



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

9/30/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Wood Village Plan Amendment
DLCD File Number 001-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, October 14, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Carole Connell, City of Wood Village
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative

<paa> YA/ph

FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DEPT OF

SEP 24 2010

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: *CITY OF WOOD VILLAGE*

Local file number: *PA 10-01 NCU*

Date of Adoption: *SEPT. 14, 2010*

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

To update and strengthen the "Non-Conforming Situations" Section 640 of the Wood Village Zoning Code

Does the Adoption differ from proposal? Please select one

Plan Map Changed from:

to:

Zone Map Changed from:

to:

NA

NA

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 001-10 (18286) [16347]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: *Carole Connell or
Preston Preasek*

Address:

City: *City of Wood Village* Zip:

Phone: *(503) 667 6211* Extension:

Fax Number: - -

E-mail Address: *connellpc@cmuclat.net
Prestonp@ci.wood-village.
or.us*

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE 13-2010

AN ORDINANCE OF THE WOOD VILLAGE CITY COUNCIL REVISING THE NON-CONFORMING USE SECTION 640

WHEREAS, the permissive nature of the current Non-Conforming Use code section has become problematic for the City as we try to implement development standards and encourage redevelopment to higher uses, especially in the industrial, commercial and mixed-use areas; and

WHEREAS, the City has spent significant time and resources developing mixed-use zoning along transit corridors and in the Town Center, and in addition, the industrial zones have been modified to attract more job intensive uses. The current lenient Non-Conforming Use code can be an obstacle to both City and regional job and housing goals; and

WHEREAS, ending the practice of favoring non-conforming uses will help the City to encourage timely and positive redevelopment opportunities.

NOW, THEREFORE, THE CITY OF WOOD VILLAGE ORDAINS AS FOLLOWS:

SECTION 1: Wood Village Zoning and Development Code Section 640 Non-Conforming Situations is hereby amended as attached in Exhibit A with additions shown in **bold**, deletions by ~~strikethrough~~.

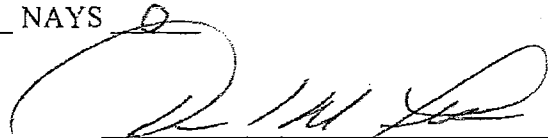
UPON UNANIMOUS CONSENT OF CITY COUNCIL, THERE BEING PRESENT A QUORUM, READ BY TITLE ONLY THIS 14th DAY OF SEPTEMBER 2010.

READ A SECOND TIME BY TITLE ONLY THIS 14th DAY OF SEPTEMBER, 2010 WITH UNANIMOUS CONSENT OF ALL MEMBERS OF THE CITY COUNCIL, THERE BEING PRESENT A QUORUM.

PASSED BY THE COMMON COUNCIL OF THE CITY OF WOOD VILLAGE, OREGON THIS 14th DAY OF SEPTEMBER, 2010.

Motion to approve by Mark Clark; seconded by Smith and adopted this 14th day of September, 2010.

YEAS 5 NAYS 0



DAVID M. FULLER
MAYOR

ATTEST


Greg Dirks, City Recorder

EXHIBIT A TO ORDINANCE 13-2010

NON-CONFORMING SITUATIONS

~~640.010 Purpose. Within the City there are lots, developments, and uses which were lawful before this Code was adopted or amended, but which would no longer be allowed under the current terms of this Code. It is the intent of these provisions to permit such non-conformities to continue, but not to encourage their perpetuation. All nonconformities are referred to as "Non-conforming Situations".~~

~~640.020 Status and Documentation of a Non-conforming Situation. The non-conforming situation regulations apply only to those situations which were allowed when established or which were approved through a land use review. Non-conforming situations which were not allowed when established have no grandfather rights and must be removed. The burden of proof is on the property owner or applicant to document that a non-conforming situation was allowed when established and was maintained over time. Evidence might consist of building permits, utility hookups, tax records, or telephone directory listings.~~

~~640.030 Types of Non-conforming Situations. A specific site may be non-conforming because it contains either a non-conforming use, an allowed residential use that exceeds that allowed density, a non-conforming development, or a combination of these.~~

~~640.040 Regulations That Apply to All Non-conforming Situations.~~

- ~~A. The status of a non-conforming situation is not affected by changes in ownership.~~
- ~~B. A non-conforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the non-conforming rights are lost and a non-conforming situation may not be re-established.~~
- ~~C. A non-conforming use may change to a conditional use if approved through a conditional use review. Once a conditional use occupies the site, the non-conforming rights are lost and a non-conforming use may not be re-established.~~
- ~~D. Normal maintenance and repair of non-conforming situations is allowed.~~

~~640.050 Loss of Non-conforming Status.~~

- ~~A. The non-conforming use of a building, structure, or land shall be deemed to have terminated if the building, structure, or land ceases to be occupied by a permitted or legally non-conforming use for any reason for a continuous period of one year. Extensions of up to two additional years may be granted under the Type II procedure if the Planning Commission finds that:~~

EXHIBIT A TO ORDINANCE 13-2010

~~(1) Conversion to any conforming use will result in a substantial economic loss and that the proposed use will result in greater conformance with the development standards of the zone or~~

~~(2) The proposed use will be compatible with both non-conforming and conforming uses in the immediate area.~~

~~B. Non-conformance with any development standards or condition other than building setback, coverage, or height shall be deemed terminated if the building, structure, or land ceases for any reason to be occupied by a permitted or legally non-conforming use for a continuous period of one year.~~

~~C. Any non-conforming use or development dependent upon a building or structure which is substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the building or structure would exceed 70 percent of its fair market value shall be deemed terminated.~~

~~(1) Cost of repair or restoration and the fair market value shall be determined by independent professional appraisal in a form satisfactory to the City. Such determinations of value and cost are appealable to the City Council. Exceptions to this standard may be applied for under the Type II procedure.~~

~~(2) The Planning Commission may grant additional degrees of reconstruction under a Type II procedure, upon finding that:~~

~~(a) Conversion to any conforming use will result in a substantial economic loss, and~~

~~(b) The proposed use will result in greater conformance with the development standards of the zone, or~~

~~(c) The reconstructed use will be compatible with both non-conforming and conforming uses in the immediate area.~~

~~D. Rebuilding of structures which have been intentionally destroyed and which contained non-conforming uses is prohibited.~~

~~640.060 Non-conforming Uses.~~

~~A. Non-conforming uses may continue to operate. Changes in operations are allowed. However, non-conforming uses in residential zones may not extend their hours of operation into the period of 10 p.m. to 6 am.~~

EXHIBIT A TO ORDINANCE 13-2010

~~B. A change to another use in the same use category is allowed by right. A change to a use in a different use category which is prohibited by the base zone may be allowed through a non-conforming use review.~~

~~C. Structural expansions shall be limited to the following:~~

Existing Gross Floor Area	% of Expansion Allowed
Building under 4,000 sq. ft.	25%
Building under 10,000 sq. ft.	20%
Building larger than 10,000 sq. ft.	15%

~~D. Non-conforming uses and buildings may expand one time only.~~

~~E. Expansion of the non-conforming use onto another site is prohibited, except in the following situation:~~

- ~~(1) The site is abutting the site of the non-conforming use; and~~
- ~~(2) The site was in the same ownership as the non-conforming site when it became non-conforming; and~~
- ~~(3) The prior zoning regulations on the expansion site would have allowed the use; and~~
- ~~(4) The expansion is approved through a non-conforming use review.~~

~~F. The addition of new residential units to a non-conforming residential use is prohibited.~~

~~640.070 Non-conforming Residential Densities. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site. There may not be a net increase in the number of dwelling units and the building may not move further out of compliance with the base zone development standards.~~

~~640.080 Non-conforming Development. This section is primarily aimed at upgrading non-conforming development elements that affect the appearance and impacts of a site. Non-conforming developments may continue unless specifically limited by Subsection (2) below or other regulations in this Code.~~

~~A. Changes may be made to the site which are in conformance with the base zone development standards.~~

~~B. Development not complying with the following standards must be brought into compliance with the base zone standards to an extent commensurate with the proposed changes.~~

- ~~(1) Landscaped setbacks for surface parking and exterior development areas;~~

EXHIBIT A TO ORDINANCE 13-2010

- ~~(2) Interior parking lot landscaping;~~
- ~~(3) Landscaping in existing building setbacks;~~
- ~~(4) Minimum landscaped area (where land is not used for structures, parking or exterior improvements);~~
- ~~(5) Screening; and~~
- ~~(6) Paving of surface parking and exterior storage and display areas.~~

~~640.090 Sites That Are Non-conforming in Parking Spaces. When a site is non-conforming in the number of required parking spaces and changes to a use or building are made that increase the number of required parking spaces, only the number of spaces related to the increase need to be provided.~~

~~640.100 Procedure. A non-conforming situation is reviewed through a Type II procedure.~~

~~640.110 Review Criteria. The request will be approved if the Planning Commission finds that the applicant has shown that all of the following criteria are met:~~

~~A. The non-conforming situation was not created unlawfully.~~

~~B. With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:~~

- ~~(1) The hours of operation;~~
- ~~(2) Vehicle trips to the site and impact on surrounding on-street parking;~~
- ~~(3) Noise, vibration, dust, odor, fumes, glare, and smoke;~~
- ~~(4) Potential for increased litter; and~~
- ~~(5) The amount, location, and nature of any outside displays, storage, or activities; and either (C) or (D) below.~~

~~C. If the non-conforming use is in a residential zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:~~

- ~~(1) Building scale, placement, and facade;~~
- ~~(2) Parking area placement;~~
- ~~(3) Buffering and the potential loss of privacy to abutting residential uses; and~~
- ~~(4) Lighting and signs.~~

~~D. If the non-conforming use is in a commercial or industrial zone, and if the changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.~~

EXHIBIT A TO ORDINANCE 13-2010

640.010 Purpose and Intent.

To carry out the purposes, goals and objectives of the Wood Village Comprehensive Plan, it is necessary and desirable that all uses and structures in each planning district be permitted under certain regulations. It is the purpose of these specific regulations to control incompatible nonconforming uses and structures so that they will be discontinued or brought into conformity with the permitted uses or structures in each planning district.

