.136. This section will be reviewed and revised with more substantive changes in Phase 3. Basic organizational changes and text adjustments for clarity have been made as noted throughout.

<sup>19</sup> Simplified continuation of use language.

<sup>20</sup> Replaces current

building.<sup>21</sup> Any building or other structure containing a nonconforming use declared unsafe by the Building Official may be strengthened or restored to a safe condition.

### 3. Abandonment of Use<sup>22</sup>

A lawful nonconforming use shall be deemed abandoned when the nonconforming use has been replaced by a conforming use or when the nonconforming use has ceased and has not been active for a continuous period of six months. Intent to resume active operations shall not be considered in determining abandonment.<sup>23</sup>

## B. Nonconforming Buildings

~~A use within a nonconforming building may continue provided it meets the following standards:~~<sup>24</sup>

### 1. Nonconforming Due to Lack of Parking and Loading<sup>25</sup>

No lawfully existing building shall be deemed to be a nonconforming building solely because of lack of off-street parking and loading spaces, provided that the area being used for off-street parking or loading shall not be further reduced in area or capacity as of the Effective Date.

### 2. Enlargement or Alteration

~~a.~~ A nonconforming building shall not be enlarged or extended so as to increase the degree of nonconformity.<sup>27</sup>

~~a.b.~~ ~~except One-family dwellings~~ in the Community Core District ~~where one-family dwellings~~ may increase their original square footage by a cumulative 20 percent subject to a Conditional Use Permit per §16.07.030.A.

~~b.~~ ~~Additions and/or enlargements to existing buildings are not considered to be nonconforming or to increase the degree of nonconformity, so long as the additions and/or enlargements comply with the following:~~

<sup>21</sup> New, replaced "extended" with "expanded" and added a more detailed definition of enlargement/expansion.

<sup>22</sup> Removed current 17.136.030A. and B.

<sup>23</sup> Replaces 17.136.030.C.

<sup>24</sup> ~~Simplified continuation of use language.~~

<sup>25</sup> Relocated from current 17.125.040.A.5.

- c. Any additional square footage may be subject to the current requirements of the underlying zoning district at the discretion of the Administrator.
- ~~d. No more than 50 percent of the existing building shall be structurally altered. Nonstructural building modifications including but not limited to painting, resurfacing, residing, or minor repairs shall not contribute to the 50 percent limitation.<sup>26</sup>~~
- d. Removal and reconstruction of any nonconforming portions of a building is not permitted unless it is declared unsafe by the Building Official in which case it may be structurally strengthened or restored to a safe condition.<sup>27</sup>
- e. If a portion of a nonconforming building is located within the public right-of-way, that portion of the building shall not be expanded or altered to increase the existing encroachment. The City Engineer and Streets Department shall determine whether the portion of the nonconforming building that extends into the public right-of-way may remain or if the encroachment must be ~~removed~~viewed. If the City Engineer and Street Department determine that the portion of nonconforming building that extends into the public right-of-way may remain, the property owner shall enter into a right-of-way encroachment agreement with the City.<sup>28</sup>
- ~~f. Removal and reconstruction of any nonconforming building or portion of a building is not permitted unless it is declared unsafe by the Building Official in which case it may be strengthened or restored to a safe condition.<sup>29</sup>~~

### 3. Restoration

- a. A nonconforming building that has been damaged or destroyed by fire or any other calamity, may be restored to its preexisting nonconforming condition if a Building Permit for the work of restoration is obtained within two years of the date of the fire or other calamity and the work of the restoration complies with the international building and fire codes in effect at the time of the issuance of the Building Permit.
- b. Nonmaterial changes to the preexisting nonconforming condition may be approved at the City's discretion. Nonmaterial changes include minor repairs and maintenance necessary to correct damage or deterioration to the structural soundness of, or the exterior or interior appearance of a nonconforming building without expanding the height or footprint of the building.<sup>30</sup> If additional square footage is added, that additional square footage may be subject to the current requirements of the underlying zoning district at the discretion of the Administrator.

<sup>26</sup> ~~Clarified the 50 percent limitation only includes structural alterations and added "residing" the list of examples.~~

<sup>27</sup> Clarified that reconstruction and removal of a nonconforming building is prohibited unless found to be unsafe.

<sup>28</sup> Second sentence is new based on current City practice.

<sup>29</sup> ~~Clarified that reconstruction and removal of a nonconforming building is prohibited unless found to be unsafe.~~

<sup>30</sup> New description of nonmaterial change.



City of Ketchum

## **ATTACHMENT B:**

# **APA Article on Nonconformities**



# ZONING PRACTICE

AUGUST 2020



AMERICAN PLANNING ASSOCIATION

➞ ISSUE NUMBER 8

## PRACTICE NONCONFORMITIES



# Everything Old Is New Again: Communities Explore Nuanced Approaches to Nonconformities

By Matthew Goebel, AICP

Zoning is mostly about the future: *Where can we open our new coffee shop? Can they really build those tall apartments next door?*

But no community is a blank slate, and zoning doesn't just look forward. It impacts the shops and apartments and signs and all the other parts of the built environment that already exist—many of which were legally established but would have to look and operate differently if they came in for review under current zoning rules (if they could be built at all). When you change the zoning, there may be buildings that are now too tall, lots that are now too small, or active businesses in neighborhoods where they now just don't fit, because they don't match what's nearby or don't fit the community's vision for the future.

Since the earliest days of zoning, local officials and planners have grappled with how to treat so-called “nonconformities.” Existing development has typically been permitted to continue under new zoning rules. That practice, grounded in a sense of fairness but also political reality, partly helps explain why communities are willing to change zoning rules in the first place. The challenge comes in trying to strike the right balance between what's already on the ground and how we want our communities to develop in the future. How should we accommodate existing development while also encouraging and requiring new projects that reflect current goals and plans?

Traditional approaches have allowed nonconformities to remain, subject to strict rules designed to bring about their quick removal or elimination. Modest repairs and maintenance are acceptable, but substantial modifications require full code compliance. For years, this was standard policy. “Nonconformities” was a section of the code that differed little from place to place, and often was carried forward substantially unchanged from one generation of an ordinance to the next, even in a major redraft.

Increasingly, however, local officials and planners recognize that all

nonconformities may not be so bad, and that a more nuanced approach is appropriate for a complex issue. During code rewrite projects, we have seen regulations for nonconformities shift to one of the more active areas of discussion. Tricky issues with redevelopment, community character and aesthetics, equity, and more come into play when talking about nonconformities.

This article surveys the creative ways that local governments are addressing nonconformities in their development codes today. A brief introduction generally describes nonconformities and traditional approaches to dealing with them. But this article does not reinvent the wheel. The general topic of nonconformities, their historical evolution, and the applicable law has been described well by many thoughtful planners already; see the bibliography for recommended additional reading. (This article also does not focus in detail on signs, which have their own constitutional issues and are covered in other articles.)

## TYPES OF NONCONFORMITIES

A nonconformity is a lot, structure, use, sign, or some other site feature that does not meet current zoning requirements. While code drafters often try to limit the creation of new nonconformities when updating a zoning code, their creation is almost inevitable when a full suite of zoning tools is refreshed. Many municipal codes refer to “legal nonconformities” to distinguish situations that were legal upon their establishment but no longer meet updated code requirements. Only legal nonconformities, not those established unlawfully, are provided protection and may continue to exist, subject to conditions.

