# WOODLAND PLANNING COMMISSION AGENDA

Planning Commission Regular Meeting – 7:00 PM

**Thursday, October 17, 2013**

Woodland City Council Chambers
100 Davidson Avenue, Woodland, Washington

**CALL TO ORDER – 7:00 PM**

**APPROVAL OF MINUTES**

- September 19, 2013 meeting minutes

**WORKSHOP**

- Non-Conforming Uses Draft Ordinance
  - Staff Report
  - Review City Attorney memo
  - Review draft ordinance

- Expiration of approved Variances
  - Staff Report
  - Review timelines from other jurisdictions
  - Review draft ordinance

- Status on Planning Commission's 2013 work items

**ADJOURN**

cc: Post (City Hall Annex, Library, Post Office, City Hall)
City of Woodland website
Planning Commission (5)
City Council (7)
Mayor
Department Heads

# WOODLAND PLANNING COMMISSION MEETING MINUTES

Planning Commission Regular Meeting – 7:00 PM

**Thursday, September 19, 2013**

Woodland City Council Chambers
100 Davidson Avenue, Woodland, Washington

**CALL TO ORDER –7:01:03 PM**

| | |
|---|---|
| **PRESENT:** | Commissioner Debra Deans<br>Commissioner Tel Jensen<br>Commissioner David Simpson<br>Commissioner Sharon Watt |
| **ABSENT:** | Commissioner Mike Amirenini |
| **STAFF:** | Clerk III Shannon Rychel<br>Community Development Planner Amanda Smeller<br>Public Works Director Bart Stepp |

**APPROVAL OF MINUTES**

July 18, 2013 Meeting Minutes (held over from last meeting) Commissioner Deans moved, seconded by Commissioner Jensen, to approve. Motion passed unanimously.

August 15, 2013 Meeting Minutes Commissioner Watts moved, seconded by Commissioner Jensen, to approve. Motion passed unanimously.

**PUBLIC HEARING**

- Comprehensive Plan Map Changes/Rezone Requests
- **Liberty Evans (LU #213-916)**
    - Staff report, Amanda Smeller- Rezone 3.4 acres of industrial to highway commercial. Proposal made last year and was denied. We have had several letters both for and against rezone. Response is that is against the Comprehensive Plan.
    - **Commissioner Watts**- Presented with rezone last year. Liberty Evans seems to be different from analysis that Amanda had. Bart stated that the City and Liberty Evans looked at the acreage from different angles so the reports had different findings.
    - **Public Comment:**
    - **Sandy Larson**- 7:08:21 PM previously had rezone issue when she was on planning commission. In the end the planning commission rezoned to light industrial. Pleased that there are so many light industrial businesses in that area.

The value as light industrial is huge. Please strongly consider keeping it light industrial.

- **Darlene Johnson** 7:12:49 PM it was a struggle to get it rezoned from agriculture to light industrial and once it got rezoned it has brought great economic wealth to the community. Across the freeway there is plenty of land available for commercial use. Use the land that is available for commercial purpose. Industrial based jobs have been good to Woodland. The light industrial land is ideal for industrial with the railroad right there.
- **Sandy Larson**- as part of the planning commission they were looking 20 years ahead. She suggests the current Planning Commission do the same.
- **Mark Fleischauer**-Liberty Evans- Purchased prop in 2010. Carving out a small piece of commercial land will help spur business in the Walmart area. With the new high school coming in there will be need for fast food restaurants, hotels, retail, etc. Commercial land will also blend in well with surrounding commercial businesses and the high school. Only asking to rezone 3.4 acres.
- **Skip Earling**- The light and industrial and commercial do mix. Employees for light industrial would benefit from having availability of commercial easily accessible on their lunch breaks and after work. School funding would also benefit from commercial businesses in that area.
- **Darlene Johnson**- The more industry we have the less citizens have to pay in taxes for school. You are going to get better paying jobs from industrial businesses than commercial businesses.
- Close public comment 7:38:32 PM

Commissioner Watt moved, seconded by Commissioner Deans, to deny recommendation to council. Motion passed unanimously.

- **Schurman Trial Run Trust (LU #213-914)**
  - Staff Report, Amanda Smeller- 1.23 acre property on Lewis River Road. Property is considered 2 parcels since it's bisected by Lewis River Road. Seeking to rezone eastern portion of the property from High Density Residential to Commercial.
  - 7:46:24 PM Open to Public Comment
  - **Sandy Larson**- If the zone has not been changed how did it get to be anything but an office space? That corner is dangerous for any type of commercial activity. The added extra traffic in that spot is really dangerous. Traffic has continued to get heavier. Does not think it's a good idea.
  - **Becky Schurman**- They separated the property in Woodland a couple years ago. Kei told her they could not have 5 continuous pieces of property, therefore he made them combine 2 pieces of property that had different zoning. He picked the zoning for the combined property. They are only trying to rezone it back to what it originally was zoned. They are trying to sell the property.
  - **Aaron Wheaton**- This impact on this corner is going to be huge. You have to look at the sports complex traffic that will be added to this as well.
  - **Janna Schurman**- This property was always one piece of property. Historically has been commercial use. Asking for the zoning to be consistent with the use of the property.
  - Close public comment 7:55:07 PM

Commissioner Watt moved, seconded by Commissioner Jensen, to recommend approval to City Council for rezone. Motion passed unanimously.