Where at the time of adoption of these standards, a use of land or structure exists which would not be permitted by the regulations herein and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful and in compliance with applicable provisions of Section 640.

640.020 Continuation of a Nonconforming Use.

Subject to the provisions of Section 640.030 and 640.090, a nonconforming structure or use may be continued and maintained in reasonable repair but shall not be enlarged or expanded except as specified in Section 640.030. The extension of a nonconforming use to a portion of a structure which was arranged or designed for the nonconforming use at the time of passage of these provisions is not an enlargement of a nonconforming use.

640.030 Enlargement or Alteration of a Nonconforming Use or Structure.

- A. A nonconforming use or structure may not be altered, enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of these provisions, except as provided in subsection B. or C. of this section. No additional structure or building shall be constructed on the lot in connection with such nonconforming use of land.
- B. For purposes of this section, enlargement or alteration of a nonconforming use or structure shall not include making repairs when such repairs are necessary to make the structure habitable or safe for occupancy; such as replacement of non-bearing walls, fixtures, plumbing, or to strengthen or restore to a safe condition a building that has been declared to be unsafe. Further, enlargement or alteration shall not include paving, landscaping and signage improvements to the site of a nonconforming use.
- C. A structure conforming as to use but nonconforming as to height, setback, coverage or other zone standards may be altered or extended, providing alteration or extension does not increase the deviation and

EXHIBIT A TO ORDINANCE 13-2010

brings the structure into conformity with the requirement.

640.040 Procedure for Authorization.

The procedure to be followed in an application for and authorization of an expansion of a nonconforming use or structure outside of the limitations described herein shall be the same review procedure as a Variance in accordance with Section 660, a Type II land use procedure.

640.050 Discontinuance or Abandonment of a Nonconforming Use.

If a nonconforming structure or use is discontinued for more than 12 months, further use of the property shall be for a conforming use. For purposes of calculating the 12 month period, a use is discontinued or abandoned upon the occurrence of the first day of any of the following events:

- A. On the date when the use of the land is physically vacated;
- B. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
- C. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
- D. On the date a request for final reading of water and power meters is made to the applicable utility provider.

640.060 Change of a Nonconforming Use.

If a nonconforming use is changed, it shall be changed to a use conforming to the regulations of the zone, and after change, it shall not be changed back again to the nonconforming use.

640.070 Destruction of a Nonconforming Structure

If a nonconforming structure or structure containing a nonconforming use is destroyed by any cause to an extent exceeding seventy (70%) percent of the real market value as recorded by the Multnomah County Assessor, or as determined by an independent professional appraisal in a form satisfactory to the City, it shall be reconstructed only in conformity with the WVZDC.

640.080 Completion of a Structure

Nothing contained in these provisions shall require any change in the plans construction, alteration, or designated use of a structure for which a building permit has been issued and construction work has commenced prior to the adoption of these provisions; except that, if the designated use will be nonconforming, it shall, for the purposes of Section 640.050, be a

EXHIBIT A TO ORDINANCE 13-2010

discontinued use if not in operation within two years of the date of issuance of the building permit.

CITY OF WOOD VILLAGE
Staff Report

June 21, 2010

To: Wood Village Planning Commission
From: Carole Connell, AICP
Through: Sheila Ritz, City Administrator

Re: Proposed Wood Village Zoning Code Amendment to replace Section 640 Nonconforming Use Situations with new standards applicable to nonconforming uses in the City.

I. Application Data

- A. Request:** City File # PA 10-01 Zoning Code Amendments; a proposal by the City to amend the Wood Village Zoning and Development Code Section 640 Nonconforming Use Situations.
- B. Public Hearings:** The Planning Commission will hold a hearing on June 28, 2010 and the City Council will tentatively hold a hearing on September 14, 2010.
- C. Location:** The proposed amendments apply to nonconforming uses in any location. Existing nonconforming uses identified to date are:
1. Gresham Transfer
 2. Residence at 23124 NE Sandy Blvd.
 3. Olinger Travel Homes
 4. Wal Mart
 5. 76 Union Service Station at NE Halsey and 238th Dr.
 6. Beanarino's Coffee Express
 7. Good Year Tire
 8. Davis Shows
 9. Drive-thru windows in the Town Center

D. Comprehensive Plan and Zoning Code Amendment Review Criteria

- Section 670.011 Zoning Code Amendments
- Section 640 Nonconforming Use Situations
- Statewide Planning Goal 2 Land Use Planning; Goal 1 Citizen Involvement; Goal 9 Economy; Goal 10 Housing
- Comprehensive Plan: Citizen Involvement; Economy; Housing, & Urbanization plan policies

E. Exhibits

- Existing Section 640 Nonconforming Use Situations
- Proposed Nonconforming Use Standards Draft 06/07/10 – Exhibit “A”

II. Findings of Fact

A. Purpose and Summary of Amendments

The purpose of the proposed amendments is to modernize the Nonconforming Situations section of the Wood Village Zoning and Development Code. The permissive nature of our current code section has become problematic for the City as we try to implement development standards and encourage redevelopment to higher uses, especially in our industrial, commercial and mixed-use areas. The City has spent significant time and resources developing mixed-use zoning along transit corridors and in the Town Center. In addition, the industrial zones have been modified to attract more job intensive uses. The lenient non-conforming use provisions can be an obstacle to both City and regional job and housing goals.

The final product will be a less lenient Nonconforming Use section in the Code. Such new provisions will encourage investment in new uses and buildings in conformance with current land use, density and design standards. Wood Village is a small community with few development opportunities, so that each parcel is an important element to building a stronger community. In order to see its economic and housing goals succeed, the City believes obstacles that prolong conversion to job-producing industry, mixed-use, higher densities and improved design must be removed. For instance, the obstacle of a single parcel with an expanding non-conforming use can discourage parcel aggregation or redevelopment on an adjoining parcel, and thus be a disincentive for market forces to overcome. Ending the practice of favoring non-conforming uses will help the City to encourage timely and positive redevelopment opportunities.

B. Summary of the Amendments

A nonconforming use or building is an existing building or use that is no longer allowed by the land use zone district it is located in, or is not in compliance with building design, dimensional or other zone standards. Such uses may continue to exist or expand, subject to the Nonconforming Use standards in Section 640 of the Wood Village Zoning and Development Code. The current Nonconforming Use Standards are proposed to be amended as follows:

As proposed:

1. A Nonconforming Use may no longer be changed to a permanent Conditional Use.

2. A Nonconforming Use shall be deemed terminated if the use is discontinued for a continuous period of one year. The existing provision for an additional two-year extension is proposed to be deleted.
3. A damaged or destroyed Nonconforming Use shall be deemed terminated if the repair or restoration would exceed 70% of the real market value as recorded by the Multnomah County Assessor, or as defined by an independent professional appraisal in a form satisfactory to the City. As proposed, no additional degrees of reconstruction may be granted by the Planning Commission.
4. Changing a Nonconforming Use to another use in the same land use category is proposed to be prohibited.
5. Expansion or alteration of a Nonconforming Use (of up to 15 - 25% of floor area) will no longer be automatically permitted. Expansion onto another site under certain circumstances will no longer be permitted, except for reasons stated in #6 below.
6. Expansion or Alteration of a Nonconforming Use (including residences) is no longer permitted except for repairs related to safe occupancy, or to increase paving, landscaping and signage improvements to the site.
7. Alteration of a Nonconforming Structure. A structure conforming as to use but nonconforming as to height, setback, coverage or other zone standards may be altered or extended, providing alteration or extension does not increase the deviation and brings the structure into conformity with the standards.

C. Notice

Public notice of the subject amendments has been mailed to all properties known to have a nonconforming use and has been posted in five places in the City to encourage public input of this legislative amendment. The Department of Land Conservation and Development has received copies of the draft amendments and background reports, as well as notice of the initial June 28, 2010 hearing. ODOT has also received notice of the amendments and they have no objections.

D. Compliance with Statewide Planning Goals and the Wood Village Comprehensive Plan Policies.

This legislative amendment to the Wood Village Zoning and Development Code (WVZDC) must be shown to be consistent with statewide planning goals and the policies of the Wood Village Comprehensive Plan. Staff has determined that the following statewide planning goals and City plan sections and policies apply to the subject request.

1. **Citizen Involvement:** The state goal for citizen involvement and the Wood Village Comprehensive Plan (page 13) “insures opportunity for citizens to participate in all phases of the planning process.” The City finds that proper public notice was published, posted and provided to all properties known to be affected by the amendments. Further, City staff held individual meetings or had phone conversations with most properties affected. A Planning Commission worksession, and at least one public hearing was open to the public to consider the proposed amendments and to satisfy this goal. The City Council will also have one work session and at least one public hearing. The City finds that minimum citizen involvement requirements have been met or exceeded.

