

COMMUNITY DEVELOPMENT

MEMORANDUM

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

To: Planning and Zoning Commission
From: Andrew Fangman, Assistant Community Development Director
Date: August 13, 2019
Re: An Ordinance Amending Title 10, Chapter 24, Nonconforming Regulations
(Continued from the July 9th Meeting)

As part of an ongoing effort to update the zoning ordinance, staff has prepared an initial draft of revised regulation for nonconforming situations for the Planning and Zoning Commission's consideration.

A nonconforming situation is a land use, structure, lot, or development that was legal when established but does not conform to the standards of the current zoning ordinance. City Code, with certain restrictions and regulations, allows for such nonconforming situations to lawfully be retained. This commonly referred to as "grandfathered" or "grandfathering." The regulations for such nonconforming situations are currently contained within Chapter 24 of Title 10 of City Code.

There are four broad categories of nonconforming situations. They are as follows:

Nonconforming Use - A use that, when established was allowed, but, which subsequently due to a change in City Code is no longer allowed at a given location. For example, a small neighborhood corner store located in a residentially zoned area.

Nonconforming Structure - A structure that was originally constructed established in conformance with the setback, building height, or other requirements of City Code that relate to the design of a structure, but which subsequently, due to a change City Code, is no longer in conformance. For example a home that was constructed in what is now a required side yard setback.

Nonconforming Lot - A lot of record that was established in conformance with the minimum lot area, width, and frontage requirements of City Code, but which subsequently, due to a change in City Code, is no longer in conformance with one or more of these requirements. For example a lawfully platted lot that does not meet the minimum size requirements of the zoning district in which it is located.

Nonconforming Development - An element of a development, such as a parking area, a loading area, landscaping, screening, or signage, that was established in conformance with City Code, but which subsequently, due to a change in City Code, is no longer in conformance with the current applicable standards. For example, a gravel parking lot established prior to the requirement that parking lots be hard surfaced.

Nonconforming situations are allowed to legally continue so long as they are not: abandoned, enlarged or expanded, destroyed, changed to conforming. A nonconforming situation is considered abandoned when any of the three following criteria are met. When the intent of the owner to discontinue the use is apparent. When the characteristic equipment and the furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within one year. When a nonconforming use is replaced by a conforming use.

Under current regulations if a nonconforming building or use is damaged by fire, explosion, or other catastrophe to such an extent that the cost of restoration would be less than 50% of the assessed value of the building at the time of the catastrophe, such building or use may be rebuilt or restored and used again as previously. Such rebuilding or restoration is required to be completed within twelve months after such catastrophe, and the building as restored shall not be greater in volume or floor space than the original nonconforming structure.

As part of an ongoing effort to update the zoning ordinance, staff has prepared an initial draft of revised regulation for nonconforming situations for the Planning and Zoning Commission's consideration. The proposed draft language is attached to this memo.

A major focus of this initial draft is to make the regulations regarding nonconforming situations easier to understand. While similar, there are critical differences in the way that nonconforming uses, lots, structures, and developments are regulated. The manner in which current City Code is written makes it very difficult for the reader to distinguish the difference between the regulations regarding these four distinct nonconforming situations. The proposed draft remedies this by creating a distinct subsection of City Code that individually addresses nonconforming, uses, lots, structures, developments.

The proposed language would make a significant change by allowing a non-conforming single-family home that has been more than 50% damaged to be rebuilt without a variance. This is being proposed, because to my knowledge the Zoning Board of Adjustment has never denied a variance to allow someone to rebuild their damaged home. If a variance is always granted, a code change to allow for this by right is good practice.

Because of the larger potential effect on adjoining and nearby areas, nonconforming multifamily residences and nonresidential structures that are more than 50% destroyed or damaged will still need to obtain a variance from the Zoning Board of Adjustment to permit reconstruction. These regulations will also not apply to any structure in the designated floodplain and flood channel districts. The City's floodplain management regulations which are contained in Chapter 4 and 5 of Title 10 contain specific regulations regarding the maintenance, repair and reconstruction of structures shall apply. This is so that the City's floodplain

management regulations are compliant with Title 44 Code of Federal Regulations 60.3, such compliances are necessary for residents and businesses to be eligible to participate in the National Flood Insurance Program.

The proposed draft would also allow that on any single, lawful nonconforming lot located within a zoning district which permits single-family detached residential dwellings, one such dwelling may be constructed by right, provided that setbacks (yards), height, lot coverage, and off-street parking requirements of the zoning district within which the parcel is located are complied with, and all appropriate permits are obtained prior to any construction activity. There are a number of lots which do not meet current size and street frontage standards, but which were lawfully created prior to the implementation of such standards. A number of these are vacant, allowing for the construction of new homes, meeting setback and parking standards, will allow for these parcels to be put back to productive use and for infill development, which is a major goal of the adopted Comprehensive Plan.