- **City of Woodland (LU #213-922)**
    - Staff report-7:57:54 PM 5 city owned properties to rezone to Public/Quasi-Public/Institutional property. Currently residential and light industrial. The properties include property on Scott Hill Rd and E. Scott Ave. There is no proposal for park at this time. If we left the park property High Residential then it would make the park a conditional use property. The main access would be through Scott Hill Road and the second would be through Meriwether. The intention is the land that the city owns will be used for a park.
    - Public Comment 8:03:52 PM
    - **Erin Wheaton**- opposes rezone because of traffic increase past residence. Requests that all parking be kept on the complex, all improvements should be made by private funds.
    - **Sandy Larson**- Rotary rep. In 2010 rotary wanted to do something for Woodland. There was supposed to be a park on the East side which never happened. The City bought the land but did not have the money to develop it. Rotary brought the plans forward for the park. There is no place for local kids to play. Residents are leaving the area to do sports. The tournaments would be on occasion but the use of the park will always be there. The park will be less of an impact on Meriwether. 8:16:36 PM
    - **Karen Uno**- Think it's a great vision and appreciates it. Noticed that the turn lane has been great but how backed up it was during construction. There is a lot of traffic. Is there a place that they can do this that has a less impact on traffic?
    - **Darlene Johnson** 8:20:37 PM – Support of zone change. When the city purchased that land it has become a desirable spot for a park. All the traffic and parking will be handled when the time comes. The park will be self contained.
    - **Kurt Snead-** House below complex. For the park. Traffic flow is a concern. Just need to make good decision on road access.
    - **Allen Schwindt**- For sports complex. Impact on neighborhood regarding parking, vandalism, traffic.
    - **Joy Snead**- In favor for park and road. Park would be a large asset to woodland. Park would bring in tourism and give kids something to do. They also have a self sustaining plan that will not be a burden on the city budget. We need to move forward with zone change to make this happen.
    - **Richard Brown** 8:35:48 PM – The area is beautiful and the hill is a special area. Would like, as we move forward, to be considerate of the beautiful surroundings. There will be significant amounts of people at the complex.
    - **Karen Uno-** Also brings up the noise level. 8:40:54 PM
    Close public Comment8:43:31 PM

Commissioner Deans moved, seconded by Commissioner Jensen, to send approval for rezone to City Council. Motion passed unanimously.

- Comprehensive Plan Text Change- requesting to allow auto oriented uses in central business district.

    - Auto-Oriented Uses within the C-1 District
    - No Public Comment

Commissioner Jensen moved, seconded by Commissioner Deans, to reject comprehensive plan text change. Motion passed unanimously.

**UPDATES/WORKSHOP**
**Items to be moved to next meeting.**

- Non-Conforming Uses Draft Ordinance
- Shoreline Master Program Status Update
- Status on Planning Commission's 2013 work items

**ADJOURN: 9:01 pm**

Commissioner Watt moved, seconded by Commissioner Jensen, to adjourn. Motion passed unanimously.

**Staff Report: Non-Conforming Uses, Structures, and Lots**

**Date:** September 10, 2013
**To:** Planning Commission
**From:** Amanda Smeller, Community Development Planner
**Re:** Non-Conforming Uses, Structures, and Lots – updated draft ordinance

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The Planning Commission reviewed a draft update Non-Conforming Ordinance (titled Pre-Existing Uses and Structures) in late 2012 and early 2013, which ended with a recommendation to send the draft to Council. The Public Hearing for this ordinance was in July 2013. The City Council passed the first reading in August 2013. Prior to the final reading, City Attorney Bill Eling brought forth concern regarding some language in the proposed ordinance, specifically that of expansion/intensification of existing non-conformities. He provided some background and text from other jurisdictions (attached).

With this information, staff reworked the proposed ordinance. Using the existing ordinance, proposed language, and language from other jurisdictions, staff moved around, added, and clarified some language. A few questions remain for discussion with Planning Commission as they are additions since the previously reviewed proposed ordinance:

1. The new proposed ordinance has sections for non-conforming uses, non-conforming structures, and non-conforming lots. Do we want to include other sections such as for non-conforming signs? Other sections?
2. Staff has now included a definition section. Are there other definitions you would like to see added?
3. Staff added the stipulation under 17.60.050 that the Hearing Examiner may recognize a legal non-conforming use and/or may authorize reinstatement of a non-conforming use. Does the Commission want to keep this possibility of remove it?
4. Other discussion.