Classic examples of nonconforming uses are auto body shops, junkyards, and industrial uses that continue to operate in areas that have matured into commercial or even residential areas.

Nonconforming structures no longer meet various site requirements, such as maximum building height or minimum

setbacks. Examples abound and frequently are created when code drafters update dimensional standards like setbacks or, for example, when a new form-based code establishes a minimum building frontage requirement along a commercial strip with street-front parking. Nonconforming uses and structures are treated separately, but often coexist (Rosenthal 2010).

Nonconforming lots do not meet minimum lot standards like width, area, or frontage. In addition to uses, structures, and lots (and signs), various site conditions like off-street parking, landscaping, buffers, or exterior lighting can also be nonconforming and are the focus of a later section of this article.

Certain features can be exempted from the “nonconforming” label. For example, codes typically say that governmental actions, like a road-widening project, that reduce setbacks or take away parking spaces do not create nonconformities.

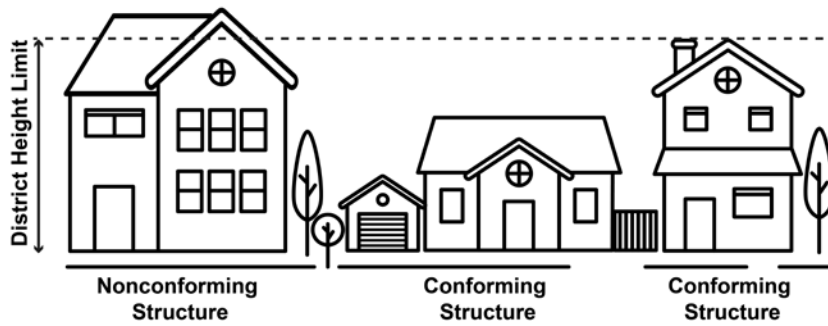
The property owner has the burden of demonstrating that a nonconformity is “legal” (i.e., that its original establishment, creation, or placement was lawful and has been maintained consistently over time). This can often be handled through an administratively issued permit, like a certificate of legal nonconforming status or zoning compliance



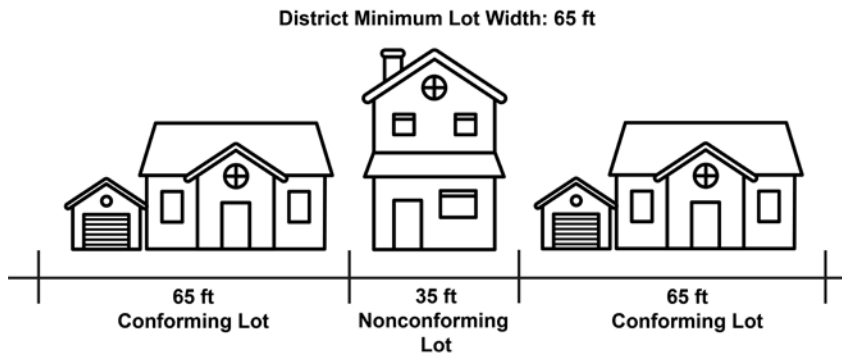
David Morley



A legally nonconforming auto repair shop in the middle of a residential district.



➡ Existing buildings that exceed district height limits are nonconforming structures.



➡ Existing lots that are narrower than the required minimum width for their zoning district are nonconforming lots.

certificate. Most often, this becomes an issue upon initiation of some development proposal. However, some communities require property owners to register nonconformities within a set period after adoption of a new code if they ever want to take advantage of the legal nonconforming status. Arlington, Texas, requires registration within 12 months after the date on which a use or building becomes nonconforming (§11.2.2).

#### TRADITIONAL APPROACHES FOR DEALING WITH NONCONFORMITIES

While communities develop tailored rules for each type of nonconformity (lots, structures, etc.), some general principles usually apply across the board. The most important of these is the authorization to continue indefinitely in productive use, subject to limits on expansion and change. Typically, a nonconforming use may only be changed to a conforming use. But some ordinances

authorize existing nonconforming uses to change to other nonconforming uses of the same general character, provided the new use is of equal or lesser intensity.

Minor repairs and maintenance are allowed; while nonconformities are discouraged and hopefully will eventually go away, no one wants them to fall into disrepair and become eyesores. Minor repairs might include work to maintain structural soundness, protect public health, or comply with updated building codes. Substantial modifications and expansions that would prolong the life of the nonconformity have traditionally been prohibited without bringing the use or structure into full code compliance, with few exceptions. The merits of a strict approach are clear: it most quickly brings about the change the community is seeking in its new plans and codes. A uniform approach that accelerates the general elimination of all nonconformities also is

the easiest to administer and is perceived as evenhanded. But, as many commentators have noted, strict thresholds on improvements can also discourage reinvestment and slow the pace of change.

#### Thresholds that Trigger Conformity

In certain instances, nonconformities pass a threshold where they must come into conformance. Destruction over a certain threshold, either as a percentage of physical size or value, usually requires rebuilding or reestablishment in line with current codes. For example, Denton, Texas, sets the threshold at 50 percent of gross floor area for partial damage or destruction of a nonconforming structure by fire or any other natural or accidental cause. Repair of any damage up to that threshold can be rebuilt to prior conditions and must be completed within 18 months; any damage exceeding that threshold requires complete rebuilding to current code standards (§1.5.4.C). Nearby McKinney, Texas, on the other hand, uses a monetary threshold: 50 percent of total appraised value (§146-40(f)).

#### Termination and Amortization

Legal nonconforming status can disappear in several ways. An owner might pursue upgrades or a rezoning to bring the activity or structure into conformance. Or general zoning rules might change again, and the use or structure complies with the new rules. A nonconformity also might be abandoned, or at least discontinued long enough, and it loses its protected status. Discontinuation periods range by community, anywhere from 30 days to two years; Denton's one-year period is typical (§1.5.2.F). (Sometimes external factors lead to one-time or ongoing extensions of this period; perhaps we will see longer periods allowed following COVID-19 and the resulting economic disruptions.)

Where allowed by state law, communities seeking to eliminate nonconformities may seek to amortize them away, the most aggressive tool to remove a nonconformity. This involves establishing a time period within which the owner may recoup her investment, after which the nonconformity must be eliminated. Amortization provisions are not uncommon for signs (especially billboards), adult uses, and uses that are particularly discordant with an area's current conditions or future land-use plans.

Where amortization is embraced, the zoning code typically sets up a general enabling framework that can then be applied to specific situations in the future. For example, McKinney, Texas, adopted rules in 2019 giving the city council general authority to direct the board of adjustment to set an amortization period for certain undefined nonconforming uses, which is a typical approach in Texas codes (§146-40(g)). At a public hearing, the board of adjustment must consider whether continued operation of the nonconforming use would have an adverse effect on nearby properties or the community welfare. Factors to consider range from general policy direction like the comprehensive plan to site-specific concerns like the character of the surrounding area and the traffic, environmental, and other impacts of the use in question. If the board finds adverse effects, a second hearing is held to determine an amortization period based on the owner's actual investment in the use before the time that the use became nonconforming. An in-depth study of financial records, as well as a physical property inspection, are authorized to help the board establish a reasonable recoupment period.