Under current regulations, parking lots that do not meet current standards do not have to be brought up to standard unless their use as parking lot has ceased for a period of one year, regardless of any other changes occurring on the parcel. During the recent discussion on parking lot surfacing standards the issue of what situation should trigger the requirement for a parking lot to be brought up to current standards came up. A review of other communities' policies shows that there are three, common, situations in which these communities require parking lot to be brought up to their current standards. All three situations are included in this draft, so that the Commission can discuss all three and determine which if any should be adopted in Muscatine. They are as follows.

1. The use, lot, or structure with which the parking lot is associated is expanded by 25% or more of the building area existing at the time of adoption of this title.
2. The change in the principal use of the parcel upon which the parking lot is located upon.
3. There is development of any additional or expansion of existing driveways, parking areas or driving areas on the parcel.

Proposed draft regulations start on following page.

Title 10 – Zoning

Chapter 24 – Nonconforming Situations Regulations

Sections

10-24-1 Purpose

10-24-2 Types of Nonconforming Situations

10-24-3 Regulation of Nonconforming Uses

10-24-4 Nonconforming Single-Family Uses

10-24-5 Regulation of Nonconforming Lots

10-24-6 Regulation of Nonconforming Development

10-24-7 Existence of Nonconforming Situations

10-24-8 Nonconforming Situations in the Flood Plain and Flood Channel Districts.

10-24-1 Purpose

The purpose of this chapter is to regulate nonconforming situations, sometimes called “grandfathering”. Nonconforming situations are created when the zoning designation is changed or the zoning regulations are changed such that an existing lawfully established use, structure, lot, or development no longer complies with the zoning regulations. The intent of these regulations is not to force all nonconforming situations to be immediately brought into conformance. Rather, the intent is to guide future uses and development in a direction consistent with City policy, to protect the character of an area by reducing the potential negative impacts from nonconforming situations, and, over time, to bring development into compliance with the City's regulations. Conformity or nonconformity runs with the land, not with the owner.

10-24-2 Types of Nonconforming Situations

- A. Nonconforming Use:** A "nonconforming use" is a use that, when established, was a permitted use, or was allowed as an approved conditional use, but which subsequently, due to a change in the zoning district or to the requirements of City Code, is no longer allowed.
- B. Nonconforming Structure:** A "nonconforming structure" is a structure or portion of a structure that was established in conformance with the setback, building height, building width, lot coverage standards, or other requirements or standards of City Code that relate to the design of the building or structure, but which subsequently, due to a change in the zoning district or to the requirements of City Code, is no longer in conformance with one or more of these standards.

- C. Nonconforming Development:** "Nonconforming development" is an element of a development, such as a parking area, a loading area, landscaping, screening, signage, or other elements not directly covered elsewhere in this chapter, categories that were established in conformance with City Code, but which subsequently, due to a change in the zoning district or to the requirements of City Code, is no longer in conformance with the current applicable standards.
- D. Nonconforming Lot:** A "nonconforming lot" is a lot of record that was established in conformance with the minimum lot area, width, and frontage requirement of City Code, but which subsequently, due to a change in the zoning district or the requirements of City Code, is no longer in conformance with one or more of these requirements

10-24-3 Regulation of Nonconforming Uses

- A. Applicability**

This section applies to all nonconforming uses that are not single-family residences, non-conforming single-family residences are governed by Section 10-24-4.

- B. Authority to Continue**

Except with regard to the termination by discontinuance or abandonment of a use, as provided for below, any lawfully existing nonconforming use may be continued so long as it remains otherwise lawful, subject to the restrictions set forth below.

- C. Repair and Maintenance.**

Incidental repairs and routine maintenance of a structure that contains or is accessory to a nonconforming use is permitted unless such repairs increase the extent of nonconformity or are otherwise expressly prohibited by provisions of this chapter. Nothing in this chapter shall be construed to prevent structures from being structurally strengthened or restored to a safe condition in accordance with an official order of a public official.

- D. Enlargement, Alteration, or Remodeling**

A structure that contains or is accessory to a nonconforming use shall not be constructed or altered in such a way as to enlarge the nonconforming use. Ordinary repair, maintenance, and remodeling are allowed as long as the nonconforming use is not enlarged. For purposes of this provision, changes made to provide safe access to a building for persons with disabilities is not considered an enlargement.