# *Law Office of William J. Eling*

***9401 N.E. Covington Road, No. 102*** ***[360] 260-1189***
***Vancouver, Washington 98662*** ***[360] 892-9991 fax***


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***MEMO***

TO: Mayor Grover Laseke and the Woodland City Council

FROM: William J. Eling, City Attorney WJE

RE: Ordinance No. 1278 Pre-Existing Uses and Structures

DATE: September 3, 2013

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Staff and the Planning Commission have prepared and presented Ordinance No. 1278 for Council action. A few modifications were proposed for WMC 17.60.040. In part this Section states "A pre-existing use or structure which is nonconforming may be continued and maintained in reasonable repair and safe condition; provided that the use or structure is not enlarged, increased, made more non-conforming, or extended to occupy a greater area than was occupied on the date of adoption of the ordinance . . ." Proposed change to WMC 17.60.050 adds New Section (c) which would allow nonconforming uses "to expand with special permission of the hearing examiner through a conditional use permit."

While the Section appears clear at first glance, it is not clear that the Code regulates an "intensification" of use. Although an argument could be made that an increased use is an intensification, it is not clear. Context for the distinction between enlargement and intensification is found in Keller v. City of Bellingham, 92 Wn.2d 726 [1979]. In Keller, the Washington Supreme Court reviewed the application of a Bellingham ordinance stating "A nonconforming use shall not be enlarged, relocated or rearranged after the effective date of the ordinance which made its use nonconforming." Georgia-Pacific commenced a plant modernization plan which added six electrolytic cells to produce liquid chlorine to a building designed to hold 32 such cells. GP's plant had begun producing liquid chlorine in 1965. In 1969 Bellingham prohibited the manufacture of chlorine in heavy manufacturing zones. The production would occur in a building designed and built before 1965 to accommodate that number of cells.

GP argued that adding the cells did not constitute the "unlawful enlargement" of a nonconforming use, but rather was an intensification of a nonconforming use and therefore, not prohibited under the Bellingham ordinance. The Court in a 5-4 decision ruled that "[a]lthough the Bellingham zoning ordinance could have specifically prohibited intensification of a nonconforming use by reference to a specified volume of such use, it did not do so." Keller, at 731. Neighbors had challenged the expansion because it increased chlorine production by 25% on the site. The Court found that this expansion did not create a fundamental change in the nonconforming use.

WMC 17.60.040 should include a reference to intensification of use. Furthermore, the ordinance would be clearer if it included examples of what is meant by enlargement and intensification. For example, the current City of Bellingham includes a reference to "intensification" and utilizes a hearing examiner process to allow for conditional use permits in those situations where an applicant can demonstrate that the nonconforming use is compatible with adjoining properties. A copy is attached for your reference. Also attached is the City of Minnetonka's attempt at defining expansion, enlargement and intensification. It includes reference to both residential and commercial properties.

In addition, the Council may wish to consider including a provision which requires that a nonconforming use be lawfully established under both the zoning law and other legislative enactments. In June the Washington Supreme Court issued an opinion regarding provisions which allow a use to vest as nonconforming. See King County Department of Development and Environmental Services v. King County, et al., 177 Wn.2d 636 [2013]. The case involved a materials recycler who claimed that nonpermitted activity on a leased parcel was sufficient to establish a nonconforming use. The case involved both the expansion of the operation and whether the use had been established in accordance with the law in effect at that time. The Court held that " . . . when a landowner utilizes unlawful methods to establish a nonconforming use, that unlawfulness precludes a subsequent finding of a lawful nonconforming use." In recent years, the Washington appellate courts have denied nonconforming use status to trespassers and, in dicta [non-binding, speculative part of an opinion] that a failure to comply with other non-zoning licensing requirements was sufficient to deny establishment of a nonconforming use. See First Pioneer Trading Co. v. Pierce County, 146 Wn. App. 606 [2008] and McMilian v. King County, 161 Wn. App. 581 [2011].

Even though many municipal codes in Washington are silent regarding intensification, I submit it is important that the characteristics of enlargement and intensification be included in the Code. Further, the Council may consider whether failure to comply with non-zoning licensing requirements should be a factor in determining the establishment of a nonconforming use.

Planning

**Permit Center**
210 Lottie Street
Bellingham, WA 98225
phone: 360-778-8300
fax: 360-778-8301
www.cob.org

# CONDITIONAL USE PROCEDURE ADDENDUM

## EXPANSION OF A NON-CONFORMING USE

(Excerpt from Bellingham Municipal Code, Chapter 20.14, unless noted)

**CHAPTER 20.14**

**.020 USES**

**A.** Any existing use lawfully established prior to the passage of this ordinance, which is not permitted in the Use District in which it is located is hereby declared a nonconforming use and not in violation of this ordinance.

