

Planning and Zoning Commission

Resolution with Attached

Recommended Amendments

AO 2007-116
Title 21 Rewrite, Chapter 21.12, *Nonconformities*

MUNICIPALITY OF ANCHORAGE

PLANNING AND ZONING COMMISSION RESOLUTION NO. 2007-067

A RESOLUTION RECOMMENDING APPROVAL OF A PROPOSED ORDINANCE OF THE MUNICIPAL ASSEMBLY TO PROVISIONALLY ADOPT A NEW CHAPTER 21.12, NONCONFORMITIES, AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21 SUBJECT TO CONCURRENT FINAL PASSAGE AND APPROVAL OF ALL PROVISIONALLY ADOPTED CHAPTERS OF TITLE 21.

(Case 2007-151)

WHEREAS, Anchorage Municipal Code Title 21 is being rewritten to implement recently adopted plans and policies, encourage more innovative development, infill, and redevelopment; to restructure and reformat the code for better usability; and to allow for more consistent interpretation and application; and

WHEREAS, adoption of the code in sections will be more manageable for the public and the decision-makers; and

WHEREAS, Chapter 12, when passed, will not become effective until the remaining chapters of the Title 21 Rewrite are passed; and

WHEREAS, the Planning and Zoning Commission held a public hearing on Chapter 12 on September 17, 2007; and

WHEREAS, the Planning Department prepared an Issue Response paper, that responded to comments received from the public and the Commission, and proposed amendments to Chapter 12 to respond to some of those issues.

NOW, THEREFORE, BE IT RESOLVED by the Anchorage Planning and Zoning Commission that:

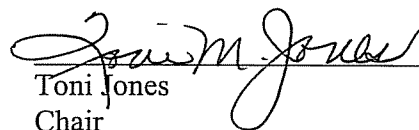
A. The Commission finds that the amendments proposed by the Planning Department adequately address the issues that were raised.

B. The Commission recommends the ordinance be approved with the amendments shown in Attachment A.

PASSED AND APPROVED by the Anchorage Planning and Zoning Commission this 15th day of October 2007.



Tom Nelson
Secretary



Toni Jones
Chair

(2007-151)

Attachment: A. Planning and Zoning Commission Recommended Amendments to Chapter 21.12

Attachment A

Amendments to Chapter 21.12 Recommended by the Planning Department and the Planning and Zoning Commission

All page and line numbers refer to the Public Hearing Draft dated August 5, 2007. Text proposed to be added is underlined. Text proposed to be deleted is [CAPITALIZED AND BRACKETED].

1. Page 2, lines 34-42
21.12.010B.3.a., *Conditional Uses and Site Plan Reviews*

“A use that lawfully existed as of [EXISTING PRIOR TO] the effective date of this title that is allowed by [PERMITTED AS A] conditional use or through an administrative or [SITE PLAN REVIEW , OR] major site plan review in the district in which it is located under this title, but which lacks a[N APPROVED] conditional use approval [PERMIT] or an approved site plan review, shall not be deemed a nonconforming use, but rather shall be considered to exist as a conditional use or to have an approved site plan. Associated nonconforming structures or lots and characteristics of use that are out of compliance with this title shall be governed by the provisions of this chapter, and if applicable, shall be modified under the provisions of this chapter. Other modifications shall be in accordance with the appropriate modification processes in chapter 21.03. [THE SCOPE OF SUCH A CONDITIONAL USE OR APPROVED SITE PLAN SHALL BE GOVERNED BY THE PROVISIONS OF THIS CHAPTER UNLESS MODIFIED BY THE DECISION-MAKING BODY IN ACCORDANCE WITH THE APPROPRIATE PROCESS IN CHAPTER 21.03.]”

2. Page 3, line 27
21.12.010F.1.c., *Maintenance and Repair*

“Replacement, repair, or maintenance of mechanical and electrical equipment;”

3. Page 5, lines 20-21
21.12.030B.1., *Change of Use*

“Any nonconforming use may be changed to another nonconforming use if all [BOTH] of the following criteria are met:”

4. Page 6, lines 15-17
21.12.030C.2.a., *Approval Criteria*

“The nonconforming use is or shall [CAN] be made compatible with uses allowed on adjacent properties, in terms of site design and operating characteristics (such as lighting, noise, odor, dust, and other external impacts);”

5. Page 6, lines 31-32
21.12.030D.1.b., *Abandonment or Cessation of Use*

“A conforming use, or a less intensive nonconforming use approved by the zoning board, has replaced the nonconforming use.”

6. Page 7, lines 11-15
21.12.030E.4., *Overcoming Presumption of Abandonment*

“The owner[:] has been engaged in activities that would affirmatively prove there was no intent to abandon, such as [A. HAS BEEN] actively and continuously marketing the land or structure for sale or lease. [; OR B. HAS BEEN ENGAGED IN OTHER ACTIVITIES THAT WOULD AFFIRMATIVELY PROVE THERE WAS NO INTENT TO ABANDON.]”

7. Page 7, lines 20-21
21.12.040A.1., *Continuation of Nonconforming Structures Generally*

“No nonconforming structure may be enlarged or altered in a way that increases its nonconformity, except as allowed pursuant to B.2. below.”

8. Page 7, lines 32-35
21.12.040B.2., *Overheight Buildings*

“Where a lawful building [STRUCTURE], existing on [date of passage], is engineered and constructed for enlargement by the addition of one or more stories, such structure may be enlarged within the full plan dimensions of the existing structure by the addition of not more than two stories. This provision shall apply to buildings that conform to the height limitations as well as to overheight buildings.”

9. Page 9, lines 1-6
21.12.040D.1.b.iii., *Conditional Use Approval*

“An approved replication conditional use shall expire if start of construction has not begun within one year of the planning and zoning commission’s approval. The director may approve an extension of up to one year upon written request showing cause. For the purposes of this section, “replicate” shall mean to rebuild to the same dimensions and in the same location as the damaged or destroyed structure, but this shall not prevent moving towards conformity.”

10. Page 10, lines 12-19
21.12.040F., *Preexisting Tower and Antennas*

“**[F. PREEXISTING TOWER AND ANTENNAS**
EXCEPT FOR ABANDONED TOWERS AND/OR ANTENNAS, PREEXISTING TOWER STRUCTURES SHALL BE ALLOWED TO CONTINUE THEIR USAGE AS THEY PRESENTLY EXIST, OR MAY BE REPLACED WITH A NEW TOWER STRUCTURE OR ANTENNA OF LIKE CONSTRUCTION AND HEIGHT. BUILDING PERMITS TO REBUILD THE FACILITY SHALL BE OBTAINED WITHIN 180 DAYS FROM THE DATE THE FACILITY IS DAMAGED OR DESTROYED. IF NO PERMIT IS OBTAINED OR IF SAID PERMIT EXPIRES, THE TOWER OR ANTENNA SHALL BE DEEMED ABANDONED. NEW CONSTRUCTION OTHER THAN ROUTINE MAINTENANCE ON A PREEXISTING TOWER STRUCTURE SHALL COMPLY WITH THE REQUIREMENTS OF THIS TITLE.]”

11. Page 10, lines 34-41
21.12.050A.2., *Nonconforming Lots*

“In any nonresidential zoning district, notwithstanding limitations imposed by other provisions of this title, any use allowed in the district by table 21.05-2 may be erected on [ANY] lots that fail to meet the requirements for minimum area and/or width, provided all of the following conditions are met:

- a. The review and approval process indicated in table 21.05-2 is applied;
- b. The use does not have a minimum lot size greater than the minimum lot size required by the underlying zoning district;
- c. Any district-specific standards, use-specific standards, and dimensional and design standards, such as setbacks, parking, open space, landscaping, etc. are met; and
- d. The lot is of record at the effective date of the original adoption or amendment of applicable regulations, except as restricted in subsection B. below.