6. **Economy:** The intent of the state and city economic planning policies is to improve the economy of Wood Village and the state as a whole. The following City Comprehensive Plan economic policies relate to this amendment:

a. **Plan Policy #5.** *Encourage redevelopment of underutilized lands and substandard structures.*

Response: The City finds that the proposed amendments could encourage the conversion of underutilized lands or substandard structures to higher value uses in conformance with current zoning district standards when such parcels are occupied by a nonconforming use. In the current proposal, a nonconforming use will have more limited expansion opportunities, and after a year of termination will not be able to resume business. The City finds that the proposed amendments to the Nonconforming Situations are consistent with this City policy.

b. **Plan Policy #6.** *Meet Metro’s Functional Plan employment targets.*

Response: The City finds that local and regional economic policies of the Comprehensive Plan target the addition of over 700 new jobs in the City by 2040. Because of a limited land supply in the City, job density will need to increase to provide an opportunity for 700 new jobs. Several existing nonconforming uses in the City’s Commercial/Industrial CI Zone utilize large asphalt lots for vehicle storage. These are low employee, land intensive uses. City economic goals strive to attract more employee-intensive industrial uses. By allowing nonconforming uses to remain, but at the same time discouraging their expansion, said businesses can remain viable until land values increase and support a change to higher value uses. However, the proposed amendments restrict the ability for such uses to expand or further invest in the nonconforming use. The City finds that the amendments support City economic goals to increase job opportunities in Wood Village.

c. **Plan Policy # 7.** *...Encourage conversion of existing residential uses to commercial and industrial uses on Sandy Blvd.*

Response: The City finds that existing single-family uses on Sandy Boulevard should be limited in their ability to expand or remain for more than a year if abandoned because residential use has not been permitted outright in the CI Zone for many years and is inconsistent with the zone's intent. The City finds that the proposed amendments encourage the conversion of residential uses to industrial or commercial uses permitted in the CI Zone.

d. Plan Policy #9. *Prohibit large-scale retail uses in the CI, LM and GM Zones in order to reserve the area for industrial, employment-intensive uses and family-wage jobs.*

Response: The City finds that several years ago Metro and local policy restricted large retail uses on lands zoned primarily for industrial uses in order to assure there would be a supply of industrial land available for new business, and to discourage retail uses with lower wage jobs from consuming industrially-zoned land. There are a number of such uses in the CI Zone that have been nonconforming for many years. The City finds the proposed amendments allow such uses to remain, but discourage new investment in those businesses. The City finds that stricter nonconforming use provisions comply with the goal to attract more family wage jobs and more employment-intensive industrial uses.

7. Housing: The Wood Village Comprehensive Plan has several housing policies that relate to and are supportive of the proposed amendments, as follows:

a. Plan Policy #4. *Encourage redevelopment of underutilized lands and substandard structures.*

Response: The City finds that underutilized lands zoned either Neighborhood Commercial NC or Town Center TC could provide higher density housing, second-story housing, or cottage-style housing near transit service to meet the demand for smaller households serving moderate household income levels. More efficient and more dense housing types will also compliment and increase support for neighborhood commercial activities in these neighborhoods. The City finds that the proposed amendments discourage the expansion of nonconforming uses and encourage redevelopment of underutilized land or substandard structures to better meet City housing and employment goals.

b. Plan Policy #9. *New housing should be located near employment and should be well connected to employment by all modes of transportation.*

Response: The City finds that fixed route transit service is available on Halsey Street within walking distance of City residential zones. A variety of housing styles are now permitted in zones near Halsey including townhouses, cottage housing and second-story dwelling units. Old zoning restrictions have been replaced with more flexibility to permit a compatible mix of uses. Housing can now be designed to mix with small-scale neighborhood commercial which each supports the other. The City finds that old nonconforming uses which are loosely allowed to remain or expand create barriers to new development patterns. New housing types that conveniently link people to transit will encourage more transit use to jobs and services.

c. Plan Policy #11. *Encourage housing on Halsey Street that is compatible with neighborhood commercial zone characteristics, such as townhouses and second-story housing above retail uses.*

Response: The City finds that proposed restrictions on the continuance or expansion of nonconforming will encourage land owners to construct new housing on Halsey Street that is compatible with the Neighborhood Commercial zone and the changing demographics and housing needs of Wood Village residents.

11. Urbanization:

a. Plan Policy # 1. *The City of Wood Village will continue to encourage infill of vacant land within the City to ease the demand on agricultural land (in the region).*

Response: The City finds that policy and zone changes over the past several years have been adopted to meet changing housing needs, to encourage mixed commercial and residential development and to develop other methods to increase efficient use of land. The City finds that the subject amendments will encourage phasing out of older nonconforming uses to make available new opportunities for infill development within the parameters of current City development policies.

E. Section 670 Zoning Code Amendment Criteria

The Code provides that amendments to modify regulations will be approved if the City finds that the following criteria are met:

- 1. The proposed amendment better achieves the goals and policies of the Comprehensive Plan and the existing regulatory language.*

Response: The City finds that the proposed amendment helps to achieve certain city housing and economic goals and policies as described by the findings herein. The proposal replaces existing regulatory language and encourages the conversion of nonconforming uses to uses that are permitted and compliant with current zone standards.

2. The proposed amendments are consistent with the Zoning and Development Code purposes and with the purpose statement for the base zone, special district, additional use regulation, or development regulation for which the amendment is proposed.

Response: Nonconforming uses are either not consistent with the purpose of the zone in which they are located, or with the development standards of the zone. The proposed amendments are intended to discourage the continuation of nonconforming uses and to encourage new development that is consistent with the intent and standards of the zone district. The amendments do not force discontinuance or conversion, but rather reduce the ability to further invest in such nonconforming uses and prolong their existence. The City finds that the proposed amendments encourage consistency with current Zoning and Development Code purposes and regulations.

3. Proposals which significantly affect a transportation facility shall assure that allowed uses are consistent with the function, capacity, and level of service of the facility identified in the City, County, and Regional Transportation Plans.

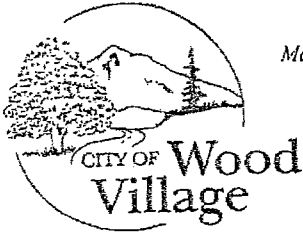
Response: The City finds that the proposed amendments to the Nonconforming Use section are not directly related to or affected by a transportation facility. Any infill development that may result from these amendments was considered at the time of such plan and code amendments. Multnomah County, Metro and ODOT have raised no objections to the proposed amendments.

III. RECOMMENDATION

Based on the above findings of fact, public testimony and recommended modifications, the subject amendments identified in Exhibit "A" are recommended to be forwarded to City Council for approval, as may be modified by the Planning Commission.

Attachments:

1. Existing Section 640 Nonconforming Situations
2. Proposed New Section 640 Nonconforming Uses – Exhibit "A" (June 7, 2010 draft)



Mayor

David M. Fuller

Council President

Patricia Smith

Councilors

Mark Clark

Stanley Dirks

Timothy Clark

**SPECIAL MEETING OF THE
WOOD VILLAGE CITY COUNCIL**

July 27, 2010

**REVISED
AGENDA**

6:00 P.M. PLEDGE OF ALLEGIANCE

1. COMMUNITY PRIDE AWARDS
2. CITIZEN COMMENTS (non-agenda items)
3. CONSENT CALENDAR
 - Temporary Use Liquor License: Yazzi's Bar and Grill – Samer Hakim
End of Summer Oktoberfest Beer Garden
 - CDBG Contract with Multnomah County for Projects FY 2011
4. Work Session: Non-Conforming Use Code Changes (recommendation from Planning Commission) – Carole Connell
5. Discussion: Selection Process for City Administrator Recruitment Consultant

REPORTS:

Public Works Director:

- Director's Report

Finance Director:

- Director's Report

City Administrator:

- Annual Performance Plan Update
- Grant Status Report
- Council Calendar

City Attorney:

Mayor and Council Comments:

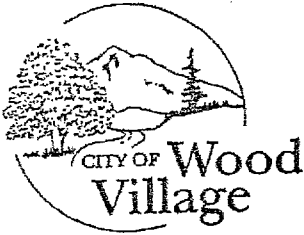
Committee Reports:

- Airport Futures Study Committee – Mark Clark
- Columbia Cascade River District – David Fuller
- EMCTC – David Fuller, Mark Clark
- East Metro Economic Alliance (EMEA) – David Fuller
- Natural Resources and Sustainability Committee – Mark Clark

Fairview/Wood Village Sewer Review Board – David Fuller, Mark Clark
Fire Services User Board – Stanley Dirks
Greater Gresham Area Abuse Prevention Partnership – Mark Clark
Regional Emergency Management Policy Advisory Committee – Patricia Smith
Neighborhood Watch – Patricia Smith
Parks & Recreation Commission – Patricia Smith

ADJOURN

The meeting location is wheelchair accessible. This information is available in large print upon request. To request large-print documents or for accommodations such as assistive listening device, sign language, and/or oral interpreter, please call 503-667-6211 at least two working days in advance of this meeting. (TDD 1-800-735-2900).



Mayor
David M. Fuller

Council President
Patricia Smith

Councilors
Mark Clark

Stanley Dirks

Timothy Clark

**SPECIAL MEETING OF THE
WOOD VILLAGE CITY COUNCIL**

**July 27, 2010
MINUTES**

PRESENT: Mayor Fuller, Council President Smith, Councilors Mark Clark, Tim Clark and Dirks, City Attorney Condit, City Administrator Ritz, Public Works Director Jones, Finance Director Minter and interested parties

ABSENT: None

MAYOR FULLER CALLED THE MEETING TO ORDER AT 6 PM.

PLEDGE OF ALLEGIANCE

COMMUNITY PRIDE AWARDS

Fuller stated that this program is to help promote pride within the community by recognizing homes and businesses for the pride and care that they take in their property. Each month in the summer, the Parks and Recreation Commission selects five properties for recognition. Fuller introduced Council President Smith who is also on the Parks and Recreation Commission. Smith gave out awards to the following people:

- John and Linda Pauker: 23860 NE Holladay Street
- Michael and Terrie Link: 24122 NE Oregon Street
- Dorris Clute and Jim Lilly: Poplar Mobile Manor #60
- Ramiro and Maria Sanchez: 1502/1504 Ne 236th Ave.
- Wood Village Town Center

The Council and audience took a few minutes to enjoy cake in honor of the Community Pride Award winners.