**B.** A nonconforming use shall not be relocated, expanded, enlarged, or increased in intensity unless such activity is approved through issuance of a Conditional Use Permit as provided by paragraph E below. Such prohibited activities shall include without being limited to:

1. Any activity, which would require a building permit other than repair or replacement of existing structures or improvements.
2. Extension of a nonconforming use to any building or other structure or land area other than one occupied by such use on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that causes such use to become nonconforming).
3. Extension of a nonconforming use within a building or other structure to any portion of the floor area that was not occupied by such use on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that causes such use to become nonconforming); provided, however, that a nonconforming use may be extended throughout any part of such building or other structure that was lawfully and manifestly designed or arranged for such use on such effective date.
4. Operation of a nonconforming use in such manner as to conflict with, or to further conflict with if already conflicting on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that results in such use becoming nonconforming), any performance standards established for the district in which the use is located.
5. Nothing contained in this section shall in any way prohibit a nonconforming use from acquiring additional off-street parking area or from installing any device, equipment, or structure whose sole purpose is to reduce any adverse environmental impact emanating from the nonconforming use.

**C.** The Hearing Examiner may grant a Conditional Use Permit for a period not more than 5 years permitting a nonconforming use to change to another use not permitted in the Use District in which it is located provided the owner clearly demonstrates (1) that the structure, because of its particular design, cannot be reasonably used to house a Permitted Use, (2) that the proposed use will be more compatible with the Permitted Uses of the Use District than was the existing use. The Hearing Examiner may condition such permit if it finds that provisions have to be taken to safeguard adjoining properties from detrimental effects that might result from the proposed use.

**D.** The Hearing Examiner may extend such conditional use permit for an additional period or may declare such use a permanent nonconforming use provided the owner clearly demonstrates that the structure cannot be reasonably used for a permitted use because of its particular design. In determining whether to grant such an extension, and if so, for what period, the Hearing Examiner shall take into account the following:

1. If the Hearing Examiner finds that the nonconforming use's contribution to the welfare of the community at its present site outweighs detriment to the neighborhood, then the Hearing Examiner may declare such use a permanent nonconforming use.

2. If the Hearing Examiner finds that the detriment to the surrounding properties outweighs the nonconforming uses contribution to the general welfare of the community, then a period should be set which provides (a) a reasonable allowance of time for amortization of investments in the building and improvements, while (b) minimizing future detriment to the surrounding properties.

3. If the Hearing Examiner finds that the detriment to the surrounding properties significantly outweighs any deprivation of the property owners rights in the nonconforming uses caused by termination of such use, the Hearing Examiner may order that the use be terminated within a period of one year or longer.

   The Hearing Examiner may otherwise condition the use so as to minimize detriment to the neighborhood. A time period shall be set so that the public benefit exceeds any private loss. No further extension shall be granted.

**E.** The Hearing Examiner may grant a Conditional Use Permit allowing a nonconforming use to expand, enlarge, or increase in intensity provided that:

1. The use may not expand beyond the site, lot, or parcel as defined by the legal description on the Certificate of Occupancy for a Nonconforming Use, or as owned or leased by the nonconforming use as of the date it became nonconforming in the event there is no Certificate of Occupancy,

2. Uses which are nonconforming due to the number of residential units may not add additional units,

3. The proposed modification will not result in further infringement of the provisions of this ordinance; modifications shall comply with all regulations (other than use restrictions) including but not limited to lot coverage, yard, height, open space, density provisions, or parking requirements unless waived by the Hearing Examiner through variance as provided by this ordinance,

4. The nonconforming use must be a permitted use within at least one of the General Use Types, and

5. The use must not be an industrial use in a Residential Single or Residential- Multi Duplex district. For the purpose of this section, "industrial use" shall mean any use, which is permitted only in Industrial general use type districts.

## ORDINANCE NO. 2010-11

## AN ORDINANCE AMENDING CITY CODE §§300.29 AND 710.005 REGARDING THE DEFINITION AND EXPANSION OF NON-CONFORMING USES

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The City of Minnetonka Ordains:

**Section 1.** City code section 300.29, subd 2 is amended as follows:

a) "Non-conformity" or "non-conforming use" means any land use, structure, physical form of land development, lot of record or sign that is not in full compliance with the regulations of this ordinance and either (1) was legally established before the effective date of the ordinance provision with which it does not comply, or (2) became non-conforming because of other governmental action, such as a court order or a taking by a governmental body under eminent domain or negotiated sale. A non-conformity or non-conforming use does not include a land use, structure, physical form of land development, lot of record, or sign that was allowed to deviate from this ordinance by an approved variance. A non-conformity or non-conforming use is one of two types of physical land development: a non-conforming land use or a non-conforming development.

b) "Non-conforming land use" means an activity using land, buildings, and/or structures for a purpose that is not currently allowed as a use in the zoning district in which it is located.

c) "Non-conforming development" means a non-conformity other than a non-conforming land use that does not currently conform to an ordinance standard such as height, setback, or size.

d) "Expansion," "enlargement," or "intensification" means any increase in a dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any addition of a site feature such as a deck, patio, fence, driveway, parking area, or swimming pool, any improvement that would allow the land to be more intensely developed, any move of operations to a new location on the property, or any increase in intensity of use based on a review of the original nature, function or purpose of the non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the city.

e) "Improvement" means making the non-conforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed, but does not include an expansion, enlargement, or intensification.