[(THROUGH THE APPROPRIATE REVIEW AND APPROVAL PROCEDURE),
PROVIDED THE UNDERLYING ZONING DISTRICT AND DIMENSIONAL AND

DESIGN STANDARDS, SUCH AS SETBACKS, PARKING, OPEN SPACE, LANDSCAPING, ETC. CAN BE MET, THAT IS OF RECORD AT THE EFFECT DATE OF THE ORIGINAL ADOPTION OR AMENDMENT OF APPLICABLE REGULATIONS, EXCEPT AS RESTRICTED IN SUBSECTION B. BELOW. THIS PROVISION SHALL APPLY EVEN IF THE LOT FAILS TO MEET THE REQUIREMENTS FOR THE AREA OR WIDTH, OR BOTH, THAT ARE APPLICABLE IN THE DISTRICT.]”

12. Page 11, lines 12-13
21.12.050C.1., *Legalization of Lots Created Prior to September 16, 1975*

“Lots existing prior to September 16, 1975, that do not meet the district requirements for minimum area and/or width, and that were not created in accordance with the regulations of the state and the municipality, may continue in existence provided the following requirements are met:”

**Issue Response Paper for
Planning and Zoning Commission**

AO 2007-116
Title 21 Rewrite, Chapter 21.12, *Nonconformities*

Municipality of Anchorage

MEMORANDUM

DATE: October 5, 2007

TO: Planning and Zoning Commissioners

FROM: Tom Nelson, Director

SUBJECT: Case #2007-151; Issue Response for Chapter 21.12 of Title 21 Rewrite

1. **Issue:** General comment on chapter

Title 21 has been altered in recent years to reflect the public's concern that non-conformities should come into compliance when certain conditions or time periods are met. There is good reason that the public wants gradual compliance because it helps achieve a city that we envisioned when the 2020 Comp Plan was developed in 1999--with much citizen input.

Below are instances (some conflicting) where Title 21 has already included conditions for bringing non-conformities into compliance, such as with signs and self-storage facilities. Yet the current chapter 12 revision does not contain strong enough language to move toward compliance with land and building non-conformities. It is very difficult for the public to know the correct language to request in order that a shift in the direction of this chapter occurs and that eventually non-conformities will be phased out.

Please insert the appropriate language to ensure greater conformity over time when it is reasonable to expect non-conforming land and buildings to come into compliance, such as when the sale of land and buildings occurs.

21.55.140 Self storage and vehicle storage operations.

1. Any self-storage or vehicle storage operation existing prior to the adoption of this section, that does not comply with the requirements of subSections 21.45.290 L.1, L.2., L.3., L.6. and L.7. for sight-obscuring fencing, required landscaping external to said fencing, and elimination of security razor or concertina security wire at the top of a fence, shall submit a site enhancement plan for the property, which is reviewed and approval determined by the Planning Director. The site enhancement plan shall be submitted to the Director within 9 years and 6 months. The plan shall be fully implemented within ten years of the date of the adoption of this section which is October 26, 2004. The intent of this site enhancement plan is to bring property as close as reasonably possible into compliance with the above noted subsections without impeding existing operations.

Staff Response: Recognizing that the creation of new development and design standards in the Title 21 rewrite has the potential to create a great number of nonconformities, staff has attempted to find a balance between allowing the continued existence of legally created development, and phasing out nonconformities. The new method for dealing with characteristics of use that are out of compliance with the new code requires developments to continually move toward compliance with the code as improvements are made to the property.

The requirements regarding self storage operations (quoted above) are included in the use-specific standards of chapter 21.05, rather than in the nonconformities chapter.

Staff Recommendation: No changes recommended.

2. **Issue:** 21.12.010B.3.a., *Conditional Uses and Site Plan Review*

Under proposed 21.12.010.B.3.a, there is reference to a use predating the effective date of the title "that is permitted as a conditional use...but which lacks an approved conditional use permit." It is confusing to refer to a use as "permitted" but lacking a permit. It appears that sentence is meant to address a pre-existing use that is "allowable only as conditional use," but lacking a permit. The language should be revised for clarity.

Under proposed 21.12.010.B.3.a, it also appears that a use that exists as of the effective date of the new title but that is allowable only on a conditional basis under the new title, is not to be considered a nonconforming use, but to be considered as if it existed as a conditional use. The language would appear to grant automatic conditional use approval even if the use was flatly prohibited in the district prior to the effective date of the new title. Is that the intent?

Additionally, the "scope of such a conditional use" (considered as if permitted based on its pre-existence) is said to be governed by the same Chapter 12. However, throughout Chapter 12, reference is made only to nonconforming uses, not conditional uses. It's not clear how those rules, then, bear on the scope of a use explicitly declared not to be a nonconforming use. Neither is it clear which of the rules are to be considered to deal with "scope," and therefore is applicable to a "considered" conditional use and which do not apply since such use is not deemed "nonconforming."

Staff Response: Concerning the first paragraph of the comment, staff agrees that the language is confusing and the suggested revision is sensible.

Concerning the second paragraph, the language as written would grant conditional use or site plan approval to a use that was illegally established under the current code, but allowed (through some approval process) in the new code. Staff is proposing an amendment to clarify that this applies to legally established uses.

Concerning the third paragraph, a nonconforming use that is subsequently allowed by conditional use approval may still have other nonconformities or characteristics of use that

are out of compliance. This section should be revised to clarify how this chapter could apply under this section.

Staff Recommendation: Page 2, lines 34-42, revise as follows:

“A use that lawfully existed as of [EXISTING PRIOR TO] the effective date of this title that is allowed by [PERMITTED AS A] conditional use or through an administrative or [SITE PLAN REVIEW , OR] major site plan review in the district in which it is located under this title, but which lacks a[N APPROVED] conditional use approval [PERMIT] or an approved site plan review, shall not be deemed a nonconforming use, but rather shall be considered to exist as a conditional use or to have an approved site plan. Associated nonconforming structures or lots and characteristics of use that are out of compliance with this title shall be governed by the provisions of this chapter, and if applicable, shall be modified under the provisions of this chapter. Other modifications shall be in accordance with the appropriate modification processes in chapter 21.03. [THE SCOPE OF SUCH A CONDITIONAL USE OR APPROVED SITE PLAN SHALL BE GOVERNED BY THE PROVISIONS OF THIS CHAPTER UNLESS MODIFIED BY THE DECISION-MAKING BODY IN ACCORDANCE WITH THE APPROPRIATE PROCESS IN CHAPTER 21.03.]”

3. **Issue:** 21.12.010B.3.b., Conditional Uses and Site Plan Reviews

What is the difference between a conditional use and a principal use? If a conditional use is null and void, are any conditions associated with that conditional use also null and void?

Staff Response: A conditional use refers to the review and approval process by which a use is allowed on a site. A use may be allowed on a site by four different approval processes: “by-right” means that a development can proceed with a building permit or land use permit issued by the development services department, with no planning department involvement; “by administrative site plan review” means that planning staff does a site plan review of the development and the director is the decision-maker; “by major site plan review” means that the site plan goes through a public hearing before the Urban Design Commission; or “by conditional use” means that the Planning and Zoning Commission reviews the application to determine if the use is appropriate at the proposed location.

A principal use is the main use on a site—the use that must go through the applicable review process. Some residential districts restrict the number of principal uses on a site to one—only accessory uses are also allowed on the site. Most commercial and industrial districts allow multiple principal uses on a site. If required by code, a principal use will go through the conditional use review and approval process.

If a conditional use becomes null and void, then any associated conditions are also null and void.

Staff Recommendation: No changes recommended.

4. **Issue:** 21.12.010C. and D., *Determination of Nonconformity Status and Government Agency Property Acquisitions*

In section C., property owners are solely responsible for establishing rights to a nonconformity. Section 21.12.010.D states that a nonconformity resulting from the actions of a government agency the structure, use of land or structure or characteristic of use will be deemed conforming. However, Section 21.12.010.D is silent as to who is responsible to obtain the conforming designation.