#### **NUANCED APPROACHES TO NONCONFORMITIES**

Increasingly we see communities explore more tailored alternatives, for various reasons. Regulations designed to bring about the elimination of nonconformities did not always have that effect. Sometimes, nonconformities are recognized as not being as bad as originally thought. Existing buildings and activities may not technically comply with the rules, but they still may be interesting and even thriving contributors to their community and local economies. Nonconforming situations maybe even help maintain unique character not possible through new development. And, if they were prohibited from expanding altogether, there might be not be anything to take their place. New (usually higher) standards might discourage infill and redevelopment, especially on challenging sites, and so officials are willing to tolerate nonconformities hanging around longer. Some communities with historic character may be especially prone to recognizing that nonconformities bring about a charm and character that comes from having aged gracefully over time (like Santa Fe, New Mexico).

Recognizing these factors, planners and local officials have embraced a range of nuanced approaches. Many distinguish the bad nonconformities from the perhaps not so bad, holding the former to stricter standards to phase them out more quickly, but allowing the latter more leeway to operate and even grow.

#### **Discretionary Relief for Expansion**

One of the first and most straightforward tools many communities explore to loosen the tight restrictions on nonconformities is to establish a process allowing for their expansion. A planning commission or board of adjustment is authorized to make the decision, often piggybacking on an existing conditional or special use approval process. In Cary, North Carolina, the zoning board of adjustment is empowered to approve such an expansion as a "special use," following a detailed consideration of the site, its context, and potential impacts on surrounding properties (§10.1.8).

#### **Administrative Approval for Expansions**

To streamline the approval of changes to nonconformities even further, some local governments allow these to be administrative decisions. Larimer County, Colorado, allows its planning director to consider and approve an extension, expansion, enlargement, or change in character of a nonconforming use (§4.8.11). Following a required preapplication conference, staff circulates the application to review agencies and surrounding property owners for review and comment. If neighbors raise concerns, the applicant and the neighbor(s) have the "opportunity to agree on a solution" within 14 days, unless an extension is requested by either party. The planning director issues a written determination, incorporating any negotiated solution from the applicant and neighbors, if applicable. While it may be appealed to the board of county commissioners, the decision is administrative.

#### **Special Flexibility for Specific Uses and Districts**

Some local governments carve out targeted allowances to their general nonconformity standards for certain uses to meet specific policy goals. Often, the exceptions involve single-family residential uses, whose advocates can be especially vocal in opposing

zoning changes that create nonconformities. In Sedona, Arizona, a new code adopted in 2018 allows automatic reductions to required setbacks for single-family dwellings on substandard width lots (§1.6E), an exception to the general rules applicable to nonconforming lots. The Arlington, Texas, ordinance exempts single-family dwellings from nonconformity restrictions based on both minimum lot size and setbacks (§11.3.2).

Arlington also calls out a different type of use for special treatment. Many auto-oriented uses on commercial corridors in the city became nonconforming following adoption of a unified development code in 2014 that encouraged a long-term transition to more pedestrian-friendly mixed use. To help cushion the change and also help stimulate economic activity, local officials carved out some flexibility for auto-oriented nonconformities. For example, the general restriction on rebuilding a nonconformity that is destroyed by more than 50 percent of its fair market value was waived for service stations, car washes, and used auto sales. (§11.2.5).

The special flexibility can also be tailored to specific areas or districts. For instance, Cary, North Carolina, sets a standard discontinuation period of 180 days for most nonconforming uses, after which the use may not be reestablished, but created an exception for single-family dwellings in the Town Center district (§10.3.2).

#### **'Benign' Versus 'Significant' Nonconformities**

Recognizing that some nonconformities are more impactful than others, planners look for alternatives to a one-size-fits-all approach. One option is to create different categories of nonconformities, each subject to different rules. Tiered standards acknowledge that some nonconformities can continue or expand without threatening public health or safety. Some communities may find it more realistic to allow such expansions rather than impose strict prohibitions that discourage reinvestment.

In Youngstown, Ohio, for example, the Redevelopment Code identifies a use, structure, lot, sign, or site improvement as preexisting if it was legally created but no longer complies with the code (§1105.05). Each such preexisting feature is categorized as "benign" or "significant." At the request of the property owner, the planning director reviews the feature to determine whether it



“creates or increases a material risk to public health or safety in the surrounding area.” A benign preexisting condition does not create or increase such risk, while a significant preexisting condition does. A feature is deemed significant until written notice of benign status is issued.

Benign preexisting features are given more flexibility and ability to continue. For instance, benign preexisting uses may be reestablished following discontinuance of two years, and they may be extended or expanded by addition of contiguous land (none of which are available for significant preexisting uses). A significant preexisting structure may be expanded only when certain conditions are met, including a reduction of risk to public health or safety, but this limitation does not apply to the expansion of a benign preexisting structure. This tiered approach puts into practice a proposal advocated in the May 2009 edition of *Zoning Practice* (Easley 2009).

#### Conferring Conformity for Specific Uses or Situations

The stigma attached to the “nonconforming” label can make it hard to find a lender. Hoping to mitigate this, sometimes code drafters lift a specific use or situation out of the nonconforming box altogether and simply deem it “conforming.” These types of solutions often emerge as part of a political agreement to help secure passage of an ambitious new zoning update. Denton, Texas, for example, worked several years on a major rewrite of both its development code and zoning map, crossing the finish line in 2019. Many upgrades to an outdated set of zoning districts were included in the final code, along with refinements to zoning district boundaries. To help reduce the number of nonconformities created, the adopted code deemed almost all residential uses and structures (single-family detached dwellings, townhomes, and duplexes) existing on the effective date of the code conforming (§1.5.2.I).

#### A New Category of ‘Compliant’ Uses and Structures

A similar technique came about when Denver adopted a citywide form-based code in 2010. Following some high-profile dustups with nonconforming uses looking to expand, city planners looked for a middle ground in

the new code in the regulation of nonconformities and came up with an alternative status—“compliant uses” and “compliant structures” (§12.5 et seq.). Similar to the Youngstown approach, the Denver code shakes up the traditional thinking about how to classify nonconformities. But rather than dividing nonconformities into categories, the Denver code identifies a new category of activities that does not fall under the “nonconformity” term and generally is afforded more flexibility to expand and continue than traditional nonconformities. The approach helps remove the stigma and financial consequences potentially associated with the “nonconforming” label.

The new legal status of “compliant use” is intended to provide greater flexibility than is available for nonconforming uses, especially in terms of the use’s continuation, expansion, or enlargement. A compliant use is one that was lawful prior to the adoption of or amendment to the code but, because of code amendments or because other uses are established closer to the legally established use than the code permits, do not comply with current use limitations. Compliant uses are legal uses and may continue indefinitely. While expansions generally are not allowed if the extent or degree of noncompliance with the code is increased, limited expansion may be approved administratively provided there is no increase in dwelling units, a reduction of the ratio of land area to the number of dwelling units, or “a change in any aspect

of or the character of the compliant use that increases the amount, extent, or degree of noncompliance.”