- E. Extension of Use**

A lawful existing nonconforming use may be extended or expanded throughout an existing building provided that such extension or expansion does not require that the structure devoted to the nonconforming use be structurally altered or enlarged; and provided further that the extension or expansion of the use shall not be allowed unless the off-street parking and loading spaces required for such extension or expansion are provided in accordance with the requirements of Section 10-27-2.

F. Change of Use

1. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.
2. A nonconforming use may be changed to a use of the same or more conforming classification and such use thereafter shall not be changed to a less conforming classification.
3. The Board of Adjustment may grant a variance to allow a nonconforming use, which is located in a structure not designed for a use allowed in the zoning district, to be converted to a nonconforming use in a different use category or subgroup that is the same or lesser in intensity than the existing use, provided the following conditions are met:
 - a. The proposed use will be located in a structure that was designed for a use that is currently not allowed in the zoning district, for example a storefront commercial building located in a single-family residential zoning district.
 - b. The proposed use is of the same or lesser level of intensity and impact than the existing use. The Board of Adjustment will make a determination regarding the relative intensity of the proposed use by weighing evidence presented by the applicant with regard to such factors as anticipated traffic generation, parking demand, hours of operation, residential occupancy, noise, dust, and customer and/or residential activity. The Board of Adjustment may also consider qualitative factors such as whether a proposed use will serve an identified need in the surrounding neighborhood.
 - c. The proposed use is suitable for the subject structure and site.
 - d. The structure will not be structurally altered or enlarged in such a way as to enlarge the nonconforming use. Ordinary repair and maintenance and installation or relocation of walls, partitions, fixtures, wiring, and plumbing is allowed, as long as the use is not enlarged.

G. Accessory Uses

No use, including parking and signage, that is accessory to a principal nonconforming use shall continue after the principal use has ceased or been terminated unless the accessory use thereafter conforms to all provisions of this title.

H. Outdoor Storage

Outdoor storage areas shall not be expanded, nor shall they be relocated closer to any adjoining residential use.

I. Damage or Destruction

Any structure, that contains or is accessory to a nonconforming use, which has been destroyed or damaged by fire, explosion, act of God or by a public enemy to the extent of less than 50% of the assessed value of the structure at the time of damage or destruction, may be restored for the same nonconforming use as existed before such damage. However, the nonconforming use must not be enlarged to more than what existed before such damage occurred. Any such restoration must be completed within one year of the date the structure was destroyed or damaged; otherwise, the property must revert to a conforming use.

J. Discontinuance or Abandonment

A nonconforming use shall be deemed abandoned if the building, structure, or use is discontinued for a period of one year. Said building, structure, or property shall not thereafter be returned to such nonconforming use and shall be used only in conformity to and with these regulations. A nonconforming use shall be considered abandoned:

1. When the intent of the owner to discontinue the use is apparent; or
2. When the characteristic equipment and the furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within one year; or
3. When a nonconforming use is replaced by a conforming use; or
4. When a nonconforming use has been changed to another use under proper permit from the Zoning Board of Adjustment.

K. The casual intermittent, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use on the part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

10-24-4 Nonconforming Single-Family Uses

Except with regard to the occupancy, any single-family use, structure for a single-family use, including any accessory structures, and any lot on which a single-family use is located, that was established lawfully prior to the establishment of the currently applicable development regulations and, due to a change in the regulations, is no longer in conformance with the provisions of this title, will be treated as conforming for as long as the dwelling is used for a single-family use and all applicable provisions of this section are complied with:

A. A nonconforming single-family use may be reestablished and its structure reconstructed if the structure for the nonconforming single-family use is destroyed or damaged by fire, explosion, act of God or by a public enemy.

- B.** A nonconforming single-family use may also be expanded, repaired and structurally altered, provided such expansion or alteration does not increase or extend any other nonconforming situation on the property.
- C.** A nonconforming structure that contains a single-family use may be restored to the same degree of nonconformity or less if destroyed or damaged by fire, explosion, act of God or by a public enemy. Such a structure may also be repaired or structurally altered, provided such construction does not increase or extend the degree of nonconformity and does not increase or extend any other nonconforming situation on the property.
- D.** A nonconforming accessory structure to a single-family use may be restored to the same degree of nonconformity or less if destroyed or damaged by fire, explosion, act of God or by a public enemy. Such a structure may also be repaired and structurally altered, provided such construction does not increase or extend the degree of nonconformity and does not increase or extend any other nonconforming situation on the property.
- E.** A nonconforming lot that contains a single-family use is granted the same rights as listed in subsections A, B and C of this section, and will be treated as if the lot were conforming.