Given that land, buildings and their uses may go unaltered for a number of years it would seem prudent to have a determination, by the Municipality, at the time of acquisition and have such recorded against the property.

Staff Response: Such a practice would indeed be prudent, but this would be a more appropriate matter for policy and regulation rather than code.

Staff Recommendation: No changes recommended.

5. **Issue:** 21.12.010F.1.c., *Maintenance and Repair*
Insert "and electrical" after "mechanical".

Staff Response: The department has no objection to the suggested addition.

Staff Recommendation: Page 3, line 27, insert “and electrical” after “mechanical”.

6. **Issue:** 21.12.010G., *Replacement Cost*

Determination of replacement cost should allow an owner to get an independent appraisal or estimate which should be considered the replacement cost unless the municipality challenges the estimate with an independent estimate of their own. Replacement costs are influenced by many factors including material costs, labor costs and productivity, insurance, bonding, and many other items. These factors are constantly changing. Just as contractors active in the business rarely agree on the total costs to undertake a renovation, it would be extremely difficult for a building official to have the current knowledge and expertise to properly estimate the replacement cost.

Staff Response: Requiring the owner to provide an independent appraisal is an unnecessary burden on that owner. The development services department has a nationally accepted schedule of costs (with local adjustments) that they use to evaluate permit applications for the purposes of determining permit fees. Using this municipal schedule maintains consistency among various projects and does not unduly burden the property owner.

Staff Recommendation: No changes recommended.

7. **Issue:** 21.12.020, *Single- and Two-family Structures and Mobile Homes*

This section is confusing in that (D.3.) refers to mobile homes in nonconforming manufactured home communities. This seems to be the only place that manufactured homes are mentioned but the term normally refers to more than just mobile homes.

Staff Response: Mobile homes are defined (in chapter 21.05) as “A transportable, factory-built dwelling unit designed and intended to be used as a year-round dwelling, and built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1976.” Any type of transportable, factory-built dwelling unit constructed after that Act is considered a manufactured home. Those areas called “mobile home parks” in our current code were requested, by the Alaska Manufactured Home Association, to be called “manufactured home communities”. Both mobile homes and manufactured homes are allowed in manufactured home communities, in accordance with the requirements for those communities.

Staff Recommendation: No changes recommended.

8. **Issue:** 21.12.020D., *Mobile Homes*

Please clarify the difference between a manufactured home and mobile home. Also, the two terms are used as interchangeable in sections of the code but in municipal work sessions the terms have been defined as different. Please clarify and define.

Staff Response: Mobile homes are defined (in chapter 21.05) as “A transportable, factory-built dwelling unit designed and intended to be used as a year-round dwelling, and built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1976.” Any type of transportable, factory-built dwelling unit constructed after that Act is considered a manufactured home.

The use of “mobile homes” is restricted to the R-5 district and to manufactured home communities. “Manufactured homes” are considered to be dwelling units (usually single-family, but occasionally two-family) and may be located in any district that single-family dwellings are allowed, subject to the relevant design standards in chapter 21.07. Thus we have not used the two terms interchangeably, but have been very specific about each.

Staff Recommendation: No changes recommended.

9. **Issue:** 21.12.030B.1., *Change of Use*

The statement reads “Any nonconforming use may be changed to another nonconforming use if both of the following criteria are met:” Three criteria are then listed. Does “both” mean all of the three criteria or two of the three, etc.? Please clarify; suggestion is to change “both” to “all”.

Change "both" to "all".

Staff Response: A typo.

Staff Recommendation: Page 5, line 20, replace “both” with “all”.

10. **Issue:** 21.12.030B.2., *Change of Use*

The statement reads "If a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed." Please define and clarify the degree and duration of "superseded". It appears that 21.12.030.B.2 can be deleted as it is covered by 21.12.030D.1 .b.

If a nonconforming use is superseded by a permitted use even for an instant, the nonconforming use may not thereafter be resumed. Owners should be allowed a reasonable period of time to revert back to the nonconforming use before it is lost. This would allow owners to correct errors or misunderstandings and would also allow an owner to test a different business model to a conforming use to determine its viability. A period of at least one year would seem reasonable.

The statement reads “If a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.” Questions regarding this point:

- o Please define and clarify “superseded”. To what degree and duration?
- o This statement conflicts with 21.12.030(public hearing draft page 6, marked changes draft page 8) D. Abandonment or Cessation of Use 1d. “The use has been discontinued, vacant, or inactive for a continuous period of at least one year.” Suggested change is to make the two consistent and set a time period of more than one year.
- o The point was raised about retail and wholesale businesses. If a retail business has a warehouse and decides to temporarily sell its stock at wholesale, is the use now nonconforming?

Staff Response: “Superseded” means to be removed so as to make way for another. Nonconformities are those things the community has judged to be incompatible or unacceptable, and over time, nonconformities are intended to go away. When a nonconforming use is discontinued, whether by being superseded by a new use, or by abandonment, it should not thereafter return. There are four different criteria by which to verify abandonment, and being superseded (replaced) by another use is one of the criteria. The one year period is a different method to substantiate the presumption of abandonment of a use that has been discontinued.

Staff Recommendation: No changes recommended.

11. **Issue:** 21.12.030C., *Damage or Destruction*

The sentence reads, “Any person wishing to replicate a nonconforming use that has been damaged or destroyed to an extent of more than 50 percent of the replacement cost at the time of destruction...” Clarify cost; is it structure or repair cost?

Staff Response: If repairing the damage would cost more than 50% of the cost of replacing the use/structure, then this section applies.

Staff Recommendation: No changes recommended.

12. **Issue:** 21.12.030C.2.a., *Approval Criteria*

What is the value in requiring that a use "can be made compatible" if there is no requirement to do so. Propose the language be changed to read "The nonconforming use is compatible, or can and is required to be made compatible, with uses. . . "

Staff Response: The intent is that the use be made compatible, but a technical reading of the language, as noted in the comment, does not require it.

Staff Recommendation: Page 6, line 15, replace "can be made compatible" with "is or shall be made compatible".

13. **Issue:** 21.12.030C.2.c. and d., *Approval Criteria*

The approval criteria for uses subject to loss or damage of 50% or more include provision for development of off site impacts. This has the potential of creating exactions which may be prohibitive in nature and effectively stall or prohibit reconstruction of damaged homes and businesses. This is of major concern to all, in that municipal infrastructure may be forced upon citizens through the regulations of the land use process. There is further concern over adoption of regulations which would have economic impacts far beyond the coverage of home insurance policies.

Compulsory off site improvements, no matter their need, are a community responsibility. Forcing the individual property owner to solely bear the burden of any improvement is an exaction disproportionate to the impact of reconstruction. These provisions are an attempt to legalize regulatory takings and should be stricken from this section.

Staff Response: These provisions are an attempt to ensure that adequate infrastructure exists to support a use. This section gives the director the authority to require what he or she judges is necessary and appropriate to the situation in terms of off-site improvements, on a case by case basis, judging whether or not the needed improvements should be the responsibility of the entire community, or are triggered only by the use in question. If the applicant considers the requirements to be disproportionate to the situation, the applicant can appeal to the zoning board. It is not unknown for a single use to create off-site impacts, which should be mitigated by that use, rather than requiring all taxpayers to subsidize the mitigation, to the benefit of the use.

Staff Recommendation: No changes recommended.

14. **Issue:** 21.12.030C. and 21.12.040D., *Damage or Destruction*

Whatever distinction is intended and the differential applicability between 21.12.030.C (replication of a damaged or destroyed use) and 21.12.040.D (replication of damaged or destroyed structure) is not at all clear. Presumably the latter deals with nonconformity with such issues as setbacks that are unrelated to use. But it's not clear.