CITIZEN COMMENTS (Non-Agenda Items)

Michael Link from 24122 NE Oregon Street in Wood Villages asked if the City has any codes regarding tall grass. Link stated that one of his neighbors has very tall grass and blackberries and they are growing into his yard.

Jones stated that if Link would provide an address of the property, we would send a letter stating that they need to cut the grass and weeds. Fuller explained that it is difficult for the City to monitor every property so we rely on residents to help keep us informed.

CONSENT CALENDAR

- Temporary Use Liquor License: Yazzi's Bar and Grill – Samer Hakim: End of Summer Oktoberfest Beer Garden
- CDBG Contract with Multnomah County for Projects FY 2011

Upon motion by Dirks, seconded by Mark Clark and passing 5-0, the Consent Calendar was approved.

WORK SESSION: NON-CONFORMING USE CODE CHANGES

The City's contract planner Carole Connell presented the work session. Connell stated that the purpose of tonight's work session is to inform the Council of the Planning Commission's recommendations, and have a discussion with the Council about the proposed changes. Connell stated that the City initiated the work on amending the non-conforming use code section. Connell explained that the non-conforming use section has not been revised or updated since it was adopted about 17 years ago, and in comparison to other jurisdictions, it is a very permissive code.

Connell stated that a non-conforming use is when an existing building or business is no longer allowed in the zone, or does not comply with current design standards. The business and building can continue to exist, but there is a range of what can be expanded, added or modified. Connell explained that the current code is lenient, and owners can expand or modify their building or business. The current code provisions are in conflict with the master plan which calls for high use and better land utilization for employment and housing. Connell stated that the point is to eventually have all the non-conforming uses come into compliance, and have businesses that conform to the master plan and zoning standards.

Connell stated that she has consulted with Condit regarding the code, and there are no restrictions for Cities on their non-conforming use codes. Connell explained that she reviewed the International Zoning Code's non-conforming use section and it is a simple one page code that basically states a non-conforming use can exist, but that is it. Other places have a more permissive code.

Connell stated that the Planning Commission spent some time looking at the code and what would be good for the City. Connell explained that the existing non-conforming uses are listed in their packet and include Gresham Transfer which is a large land intensive storage facility for trucking. Connell stated that Gresham Transfer came to the Planning Commission hearing and they are opposed to the changes because they could sell their land under the current code for more uses than they could under the proposed code.

Connell explained that the other non-conforming uses include Davis Shows, Olinger Travel Homes/Camping World, Wal-Mart and a house on Sandy Blvd. There is also the 76 gas station on Halsey Street which is partially non-conforming. The gas station portion is non-conforming, but the retail store is conforming. Beararino's Coffee is non-conforming as is the Goodyear Tire Store and all the drive through windows in the Town Center.

July 27, 2010

Wood Village City Council Minutes

Page 2 of 9

Connell stated that the proposed code will replace the existing code entirely. The proposed code is shorter, more direct, less vague and stricter. The changes include that a non-conforming use can no longer be changed to a permanent conditional use, the non-conditional use will be terminated if the use is discontinued for a period of one year, and the non-conforming use will be terminated if the structure is damaged beyond 50% of the buildings fair market value.

Fuller asked if measures 5 and 50 would have an impact on the fair market value of a structure. Fuller stated that if the market value is tied into measure 5 and 50, it would be easy for a damaged structure to have more than 50% of fair market value damage. Connell stated that she believes that value is based on today's fair market value. Fuller stated that since the County Assessor determines the fair market value, there should be a provision in the code stating that the fair market value is based on current value, and not based on measures 5 and 50. Condit stated that there are two values that the County Assessor uses. One is a compressed value which has no relation to actual market value, and the other is the real market value which is closer to the actual cash value of a property. Condit explained that if the assessor determines the value, it may be beneficial to have in the code that it is the real market value.

Connell stated that the code states it is 50% of the value of the structure as assessed by Multnomah County. Condit stated that it would be good to have clarification that the assessed value is the real market value, not the compressed value.

Fuller stated that Wal-Mart is affected by these codes and if something happened to their structure and they could not rebuild, that would not be a good thing. Connell stated that the zoning would have to change in that area if Wal-Mart was damaged and wanted to rebuild. Another option would be to increase the damage amount over 50%.

Tim Clark asked why the Planning Commission selected 50% instead of a higher number for the damage amount. Connell stated that the Planning Commission went with the International Zoning Code language. Connell explained that with today's building codes and standards, major damage to structures do not happen often. Fuller stated that if it did happen and a good store had to go away, would it be worth it because of an arbitrary number.

Condit stated that a property owner would have the option of applying for a rezone of a property. Fuller stated that process would take some time. Connell stated that it may be worth looking into rezoning the south side of Sandy Blvd. at some point in the future.

Fuller stated that there are a number of good businesses that are non-conforming and for their sake it would be better to increase the damage amount to 70%. Dirks agreed and stated that with smoke and water damage, it would not be hard to have over 50% worth of damage. The Council agreed to change the 50% damage value to 70%.

Connell stated that the other significant change is removing the provision of allowing a non-conforming business to change to another use in the same category. Fuller asked if Connell could explain what that means. Connell stated using Gresham Transfer as an example, they are zoned Commercial/Industrial. They are classified as industrial services, which also include a lot of other uses such as storage and scrap of metal and heavy machinery, auction yards, slaughterhouses, oil/gas storage and a lot of other uses. The change to the code would not allow any other non-conforming use except for the current non-conforming use.

Connell stated that the expansion or alteration of a non-conforming use would no longer be automatically permitted. The expansion onto another site would no longer be automatically permitted either. Connell explained that Gresham Transfer did not like that proposed change. The provision limits the ability of a non-conforming use to expand or modify except for a few necessary repairs or alterations.

Connell stated that there is also a provision in the proposed code that will allow a non-conforming use to apply for a variance if they want to expand their business or operation. The Planning Commission discussed that provision because if a non-conforming use had an opportunity to expand employment, the Planning Commission wanted to give the business the opportunity to apply for a variance.

Mark Clark asked if adopting these code provisions will mean the non-conforming uses will have to go away. Ritz stated this is not the case. A non-conforming use has to be closed for a continuous year for them to forfeit their non-conforming use. Connell stated that the proposed code removes a two-year extension period.

Connell stated that if there are plans in review for permitting, those plans are still good and valid if they are active within two-years of the code's adoption.

Connell stated that there has been a work session and public hearing with the Planning Commission. All the affected property owners have been notified. Fuller asked if all the affected property owners have been talked to. Connell stated that all the properties except for the fast food resultants in the Town Center with a drive through have been.

Fuller stated that he heard a bank purchased a lot in the Town Center and a lack of a drive through may mean that they will not build there. Connell stated that they can apply for a variance. Tim Clark stated that he is concerned that prohibiting drive through windows would limit the use for that land. Fuller stated that it would limit the use for fast food restaurants and banks. Connell stated that the change to prohibit drive through windows was made over a year ago, and the long term design is to move away from the shopping center it is now and move more towards a high density, pedestrian friendly use.

Connell stated that the Town Center could be rezoned and design standards changed. Fuller asked how that would affect what could be built there. Condit stated an example from his neighborhood where a non-conforming fast food restaurant was. The restaurant closed for over a year and lost the right for a drive through window. Without the drive through window the value of the property for a fast food restaurant was low. The building was demolished and a nice higher density better use building was built. If the restaurant was allowed to keep the drive through window, the high density use would not have been built. Condit explained that higher investment will bring higher development to the Town Center. It may be better to wait and see what happens to the Town Center area before they look at a zone change.

Connell explained that at the very least, a property owner or developer could apply for a variance. Fuller asked if approving one variance sets a precedent for other variances. Connell stated that it does not because variances are done on a case-by-case basis.

Ritz stated that the proposed code provisions will be brought back to Council for a public hearing in September.

DISCUSSION: SELECTION PROCESS FOR CITY ADMINISTRATOR RECRUITMENT CONSULTANT

Fuller stated that a spreadsheet was developed to assist the Council to help compare the different firms. Fuller asked the Council if they would like to select a firm based on the information, or select their top two choices and conduct an interview. Fuller explained that it would be good to move forward on this process as soon as possible.

Fuller asked the Council which firms they liked. Mark Clark stated that he liked Protham and Waters. Tim Clark stated that he liked Prothman's two-year guarantee. Tim Clark asked how much money is available in the budget for a recruitment firm. Minter stated that \$20,000 is in the budget, but there could be more added from contingency.

Fuller stated that he liked Waldron because they just finished the recruitment for Troutdale and heard good things about them. Tim Clark stated that he likes them in part because they have a local office.

The Council decided to conduct interviews with Prothman and Waldron on Wednesday August 4th.

PUBLIC WORKS DIRECTOR'S REPORT

Jones presented the report. Jones stated that the Arata Road sewer line is in and working. Other than a few restoration items, the project is finished. Jones explained that they are still working on resolving the issues regarding Reservoir 1, but there is nothing new to report on it.

Tim Clark asked about the leaking valves. Jones stated that they have discovered leaking valves during the pressure test for the booster station alternative project, but because of other projects they have not been repaired yet. Fuller asked if the pressure tests could have damaged the valves. Jones stated that the valves needed replaced and the pressure test helped locate the leaking valves. Fuller asked if he is still hopeful that the booster station alternative project will work. Jones stated that he is still hopeful, but the valves have to be replaced first.

Jones stated that there have been meetings on the East Metro Connections Plan, but the Mayor's from the area have not met on that yet. Fuller stated that the plan needs to go to the East Multnomah County Transportation Committee first, so people can get an understanding of the project. Fuller explained that there was a suggestion of having a local match to help bring the project higher on the priority list, but most of the work will be done by Metro staff and the City should not have to supplement that.