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# Chapter 17.60: Non-Conforming Uses, Structures, and Lots

17.60.010 Purpose
17.60.020 Definitions
17.60.030 Abatement
17.60.040 Completion of Structure
17.60.050 Non-Conforming Uses
17.60.060 Non-Conforming Structures
17.60.070 Non-Conforming Lots
17.60.080 Single-family dwellings
Other sections: signs, etc?

## 17.60.010 – Purpose

The purpose of this chapter is to provide for those circumstances, uses, and lots that are inconsistent with the regulations of this title, but which enjoy rights based on their previous legal existence. The intent of this chapter is to permit legal non-conforming developments, lots, structures, and uses to continue until they are removed but not to encourage their perpetuation.

## 17.60.020 – Definitions

- Non-Conforming Lot – A lot that, at the time of its establishment, met the minimum lot size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, no longer complies with requirements.
- Non-Conforming Structure – A structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations in regards to height, setbacks, lot coverage, size, or area.
- Non-Conforming Use – A use of property that was allowed at the time the use was established but which, because of changes in zoning regulation, is no longer permitted.
- Expansion/Enlargement – Any increase in dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any addition of a site feature such as a deck, patio, fence, driveway, parking, or swimming pool or any move of operations to a new location on the property.
- Intensification – Any improvement that would allow the land to be more intensely developed, or any increase in intensity of use based on a review of the original nature, function or purpose of the non-conforming use, the hours of operations, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the City.
- Improvement – Making the non-conforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed, but does not include an expansion, enlargement, or intensification.

- Pre-Existing – That which existed prior to the adoption of the ordinance codified in this title.
- Other?

**17.60.030 – Abatement of illegal use, structure or development**
Any use, structure, lot or other site improvement not established in compliance with use, lot size, and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal.

**17.60.040 – Completion of Structure**
Nothing contained in this title shall require any change in the plans, construction, alteration, or designated use of a structure for which a building permit has been legally issued and construction commenced prior to the adoption of the ordinance codified in this title and subsequent amendments thereto.

**17.60.050 – Non-Conforming Uses**

A. A non-conforming use may not increase in intensity or made more non-conforming without special permission by the Hearing Examiner through a Conditional Use Permit as per Chapter 17.72.
B. A structure containing a non-conforming use may be enlarged or extended only by special permission of the Hearing Examiner through a Conditional Use Permit as per Chapter 17.72. The extension of a non-conforming use to a portion of a structure which was built for the non-conforming use at the time of the passage of the ordinance codified in this title is not considered an extension of a non-conforming use.
C. No non-conforming use shall be moved in whole or in part to any other portion of the lot or zoning district in which it is located. If moved, it must be to a district in which the use is permitted.
D. If any non-conforming use ceases for any reason for a period of six months, any subsequent use shall conform to the regulations specified by this title for the district in which such use is located.
E. The Hearing Examiner may recognize a legal non-conforming use and/or may authorize reinstatement of a non-conforming use. The procedure for recognizing and/or reinstatement shall be the same as for Conditional Use Permits as outlined in Chapter 17.72 and conditions may be imposed if reinstatement is allowed.
F. A non-conforming use cannot be changed in another kind of non-conforming use, but is limited to either retaining the specific non-conforming use legally established or changed to a use permitted in the zoning district. If a non-conforming use is changed to a conforming use, it cannot be changed back.
G. If a structure containing a non-conforming use is destroyed by any cause to an extent exceeding fifty percent of the cost of replacement of the structure, using new materials, a future use of the property shall conform to the provisions of this title. See Section 17.60.080 for single-family dwelling exemptions.

**17.60.060 – Non-Conforming Structures**

A. A non-conforming structure may be continued and maintained in reasonable repair and safe condition, provided that the structure is not enlarged, extended, or increased without special permission by the Hearing Examiner through a Conditional Use Permit as per Chapter 17.72. A non-conforming structure may not be made more non-conforming.
B. A non-conforming structure may not be moved in whole or part to any other portion of the lot of zoning district in which it is located, unless to bring the structure into conformance.
C. A non-conforming structure may be utilized by a use which is permitted in the zoning district in which the structure is located. In order to accommodate a permitted use, the structure may be repaired, modified, or altered, internally and externally; provided such repairs and modifications do not increase the non-conformance of the structure and that they meet the International Building Code standards.
D. In addition, a non-conforming structure as described in C above may be modified or altered in such a manner that it conforms to the standards of the district, this title, and the International Building Code.
E. If a non-conforming structure is destroyed by any cause to an extent exceeding fifty percent of the cost of replacement of the structure, using new materials, a future structure of the property shall conform to the provisions of this title. See Section 17.60.080 for single-family exemptions.
F. A non-conforming structure that is made conforming will not be allowed to become non-conforming again, without following the Variance process outlined in Chapter 17.81.