Staff Response: There are four potential types of nonconformities: nonconforming uses of land or structure (uses not allowed in zoning district); nonconforming structures (buildings that are in the setbacks, over the lot coverage, or too high); nonconforming lots (lots that don't meet the minimum required dimensions); and nonconforming characteristics of use (such as parking, landscaping, etc... which we are not considering a nonconformity under the rewrite). There are sections in chapter 21.12 to deal with each of these situations. The processes for replicating a damaged nonconforming use and a damaged nonconforming structure are quite similar.

Staff Recommendation: No changes recommended.

15. **Issue:** 21.12.30D.1.b., *Abandonment or Cessation of Use*

The abandonment standard of 21.12.030D.1.b. is unclear as to whether an interim or transitory use constitutes abandonment, and assuming not, what is the threshold if the one year continuous discontinuation of 1.d. has not run? Does not the one year period of 1.d. suggest that a discontinued use may be restored within that year despite an interim replacement use? A similar question arises from 1.c., concerning removal of a structure given that 21.12.040 allows damaged structures to be replaced.

Staff Response: Any conforming interim or transitory use that operates after the discontinuation of a nonconforming use would trigger the criteria of 1.b., and would extinguish the nonconforming rights. The one year period of 1.d. is to substantiate the presumption of abandonment.

Staff Recommendation: Page 6, lines 31-32, It is unclear who determines what a "less intensive nonconforming use" is in D.1.b. Revise as follows: "A conforming use, or a less intensive nonconforming use approved by the zoning board, has replaced the nonconforming use."

16. **Issue:** 21.12.030E.1., *Overcoming Presumption of Abandonment*

By stating that the owner must have maintained the land and structure in accordance with "all" applicable regulations then drawing attention to building and fire codes becomes a redundancy and is unnecessary.

Staff Response: While technically redundant, the specific mention of building and fire codes is to clarify that "all applicable regulations" does not just refer to title 21.

Staff Recommendation: No changes recommended.

17. **Issue:** 21.12.030E.4.a., *Overcoming Presumption of Abandonment*

Revise to read: "Has been engaged in activities that would prove there was no intent to abandon, such as actively and continuously marketing the land or structure for sale or lease." and delete 21.12.030.E.4.b.

Staff Response: No objection.

Staff Recommendation: Page 7, lines 11-15, revise 4.a. and b. to read "4. The owner has been engaged in activities that would affirmatively prove there was in intent to abandon, such as actively and continuously marketing the land or structure for sale or lease."

18. **Issue:** 21.12.040A.1., *Continuation of Nonconforming Structures Generally*

In the first sentence, replace "may be enlarged" with "may be enlarged, except as provided in 21.12.040.B.2."

Staff Response: The suggested addition adds clarity to the section; staff has no objection.

Staff Recommendation: Page 7, lines 20-21, revise to read "No nonconforming structure may be enlarged or altered in a way that increases its nonconformity, except as allowed pursuant to B.2. below."

19. **Issue:** 21.12.040A.1., *Continuation of Nonconforming Structures Generally*

The meanings of the phrases "increases its nonconformity" and "intensify the nonconformity" are not clear, nor are they consistent.

Staff Response: "Increasing" the nonconformity has different meanings depending on the type of nonconformity. For nonconforming uses, it means either making the use larger or adding additional capacity to the use. For a nonconforming structure, it could mean adding to an encroachment into a setback, enlarging the footprint of a building that is already over the allowed lot coverage, or increasing the height of a building that is already over the height limit (except as specifically allowed in this chapter). For a nonconforming lot, it would mean reducing the size or width of a lot that is already too small or too narrow. For the characteristics of use, increasing the problem could mean removing landscaping or parking spaces from a site that already doesn't have enough landscaping or parking.

The concept and language of "increasing" or "decreasing" a nonconformity has worked successfully in the current code for many years.

As the commenter has not explained why they see the phrases as inconsistent, staff is unable to address that specific issue.

Staff Recommendation: No changes recommended.

20. **Issue:** 21.12.040A.2., *Continuation of Nonconforming Structures Generally*

The sentence reads “Should a nonconforming structure be moved for any reason for any distance whatever, it shall therefore conform to the regulations for the district in which it is located after it is moved.” There are a couple of questions regarding this statement:

- o This seems to discourage the act of moving a container to a more discrete location, buffered from adjacent uses.
- o The Anchorage School District used the example of moving a storage container for the purpose of construction. Would that container now have to conform?

Staff Response: If a container is allowed in a certain use district, it can be moved in accordance with applicable setback regulations. If it was originally placed in a nonconforming location, such as in a setback, any movement would have to be to a place that conforms. If a container is not allowed in a certain use district, moving it would trigger the loss of nonconforming rights, and the container would have to be removed. Containers used as waste receptacles for construction projects are exempt from the district prohibitions.

Staff Recommendation: No changes recommended.

21. **Issue:** 21.12.040A.2., *Continuation of Nonconforming Structures Generally*

Moving a nonconforming structure on a property to allow maintenance, reduce a visual eyesore, or a similar reason would seem to be in the best interest of the community but would be disallowed or penalized by this section. The section should be rewritten.

Staff Response: Nonconformities are those things the community has judged to be incompatible, and over time, nonconformities are intended to go away. The more allowances that are permitted to accommodate a nonconformity and make it more useful, the longer it will take to go away.

Staff Recommendation: No changes recommended.

22. **Issue:** 21.12.040B.2., *Overheight Buildings*

The sentence reads: “Where a lawful structure, existing on [date of passage], is engineered and constructed for enlargement by the addition of one or more stories, such structure may be enlarged within the full plan dimensions of the existing structure by the addition of not more than two stories.” What about Downtown? Please define and specific “full plan dimensions”. Suggested change, replace “by the addition of not more than two stories” with “to the building height allowed in zoning, or not more than two stories, whichever is greater.”

Staff Response: This section applies to the whole municipality (although the application to Chugiak-Eagle River is unclear until chapter 21.10 is completed), including downtown. The full plan dimensions would be the maximum build out proposed by the original plans.

The title of this section implies that the provision only applies to buildings that already exceed the height limit of their zoning district. However, buildings that are under the

maximum height but are engineered and constructed for additional height should also be allowed the additional two stories. A revision is suggested below.

“Full plan dimensions” refer to the horizontal dimensions of a structure.

Staff Recommendation: Page 7, lines 32-35, revise as follows:

“Where a lawful building [STRUCTURE], existing on [date of passage], is engineered and constructed for enlargement by the addition of one or more stories, such structure may be enlarged within the full plan dimensions of the existing structure by the addition of not more than two stories. This provision shall apply to buildings that conform to the height limitations as well as to overheight buildings.”

23. **Issue:** 21.12.040D.1.b.iii., *Conditional Use Approval*

Allowing one year for construction to start after approval from the planning and zoning commission does not recognize the time to design and permit projects prior to initiating construction. This section should be lengthened or eliminated.

The code provides one year for planning and start of construction after an approved replication conditional use, or that use will expire. It is questionable if one year is do-able. There are legal issues, permits to acquire design work that needs to be done. Furthermore, what is the start of construction? Is demolition considered the start of construction? Make provisions for reasonable extensions.

Suggest defining what constitutes start of construction and to provide for a reasonable extension of the one year period.

Staff Response: Property owners have one year from the time of damage or destruction to file for approval to replicate their structure. After receiving an approval, they have one year to begin construction. While staff considers two years (plus the application review time) to be sufficient, an extension provision is proposed below.

“Start of construction” is defined in chapter 21.14 as “Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers or foundation, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.”

Staff Recommendation: Page 9, lines 1-6, revise as follows:

“An approved replication conditional use shall expire if start of construction has not begun within one year of the planning and zoning commission’s approval. The director may approve an extension of up to one year upon written request showing cause. For the purposes of this section...”