Jones stated that the standby generator for the Shea lift station is in and functional, and the operation building has plug-ins for the large portable generator for backup power. The storm water facility plan is underway with an agreement from Keller Engineering to finish it up and bring to Council for final adoption. Staff will be doing a lot of data collection to help finish the plan, but it is underway. Jones explained that it has been a difficult year in terms of vegetation control, but the crew is keeping up as best as possible. The entrance signs have been washed and sealed. The vegetation around the signs will be removed and the area will look a lot better soon.

Jones stated that there are a couple of slides in the park that have become damaged from normal wear and tear. The City's Engineering Technician found a company that provides aftermarket repairs for that type of material, and the hope is to repair both slides with the money that was budgeted to replace one.

Dirks asked if the Community Development Block Grant money has been received for the pollution control vault on Cedar Lane. Jones stated that the money has been awarded and the project is scheduled to be completed by the end of October.

Tim Clark asked about the bottle redemption center. Ritz stated that they are planning to be in by September. Jones stated that the developers for that project filled out a customer service review card and Julie and Marie are the main reasons for the good review.

FINANCE DIRECTOR'S REPORT

Minter presented the report. Minter stated that the year-end numbers are coming together and it is looking like most revenues will come in at around 95% of their estimate. The only two that will probably fall short are the inspections income and interest income. Minter explained that the

hotel tax looks low because those taxes are paid on a quarterly basis with the final payment due July 31st.

Minter stated that total investments are around \$6.411 million. Dirks asked about the Bank of America account which looks like it is receiving very little interest income. Minter stated the City has its checking account through Bank of America, and we keep only enough money in that account to cover the checking fees. The highest interest the City is receiving is 1.25% from Riverview Bank.

Dirks asked about the two recent loans taken out for the sewer projects and the difference in interest between what we are earning and what we are paying. Minter stated that the City is paying out a substantial amount per month in interest payments. Minter explained she included recent statistics about various national economic indicators in their packet. Minter stated that according to the statistics, about 30% of all home sales are going into foreclosure and the national consumer price index is up only about 2%. On a national level, home prices are not estimated to be back to their pre-recession price until 2014.

Minter stated that the figures show that this recession has the most job loss in the past 30 years, but it is not the worst in terms of retail sales. Minter explained that the final figures show that income and sales taxes are in sharp decline, but property taxes which the City relies on are relatively stable. Minter stated that she included figures for recent homes sales and foreclosures within the City. There have been 24 homes bought in the past 12 months, and there are 16 active foreclosures within the City.

CITY ADMINISTRATOR'S REPORT

Ritz asked the Council if any of them were planning on attending the League of Oregon Cities Conference. Fuller and Tim Clark stated that they are planning to attend. Ritz asked if any of the Councilors were interested in the Historical Society Vault Tour on August 10th at 4pm. Fuller and Mark Clark stated they are planning on attending and asked if spouses can attend. Ritz stated that she would look into it.

Ritz presented an update to the Annual Performance Plan. Ritz explained that Gresham will not enter into an agreement to conduct our rental housing inspections. Assistant to the City Administrator Preston Polasek has talked with Multnomah County to conduct the inspections and we are waiting for their response. The City is also trying to contact the City of Portland to see if they would be interested in managing the inspections. Ritz stated that the cost of inspections has to be determined before the process can move forward.

Ritz stated that the water conservation plan data collection has started which is a state requirement. Once the current park project is finished, other park projects can be looked at

depending on the available funds. Smith asked when the park project will be completed. Jones stated that it will probably be finished in September, but the contractor has until October to complete the project.

Ritz stated that the Nite Out was successfully completed. Public Works is working on the cost and feasibility for inflow and infiltration repairs on two mainlines. One is on Halsey Street and the other is on 238th. Jones stated that the line on 238th should be the priority and the City could probably line about 1,000 feet of pipe with the available money.

Ritz stated that the feasibility for GIS mapping and software is underway. Staff is looking into partnering with other governments to reduce the cost of the project. Ritz explained that the Great Business award has been applied for and we are in the process of being evaluated for the award. The planning and design of the pollution control vault on Cedar Lane is in progress. Ritz explained that computer and email procedures for Council are being drafted, and one computer will be purchased for Council.

Jones stated that the Council should have received a copy of the Emergency Operations plan for their review. Jones explained that the final adoption will probably be in October or November.

Polasek presented the Grant Status report. Polasek stated that this report outlines what has been received for this fiscal year and what grants are still pending. Polasek stated that the TGM Grant for \$38,000 is still pending and will be for the next few months. Smith asked if the City has received \$116,000 so far this fiscal year. Polasek stated that is correct. Tim Clark asked how that compares to last year. Polasek stated that it is hard to compare one year to another because different opportunities arise from year to year. Polasek explained that last year the City received about \$94,000 from federal funds to construct a sidewalk on the south side of Halsey Street, and those things come and go. Community Development Block Grant money is more consistent, and the City applies for those every year. Tim Clark asked if there are enough resources for the City to find and apply for all available grants. Polasek stated that he applies for all the grants that are realistic for the City. There are many grants that do not apply to the City because we are not rural.

CITY ATTORNEY'S REPORT

Condit stated that with the casino measures in doubt and with no Council meetings scheduled in August, the Council may want to pass a motion to allow the Mayor to redact the Council resolution referring the casino measure to the voters of the City. Condit explained that the City's measure does not have to be filed until September 2, 2010, so there is time to see what will happen with the two statewide measures.

COUNCIL ACTION: WOOD VILLAGE CASINO BALLOT MEASURE

Upon motion by Tim Clark, seconded by Dirks and passing 5-0, the Mayor was authorized to make a decision not to file the Wood Village Casino ballot measure if it appears that the statewide casino measure will not qualify for the November general election.

COUNCIL REPORTS

Mark Clark provided an update from the Airport Futures Study Group.

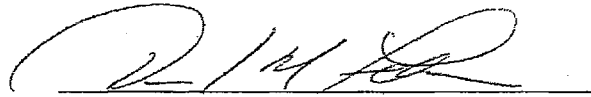
Fuller stated that the Eat Metro Economic Alliance had a good meeting a few weeks ago.

Mark Clark stated that he would like to organize a park clean-up day. Smith stated that she would like to work with him on that.

Smith stated that she held a neighborhood watch meeting last Sunday, and overall things are quiet in the City.

ADJOURN

With no further business coming before the Council, and upon motion by Smith, seconded by Tim Clark and passing 5-0, the Council adjourned at 7:50 pm.



David Fuller
Mayor

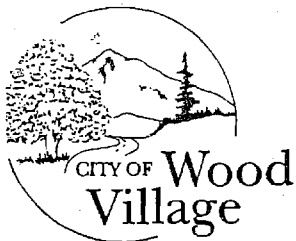
9-21-2010

Date

ATTEST:



Greg Dirks
City Recorder



Mayor

David M. Fuller

Council President

Patricia Smith

Councilors

Mark Clark

Stanley Dirks

Timothy Clark

**CITY OF WOOD VILLAGE
NOTICE OF PUBLIC HEARINGS**

PLANNING COMMISSION

CITY COUNCIL

**PROPOSED AMENDMENT TO THE
CITY OF WOOD VILLAGE ZONING & DEVELOPMENT CODE
SECTION 640 – NON-CONFORMING SITUATIONS**

**THIS IS TO NOTIFY YOU THAT THE CITY OF WOOD VILLAGE HAS
PROPOSED A PLAN AND LAND USE REGULATION THAT WILL AFFECT
THE PERMISSIBLE USES OF YOUR PROPERTY.**

This notice is provided in order to comply with ORS 227.160 to 227.185 which requires the City to print the following sentence: "The City of Wood Village has proposed Ordinance No. 2-2002. The City of Wood Village has determined that the adoption of this ordinance will affect the permissible uses of your property and may reduce the value of your property." **On the contrary, the City of Wood Village has not determined this action will reduce the value of your property.**

Notice is hereby given that the **WOOD VILLAGE PLANNING COMMISSION** will hold a **PUBLIC HEARING** on **MONDAY, JUNE 28, 2010 AT 6:00 P.M.**, at 2055 N.E. 238th Drive, City Hall, Wood Village, Multnomah County, Oregon.

Notice is further given that the **WOOD VILLAGE CITY COUNCIL** will conduct a public hearing on the same matter, at the Wood Village City Hall, 2055 N.E. 238th Drive. The City Council is scheduled to conduct its public hearing on **TUESDAY, SEPTEMBER 14TH, 2010 at 6:00 P.M.**

The purpose of these hearings is to consider public testimony on proposed Zoning Code amendments that would replace the existing Section 640 - Nonconforming Use Situations with amended provisions that are more objective, less lenient and easier to understand and administer.

Applicable criteria for this review is set forth in:

**WOOD VILLAGE
ZONING & DEVELOPMENT CODE**

- Section 640 - Nonconforming Situations
- Section 560.100 - Legislative Process
- Section 670.010 - Zoning Code Amendments

**WOOD VILLAGE
COMPREHENSIVE PLAN**

- Citizen Involvement
- Housing
- Economic Development

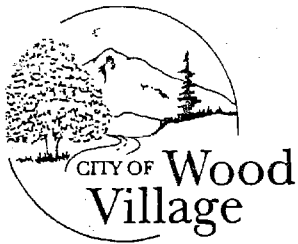
A complete copy of relevant file information, including the staff report and recommendations, will be available for inspection seven days prior to the hearings. Copies may be provided at the cost of ten cents per page.

Public testimony, oral and written, regarding this matter will be accepted at the hearing. Written statements are encouraged and may be submitted prior to the hearing date. Submit written statements to Marie Kizzar, Public Works Administrative Assistant at 2055 NE 238th Dr., Wood Village, OR 97060, or submit via e-mail at kizzar@ci.wood-village.or.us.