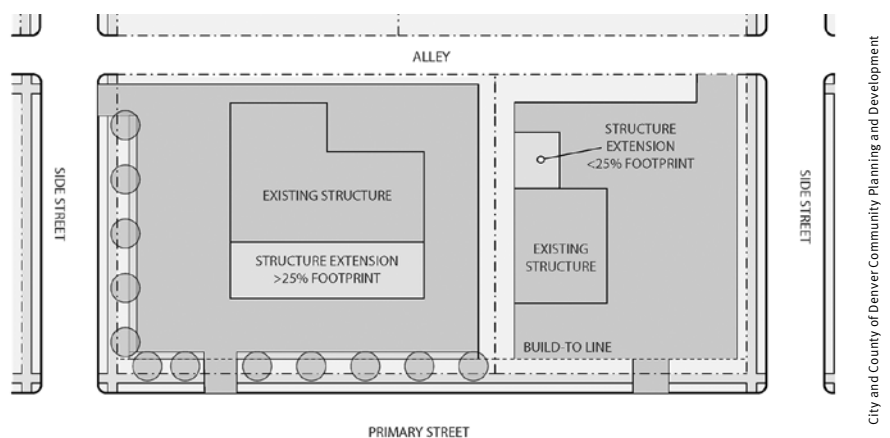
#### NONCONFORMING SITE FEATURES

Site features like off-street parking, landscaping, buffers, screening, or exterior lighting can also be nonconforming. In many code update projects, this actually may be the hottest area of discussion. Code updates often focus on raising the bar of development quality, and so even if the zoning districts and uses are not substantially overhauled, the development standards often do see significant change. Minimum off-street parking ratios might be revised, environmental controls might be beefed up, and building design standards might be introduced. Consequently, many properties may find they have a “nonconforming” label attached after a zoning update.

The debate comes when redevelopment projects must upgrade to meet new, higher standards. The balancing act is the same as for other types of nonconformities—implementation of new public policy versus respect for existing property rights and a reluctance to set the bar so high that additional investment is discouraged. The examples below illustrate a range of approaches by communities in striking the right balance.

#### A Light Touch to Regulating Nonconforming Site Features

Albany, New York, offers a straightforward



- ➡ In Denver, “compliant structures” with parking located between a building or side street can expand up to 25 percent without having to comply with perimeter landscaping standards (§12.6-3.G).

approach that acknowledges nonconforming site features but does not make them an especially onerous burden to overcome. In its 2017 code, the city identifies certain site features that may be nonconforming, specifically off-street parking and loading; landscaping, screening, and buffering; and outdoor lighting (§375-5(F)(6)). Otherwise conforming land uses and structures on parcels where these features do not meet new standards may be expanded, revised, or redeveloped subject to certain conditions, including no increase in the degree of nonconformity and provision of new parking spaces to meet demands of the new use. However, full site compliance with all development standards is required with any increase of impervious surface area of 10 percent or more, any demolition of all or part of a primary structure, or the construction of a new primary structure.

**Sliding Scale Based on Size of Improvements**  
Recognizing the site-specific challenges that may arise in dealing with a host of site features that may not meet current standards, some local governments try to offer flexibility so long as the overall bar is raised.

For all development in Arlington, Texas, any change in use or external addition to a structure existing on the effective date of the code must comply with all or portions of the code’s design and development standards to the maximum extent practicable, based on a sliding-scale approach (§5.1.3 et seq.). The table at right shows the approach with a selection of standards (see the full code provisions for the complete list).

The timeframe for calculating the cumulative amount of expansions is unlimited. Any exterior renovation must comply with the standards applicable to that renovation. For partial renovations, the zoning administrator may waive compliance if upgrades would be inconsistent with the overall design of the existing structure.

Some important exceptions apply; this recreation- and sports-oriented city exempts major sports complexes and amusement parks from the heightened standards, as well as planned developments (which incorporate their own baseline standards) and historic structures.

**Sliding Scale Based on Improvement Value**  
Norfolk, Virginia, takes a similar tack as

### A SLIDING SCALE FOR CODE COMPLIANCE FROM ARLINGTON, TEXAS

Extent of Addition	Required Compliances
<10% of size of structure	Screening (residential, mechanical/utility, service/loading) <ul style="list-style-type: none"> <li>• Street trees (for nonresidential or mixed use)</li> <li>• Off-street parking (if additional spaces required)</li> <li>• Sign standards (if applicable to addition)</li> </ul>
10–30% of size of structure	All above standards, plus: <ul style="list-style-type: none"> <li>• Parking lot landscaping and screening</li> <li>• Residential design (character, exterior finish)</li> <li>• Nonresidential design (facade colors for building, covered entries)</li> </ul>
>30% of size of structure	All above standards, plus: <ul style="list-style-type: none"> <li>• Addition and site must comply with all development and design standards</li> <li>• Single-family residential must comply with all residential design standards, except roof pitch</li> </ul>

Arlington, but Norfolk’s sliding scale is based on the value of improvements proposed, not their physical size. Norfolk’s code, adopted in 2017, focuses on off-street parking, landscaping, and screening of mechanical equipment (§6.5 et seq.). Any structural alteration of a building on a site that has one or more nonconforming site features, where the value of the proposed improvements exceeds 50 percent of the assessed value of the building, must make required improvements. For improvements totaling at least 50 but less than 75 percent of the structure value, a corresponding percentage must come into compliance; improvements totaling 75 percent or more of structure value must bring the three subject site features into full compliance with the current ordinance. The timeframe for calculating cumulative improvements is five years (versus the open-ended timeframe in Arlington).

For example, a commercial building with nonconforming street parking with an assessed value of \$100,000 proposes remodeling totaling \$50,000 (50 percent of the assessed value). If at the time of the remodel there were 10 spaces, but the ordinance would require 20 for the subject use, the applicant would be required to provide 50 percent of the 20 spaces, or 10 more spaces, bringing the total number of spaces on the site to 20 (and thus meaning the site would be in complete compliance).

A similar scale applies to expansions, setting the bar for partial compliance at 15 percent and full compliance at 50 percent. A safety-valve provision allows for a waiver in

cases where the site has physical constraints that prevent upgrading certain elements.

### An Open-Ended Approach to Coming ‘Toward Compliance’

Anchorage, Alaska, landed on a creative and unusual approach. A new code adopted in 2015 introduced a range of development quality standards that had not been regulated before in Anchorage. Planners and local officials were looking for opportunities to raise the bar for development quality, but in a way that allowed maximum flexibility. The new code sidestepped the “nonconforming” label by designating any development that did not meet use-specific or design/development standards (except stream/water body protection) as “conforming” if legally established prior to code adoption (§21.12.060 et seq.).

However, new multifamily, commercial, commercial marijuana, community use, and industrial development that does not meet new code requirements must spend a portion of project costs on achieving compliance with new code standards. The requirement kicks in for projects that require some type of approval under the zoning ordinance and cost more than 10 percent of the assessed value of structure (or the assessed value of the land if no structure over 150 square feet exists). Such projects must spend a minimum 10 percent of total project costs on “bringing development toward compliance.” If full compliance can be achieved for under 10 percent, no additional monies must be spent. If the applicant chooses to spend over 15 percent, the excess may be credited

toward future improvements. The planning director, in consultation with the applicant, determines how the money should be spent, with a focus on “how to maximize the public benefit and minimize the economic impact to the property owner.” If there are no good or feasible options for how to spend the funds, the applicant may place the funds into a municipal account dedicated to public improvements.