24. **Issue:** 21.12.040D.2.a., *Approval Criteria*

The wording of this paragraph should be consistent with 21.12.030.C.2.a

Staff Response: No objection.

Staff Recommendation: Page 9, line 11, amend to be as proposed in issue #12.

25. **Issue:** 21.12.040D.2.c., *Approval Criteria*

The meaning of the phrase "moving towards conformity" is not clear.

Staff Response: If a building extends six feet into the setback, and it is moved to extend only four feet into the setback, that is moving towards conformity. If a development is 20 parking spaces short of their minimum requirement, and they provide 10 additional spaces, that is moving towards conformity.

Staff Recommendation: No changes recommended.

26. **Issue:** 21.12.040D.2.d., *Approval Criteria*

Structures subject to damage or loss in excess of 50% or more are required to upgrade municipal infrastructure. As in Section 21.12.030C.2.c and d, this will result in regulatory takings and should be stricken from this section.

Staff Response: See issue #13. It is an exaggeration to imply that in all cases damaged structures will be required to upgrade municipal infrastructure.

Staff Recommendation: No changes recommended.

27. **Issue:** 21.12.040E., *Legalization of Nonconforming Dimensional Setback Encroachments*

Set-back encroachments have long been regulated by airports rather than Title 21. Without waiving the disclaimer stated above, 21.12.040E. should acknowledge that history with a blanket exemption for airport lease lots from any registration procedure for nonconforming setback encroachments.

Staff Response: Lease lots at TSAIA typically don’t have a platted boundary from which to measure a setback. This provision has been in the code since 1999 and to our knowledge has not caused any problems at the airport.

Staff Recommendation: No changes recommended.

28. **Issue:** 21.12.040E.2., *Procedures for Registration*

There were a couple of questions regarding this section:

- o Requiring an as-built places an undue burden on the property owner.
- o The code also requires the “structure and encroachments were constructed prior to January 1, 1986.” What is the significance of that day?
- o There are no established criteria for the application and gives discretion to the director. That raises too many questions. This concern continues into section b. The “director” is given a lot of leeway and authority with no criteria for acceptance or denial written in the code.

While these requirements are probably reasonable, they place an additional responsibility and cost on a property owner. Requiring an as-built merely provides a base line for future monitoring but imposes a cost on property owners. How do you deal with property owners that are ignorant of this requirement and fail to file the application? Can the director impose any conditions they wish prior to approving the application? Shouldn't the director's authority be limited or defined?

Staff Response: This provision, added to the code in 1999, provides an avenue for relief for property owners who have illegally encroached into their setbacks before 1986. Without this avenue, they could be required to remove the encroachment. This provision allows them to keep the encroaching portion of the structure, which becomes a nonconformity. Since 1999, this helpful provision has satisfactorily provided relief to many property owners.

Without an as-built, there is no way to accurately document the dimensions of the encroachment. January 1, 1986 was the day that the municipality began requiring as-builts in order to get a certificate of occupancy. The criteria for the director are 1) the encroachment can't be a life safety hazard; and 2) the general welfare must be protected.

Such an illegal encroachment would likely come to the attention of the property owner in one of three ways: a complaint made by a citizen; during the sale of the property; or during a home remodeling or addition project that triggers a permit. Absent one of these situations, neither the property owner nor the municipality will likely be aware of the illegality of the encroachment.

Staff Recommendation: No changes recommended.

29. **Issue:** 21.12.040F., *Preexisting Tower and Antennas*

The first sentence allows preexisting towers to be replaced with a new one of like construction and height, presumably even if the height and construction do not conform to Title 21, but the last sentence requires new construction to comply with the requirements of Title 21. These sentences appear to be in conflict. Any tower or antenna in an Airport Height Overlay District or that otherwise penetrates a Federal Airport Regulation Part 77 imaginary

surface with respect to an airport, or that would penetrate such a surface if reconstructed, should be excepted from the automatic allowance for rebuilding a preexisting tower or antenna. Otherwise, the requirement to obtain a permit within 180 days from date the facility is damaged or destroyed seems far too short.

This section requires a permit be obtained within 180 days from the date the facility is damaged or destroyed. This is an unreasonable time amount. Earlier in the section, one year is given after damage or destruction. The code should be consistent and allow for more time.

A time limit of 180 days from the date the facility is damaged or destroyed seems unreasonable since section 21.12.040D. allows one years from the approval from planning and zoning. The time lines in this entire section should be consistent.

Staff Response: The commenter is correct that the first and last sentences are contradictory. Since towers built after the adoption of this code should comply with this code, the last sentence is the correct sentence. And since new construction (after the adoption of this code) must comply with the code, stating the last sentence is unnecessary.

Staff Recommendation: Page 10, lines 12-19, delete section 21.12.040F.

30. **Issue:** 21.12.050, *Nonconforming Lots of Record*

ANC comprises some 4,600 acres under single ownership by the State of Alaska, but is composed of a great many individual platted parcels, which are, in turn, overlain with ANC's Airport Information Maps (AIMS) describing the ANC's lot and block plan of lease lot configuration. ANC has historically exercised exclusive jurisdiction over lease lot configuration within ANC's boundaries. To try to apply proposed 21.12.050, dealing with lot conformity, on ANC, with its multiplicity of platted and AIMS lots, would be extremely confusing and serve no beneficial purpose. Without waiving the general disclaimer stated above, the ANC should be exempted completely from 21.12.050.

Staff Response: This provision has been in the code since borough days, and to the knowledge of staff, has not created a problem for the airport.

Staff Recommendation: No changes recommended.

31. **Issue:** 21.12.050A.2., *Nonconforming Lots*

What is the intent of this section?

Staff Response: This section explains what is allowed on a nonconforming lot (too small and/or too narrow) in a nonresidential zoning district. Current code addresses what can happen on nonconforming lots “in any zoning district in which dwellings are permitted”—dwellings and customary accessory buildings may be placed. However, the code does not address what is allowed on a nonconforming lot in a zoning district in which dwellings are not permitted. And the question is raised—if the nonconforming lot is in a commercial

district, are only dwellings allowed and is that appropriate? Sections 21.12.050A.1. and 2. clarify what is allowed on nonconforming lots in any district.

Upon review of this section, it was noted that some uses have a greater minimum lot size in their use-specific standards and should not be allowed on nonconforming lots. Staff proposes a revision to clarify this.

Staff Recommendation: Page 10, lines 34-41, amend 21.12.050A.2. to read:

“In any nonresidential zoning district, notwithstanding limitations imposed by other provisions of this title, any use allowed in the district by table 21.05-2 may be erected on [ANY] lots that fail to meet the requirements for minimum area and/or width, provided all of the following conditions are met:

- a. The review and approval process indicated in table 21.05-2 is applied;
- b. The use does not have a minimum lot size greater than the minimum lot size required by the underlying zoning district;
- c. Any district-specific standards, use-specific standards, and dimensional and design standards, such as setbacks, parking, open space, landscaping, etc. are met; and
- d. The lot is of record at the effective date of the original adoption or amendment of applicable regulations, except as restricted in subsection B. below.

[((THROUGH THE APPROPRIATE REVIEW AND APPROVAL PROCEDURE), PROVIDED THE UNDERLYING ZONING DISTRICT AND DIMENSIONAL AND DESIGN STANDARDS, SUCH AS SETBACKS, PARKING, OPEN SPACE, LANDSCAPING, ETC. CAN BE MET, THAT IS OF RECORD AT THE EFFECT DATE OF THE ORIGINAL ADOPTION OR AMENDMENT OF APPLICABLE REGULATIONS, EXCEPT AS RESTRICTED IN SUBSECTION B. BELOW. THIS PROVISION SHALL APPLY EVEN IF THE LOT FAILS TO MEET THE REQUIREMENTS FOR THE AREA OR WIDTH, OR BOTH, THAT ARE APPLICABLE IN THE DISTRICT.)]