Failure to raise an issue, including constitutional or other issues regarding proposed conditions of approval, accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue, precludes appeal to the City Council or Land Use Board of Appeals based on that issue or to seek damages in circuit court due to a condition of approval.

If there are any questions pertaining to this hearing contact Marie Kizzar, Public Works Administrative Assistant at 2055 NE 238th Dr., Wood Village, OR 97060, or by phone 503-489-6859 or submit via e-mail at kizzar@ci.wood-village.or.us.

The City will endeavor to provide Assistive Listening Devices (ALD) for persons with impaired hearing and qualified sign language interpreters and/or bilingual interpreters, without cost, if requested at least 48 hours prior to the meeting: To obtain such services, please call Marie Kizzar at 503-489-6859.



Mayor
David M. Fuller

Council President
Patricia Smith

Councilors
Mark Clark

Stanley Dirks

Timothy Clark

June 8, 2010

PROPOSED AMENDMENTS AFFECTING EXISTING NON-CONFORMING USES

Background

The purpose of the proposed amendments is to modernize the Non-conforming Situations section of the Wood Village Zoning and Development Code. The permissive nature of our current code section has become problematic for the City as we try to implement development standards and encourage redevelopment to higher uses, especially in our industrial, commercial and mixed-use areas. The City has spent significant time and resources developing mixed-use zoning along transit corridors and in the Town Center. In addition, the industrial zones have been modified to attract more job intensive uses. The lenient non-conforming use provisions can be an obstacle to both City and regional job and housing goals.

The final product will be a less lenient Non-conforming Use section in the Code. Such new provisions will encourage investment in new uses and buildings in conformance with current land use, density and design standards. Wood Village is a small community with few development opportunities, so that each parcel is an important element to building a stronger community. In order to see its economic and housing goals succeed, the City believes obstacles that prolong conversion to job-producing industry, mixed-use, higher densities and improved design must be removed. For instance, the obstacle of a single parcel with an expanding non-conforming use can discourage parcel aggregation or redevelopment on an adjoining parcel, and thus be a disincentive for market forces to overcome. Ending the practice of favoring non-conforming uses will help the City to encourage timely and positive redevelopment opportunities.

Summary of the Amendments

A non-conforming use or building is an existing building or use that is no longer allowed by the land use zone district it is located in, or is not in compliance with building design, dimensional or other standards. Such uses may continue to exist or expand, subject to the Non-conforming Use standards in Section 640 of the Wood Village Zoning and Development Code. The current Non-conforming Use Standards are proposed to be amended as follows:

1. A Non-conforming Use may no longer be changed to a permanent Conditional Use.
2. A Non-conforming Use shall be deemed terminated if the use is discontinued for a continuous period of one year. The existing provision for an additional two-year extension is proposed to be deleted.
3. A damaged or destroyed Non-conforming Use shall be deemed terminated if the repair or restoration would exceed (50 or 70% - to be decided) of its fair market value. As proposed, no additional degrees of reconstruction may be granted by the Planning Commission.
4. Changing a Non-conforming Use to another use in the same land use category is proposed to be prohibited.
5. Expansion or alteration of a Non-conforming Use (of up to 15 - 25% of floor area) will no longer be automatically permitted. Expansion onto another site under certain circumstances will no longer be permitted, except for reasons stated in #6 below.
6. Expansion or Alteration of a Non-conforming Use (including residences) is no longer permitted except for repairs related to safe occupancy, paving, landscaping and signage improvements to the site.
7. Alteration of a Non-conforming Structure. A structure conforming as to use but non-conforming as to height, setback, coverage or other zone standards may be altered or extended, providing alteration or extension does not increase the deviation and brings the structure into conformity with the standards.

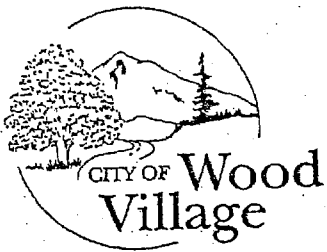
The proposed amendments are available at City Hall for review or copy.

PLEASE SIGN IN IF YOU WOULD LIKE TO ADDRESS
THE WOOD VILLAGE PLANNING COMMISSION

DATE: June 28th, 2010

NAME	ADDRESS
DAVID OLIVER	24001 NE SANDY BLVD
RICK OLIVER	WOODVILLE, OR 97060
	SAME →

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Mayor
David M. Fuller

Council President
Patricia Smith

Councilors
Mark Clark

Stanley Dirks

Timothy Clark

**CITY OF WOOD VILLAGE
PLANNING COMMISSION MEETING
MONDAY, JUNE 28TH, 2010
AGENDA**

6:00 PM

PLANNING COMMISSION

1. Public Hearing:

Amendments to the Wood Village Zoning & Development Code
Section 640 - Nonconforming Uses & Structures

Pages 1-13

The meeting location is wheelchair accessible. This information is available in large print upon request. To request large-print documents or for accommodations such as assistive listening device, sign language, and/or oral interpreter, please call 667-6211 at least two working days in advance of the meeting. (TDD 1-800-735-2900)

CITY OF WOOD VILLAGE
Staff Report

June 21, 2010

To: Wood Village Planning Commission
From: Carole Connell, AICP
Through: Sheila Ritz, City Administrator

Re: Proposed Wood Village Zoning Code Amendment to replace Section 640 Nonconforming Use Situations with new standards applicable to nonconforming uses in the City.

I. Application Data

A. Request: City File # PA 10-01 Zoning Code Amendments; a proposal by the City to amend the Wood Village Zoning and Development Code Section 640 Nonconforming Use Situations.

B. Public Hearings: The Planning Commission will hold a hearing on June 28, 2010 and the City Council will tentatively hold a hearing on September 14, 2010.

C. Location: The proposed amendments apply to nonconforming uses in any location. Existing nonconforming uses identified to date are:

1. Gresham Transfer
2. Residence at 23124 NE Sandy Blvd.
3. Olinger Travel Homes
4. Wal Mart
5. 76 Union Service Station at NE Halsey and 238th Dr.
6. Beanarino's Coffee Express
7. Good Year Tire
8. Davis Shows
9. Drive-thru windows in the Town Center

D. Comprehensive Plan and Zoning Code Amendment Review Criteria

- Section 670.011 Zoning Code Amendments
- Section 640 Nonconforming Use Situations
- Statewide Planning Goal 2 Land Use Planning; Goal 1 Citizen Involvement; Goal 9 Economy; Goal 10 Housing
- Comprehensive Plan: Citizen Involvement; Economy; Housing, & Urbanization plan policies

E. Exhibits

- Existing Section 640 Nonconforming Use Situations
- Proposed Nonconforming Use Standards Draft 06/07/10 – Exhibit “A”

II. Findings of Fact

A. Purpose and Summary of Amendments

The purpose of the proposed amendments is to modernize the Nonconforming Situations section of the Wood Village Zoning and Development Code. The permissive nature of our current code section has become problematic for the City as we try to implement development standards and encourage redevelopment to higher uses, especially in our industrial, commercial and mixed-use areas. The City has spent significant time and resources developing mixed-use zoning along transit corridors and in the Town Center. In addition, the industrial zones have been modified to attract more job intensive uses. The lenient non-conforming use provisions can be an obstacle to both City and regional job and housing goals.

The final product will be a less lenient Nonconforming Use section in the Code. Such new provisions will encourage investment in new uses and buildings in conformance with current land use, density and design standards. Wood Village is a small community with few development opportunities, so that each parcel is an important element to building a stronger community. In order to see its economic and housing goals succeed, the City believes obstacles that prolong conversion to job-producing industry, mixed-use, higher densities and improved design must be removed. For instance, the obstacle of a single parcel with an expanding non-conforming use can discourage parcel aggregation or redevelopment on an adjoining parcel, and thus be a disincentive for market forces to overcome. Ending the practice of favoring non-conforming uses will help the City to encourage timely and positive redevelopment opportunities.

B. Summary of the Amendments

A nonconforming use or building is an existing building or use that is no longer allowed by the land use zone district it is located in, or is not in compliance with building design, dimensional or other zone standards. Such uses may continue to exist or expand, subject to the Nonconforming Use standards in Section 640 of the Wood Village Zoning and Development Code. The current Nonconforming Use Standards are proposed to be amended as follows:

As proposed:

1. A Nonconforming Use may no longer be changed to a permanent Conditional Use.

2. A Nonconforming Use shall be deemed terminated if the use is discontinued for a continuous period of one year. The existing provision for an additional two-year extension is proposed to be deleted.
3. A damaged or destroyed Nonconforming Use shall be deemed terminated if the repair or restoration would exceed (50 or 70%) of its fair market value. As proposed, no additional degrees of reconstruction may be granted by the Planning Commission.
4. Changing a Nonconforming Use to another use in the same land use category is proposed to be prohibited.
5. Expansion or alteration of a Nonconforming Use (of up to 15 - 25% of floor area) will no longer be automatically permitted. Expansion onto another site under certain circumstances will no longer be permitted, except for reasons stated in #6 below.
6. Expansion or Alteration of a Nonconforming Use (including residences) is no longer permitted except for repairs related to safe occupancy, or to increase paving, landscaping and signage improvements to the site.
7. Alteration of a Nonconforming Structure. A structure conforming as to use but nonconforming as to height, setback, coverage or other zone standards may be altered or extended, providing alteration or extension does not increase the deviation and brings the structure into conformity with the standards.

C. Notice

Public notice of the subject amendments has been mailed to all properties known to have a nonconforming use and has been posted in five places in the City to encourage public input of this legislative amendment. The Department of Land Conservation and Development has received copies of the draft amendments and background reports, as well as notice of the initial June 28, 2010 hearing. ODOT has also received notice of the amendments and they have no objections.