## CONCLUSIONS

This brief survey illustrates a variety of approaches in how local governments are striking a balance in dealing with nonconformities. There are fewer one-size-fits-all approaches and more nuanced experimentation underway.

For planners considering how best to strike the appropriate balance in their own communities, several considerations should be kept in mind:

- **Plan implementation.** A more aggressive approach that prioritizes the timely phasing out of nonconformities may be the quickest path to implement new plans and policies.
- **Different types of nonconformities.** Consider identifying the less impactful nonconforming situations and making it easier for them to continue and maybe even expand, and ultimately become conforming. Tools like a special permit process, rezoning, and exemptions from new standards can be effective ways to strike the right balance.
- **Uniformity and ease of administration.** How easy will it be to administer the preferred approach? While tailored strategies that apply different rules to different parts of the community or treat some uses differently than others may make sense from a policy perspective, they could require more time to administer, to explain to the public, and to enforce.
- **Pressure for infill and redevelopment, especially on challenging sites.** The relative pressure for redevelopment and infill can play a role in how nonconformities are treated. Would a lighter touch on expansion of nonconformities result in more community reinvestment?
- **Neighborhood opposition or support.** Tailored solutions to nonconformities often come about because of input from the

neighbors most impacted. Stakeholder outreach can be especially important in determining the best approach to this complex, often controversial issue.

- **Zoning map updates.** A new zoning code is sometimes accompanied by a new map, and the mapping process provides an opportunity to ensure that conditions

on the ground match the new zoning tools (especially the district boundaries and the uses allowed). A new zoning map should not be so different from existing conditions that many new nonconformities are created.

## ABOUT THE AUTHOR

Matthew Goebel, AICP, is a director in the Denver office of Clarion Associates. He works principally in the areas of zoning, planning, and historic preservation. His projects have included development codes and growth management plans for a variety of large and small jurisdictions around the country. Goebel is coauthor of the PAS Reports *The Rules that Shape Urban Form and Aesthetics*, *Community Character*, and *the Law* and principal author of award-winning studies of the economic benefits of historic preservation and regulatory barriers to affordable housing.

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## VOL. 37, NO. 8

The American Planning Association provides leadership in the development of vital communities for all by advocating excellence in planning, promoting education and resident empowerment, and providing our members with the tools and support necessary to ethically meet the challenges of growth and change.

*Zoning Practice* (ISSN 1548-0135) is a monthly publication of the American Planning Association. Joel Albizo, FASAE, CAE, Chief Executive Officer; Petra Hurtado, PhD, Research Director; Joseph DeAngelis, AICP, and David Morley, AICP, Editors.

Subscriptions are available for \$95 (U.S.) and \$120 (foreign). Missing and damaged print issues: Contact APA Customer Service (312-431-9100 or [subscriptions@planning.org](mailto:subscriptions@planning.org)) within 90 days of the publication date.

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Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

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DOES YOUR ZONING CODE  
TREAT ALL NONCONFORMITIES  
THE SAME?

8





City of Ketchum

## **ATTACHMENT C:**

### **Parking - redline**

#### 4. Design

Bicycle parking spaces shall contain a stationary device or devices, secured to the ground, to which bicycles can be locked. Each bicycle parking space shall be accessible without moving another bicycle.

#### 5. Surfaces

Bicycle racks shall be located on paved or pervious, dust free surface. Surfaces cannot be gravel, landscape stone or wood chips.

### H. Parking Demand Analysis<sup>144</sup>

#### 1. Purpose

A parking demand analysis is a study indicating that the requirements of this section regarding the number of off-street vehicle parking spaces required are not applicable to the proposed project because the project contains a unique mix of uses, the operational method is atypical, the use is not listed, or location or contextual factors affect the amount of off-street parking spaces required.

#### 2. Eligibility

A parking demand analysis may be submitted by an applicant for any project in any zoning district or as required for shared parking and transportation demand management plans.

Parking reductions for Parking Demand Analysis not required for shared parking and transportation demand management plans require approval of a Conditional Use Permit.

#### 3. Potential Parking Reduction

Up to 50 percent of the total required on-site vehicle parking spaces may be granted. ~~waived if the Administrator finds the remedies proposed, that may include a shared parking plan and a transportation demand management plan, are sufficient to reduce the parking demand generated by the project.~~

#### 4. Submittal Requirements

A parking demand analysis shall be prepared in the following manner to demonstrate that the requirements of Table 16-13: *Minimum Off-Street Parking and Loading Requirements* are not applicable:

- a. The parking demand analysis shall be prepared by a registered professional engineer licensed in the State of Idaho.
- b. A project description shall be included. The project description shall include, but is not limited to:
  - (1) Project location context map;
  - (2) Gross and net square footage of existing and proposed uses that will be part of the new development under review; and

<sup>144</sup> Reorganized Content and updated headers for clarity.

- (3) Table containing off-street parking and loading requirements for each use as required by this section.
- c. A narrative analysis considering the following minimum factors shall be submitted:
  - (1) Discussion of the project's mix of uses, operational method, unique nature of uses, and location, contextual, or other factors affecting the amount of off-street parking and loading spaces required;
  - (2) Existing site plan;
  - (3) Proposed site plan;
  - (4) Discussion of site specific parking needs.
- d. A narrative describing proposed measures to be taken to reconcile the project's parking demand with off-street parking and loading required for the project.
- e. A shared parking plan and/or a transportation demand management plan may serve as the remedy in part or in full.
- f. The City may require additional information as part of the parking demand analysis.

## 5. Criteria for Approval

The ~~Administrator shall review~~Commission shall review the parking demand analysis and accompanying remedies and upon finding that the analysis uses the appropriate methodology and includes an acceptable and reasonable remedy that can be implemented the analysis shall be approved or approved with conditions. Remedies contained in the analysis are binding and may only be modified through a ~~written finding made by the Administrator~~an amendment to the Conditional Use Permit.

## I. Shared Parking Reduction

### 1. Purpose

Dedicated parking areas for individual uses, especially when provided in new developments, can result in less efficient land usage, lower floor area ratios, and more significant impacts and implications for multi-modal transportation and the quality of the pedestrian environment. Shared parking is a strategy that can reduce the amount of land devoted to parking while providing a sufficient number of spaces and encouraging development that is compact, walkable, bikeable, and conducive to transit. ~~A reduction of up to 25 percent of on-site vehicle parking requirements may be approved by the Administrator. A parking demand analysis shall be submitted as part of a shared parking plan.~~

### 2. Eligibility

A shared parking reduction may be requested through a Conditional Use Permit submitted by an applicant for any project in any zoning district.

### 3. Potential Parking Reduction

a. A reduction of up to 25 percent of on-site vehicle parking requirements may be granted.

~~a.b.~~ The total required parking spaces may be reduced through the provision of shared parking spaces. Shared parking spaces may be provided in areas designed to serve jointly two or more buildings or users.

**b.c.** All shared parking shall be located no less than 300 feet from the uses utilizing the shared parking, as determined by measuring along existing sidewalk or sidewalk that shall be constructed as a condition of approving the shared parking reduction from the primary entrance of the use(s) to the location of shared parking spaces.