**17.60.070 – Non-conforming Lots**

Any permitted use may be established on an undersized lot that cannot satisfy lot size or width requirements of this Title, provided that:

A. All other applicable zoning development standards, such as building setback requirements and lot coverage requirements, are met or a variance has been granted;
B. The lot was legally created and satisfied the lot size and width requirements applicable at the time of creation;
C. No unsafe condition is created by permitting development on the non-conforming lot; and
D. The lot was not created as a "special tract" to protect critical areas, provide open space, or as a public or private access tract.

**17.60.080 – Single-Family Dwellings**

A. Single-family dwellings, including manufactured homes, existing in the C-1, C-2, C-3, I-1, or I-2 districts at the time of passage of the ordinance codified in this title shall be allowed to remain, and any addition or improvements thereto shall meet the standards of the LDR-6 zoning district.
B. In any zone, a single-family dwelling destroyed by any cause to any extent, shall be allowed to be improved or reconstructed, provided the setback standards of the LDR-6 district are maintained or provided that the original footprint of the destroyed dwelling is maintained.

# Staff Report: Expiration on Approved Variances

**Date:** October 9, 2013
**To:** Planning Commission
**From:** Amanda Smeller, Community Development Planner
**Re:** Expiration on approved Variances

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## Summary

The code is currently silent on expirations for approved major and minor variances. This issue was first discussed in 2010 and is a 2013 Planning Commission Work Item.

In 2012, Council adopted an amendment to the zoning code which better defined major and minor variances, and set approval and review criteria for these variances. Adding expiration timeframes to the code was not part of this update.

Staff reviewed several jurisdictions' language in regards to timelines and possibilities for extensions of said timeline. Staff requests the Commission's input for major and minor variances, whether an extension can be sought, and the process through which to apply for one.


-AS

| Jurisdictional Comparison - Time Limit of Approval for Variances | | |
|---|---|---|
| | Expiration of Approval | Language |
| Vancouver | 5 Years<br><br>1-Year Extension | A. Time limit. Authorization of a variance shall be void after five years, unless a building permit has been issued and substantial construction has taken place. Subdivision variances shall be valid for the term of the preliminary plat.<br><br>B. Extension. Upon written request by the applicant and payment of the required fee pursuant to Chapter 20.180 VMC, the planning official may extend the authorization for a maximum of one year. |
| Ridgefield | 3 Years<br><br>1-Year Extension | Approval of a variance or adjustment shall be void after three years, unless a building permit has been issued and substantial construction has taken place.<br><br>1. The planning director and city engineer, for good cause, may extend approval for no more than one year.<br><br>2. If a variance or adjustment is specifically related to an approved phasing program, the validity of the adjustment or variance shall be limited only by the phasing plan. |
| La Center | 2 Years<br><br>1-Year Extension Possible | " . . . decisions made pursuant to this chapter expire two years after the effective date of the decision unless, within that time, the applicant or a successor in interest files an application for an extension of the decision . . .".<br><br>The director may approve a single one-year extension of a decision. |
| Camas | 1 Year<br><br>1-Year Extension | A variance so authorized shall become void after the expiration of one year, or a longer period as specified at the time of the approval authority action, if no building permit has been issued in accordance with the plans for which such variance was authorized, except that the approval authority may extend the period of variance authorization, without a public hearing, for a period not to exceed twelve months upon a finding that there has been no basic change in pertinent conditions surrounding the property since the time of the original approval. |
| Walla Walla | 1 Year<br><br>6-Month Extension | A variance shall expire after one year unless terms of the permit have begun or have been substantially completed within that time required by the approving authority. The director may extend authorization for an additional period of six months for reasons such as health, financial, or administrative problems incurred by the applicant during the permit period. The director must make a finding that the delay is justified by circumstances beyond the applicant's control, and that the six-month extension can reasonably be expected to remedy the circumstances. |
| Tacoma | 5 Years | No specific language – expiration listed in table |

# DRAFT Ordinance – Expiration of Variance Approval

**Date: January 2013**

The text highlighted and *italicized* are proposed amendments to the current code. Text ~~struck through~~ is proposed to be eliminated from the current code.

**17.81.020 - Creation of land use hearing examiner.**

The office of Woodland municipal land use hearing examiner, hereinafter referred to as "examiner," is created. The examiner shall interpret, review, and implement land use regulations and policies as provided in this chapter or by other ordinances of the city, including but not limited to the following:

A. Conditional uses per Chapter 17.72. Applications for conditional uses when the zoning ordinance sets forth the specific uses to be made subject to conditional use permits.

