



MEMORANDUM

TO: City Planning Commission

FROM: Jon Barrett, Zoning Coordinator and Alexis DiLeo, Principal Planner

DATE: October 8, 2024

SUBJECT: Amendment to Unified Development Code related to Nonconforming Structures (Section 5.32.2)

Introduction

Staff presents ordinance revisions to Section 5.32.2 related to nonconforming structures in residential districts. These are presented in response to a request by the Zoning Board of Appeals (ZBA) to eliminate the requirement for ZBA approval for certain improvements to nonconforming structures. The proposed amendment will allow administrative approval, by the Planning Manager or designee, to approve an alteration (defined as a change that increases floor area, the number of dwelling units or the exterior dimensions of a building) that does not extend closer to a lot line, does not create any new nonconformities, and complies with all other zoning district dimensional standards.

Background

Section 5.32 of the Unified Development Code provides the general standards for the three types of nonconformities: nonconforming uses, nonconforming structures, and nonconforming lots. Section 5.32.2 Nonconforming Structures states nonconforming structures may be maintained and provides regulations on how they may be altered. An alteration is defined as “any change in a building that results in additional floor area being fit for occupancy, a greater number of dwelling units or rooming units or an increase in the exterior dimensions of the building.” Currently, the Planning Manager is permitted to approve alterations to nonconforming structures in an R1, R2, R3 or R4 district if the alteration complies with the zoning district dimensional standard. All other alterations must be approved by the Zoning Board of Appeals upon finding the alteration complies as nearly as practical with the requirements of the Unified Development Code, notably the zoning district dimensional standards.

Over the past 10 years, the Zoning Board of Appeals has approved 95% of petitions to alter a nonconforming structure. Not only does this represent an inefficient use of time and resources of the Zoning Board of Appeals as well as staff and applicants, it indicates the regulations no longer align with the community’s goals to allow and ease increasing density in existing developments, provide more housing options including more affordable choices, and enable more sustainable forms of development.

The Zoning Board of Appeals discussed the proposed amendments at their July 28, 2024 meeting and recommends approval.

Proposed Amendments

The proposed amendments will allow an alteration to a nonconforming structure if the alteration does not extend closer to a lot line, does not create any new nonconformities, complies with the district height, setback and all other dimensional standard, and all building codes.

5.32.2 Nonconforming Structure

A *nonconforming structure* may be maintained or restored, but no *alteration* shall be made to a *nonconforming structure* unless one of the following conditions is met:

- A. Alterations to nonresidential nonconforming structures. The *alteration* is approved by the Zoning Board of Appeals upon a finding that it complies as nearly as practicable with the requirements of this chapter and that it will not have a detrimental effect on neighboring property.
- B. Alterations to residential nonconforming structures. ~~The An alteration meeting the following standards may be is~~ approved by the Planning Manager upon a finding that it conforms to all the requirements of this chapter and is made to a *building* which will be a *single-family dwelling* on completion of the *alteration* and is located in an R1, R2, R3 or R4 district. otherwise, the alteration shall be approved by the Zoning Board of Appeals upon finding that it complies as nearly as practical with the requirements of this chapter and it will not have a detrimental effect on neighboring property:
 1. The alteration does not extend closer to the lot line than any part of the existing nonconforming structure.
 2. The alteration does not create a new nonconformity on the lot or an adjacent lot.
 3. The alteration maintains compliance with all other dimensional standards of the zoning district for the lot on which it is located.
 - ~~4.~~ The alteration will meet all other code and ordinance requirements.
- ~~B.C.~~ For purposes of this Section, *alteration* shall mean any change in a *building* that results in additional *floor area* being fit for occupancy, a greater number of *dwelling units* or rooming units or an increase in the exterior dimensions of the *building*.
- ~~C.D.~~ A *nonconforming structure* shall not be replaced after damage or destruction of the *nonconforming structure* if the estimated expense of reconstruction exceeds 75% of the appraised value, as determined by the Building Official, of the entire *building* or *structure*, exclusive of foundations.

Analysis and Comments

The proposed criteria for Planning Manager approval reflect the historical decisions of the Zoning Board of Appeals to approve alterations to residential structures. With the proposed amendment, nonconforming structures may increase the number of dwelling units within and/or may have additions that are equal to or less than the current dimensions of the structure without going through the Zoning Board of Appeals process. The same outcomes of the current process will be achieved in a streamlined fashion for applicants, property owners, staff and the Zoning Board of Appeals alike.

Example Scenario A: An L-shaped house in the R1C district where the “L” extends beyond the 30-foot rear required setback line, thus a nonconforming building that does not meet the rear setback requirement. The current owners would like to construct an addition to square the rear half of the house. The proposed addition would also extend beyond rear required setback line but no more than the existing L.

- Currently – the addition requires approval by the Zoning Board of Appeals to alter a nonconforming structure because it does not conform to the required rear setback of the R1C district.
- Proposed – the addition may be approved by the Planning Manager because it is a residential building, it does not extend closer to the lot line than any part of the existing structure, it does not create a new nonconformity on the lot and maintains compliance with all other dimensional standards of the R1C district.

Example Scenario B: A residential building with 2-apartments and an unfinished attic on a 7,000-square foot lot in the R4C district, thus a nonconforming building with more apartments than permitted for the lot size. The owner would like to finish the attic with two more bedrooms for the upper apartment.

- Currently – the attic conversion requires approval by the Zoning Board of Appeals to alter a nonconforming structure because it does not conform to the minimum lot area per dwelling unit standard of the R4C district and the building will not be a single-family dwelling upon completion.
- Proposed – the attic conversion may be approved by the Planning Manager because it is a residential building, it does not change the exterior dimensions of the building (therefore does not extend closer to the lot line than any part of the existing structure) and does not create a new nonconformity on the lot (no more dwelling units than currently existing).

Staff are seeking feedback from the City Planning Commission and assistance in identifying any questions or considerations to incorporate into the proposed amendments or future staff report when a public hearing is scheduled.

Attachment: July 28, 2024 Memo to Zoning Board of Appeals
June 5, 2024 Draft Amendments to Section 5.32.2