#### 4. Submittal Requirements

A shared parking plan shall be submitted for review ~~and is subject to approval by the Administrator~~. The plan shall, at minimum, identify or contain:

- a. A parking demand analysis pursuant to §16.04.050.H;
- b. The hours of peak parking demand for each use;
- c. All locations of parking spaces on private property used through shared parking and identified on a location context map;
- d. All public parking that can be accessed within a 1,000-foot walk as measured along sidewalk connecting to the site of the subject uses.
- e.** The plan shall include an agreement between property owners for sharing common parking on private property. However, in no case will the City manage shared parking agreements.
- f.** The City may require additional information as part of the parking demand analysis.

#### 5. Criteria for Approval

A reduction to parking requirements for individual uses may be made after considering the following standards and criteria:

- a. The hour(s) of peak parking demand for each use, with peak demand being different or staggered;
- b. The operating hours of each use, with operating hours being staggered; and
- c. There is existing on-street parking available for public use within a 1,000-foot walk as measured along the sidewalk connecting to the site of the subject use.

### J. Transportation Demand Management (TDM) Plan

#### 1. Purpose<sup>145</sup>

The purpose of a transportation demand management (TDM) plan is to mitigate traffic and other general transportation impacts generated from new development by reducing single-occupancy vehicle trips, increase accessibility to transit, improve mobility of pedestrians and bicyclists, address traffic congestion at peak periods, and minimize parking demand.

#### 2. Eligibility

For projects with a FAR greater than 0.5 a TDM plan may be provided to demonstrate that alternative strategies will be used to offset the demand for parking. Parking reductions resulting from a TDM plan shall be reviewed and approved by the Administrator.

<sup>145</sup> New.

### 3. Potential Parking Reduction

A reduction of up to 25 percent of on-site vehicle parking requirements may be ~~approved by the Administrator~~ **granted**. ~~Transportation demand management plans shall consider at least three of the following strategies:~~

- ~~a. A shared parking plan subject to the standards found in §16.04.050.I.~~
- ~~b. Covered bicycle parking provided inside buildings, under roof overhangs or awnings, in bicycle lockers, or within or under other structures. When not located within a building or a locker the cover shall be permanent, designed to protect the bicycle from rainfall, and at least seven feet above the floor or ground.~~
- ~~c. Secure bicycle parking in a locked room or area enclosed by a locked gate or fence, in an area that is monitored by a security camera, or in an area that is visible from employee work areas.~~
- ~~d. On-site locker room and shower facilities.~~
- ~~e. Provision of a public transit stop or demonstration of proximate access to an existing transit stop.~~
- ~~f. Demonstration of proximate access, within 1,000 feet, to the Wood River Trail.~~
- ~~g. Construction of a "spur" connecting the subject property to the Wood River Trail.~~
- ~~h. Reserved preferential parking spaces for high occupancy vehicles.~~
- ~~i. Reserved preferential parking spaces for hybrid, electric, or alternative fuel vehicles.~~
- ~~j. Installation of on-site electric vehicle charging stations.~~
- ~~k. Publicly accessible permanent display area for information on TDM strategies and options for alternative transportation modes.~~
- ~~l. Shuttle service.~~
- ~~m. Contribution to public transit or alternative modes of transportation fund(s).~~
- ~~n. Employer programs such as:~~
  - ~~(1) Car/van pool coordination and incentive programs;~~
  - ~~(2) Shuttle program;~~
  - ~~(3) Guaranteed emergency ride home program; and~~
  - ~~(4) Public transit passes.~~
- ~~o. Alternative strategies approved by the Administrator.~~

### 4. Submittal Requirements<sup>146</sup>

A TDM plan shall be submitted ~~for review and is subject to approval by the Administrator~~. The plan shall, at minimum, identify or contain:

- a. A parking demand analysis pursuant to §16.04.050.H;
- b. A listing of measures to minimize transportation demand and impacts on the City's transportation network. These measures may include, but are not limited to providing

<sup>146</sup> New.

public transit accessibility, pedestrian or bicycle amenities, shuttle service, preferential parking designation for carpool and/or vanpool or remote work opportunities;

- c. The anticipated peak hour trips without the measures and the anticipated peak hour trip reduction resulting from these measures;
- d. The number of employees and/or residents that the project will add;
- e. Number of employees and/or residents anticipated to utilize transportation alternatives for commuting;
- f. Barriers to employees and/or residents for utilization of transportation alternatives for commuting;
- g. Suggested recommendations to address barriers for utilization of transportation alternatives for commuting;
- h. Public transit amenities, including bus shelters, benches, wayfinding signage and street furniture; and
- i. Location of on-site preferential parking designation for carpool and/or vanpool, if provided.
- j. Narrative outlining any request for fee in-lieu payments for parking and justification for such request.
- k. The City may require additional information as part of the parking demand analysis.

## 5. In Lieu Fee<sup>147</sup>

- a. The City may adopt or have adopted parking and/or transportation demand plans that include planning for and construction of parking and/or transportation mitigation projects. When such a plan or plans are in existence, a proposer may voluntarily opt to request and the City may consider requests to meet or mitigate parking requirements, in whole or in part, via an optional payment in lieu as an alternative where such City project, as determined by the City, is likely to meet or mitigate the transportation demand created by the development.
- b. Such parking in lieu fees will be determined by the City Council and set by resolution based upon planning, acquisition, and construction estimates and costs related to the parking and/or transportation mitigation plans and projects.
- c. Payment of in lieu fees shall be made to the City at the time of issuance of a building permit.
- d. All in lieu funds received under this section shall be placed into a special and separate Transportation Improvement and Acquisition Fund to be used primarily for transit improvements and parking management programs, such as paid parking, that address the demand for physical parking on-site; and secondarily for the purchase, construction, and improvement of public parking facilities.

<sup>147</sup> Relocated from current 17.125.100.

**6. Criteria for Approval<sup>148</sup>**

The Administrator may approve a TDM plan if the plan ~~Transportation demand management plans shall consider~~ at least three of the following strategies ~~and the Administrator finds that the TDM plan is reasonable approach that can be implemented based on uses and site specific conditions:~~

- a. A shared parking plan subject to the standards found in §16.04.050.I.
  - b. Covered bicycle parking provided inside buildings, under roof overhangs or awnings, in bicycle lockers, or within or under other structures. When not located within a building or a locker the cover shall be permanent, designed to protect the bicycle from rainfall, and at least seven feet above the floor or ground.
  - c. Secure bicycle parking in a locked room or area enclosed by a locked gate or fence, in an area that is monitored by a security camera, or in an area that is visible from employee work areas.
  - d. On-site locker room and shower facilities.
  - e. Provision of a public transit stop or demonstration of proximate access to an existing transit stop.
  - f. Demonstration of proximate access, within 1,000 feet, to the Wood River Trail.
  - g. Construction of a "spur" connecting the subject property to the Wood River Trail.
  - h. Reserved preferential parking spaces for high occupancy vehicles.
  - i. Reserved preferential parking spaces for hybrid, electric, or alternative fuel vehicles.
  - j. Installation of on-site electric vehicle charging stations.
  - k. Publicly accessible permanent display area for information on TDM strategies and options for alternative transportation modes.
  - l. Shuttle service.
  - m. Contribution to public transit or alternative modes of transportation fund(s).
  - n. Employer programs such as:
    - (1) Car/van pool coordination and incentive programs;
    - (2) Shuttle program;
    - (3) Guaranteed emergency ride home program; and
    - (4) Public transit passes.
  - o. Alternative strategies approved by the Administrator.
- ~~meets the standards set forth in §16.04.050.J.3 above.~~

**16.04.060. Landscaping, Buffering, and Screening****A. Standards for All Development<sup>149</sup>**

The following standards shall apply to all development, unless otherwise noted in this Code..<sup>150</sup>

<sup>148</sup>

<sup>149</sup> Relocated from current 17.124.170 and applied broadly.