32. **Issue:** 21.12.050C., *Legalization of Lots Created Prior to September 16, 1975*

Purports to "legalize" pre-existing lots under certain circumstances. The implication is that if the requirements are not met, the pre-existing lot is illegal and may not continue. There is, however, no procedure to accomplish that result, and if it is not clear the MOA may by fiat declare a 30+ year old lot "illegal." Neither is it clear what the impact would be on a lot that does not satisfy the legalization requirement. If the result would regulate the lot into uselessness, the owner would probably be due just compensation due to regulatory taking. Without waiving the disclaimers stated above, 21.12.050.C should exempt ANC from registration requirements for non-conforming lots.

Staff Response: This provision, adopted in 2005, has not caused any problems at the airport of which we are aware.

Staff Recommendation: No changes recommended.

33. **Issue:** 21.12.050C., *Legalization of Lots Created Prior to September 16, 1975*

Lots which fail to meet current standards created prior to 9/16/1975 are permitted to continue only through a process which seems to state that duly recorded BLM, Commissioner, Precinct, City and Borough plats are somehow inherently deficient. Why must the property owner pay the Municipality fees and take the added time and frustration of having an official record of something which is on record with the State of Alaska District Recorders office? This is an unwarranted requirement. The Municipality is only increasing its own workload and that of the individual property owner. If a plat is recorded and is legally recognized by the State, why create a problem where one does not exist?

While these requirements are probably reasonable, they place an additional responsibility and cost on a property owner. Requiring an as-built merely provides a base line for future monitoring but imposes a cost on property owners. How do you deal with property owners that are ignorant of this requirement and fail to file the application? Can the director impose any conditions they wish prior to approving the application? Shouldn't the director's authority be limited or defined?

Staff Response: When Assemblymember Coffey proposed the language for this section in 2005, he wrote by way of explanation:

The ordinance adds a new section AMC 21.55.020B. which will create a procedure whereby an illegal lot, for example, a lot that was created by illegal subdivision and does not meet lot area or the width to depth ratio, may become a legal nonconforming lot subject to all the rights, privileges and restrictions of AMC 21.55.020 if it meets the registration requirements.

The applicability should be clarified, as the language now states that all lots existing prior to 9/16/75 need to register for legalization.

Staff Recommendation: Page 11, lines 12-13, the language should be clarified to state that applicable lots are those that were not created in accordance with the regulations of the state and the municipality and that don't meet the district requirements for minimum area and width. Revise as follows:

"Lots existing prior to September 16, 1975, that do not meet the district requirements for minimum area and/or width, and that were not created in accordance with the regulations of the state and the municipality, may continue in existence provided the following requirements are met:"

34. **Issue:** 21.12.050C., *Legalization of Lots Created Prior to September 16, 1975*

In the marked changes draft, a footnote symbol appears in the title, but it does not show what text or footnote it corresponds(ed). Also, what is the significance of the September 16 date?

Staff Response: The text of the footnote to be deleted is at the end of the marked changes draft. September 16, 1975 is the date of unification of the City of Anchorage and the Greater Anchorage Area Borough.

Staff Recommendation: No changes recommended.

35. **Issue:** 21.12.050C.3., *Legalization of Lots Created Prior to September 16, 1975*
What happens if the Municipality of Anchorage misses its deadline?

Staff Response: Staff has not missed a deadline for this provision yet, and don't anticipate missing any in the future.

Staff Recommendation: No changes recommended.

36. **Issue:** 21.12.060A.1., *Developments Are Conforming*
Why is 21.07.020B. exempted from this provision?

Staff Response: Section 21.07.020B. lays out the setbacks required from streams, wetlands, and water bodies. Structures that encroach into these setbacks are considered nonconforming structures rather than characteristics of use that are out of compliance.

Staff Recommendation: No changes recommended.

37. **Issue:** 21.12.060A.2., *Developments Are Conforming*

No change may be made to any development except in the direction of conformity. This is a new section and is unclear as to its application. Will this only apply to a specific parcel or is it also applicable to subdivisions? Will a nonconforming use in one phase of a development prohibit continued expansion in a second phase? Will this section be used to obtain exactions from property owners to improve off site infrastructure or garner favorable support for future Municipal projects? This section needs to be more specific as to its application.

Staff Response: Once right-of-way improvements are accepted by the municipality, the developer is no longer responsible for a subdivision and is not expected to correct any nonconformities that may arise with subsequent code amendments. The existence of a nonconforming use would not prohibit the development of a second phase of a project, but the use of the second phase would have to be conforming. Property owners will only contribute to off-site improvements as stated in section 21.12.060C.3. or 4. This section will not be used to "garner favorable support for future Municipal projects".

Staff Recommendation: No changes recommended.

38. **Issue:** 21.12.060B., *Parking Out of Compliance*
Please explain the example more clearly.

Staff Response: If a development doesn't have the required amount of parking, and additional floor area is added to the development that triggers the need for five more parking spaces, the development must add five more parking spaces at the time of the addition of the floor area. The development is not required to address the original lack of parking, but may address it if the addition of floor area triggers this section, requiring 10% of project costs to be spent on bringing characteristics of use towards compliance.

Current code is not clear on this point, but this has been standard practice for some time.

Staff Recommendation: No changes recommended.

39. **Issue:** 21.12.060B., *Parking Out of Compliance*

This is a new section allowing for upgrades to existing nonconforming parking. This sets a reasonable standard for parking upgrades. The question which comes to mind is will this be used as a test of proportionality for other characteristics of use?

Staff Response: No.

Staff Recommendation: No changes recommended.

40. **Issue:** 21.12.060C.1., *Applicability*

Define a development project. Would a new roof count? Would adding insulation and replacing light fixtures with efficient bulbs count? Would adding a fire suppression system count? All of those cost more than the threshold.

Staff Response: Any project that requires a permit, costs more than 2.5% of the assessed value of the structure, and is happening on a site that is out of compliance with any characteristics of use would fall under this section. If the examples above meet all three of the applicability requirements, then they would "count".

Staff Recommendation: No changes recommended.

41. **Issue:** 21.12.060C.1., *Applicability*

It is not clear what "development project" means as used in this provision. Is this only expansion or alteration, or could it mean repairs? Don't think it was intended to apply to repair projects, so that probably should be clarified.

Staff Response: It is intended to apply to repair projects, as long as they meet all three of the applicability requirements.

Staff Recommendation: No changes recommended.

42. **Issue:** 21.12.060C.2., *Standard*

It is not clear that an exaction under 21.12.060C.3 of 10% of project costs to be paid to the MOA is justified. It may be appropriate to apply the 10% to benefit the facilities, such as appearance. That would be particularly true if applied on a Federally-funded airport-including Merrill Field-where an exaction that goes into the municipal general fund would violate FAA revenue diversion policy. Moreover, it appears the same exaction could be required again and again for a whole series of projects. Yet once a payment is made, it seems that in exchange the nonconformity would have to be deemed cured and not subject to payment again under a subsequent project. Indeed, multiple 10% exactions would actually make resolution of the nonconformity even less likely, as the municipality's 10% "hits" would prevent an owner from building the resources to do the job.

Staff Response: A property owner who is unable to bring his or her property into compliance with the code without complete redevelopment of the site must continue to contribute the 10% every time he or she does an applicable project, until the site is brought into compliance with the code.

Staff Recommendation: No changes recommended.

43. **Issue:** 21.12.060C.2.e., *Standard*

This paragraph implies that the UDC will have decision making authority on appeals. It is our understanding that the UDC has been stripped of its decision making authority and will be an advisory group only.

Staff Response: The planning department supports the role of the UDC as proposed throughout the rewrite. Specifically, the department supports giving the UDC decision-making authority over major site plan reviews, as well as occasional variance and appeal authority.