B. Major Variances. A major variance shall be defined as a variance to a measurable zoning standard which does not fall under a category of minor variances as outlined in WMC 17.81.180.A. The examiner shall decide upon application for major variances from the terms of this title; provided that any variance granted shall be subject to such conditions as will assume that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and:

1. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to other properties in the vicinity and in the same zone in which the subject property is located;

2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;

3. If such permit for variance is denied, no reapplication shall be made within one year from the date of denial;

4. An approved variance will go with or be assigned to the subject property and shall not be transferable to another property; and

5. No use variance shall be granted except for lawfully created pre-existing uses in accordance with WMC 17.60

*C. Expiration of approval - major variances. Approval of a major variance shall be void after ____ years, unless a building permit has been issued and substantial construction has taken place. The Public Works Director, for good cause, may extend approval for no more than _____. If a variance is specifically*

*related to an approved phasing program, the validity of the variance shall be limited only by the phasing plan. Approval expiration shall apply to all applications deemed complete on or after the effective date of this ordinance, Month, Day, Year.*

**17.81.180 - Minor variances or minor modifications to approved conditional uses or administrative conditional uses—Review and appeal authority.**

A. The following variances shall be deemed minor in nature and may be approved, approved with conditions, or denied by the development review committee (DRC) without a public hearing based on the approval criteria outlined in WMC 17.81.180.B and in accordance with the notice requirements outlined in WMC 17.81.200

1. A reduction in lot area, setbacks, lot dimensions; and, an increase in lot coverage and building height, all by not more than thirty percent of that required by the applicable standard of the zoning district in which the proposal is located;

2. Any reduction in a side or rear yard setback below the minimum setback required by the applicable standard in the light industrial (I-1) or heavy industrial (I-2) zoning district; or

3. The modification of pre-existing nonconforming structures housing permitted uses, to the extent that the modification will not cause a greater infringement than exists of any standard of the zoning district in which the proposal is located.

B. Approval Criteria for Minor Variances.

1. No variance shall be approved by the DRC which will allow an increase in the number of dwelling units on a parcel greater than that permitted by the applicable zoning district, or which will permit the reduction in area of any lot created after the adoption of the ordinance codified in this chapter;

2. All major variance criteria outlined in WMC 17.81.020.B shall be met, except where a variance is proposed to side or rear setback standards applicable to the light industrial (I-1) or heavy industrial (I-2) zoning districts. In these cases, the DRC shall consider criteria 2—5 outlined in WMC 17.81.020.B. The DRC shall also consider whether or not the requested minor variance is necessary due to the unique physical characteristics of the existing site configuration, building, and/or use and consistent with the intent of applicable standard to which the minor variance is sought.

C. The following modifications to approved conditional uses or administrative conditional uses shall be deemed minor in nature and may be approved, approved with conditions, or denied by the DRC without a public hearing based on the approval criteria outlined in WMC 17.81.180.D and in accordance with the notice requirements outlined in WMC 17.81.200

1. Construction of accessory buildings which will not alter or affect the permitted conditional use of the property.

D. Approval criteria for minor modifications to approved conditional uses or administrative conditional uses:

1. No minor modifications to an approved conditional use or administrative conditional use shall be approved by the DRC which will allow an increase in the number of dwelling units on a parcel greater than that permitted by the applicable zoning district, or which will permit the reduction in area of any lot created after the adoption of the ordinance codified in this chapter; and

2. Granting of the proposed minor modification to the approved conditional use or administrative conditional uses is consistent with the applicable zoning district requirements, and will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

E. The DRC may solicit advice from the planning commission as part of a public meeting and/or qualified professionals without a public meeting, to help determine whether the proposed minor variance or minor modification to the approved conditional use or administrative conditional use meets the approval criteria.

F. The DRC shall develop a written decision including the DRC's response to each applicable approval criteria concerning minor variances outlined in WMC 17.81.180.B or concerning minor modifications to approved conditional uses or administrative conditional uses outlined in WMC 17.81.180.D.

G. The DRC's decisions concerning minor variances or minor modifications to approved conditional uses or administrative conditional uses can be appealed to the planning commission within ten days from the date the DRC's written decision is issued. The planning commission shall review such appeals at an open record public hearing in accordance with the notice requirements outlined in WMC 19.06.070 and 19.06.080 and render decisions based on the applicable review criteria outlined in WMC 17.81.180.B or WMC 17.81.180.D, the intents of applicable standards, and applicable provisions in the Woodland Comprehensive Plan.

*(Ord. 600 § 2, 1985)*

*(Ord. No. 1219, 2-6-2012)*

**17.81.190 - Minor variances or minor modifications to approved conditional uses or administrative conditional uses—Procedure.**

A. Valid Applicant. The proper owner or the owner's authorized agent, or a non-owner resident may file an application for a minor variance or minor modification to an approved conditional use or administrative conditional use. Where the applicant is a non-owner resident, the owner or owner's agent shall co-sign the application.