D. Compliance with Statewide Planning Goals and the Wood Village Comprehensive Plan Policies.

This legislative amendment to the Wood Village Zoning and Development Code (WVZDC) must be shown to be consistent with statewide planning goals and the policies of the Wood Village Comprehensive Plan. Staff has determined that the following statewide planning goals and City plan sections and policies apply to the subject request.

1. **Citizen Involvement:** The state goal for citizen involvement and the Wood Village Comprehensive Plan (page 13) "insures opportunity for citizens to

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participate in all phases of the planning process.” The City finds that proper public notice was published, posted and provided to all properties known to be affected by the amendments. Further, City staff held individual meetings or had phone conversations with most properties affected. A Planning Commission worksession, and at least one public hearing was open to the public to consider the proposed amendments and to satisfy this goal. The City Council will also have one work session and at least one public hearing. The City finds that minimum citizen involvement requirements have been met or exceeded.

2. **Economy:** The intent of the state and city economic planning policies is to improve the economy of Wood Village and the state as a whole. The following City Comprehensive Plan economic policies relate to this amendment:

a. **Plan Policy #5.** *Encourage redevelopment of underutilized lands and substandard structures.*

Response: The City finds that the proposed amendments could encourage the conversion of underutilized lands or substandard structures to higher value uses in conformance with current zoning district standards when such parcels are occupied by a nonconforming use. In the current proposal, a nonconforming use will have more limited expansion opportunities, and after a year of termination will not be able to resume business. The City finds that the proposed amendments to the Nonconforming Situations are consistent with this City policy.

b. **Plan Policy #6.** *Meet Metro’s Functional Plan employment targets.*

Response: The City finds that local and regional economic policies of the Comprehensive Plan target the addition of over 700 new jobs in the City by 2040. Because of a limited land supply in the City, job density will need to increase to provide an opportunity for 700 new jobs. Several existing nonconforming uses in the City’s Commercial/Industrial CI Zone utilize large asphalt lots for vehicle storage. These are low employee, land intensive uses. City economic goals strive to attract more employee-intensive industrial uses. By allowing nonconforming uses to remain, but at the same time discouraging their expansion, said businesses can remain viable until land values increase and support a change to higher value uses. However, the proposed amendments restrict the ability for such uses to expand or further invest in the nonconforming use. The City finds that the amendments support City economic goals to increase job opportunities in Wood Village.

c. **Plan Policy # 7.** *...Encourage conversion of existing residential uses to commercial and industrial uses on Sandy Blvd.*

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Response: The City finds that existing single-family uses on Sandy Boulevard should be limited in their ability to expand or remain for more than a year if abandoned because residential use has not been permitted outright in the CI Zone for many years and is inconsistent with the zone's intent. The City finds that the proposed amendments encourage the conversion of residential uses to industrial or commercial uses permitted in the CI Zone.

d. Plan Policy #9. *Prohibit large-scale retail uses in the CI, LM and GM Zones in order to reserve the area for industrial, employment-intensive uses and family-wage jobs.*

Response: The City finds that several years ago Metro and local policy restricted large retail uses on lands zoned primarily for industrial uses in order to assure there would be a supply of industrial land available for new business, and to discourage retail uses with lower wage jobs from consuming industrially-zoned land. There are a number of such uses in the CI Zone that have been nonconforming for many years. The City finds the proposed amendments allow such uses to remain, but discourage new investment in those businesses. The City finds that stricter nonconforming use provisions comply with the goal to attract more family wage jobs and more employment-intensive industrial uses.

3. Housing: The Wood Village Comprehensive Plan has several housing policies that relate to and are supportive of the proposed amendments, as follows:

a. Plan Policy #4. *Encourage redevelopment of underutilized lands and substandard structures.*

Response: The City finds that underutilized lands zoned either Neighborhood Commercial NC or Town Center TC could provide higher density housing, second-story housing, or cottage-style housing near transit service to meet the demand for smaller households serving moderate household income levels. More efficient and more dense housing types will also compliment and increase support for neighborhood commercial activities in these neighborhoods. The City finds that the proposed amendments discourage the expansion of nonconforming uses and encourage redevelopment of underutilized land or substandard structures to better meet City housing and employment goals.

b. Plan Policy #9. *New housing should be located near employment and should be well connected to employment by all modes of transportation.*

Response: The City finds that fixed route transit service is available on Halsey Street within walking distance of City residential zones. A variety

of housing styles are now permitted in zones near Halsey including townhouses, cottage housing and second-story dwelling units. Old zoning restrictions have been replaced with more flexibility to permit a compatible mix of uses. Housing can now be designed to mix with small-scale neighborhood commercial which each supports the other. The City finds that old nonconforming uses which are loosely allowed to remain or expand create barriers to new development patterns. New housing types that conveniently link people to transit will encourage more transit use to jobs and services.

c. **Plan Policy #11.** *Encourage housing on Halsey Street that is compatible with neighborhood commercial zone characteristics, such as townhouses and second-story housing above retail uses.*

Response: The City finds that proposed restrictions on the continuance or expansion of nonconforming will encourage land owners to construct new housing on Halsey Street that is compatible with the Neighborhood Commercial zone and the changing demographics and housing needs of Wood Village residents.

4. Urbanization:

a. **Plan Policy # 1.** *The City of Wood Village will continue to encourage infill of vacant land within the City to ease the demand on agricultural land (in the region).*

Response: The City finds that policy and zone changes over the past several years have been adopted to meet changing housing needs, to encourage mixed commercial and residential development and to develop other methods to increase efficient use of land. The City finds that the subject amendments will encourage phasing out of older nonconforming uses to make available new opportunities for infill development within the parameters of current City development policies.

E. Section 670 Zoning Code Amendment Criteria

The Code provides that amendments to modify regulations will be approved if the City finds that the following criteria are met:

1. *The proposed amendment better achieves the goals and policies of the Comprehensive Plan and the existing regulatory language.*

Response: The City finds that the proposed amendment helps to achieve certain city housing and economic goals and policies as described by the findings herein. The

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proposal replaces existing regulatory language and encourages the conversion of nonconforming uses to uses that are permitted and compliant with current zone standards.

2. The proposed amendments are consistent with the Zoning and Development Code purposes and with the purpose statement for the base zone, special district, additional use regulation, or development regulation for which the amendment is proposed.

Response: Nonconforming uses are either not consistent with the purpose of the zone in which they are located, or with the development standards of the zone. The proposed amendments are intended to discourage the continuation of nonconforming uses and to encourage new development that is consistent with the intent and standards of the zone district. The amendments do not force discontinuance or conversion, but rather reduce the ability to further invest in such nonconforming uses and prolong their existence. The City finds that the proposed amendments encourage consistency with current Zoning and Development Code purposes and regulations.

3. Proposals which significantly affect a transportation facility shall assure that allowed uses are consistent with the function, capacity, and level of service of the facility identified in the City, County, and Regional Transportation Plans.

Response: The City finds that the proposed amendments to the Nonconforming Use section are not directly related to or affected by a transportation facility. Any infill development that may result from these amendments was considered at the time of such plan and code amendments. Multnomah County, Metro and ODOT have raised no objections to the proposed amendments.

III. RECOMMENDATION

Based on the above findings of fact, public testimony and recommended modifications, the subject amendments identified in Exhibit "A" are recommended to be forwarded to City Council for approval, as may be modified by the Planning Commission.

Attachments:

1. Existing Section 640 Nonconforming Situations
2. Proposed New Section 640 Nonconforming Uses – Exhibit "A" (June 7, 2010 draft)

NON-CONFORMING SITUATIONS

640.010 Purpose. Within the City there are lots, developments, and uses which were lawful before this Code was adopted or amended, but which would no longer be allowed under the current terms of this Code. It is the intent of these provisions to permit such non-conformities to continue, but not to encourage their perpetuation. All nonconformities are referred to as "Non-conforming Situations".

640.020 Status and Documentation of a Non-conforming Situation. The non-conforming situation regulations apply only to those situations which were allowed when established or which were approved through a land use review. Non-conforming situations which were not allowed when established have no grandfather rights and must be removed. The burden of proof is on the property owner or applicant to document that a non-conforming situation was allowed when established and was maintained over time. Evidence might consist of building permits, utility hookups, tax records, or telephone directory listings.

640.030 Types of Non-conforming Situations. A specific site may be non-conforming because it contains either a non-conforming use, an allowed residential use that exceeds that allowed density, a non-conforming development, or a combination of these.

640.040 Regulations That Apply to All Non-conforming Situations.

- A. The status of a non-conforming situation is not affected by changes in ownership.
- B. A non-conforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the non-conforming rights are lost and a non-conforming situation may not be re-established.
- C. A non-conforming use may change to a conditional use if approved through a conditional use review. Once a conditional use occupies the site, the non-conforming rights are lost and a non-conforming use may not be re-established.
- D. Normal maintenance and repair of non-conforming situations is allowed.

640.050 Loss of Non-conforming Status.

- A. The non-conforming use of a building, structure, or land shall be deemed to have terminated if the building, structure, or land ceases to be occupied by a permitted or legally non-conforming use for any reason for a continuous period of one year. Extensions of up to two additional years may be granted under the Type II procedure if the Planning Commission finds that:
 - (1) Conversion to any conforming use will result in a substantial economic loss and that the proposed use will result in greater conformance with the development standards of the zone or

- (2) The proposed use will be compatible with both non-conforming and conforming uses in the immediate area.
- B. Non-conformance with any development standards or condition other than building setback, coverage, or height shall be deemed terminated if the building, structure, or land ceases for any reason to be occupied by a permitted or legally non-conforming use for a continuous period of one year.
- C. Any non-conforming use or development dependent upon a building or structure which is substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the building or structure would exceed 70 percent of its fair market value shall be deemed terminated.
 - (1) Cost of repair or restoration and the fair market value shall be determined by independent professional appraisal in a form satisfactory to the City. Such determinations of value and cost are appealable to the City Council. Exceptions to this standard may be applied for under the Type II procedure.
 - (2) The Planning Commission may grant additional degrees of reconstruction under a Type II procedure, upon finding that:
 - (a) Conversion to any conforming use will result in a substantial economic loss, and
 - (b) The proposed use will result in greater conformance with the development standards of the zone, or
 - (c) The reconstructed use will be compatible with both non-conforming and conforming uses in the immediate area.
- D. Rebuilding of structures which have been intentionally destroyed and which contained non-conforming uses is prohibited.