Staff Recommendation: No changes recommended.

44. **Issue:** 21.12.060C.4., *No Applicable Characteristics*

Requiring that at least ten percent of a project cost be used to move a nonconforming structure toward conformity seems reasonable but should have a minimum threshold prior to implementation. Further the ten percent should not be levied as a penalty as it apparently is in this section. Instead the money might better be required to approve the appearance of the property, because if it is viewed as being punitive, the property owner might allow the property to deteriorate rather than improve it.

This section requires "the applicant shall place the required 10 percent of project costs in a municipal account dedicated to public improvements". What is the rationale? It seems like a hidden tax and the money might be better applied to improve appearance. It seems counterproductive.

Staff Response: The minimum threshold is laid out in the applicability section of 21.12.060C.1. This section is responding to the possibility that the only out-of-compliance characteristics of a site are not fixable without a complete redevelopment of the site. Property owners in that situation should not be “off the hook” completely. Until such time (if ever) the site is redeveloped and brought into full compliance with the code, the property owner can assist with improving the public right-of-way near his or her property, thus improving the general area and benefiting the development itself.

The suggestion that the money be used to approve the appearance of the site is not practical, as it is an aesthetic judgment whether or not there is something wrong with the appearance of the site.

Any method of addressing nonconformities could cause an owner to avoid making improvements and allow a site to deteriorate. The community can only hope that property owners take pride in their properties and want to invest in improvements to enhance the site and meet community standards.

Staff Recommendation: No changes recommended.

45. **Issue:** 21.12.070, *Nonconforming Signs*

There is another footnote mark on the marked changes draft. What text or deleted footnote does this correspond to?

Staff Response: The text of the footnote to be deleted is at the end of the marked changes draft.

Staff Recommendation: No changes recommended.

Comments Received for September 17, 2007

Planning and Zoning Commission

Public Hearing

Northeast Community Council, Peggy Robinson

Municipality Of Anchorage, Public Transportation Department
Alton Staff, Planning Manager

Municipality Of Anchorage, Development Services Department
Building Safety Division, On-Site Water and Wastewater Program
Daniel Roth, Program Manager

Municipality Of Anchorage, Development Services Department
Right of Way Division
Lynn McGee, Senior Plan Reviewer

Anchorage Home Builders Association, Daniel Bolles

Anchorage Chamber of Commerce
Stacy Schubert, President
George Vakalis, Chair of the Ad Hoc Title 21 Committee

Dianne Holmes

Ted Stevens Anchorage International Airport
Jack Jones, Planning Manager

Associated General Contractors of Alaska
Richard Cattanach, Executive Director

AO 2007-116
Title 21 Rewrite, Chapter 21.12, *Nonconformities*

NECC

Northeast Community Council

Resolution 5 – August 16, 2007

TO: Anchorage Planning and Zoning Commission
MOA Planning Department (fax: 343-7927)

FROM: Peggy Robinson, President
Northeast Community Council, 333-1831

SUBJECT: Ordinance Amending Title 21, Chapter 12: Nonconformities

The NorthEast Community Council Title 21 Committee met and reviewed these proposed changes to Chapter 12 on nonconformities. The chair presented their review to the NECC members at the August 16th meeting. The format as presented by the MOA made it difficult to tell which was new language and which was existing language.

There was minimal discussion. However, it was noted that the changes assisted the homeowners in the NECC area with their long-standing nonconforming properties.

The motion was as follows: "To support these changes as presented, as long as any changes do not make nonconformities any more lenient than they currently are." The motion was approved with a vote of 17 in favor, 0 opposed, and 1 abstaining.

We ask that you act upon this motion as warranted in the interests of the NECC and the community of Anchorage as a whole. Thank you for your attention to this matter.

Signed:



From: Staff, Alton R.
Sent: Thursday, August 23, 2007 11:50 AM
To: Title 21 Rewrite
Subject: Review Comment - Planning and Zoning Commission Case 2007-151, Title 21 Rewrite, Chapter 12, Nonconformities

The Public Transportation Department has no comment on the proposed Rewrite of Title 21, Chapter 12.

Thank you for the opportunity to review.

Alton R. Staff
Planning Manager
Public Transportation Department
3650A East Tudor Road
Anchorage, AK 99507
907-343-8230



**Municipality of Anchorage
Development Services Department
Building Safety Division**



MEMORANDUM

RECEIVED

DATE: September 4, 2007
TO: Jerry Weaver, Jr., Platting Officer, CPD
FROM: *DR* Daniel Roth, Program Manager, On-Site Water and Wastewater Program
SUBJECT: Comments on Cases due September 7, 2007

SEP 04 2007

Municipality of Anchorage
Zoning Division

The On-Site Water & Wastewater Program has reviewed the following cases and has these comments:

2007 - 151 Title 21 Rewrite, Chapter 12, Nonconformities
No objection



MUNICIPALITY OF ANCHORAGE

Development Services Department
Right of Way Division



MEMORANDUM

DATE: September 6, 2007

TO: Planning Department, Zoning and Platting Division

THRU: Jack L. Frost, Jr., Right of Way Supervisor *L*

FROM: Lynn McGee, Senior Plan Reviewer *L*

SUBJ: Request for Comments on Planning and Zoning Commission case(s) for September 17, 2007.

RECEIVED

SEP 06 2007

Municipality of Anchorage
Zoning Division

Right of Way Division has reviewed the following case(s) due September 7, 2007.

**07-151 Title 21 Rewrite
(Chapter 12, Nonconformities)**
Right of Way Division has no comments at this time.
Review time 15 minutes.

From: Daniel Bolles [dnbolles@hotmail.com]
Sent: Friday, September 07, 2007 3:48 PM
To: Title 21 Rewrite
Subject: AHBA Comments for Chapter 12

Field Tech
Zoning – Stormwater
Assessment and Inspection
PO Box 220042, Anchorage, AK 99522
907-952-0244

MEMORANDUM

DATE: August 31, 2007
TO: Municipality of Anchorage
FROM: Anchorage Home Builders Association
SUBJECT: AMC 21.12 Nonconformities

The Anchorage Home Builders Association wishes to take this opportunity to thank the Planning staff for their hard work and continued dialogue in this refining process that is developing Title 21. We are grateful for the responsiveness and willing cooperation which has permeated the process during the development of Chapter 12, Nonconformities.

The following comments are offered concerning the public hearing draft of August 5, 2007.

Sections 21.12.010.C and D. Section 21.12.010.C property owners are solely responsible for establishing rights to a nonconformity. Section 21.12.010.D states that a nonconformity resulting from the actions of a government agency the structure, use of land or structure or characteristic of use will be deemed conforming. However, Section 21.12.010.D is silent as to who is responsible to obtain the conforming designation.

Given that land, buildings and their uses may go unaltered for a number of years it would seem prudent to have a determination, by the Municipality, at the time of acquisition and have such recorded against the property.

Section 21.12.020.A. The inclusion of mobile homes in this section grants equal protection to all home owners within the municipality and is greatly appreciated

Section 21.12.030.C.2.c and d. The approval criteria for uses subject to loss or damage of 50% or more include provision for development of off site impacts. This has the potential of creating exactions which may be prohibitive in nature and effectively stall or prohibit reconstruction of damaged homes and businesses. This is of major concern to all, in that municipal infrastructure may be forced upon citizens through the regulations of the land use process. There is further concern over adoption of regulations which would have economic impacts far beyond the coverage of

home insurance policies.

Compulsory off site improvements, no matter their need, are a community responsibility. Forcing the individual property owner to solely bear the burden of any improvement is an exaction disproportionate to the impact of reconstruction. These provisions are an attempt to legalize regulatory takings and should be stricken from this section.

Section 21.12.030.E.1. By stating that the owner must have maintained the land and structure in accordance with "all" applicable regulations then drawing attention to building and fire codes becomes a redundancy and is unnecessary.