B. An application for a minor variance or minor modification to an approved conditional use or administrative conditional use shall be accompanied by the following:

1. A site plan of the property involved that is to scale showing all property lines, existing and proposed structures and off-street parking;

2. In the case of a variance from the height limitations, front and side or longitudinal cross-sections of the proposed structure(s) showing grade and building elevations;

3. A filing fee as determined by the city council;

4. The applicant's response to each applicable approval criteria outlined in WMC 17.81.180.B or WMC 17.81.180.D; and

5. Other information as determined by the DRC that is necessary to demonstrate the proposed minor variance or minor modification to the approved conditional use or administrative conditional use permit meets the approval criteria and other applicable standards in the Woodland Municipal Code and policies and goals in the comprehensive plan.

*(Ord. 600 § 3, 1985)*

*(Ord. No. 1219, 2-6-2012)*

**17.81.200 - Minor variances or minor modifications to approved conditional uses or administrative conditional uses—Notification.**

Upon receipt of a valid application, the city clerk-treasurer or designee shall notify in writing the applicant, the owner of record of the subject property, the planning commission, and the owners of record of all properties located within three hundred feet that the requested minor variance or minor modification to an approved conditional use or administrative conditional use is being reviewed and approved, approved with conditions, or denied by the DRC based on the applicable approval criteria. The city shall mail such notices at least fourteen days prior to the date the DRC makes the final decision on the proposal. Such notices shall provide a fourteen-day public comment period. Not later than five days following the rendering of the DRC's written decision, copies thereof shall be mailed to the applicant, the owner of record of the subject property, and those who have submitted to the city a non-anonymous written comment during the fourteen-day comment period.

***17.81.210 - Minor variances — Expiration of Approval.***

*Approval of a minor variance shall be void after ___ years, unless a building permit has been issued and substantial construction has taken place. The Public Works Director, for good cause, may extend approval for no more than _____. If a variance is specifically related to an approved phasing program, the validity of the variance shall be limited only by the phasing plan. Approval expiration shall apply to all applications deemed complete on or after the effective date of this ordinance, Month, Day, Year.*

# *2013 Planning Commission Work Items*

*March 19, 2013*

Non-negotiable 2013 Work Items

1. **Shoreline Master Program (SMP) Update**
   - The City received a $50,000 grant to update its SMP by June 2014. Consultant work products must be reviewed by staff and the Planning Commission. The City's consultant made one presentation to the Planning Commission in 2012. It is estimated that five of the Planning Commission's agendas in 2013 will include Shoreline issues.

2. **Comprehensive Plan and Map Amendments**
   - The City is required to consider proposed comprehensive plan amendments annually. It is currently unknown if the City will see amendment proposals in 2013.

Committed to Completing in 2013

3. **Sign Code Review**
   - Council approved a review of the sign code on May 7, 2012. The purpose of the review is to address vehicles used as signs. In addition, staff has become aware of a number of conflicting or confusing provisions of the sign code that should be clarified. This includes provisions related to the size of "for sale" / "for lease" signs, the location of special event signs, signs in the right of way, and off-premise commercial signs. Although this was added to the list of 2012 work items, no work has been done on this item to date.

4. **Non-conforming Uses Zoning Code Text Change (LU# 211-913)**
   - Amendments are being sought to address a number of issues. The existing code uses terms such as "actively used" that are undefined and difficult to interpret. Further, our existing code is unclear on what changes in use are (un)acceptable when dealing with a property with non-conforming use rights. Finally, the Hearing Examiner's Final Order on the 208 Buckeye (Foglia House) matter called into question current code language and the way the ordinance has been administered.

Proposed 2013 Work Items

5. **Comprehensive Site Plan Review Ordinance**
   - For all intensive purposes, the City has been operating without a site plan review ordinance. The current code says little to nothing about what site plan approval is, when it is required, submittal requirements, the approval process, the expiration period on approvals, revisions to approved plans, and approval extensions. Site plan approval is the most common land use process in the City of Woodland and there is a need to address the inadequacies of the current code.

6. **Expiration on Approved Variances**
   - The code is currently silent on the period for which variance approval extends. This issue was first brought up in 2010.

7. **Subdivision Phasing After Preliminary Approval**
   - During the 2012 Joint Session, Commissioner Simpson asked that subdivision phasing after preliminary approval be added to the list of possible 2013 work items. Review would entail reviewing provisions in WMC 16.14.030 that allow for phasing after preliminary plat approval.

**8. Amending Multi-family Zoning Standards**

- Mr. Perry expressed concern during the March 2013 joint session meeting about the quality of apartment housing in Woodland. Specifically, he mentioned parking availability, garages, and the general quality of apartment housing. Mr. Perry will forward the Planning Commission example ordinances that he feels have worked well in other communities.

**9. Low-density Residential Yard Standards**

- After listening to a citizen's concerns regarding yard maintenance in low-density residential districts, the Council asked that a list of concerns go first through Council Committee and then to the Planning Commission. Carolyn Johnson is to develop a list for Committee based on Mr. Patrick's concerns.

Likely Additions to 2013 Work Schedule