10-24-5 Regulation of Nonconforming Lots

- A.** On any single, lawful nonconforming lot located within a zoning district which permits single-family detached residential dwellings, one such dwelling may be constructed by right, provided that setbacks (yards), height, lot coverage, and off-street parking requirements of the zoning district within which the parcel is located are complied with, and all appropriate permits are obtained prior to any construction activity.
- B.** If two or more abutting lots (or portions thereof), one or more of which are nonconforming, become under single ownership, the land involved shall be deemed a single parcel for the purposes of this article, and no portion of said parcel shall be sold or used in a manner which diminishes compliance with lot frontage, width and area requirements.
- C.** If a portion of a legally existing lot in any district is acquired for public use, the remainder of this lot shall be considered a conforming lot.

10-24-6 Regulation of Nonconforming Development

A. Authority to Continue

Except with regard to the termination by discontinuance or abandonment of use of a nonconforming development, as provided for below, any lawfully existing use of a nonconforming development may be continued so long as it remains otherwise lawful, subject to the restrictions set forth below.

B. Repair and Maintenance.

Incidental repairs and routine maintenance of a development is permitted unless such repairs increase the extent of nonconformity or are otherwise expressly prohibited by provisions of this chapter. Nothing in this chapter shall be construed to prevent development from being structurally strengthened or restored to a safe condition in accordance with an official order of a public official.

C. Enlargement, Alteration, or Remodeling

A nonconforming development shall not be constructed or altered in such a way as to enlarge the nonconforming development. Ordinary repair, maintenance, and remodeling are allowed as long as the nonconforming use is not enlarged. For purposes of this provision, changes necessary to comply with the Americans With Disability Act is not considered an enlargement.

D. Outdoor Storage

Outdoor storage areas shall not be expanded, nor shall they be relocated closer to any adjoining residential use.

E. Damage or Destruction

Any nonconforming development, which has been destroyed or damaged by fire, explosion, act of God or by a public enemy to the extent of less than 50% of the assessed value of the development at the time of damage or destruction, may be restored as existed before such damage. However, the nonconforming development must not be enlarged to more than what existed before such damage occurred. Any such restoration must be completed within one year of the date the structure was destroyed or damaged; otherwise, the property must revert to a conforming use.

F. Discontinuance or Abandonment

A nonconforming development shall be deemed abandoned if use of the nonconforming development is discontinued for a period of one year. Said nonconforming development shall not thereafter be returned to such nonconforming use and shall be used only in conformity to and with these regulations. A nonconforming use shall be considered abandoned:

1. When the intent of the owner to discontinue the use of the development is apparent; or

2. When the characteristic equipment and the furnishings of the nonconforming development have been removed from the premises and have not been replaced by similar equipment within one year; or
3. When replaced by a conforming development; or
4. When a nonconforming use has been changed to another use under proper permit from the Zoning Board of Adjustment.

G. Additional Regulations Applying to Parking Areas, Driveways, and Other Areas Intended for Vehicular Use

In addition to all other provision of this chapter, lawful nonconforming parking areas, driveways, and other areas intended for vehicular use shall be brought into conformance with all applicable provisions of Chapter 27 of Title 10 of City Code whenever:

1. The use, lot, or structure with which they are associated is expanded by 25% or more of building area existing at the time of adoption of this title; or
2. The change in the principal use of the parcel upon which it is located upon; or
3. There is development of any additional or expansion of existing driveways, parking areas or driving areas on the parcel.

10-24-7 Existence of Nonconforming Situation

Whether a nonconforming situation exists shall be a question of fact and shall be decided by the Zoning Board of Adjustment after public notice and hearing and in accordance with the rules of the Board. The burden of establishing that a nonconforming situation is a legal nonconforming situation rests solely upon the owner of such nonconformity.

10-24-8 Nonconforming Situations in the Flood Plain and Flood Channel Districts.

A. Nonconforming Situations in the Flood Plain District

When a nonconforming situation exists in the Flood Plain District, as defined in Chapter 4 of Title 10, or Flood Plain District, and there is conflict between the regulations contained in this Chapter and Chapter 4 of Title 10, the regulations contained within Chapter 4 of Title 10 shall apply.

B. Nonconforming Situations in the Flood Channel District

When a nonconforming situation exists in the Flood Plain District, as defined in Chapter 5 of Title 10, or Flood Plain District, and there is conflict between the regulations contained in this Chapter and Chapter 5 of Title 10, the regulations contained within Chapter 5 of Title 10 shall apply.