<sup>150</sup> New.



City of Ketchum

## **ATTACHMENT D:**

# **Historic Preservation Handbook**

**[LINK](#)**





City of Ketchum

## **ATTACHMENT E:**

# **Neighborhood Meeting - redline**

- g. Applicants shall submit the associated development application within 12 months of the preapplication staff meeting.

## B. Preapplication Neighborhood Meeting

### Commentary

Many communities introduce a neighborhood meeting process (either preapplication or somewhere between application submittal and public hearing) to identify key concerns or potential issues early in the development review process. It also adds an additional layer of transparency between residents and developers.

This draft procedure allows public involvement earlier in the review process to allow residents an opportunity to speak with developers to voice concerns and learn about the project. This process is typically reserved for major projects or application types that also require public hearing; for the purpose of this draft, we have only included it as a requirement for a Conditional Use Permit and Planned Development Conditional Use Permit.

### 1. Purpose

The purpose of an applicant-facilitated neighborhood meeting is to provide an opportunity to inform the residents and landowners of the surrounding neighborhood(s) of the details of a proposed development and application, how the applicant intends to meet the standards contained in this Code, and to receive public comment and encourage dialogue early in the review process. No decision regarding the application will be made at the neighborhood meeting.

### 2. Applicability

A neighborhood meeting is required for Conditional Use Permits, Planned Unit Development Conditional Use Permits, Preapplication Design Review applications where the Preapplication Design Review is required, and Design Review applications that require a public hearing. ~~A neighborhood meeting is recommended for Alterations to Historic Structures.~~ For developments requiring both a Preapplication Design Review and Design Review, only one neighborhood meeting prior to the Preapplication Design Review public hearing is required. Neighborhood meetings shall be conducted prior to the first public hearing. A neighborhood meeting is recommended for voluntary Preapplication Design Review applications and Alterations to Historic Structures. The Administrator may waive the applicant-facilitated neighborhood meeting requirement for applications where the projected size, complexity, or anticipated impacts do not warrant the need for a neighborhood meeting.

### 3. Procedure

#### a. Notice of Neighborhood Meeting

An applicant holding a neighborhood meeting shall provide mailed notice of the meeting in the same manner that would be required for public hearings on the application pursuant to the common development review procedures. Additional notice is encouraged through alternative methods such as email, social media, and published newsletters.



City of Ketchum

## **ATTACHMENT F:**

**Design Review - redline**

## 2. Design Review<sup>259</sup>

### a. Purpose

The purpose of Design Review is to:

- (1) Maintain and enhance appearance, character, beauty, and function of the city;
- (2) Ensure that new development is complementary to the design of existing neighborhoods; and
- (3) Protect and enhance the City's economic base.

### b. Applicability

(1) Design Review is required pursuant to §16.04.080.B.

~~(A) The Administrator shall review all Design Review requests and determine whether a project is exempt pursuant to §16.04.080.B.3, approved by the Administrator, or by the Planning and Zoning Commission.~~

~~(B)(A) The Administrator is authorized to approve items identified in §16.04.080.B.2, Administrative Design Review, provided they do not conflict with the provisions and requirements of this section.~~

~~(C)(A) The Planning and Zoning Commission shall review all other application proposals as described in §16.04.080.B.1, Design Review.~~

~~(D)(A) The City Council shall approve all permanent encroachments within the City owned right of way associated with a development project and any application that includes a building greater than 48 feet in height or that contains a fourth or fifth floor in the CC districts.~~<sup>260</sup>

### c. Procedure

#### (1) Preapplication Staff Meeting

A preapplication staff meeting shall be held pursuant to §16.07.020.A for Design Review applications that require a public hearing.

#### (2) Preapplication Neighborhood Meeting

A preapplication neighborhood meeting is required pursuant to §16.07.020.B for Design Review applications that require a public hearing.

#### (3) Application Submittal and Processing

The application shall be submitted and accepted, and may be revised or withdrawn, pursuant to the common review procedures in §16.07.020.C. In addition:

<sup>259</sup> Current Chapter 17.96.030-050, 090. And 100. Reorganized for consistency with new common review procedures.

<sup>260</sup> ~~New, relocated from lot and building standards in the CC district.~~

**(A) Preapplication Design Review**

If required by §16.07.030.C.1.b, *Applicability*, a Preapplication Design Review shall be completed prior to submitting an application for Design Review.

**(B) Application Requirements<sup>261</sup>**

All Design Review plans and drawings for nonresidential projects, multi-family dwelling units of four units or more, and public and semipublic projects shall be prepared by an Idaho licensed architect or an Idaho licensed engineer.

Applicants shall submit the following:

- i. An application form including project name, location, applicant, owner, project representatives, and contact information.
- ii. One PDF electronic set of the complete application containing all requirements as listed below, plans appropriately scaled, shall be submitted. Electronic record of the materials and color sample board may be satisfied with photos. One hard copy set of scalable plans showing at a minimum the following:
- iii. Vicinity map, to scale, showing the project location in relationship to neighboring buildings and the surrounding area. A vicinity map must show location of adjacent buildings and structures.
- iv. Drainage plan (grading, catch basins, piping, and dry wells).
- v. Utilities plan (location and size of water and sewer mains and services, gas, electric, TV and phone).
- vi. Site plan, to scale, showing proposed parking (including parking stall dimensions), loading, general circulation, and snow storage. List square footage of subject property including lot dimensions.
- vii. Landscape plan (existing landscaping on the site shown and adjacent right-of-way as retained, relocated or removed; proposed landscaping including species type, size and quantity).
- viii. Floor plan. List gross and net square footage for each floor. List occupancy classification and type of construction.
- ix. Detailed elevations of all sides of the proposed building and other exterior elements (colors, materials).
- x. Exterior lighting plan, pursuant to §16.04.090, *Dark Skies* showing location, height, type, and lumen output; spec sheets for fixtures; illuminance levels/photometrics for area lighting.
- xi. One 11-inch by 17-inch materials and colors sample board showing all exterior materials used on the facade of the structure.
- xii. For projects requiring Preapplication Design Review, a model or computer simulation renderings, as described in §16.07.030.C.1.c(3)(A)v shall be required.

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<sup>261</sup> Current 17.96.040.B. and C.

- xiii. For new multi-tenant buildings, a master signage plan shall be submitted.
- xiv. Application fee.
- xv. The Administrator may waive some submittal requirements if it is determined the information is not relevant to the Design Review.
- xvi. Other information as required by the Administrator or the Planning and Zoning Commission.