640.060 Non-conforming Uses.

- A. Non-conforming uses may continue to operate. Changes in operations are allowed. However, non-conforming uses in residential zones may not extend their hours of operation into the period of 10 p.m. to 6 am.
- B. A change to another use in the same use category is allowed by right. A change to a use in a different use category which is prohibited by the base zone may be allowed through a non-conforming use review.
- C. Structural expansions shall be limited to the following:

<u>Existing Gross Floor Area</u>	<u>% of Expansion Allowed</u>
Building under 4,000 sq. ft.	25%
Building under 10,000 sq. ft.	20%
Building larger than 10,000 sq. ft.	15%

- D. Non-conforming uses and buildings may expand one time only.
- E. Expansion of the non-conforming use onto another site is prohibited, except in the following situation:
 - (1) The site is abutting the site of the non-conforming use; and
 - (2) The site was in the same ownership as the non-conforming site when it became non-conforming; and
 - (3) The prior zoning regulations on the expansion site would have allowed the use; and
 - (4) The expansion is approved through a non-conforming use review.
- F. The addition of new residential units to a non-conforming residential use is prohibited.

640.070 Non-conforming Residential Densities. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site. There may not be a net increase in the number of dwelling units and the building may not move further out of compliance with the base zone development standards.

640.080 Non-conforming Development. This section is primarily aimed at upgrading non-conforming development elements that affect the appearance and impacts of a site. Non-conforming developments may continue unless specifically limited by Subsection (2) below or other regulations in this Code.

- A. Changes may be made to the site which are in conformance with the base zone development standards.
- B. Development not complying with the following standards must be brought into compliance with the base zone standards to an extent commensurate with the proposed changes.
 - (1) Landscaped setbacks for surface parking and exterior development areas;
 - (2) Interior parking lot landscaping;
 - (3) Landscaping in existing building setbacks;
 - (4) Minimum landscaped area (where land is not used for structures, parking or exterior improvements);
 - (5) Screening; and
 - (6) Paving of surface parking and exterior storage and display areas.

640.090 Sites That Are Non-conforming in Parking Spaces. When a site is non-conforming in the number of required parking spaces and changes to a use or building are made that

increase the number of required parking spaces, only the number of spaces related to the increase need to be provided.

640.100 **Procedure.** A non-conforming situation is reviewed through a Type II procedure.

640.110 **Review Criteria.** The request will be approved if the Planning Commission finds that the applicant has shown that all of the following criteria are met:

- A. The non-conforming situation was not created unlawfully.
- B. With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - (1) The hours of operation;
 - (2) Vehicle trips to the site and impact on surrounding on-street parking;
 - (3) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (4) Potential for increased litter; and
 - (5) The amount, location, and nature of any outside displays, storage, or activities; and either (C) or (D) below.
- C. If the non-conforming use is in a residential zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (1) Building scale, placement, and facade;
 - (2) Parking area placement;
 - (3) Buffering and the potential loss of privacy to abutting residential uses; and
 - (4) Lighting and signs.
- D. If the non-conforming use is in a commercial or industrial zone, and if the changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

EXHIBIT "A"

June 7, 2010

To: Wood Village Planning Commission
From: Carole Connell, Consulting City Planner

As a result of the 5/24/10 Planning Commission work session, and with additional clarification by staff, the following are the draft amendments to replace WVZC Section 640 Nonconforming Situations:

PROPOSED AMENDED SECTION 640 NONCONFORMING USES

640.010 Purpose and Intent.

To carry out the purposes, goals and objectives of the Wood Village Comprehensive Plan, it is necessary and desirable that all uses and structures in each planning district be permitted under certain regulations. It is the purpose of these specific regulations to control incompatible nonconforming uses and structures so that they will be discontinued or brought into conformity with the permitted uses or structures in each planning district.

Where at the time of adoption of these standards, a use of land or structure exists which would not be permitted by the regulations herein and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful and in compliance with applicable provisions of Section 640.

640.020 Continuation of a Nonconforming Use.

Subject to the provisions of Section 640.030 and 640.090, a nonconforming structure or use may be continued and maintained in reasonable repair but shall not be enlarged or expanded except as specified in Section 640.030 and 640.040. The extension of a nonconforming use to a portion of a structure which was arranged or designed for the nonconforming use at the time of passage of these provisions is not an enlargement of a nonconforming use.

640.030 Enlargement or Alteration of a Nonconforming Use.

- A. A nonconforming use or structure may not be altered, enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of these provisions, except as provided in subsection B. of this section. No additional structure or building shall be constructed on the lot in connection with such nonconforming use of land.
- B. For purposes of this section, enlargement or alteration of a nonconforming use or structure shall not include making repairs when such repairs are necessary to make the structure habitable or safe for occupancy; such as replacement of non-bearing walls, fixtures, plumbing, or to strengthen or restore to a safe condition a building that has been

declared to be unsafe. Further, enlargement or alteration shall not include paving, landscaping and signage improvements to the site of a nonconforming use.

640.040 Enlargement or Alteration of a Nonconforming Structure.

A structure conforming as to use but nonconforming as to height, setback, coverage or other zone standards may be altered or extended, providing alteration or extension does not increase the deviation and brings the structure into conformity with the requirement.

640.050 Procedure for Authorization.

The procedure to be followed in an application for and authorization of an expansion of a nonconforming use or structure outside of the limitations described herein shall be the same review procedure as a Variance in accordance with Section 660, a Type II land use procedure.

640.060 Discontinuance or Abandonment of a Nonconforming Use.

If a nonconforming structure or use is discontinued for more than 12 months, further use of the property shall be for a conforming use. For purposes of calculating the 12 month period, a use is discontinued or abandoned upon the occurrence of the first day of any of the following events:

- A. On the date when the use of the land is physically vacated;
- B. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
- C. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
- D. On the date a request for final reading of water and power meters is made to the applicable utility provider.

640.070 Change of a Nonconforming Use.

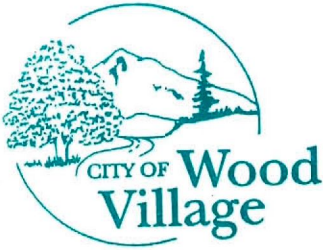
If a nonconforming use is changed, it shall be changed to a use conforming to the regulations of the zone, and after change, it shall not be changed back again to the nonconforming use.

640.080 Destruction of a Nonconforming Structure

If a nonconforming structure or structure containing a nonconforming use is destroyed by any cause to an extent exceeding (50% - 70%) percent of the value of the structure as assessed by the Multnomah County Assessor, it shall be reconstructed only in conformity with the WVZDC.

640.090 Completion of a Structure

Nothing contained in these provisions shall require any change in the plans construction, alteration, or designated use of a structure for which a building permit has been issued and construction work has commenced prior to the adoption of these provisions; except that, if the designated use will be nonconforming, it shall, for the purposes of Section 640.050, be a discontinued use if not in operation within two years of the date of issuance of the building permit.



Mayor
David M. Fuller

Council President
Patricia Smith

Councilors
Mark Clark

Stanley Dirks

Timothy Clark

LETTER OF TRANSMITTAL

Date: September 22, 2010

Project/Subject Name: Zoning & Development Code: Non-Conforming Use Revisions

Project/Subject Address: City of Wood Village

Sent to:

Attention: Plan Amendment Specialist
Department of Land Conservation & Development
635 Capitol Street NE, Ste 150
Salem OR 97301-2540

These are transmitted as checked below:

- | | | |
|---|---|--|
| <input type="checkbox"/> For signature and return | <input type="checkbox"/> For approval | <input type="checkbox"/> Approved as submitted |
| <input checked="" type="checkbox"/> For your use | <input type="checkbox"/> As requested | <input type="checkbox"/> Approved as noted |
| <input type="checkbox"/> For review and comment | <input type="checkbox"/> Returned for corrections | |
| <input type="checkbox"/> Requested information | <input type="checkbox"/> Other: | |

Documents enclosed are:

2 copies each:

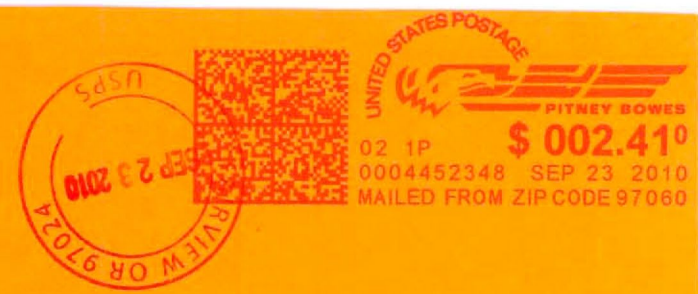
DLCD Notice of Adoption – Form 2
Item # 7 Product: Attachment E – required documents
Item # 6 Products – required documents

Comments:

Sender Signature: 

Print Name: Marie Kizzar, Public Works Administrative Assistant

Contact Phone Number: 503-489-6859



**THE CITY OF WOOD VILLAGE
2055 NE 238TH DRIVE
WOOD VILLAGE OR 97060**

TO

**Attention: Plan Amendment
Specialist
Department of Land Conservation
& Development
635 Capitol Street NE, Ste 150
Salem OR 97301-2540**