### **(C) Mountain Overlay District**

For projects within the Mountain Overlay District:<sup>262</sup>

- i. In addition to the application requirements listed above, the applicant shall submit topography of sufficient detail to represent slope of land, significant rock outcrops, cuts and fills required and similar features; elevations of proposed building pads and public streets providing access, private access drives; preliminary utility extension plans, drainage plans and driveway plans; and description of proposed drilling or blasting, if any.
- ii. On-site information may be required prior to any on-site visit to the subject property by the Planning and Zoning Commission. On-site information shall be placed a minimum of seven days prior to the on-site visits and shall include stakes marking boundaries of buildings, centerlines of access drives or other elements of the proposal and poles illustrating proposed heights of structures.<sup>263</sup>
- ~~iii. On-site review by the members of the Planning and Zoning Commission is required prior to taking action on a Design Review application. Extreme weather conditions or inordinate depth of snow may cause the Commission to delay on-site review not more than 180 days.~~<sup>264</sup>

<sup>262</sup> Current 17.104.060 – did not duplicate basic preapplication design procedural details.

<sup>263</sup> Deleted “and also may include recent photographs evidencing impact(s) of the proposed development from various vantage points” as that information is covered by renderings required in the application materials.

<sup>264</sup> This section being discussed with City Attorney.

#### (D) Process Determination

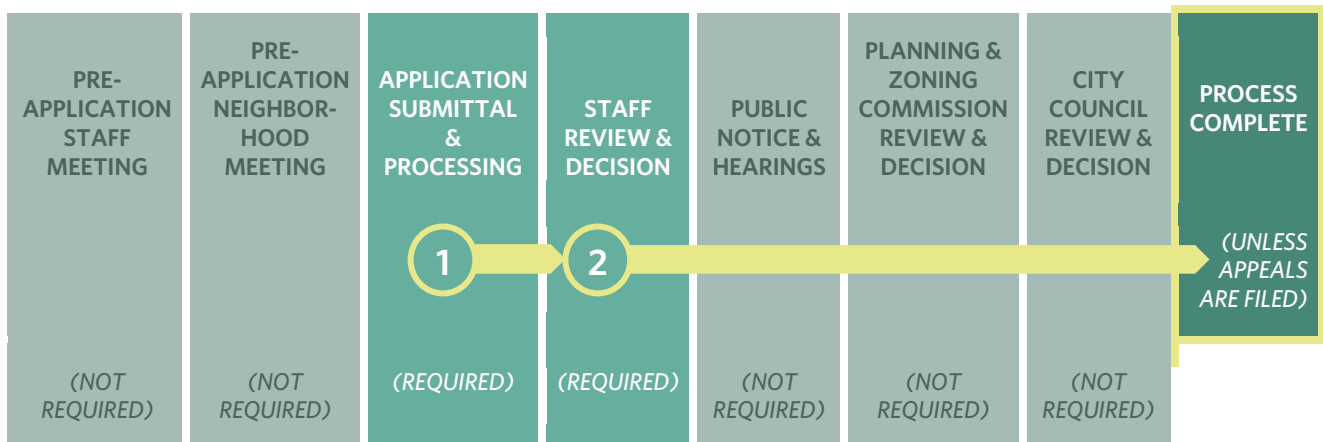
Following submittal of all required materials, ~~the~~ the Administrator shall review all Design Review requests and determine whether a project is exempt pursuant to §16.04.080.B.3, approved by the Administrator, or by the Planning and Zoning Commission pursuant to §16.04.080.B.

~~The Administrator is authorized to approve items identified in §16.04.080.B.2, Administrative Design Review, provided they do not conflict with the provisions and requirements of this section.~~

~~The Planning and Zoning Commission shall review all other application proposals as described in §16.04.080.B.1, Design Review.~~

~~The City Council shall approve all permanent encroachments within the City-owned right-of-way associated with a development project and any application that includes a building greater than 48 feet in height or that contains a fourth or fifth floor in the CC districts.~~<sup>265</sup>

#### (4) Review and Action: Administrative Approvals



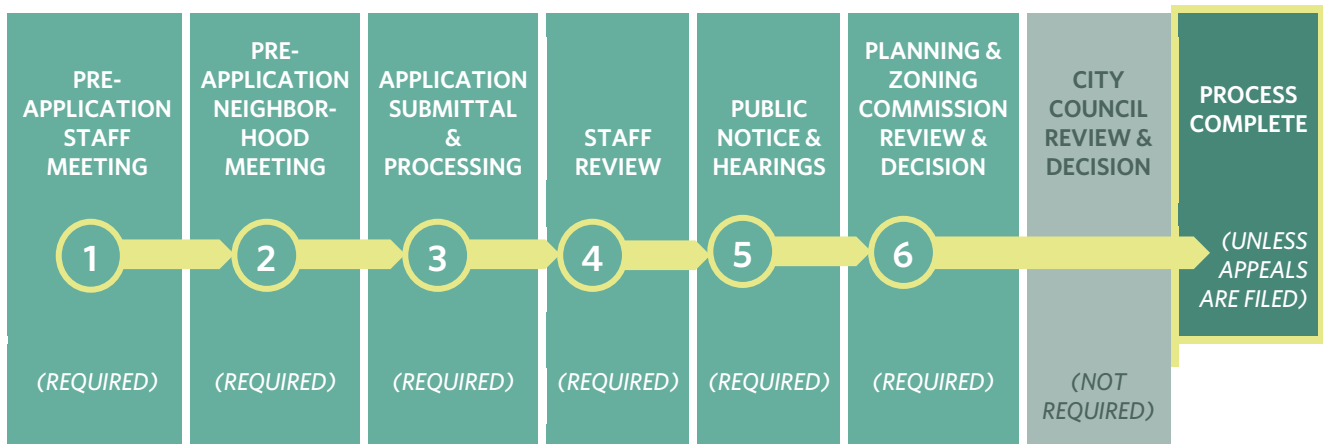
The Administrator is authorized to approve items identified in §16.04.080.B.2, Administrative Design Review. The application shall be reviewed pursuant to the common review procedures for applications subject to administrative decision in §16.07.020.D. In addition:

#### (A) Security

At the discretion of the Administrator, the applicant may, in lieu of actual construction of any required or approved improvement, provide to the City a security agreement pursuant to §16.07.020.E.8, *Performance Bonds and Security Agreements*.

<sup>265</sup> New, relocated from lot and building standards in the CC district.

### (5) Review and Action: Public Hearing Approvals



The Planning and Zoning Commission shall review all applications as described in §16.04.080.B.1, Design Review. The City Council shall approve all permanent encroachments within the City-owned right-of-way associated with a development project and any application that includes a building greater than 48 feet in height or that contains a fourth or fifth floor in the CC districts. 266 The application shall be reviewed pursuant to the common review procedures for applications requiring a public hearing in §16.07.020.E. In addition:

~~The application shall be reviewed pursuant to the common review procedures for applications requiring a public hearing in §16.07.020.E. In addition:~~

#### (A) Security

At the discretion of the Administrator, the applicant may, in lieu of actual construction of any required or approved improvement, provide to the City a security agreement pursuant to §16.07.020.E.8, *Performance Bonds and Security Agreements*.

### (6) Expiration of Approval

- (A) The term of Design Review approval shall be 12 months from the date that findings of fact, conclusions of law, and decision are adopted by the Commission; or, upon Appeal, the date the approval is granted by the City Council.
- (B) A complete application with all fees paid shall be made for a Building Permit with the Planning and Building Department during the 12-month term.
- (C) Unless an extension is granted as set forth below, failure to file a complete Building Permit application for a project pursuant to these provisions shall cause the approval to be null and void.

<sup>266</sup> New, relocated from lot and building standards in the CC district.