Section 21.12.040.D.2.d. Structures subject to damage or loss in excess of 50% or more are required to upgrade municipal infrastructure. As in Section 21.12.030.C.2.c and d, this will result in regulatory takings and should be stricken from this section.

Section 21.12.050.C. Lots which fail to meet current standards created prior to 9/16/1975 are permitted to continue only through a process which seems to state that duly recorded BLM, Commissioner, Precinct, City and Borough plats are some how inherently deficient. Why must the property owner pay the Municipality fees and take the added time and frustration of having an official record of something which is on record with the State of Alaska District Recorders office? This is an unwarranted requirement. The Municipality is only increasing its own workload and that of the individual property owner. If a plat is recorded and is legally recognized by the State, why create a problem where one does not exist?

Section 21.12.060.A.2. No change may be made to any development except in the direction of conformity. This is a new section and is unclear as to its application. Will this only apply to a specific parcel or is it also applicable to subdivisions? Will a nonconforming use in one phase of a development prohibit continued expansion in a second phase? Will this section be used to obtain exactions from property owners to improve off site infrastructure or garner favorable support for future Municipal projects? This section needs to be more specific as to its application.

Section 21.12.060.B. This is a new section allowing for upgrades to existing nonconforming parking. This sets a reasonable standard for parking upgrades. The question which comes to mind is will this be used as a test of proportionality for other characteristics of use?

The AHBA is withholding comment on those sections which are dependant on chapters still pending.

September 7, 2007

Planning & Zoning Commission

RE: Title 21 (Chapter 21.12: Nonconformities)
PZC Case 2007-151

RECEIVED

SEP 7 2007

PLANNING DEPARTMENT

Ladies and Gentlemen:

Please accept the following questions and comments from the Anchorage Chamber of Commerce as they pertain to Chapter 21.12: Nonconformities.

The Anchorage Chamber has been monitoring the progress of the re-write for several years and is very much in support of a revised Title 21 land-use code but also recognizes the potential large impacts to the business community. As a general point, it is difficult to review this document chapter by chapter without seeing the whole work product. Omissions and deletions in one section have a direct impact on others and require follow-up to ensure consistency within the code. A suggested change from our committee is to mark where any deleted or moved content will be included in future chapters.

As an organization with more than 1,200 members dedicated to protecting and promoting the interests of business we offer the following comments for consideration:

- **21.12.010 (public hearing draft page 2, marked changes draft page 3) A. Purpose:** We are encouraged to see the defined intention of this chapter to include “minimize negative economic effects on development”. This is a positive step to include this in written record.
- **21.12.020 (public hearing draft page 4, marked changes draft page 5) D. Mobile Homes:** Please clarify the difference between a manufactured home and mobile home. Also, the two terms are used as interchangeable in sections of the code but in municipal work sessions the terms have been defined as different. Please clarify and define.
- **21.12.030 (public hearing draft page 5, marked changes draft page 6) B. Change of Use:** Under 1-The statement reads “Any nonconforming use may be changed to another nonconforming use if **both** of the following criteria are met:” Three criteria are then listed. Does “both” mean all of the three criteria or two of the three, etc.? Please clarify; suggestion is to change “both” to “all”.
- **21.12.030 (public hearing draft page 5, marked changes draft 6) B. Change of Use:** Under 2-The statement reads “If a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.” Questions regarding this point:
 - Please define and clarify “superseded”. To what degree and duration?
 - This statement conflicts with 21.12.030(public hearing draft page 6, marked changes draft page 8) D. Abandonment or Cessation of Use 1d. “The use has been discontinued, vacant, or inactive for a continuous period of at least one year.” Suggested change is to make the two consistent and set a time period of more than

- one year.
 - The point was raised about retail and wholesale businesses. If a retail business has a warehouse and decides to temporarily sell its stock at wholesale, is the use now nonconforming?
- **21.12.030 (public hearing draft page 5, marked changes draft page 7) C. Damage or Destruction:** The sentence reads, “Any person wishing to replicate a nonconforming use that has been damaged or destroyed to an extent of more than 50 percent of the replacement cost at the time of destruction...” Clarify cost; is it structure or repair cost?
- **21.12.040 (public hearing draft page 7, marked changes draft page 9) A. Continuation of Nonconforming Structures Generally A.2.:** The sentence reads “Should a nonconforming structure be moved for **any reason** for any distance whatever, it shall therefore conform to the regulations for the district in which it is located after it is moved.” There are a couple of questions regarding this statement:
 - This seems to discourage the act of moving a container to a more discrete location, buffered from adjacent uses.
 - The Anchorage School District used the example of moving a storage container for the purpose of construction. Would that container now have to conform?
- **21.12.040 (public hearing draft page 7, marked changes draft page 10) B Over height Buildings 2.:** The sentence reads: “Where a lawful structure, existing on [date of passage], is engineered and constructed for enlargement by the addition of one or more stories, such structure may be enlarged within the **full plan dimensions** of the existing structure **by the addition of not more than two stories.**” What about Downtown? Please define and specific “full plan dimensions”. Suggested change, replace “by the addition of not more than two stories” with “to the building height allowed in zoning, or not more than two stories, whichever is greater.”
- **21.12.040 (public hearing draft page 9, marked changes draft page 11) D. Damage or Destruction. 1. b.iii.:** The code provides one year for planning and start of construction after an approved replication conditional use, or that use will expire. It is questionable if one year is do-able. There are legal issues, permits to acquire design work that needs to be done. Furthermore, what is the start of construction? Is demolition considered the start of construction? Make provisions for reasonable extensions.
- **21.12.040 (public hearing draft page 9, section E, marked changes draft page 11, section F.) Legalization of Nonconforming Dimensional Setback Encroachments. 2. Procedures for Registration:** There were a couple of questions regarding this section:
 - Requiring an as-built places an undue burden on the property owner.
 - The code also requires the “structure and encroachments were constructed prior to January 1, 1986.” What is the significance of that day?
 - There are no established criteria for the application and gives discretion to the director. That raises too many questions. This concern continues into section b. The “director” is given a lot of leeway and authority with no criteria for acceptance or denial written in the code.
- **21.12.040 (public hearing draft page 10, marked changes draft page 12) G. Preexisting Tower and Antennas.** This section requires a permit be obtained within 180 days from the date the facility is damaged or destroyed. This is an unreasonable time amount. Earlier in the section, one year is given after damage or destruction. The code should be consistent and allow for more time.
- **21.12.050 (public hearing draft page 11, marked changes draft page 13) C. Legalization of Lots Created Prior to September 16, 1975:** In the marked changes draft, a footnote symbol appears in the title, but it does not show what text or footnote it corresponds(ed). Also, what is the significance of the September 16 date?

- **21.12.050 (public hearing draft page 11, marked changes draft page 13) C.3.:** What happens if the Municipality of Anchorage misses its deadline?
- **21.12.060 (public hearing draft page 12, marked changes draft page 14) Characteristics of Use C.1.** Define a development project. Would a new roof count? Would adding insulation and replacing light fixtures with efficient bulbs count? Would adding a fire suppression system count? All of those cost more than the threshold.
- **21.12.060 (public hearing draft page 13, marked changes draft page 16) 4. No Applicable Characteristics:** This section requires “the applicant shall place the required 10 percent of project costs in a municipal account dedicated to public improvements”. What is the rationale? It seems like a hidden tax and the money might be better applied to improve appearance. It seems counterproductive.
- **21.12.070 (marked changes draft page 16) Nonconforming Signs:** There is another footnote mark on the marked changes draft. What text or deleted footnote does this correspond to?

Should you have any questions about our comments, please direct them either to Emily Ford, Anchorage Chamber government & external affairs manager at 677-7105 or George Vakalis, Anchorage Chamber past chair and ad hoc Title 21 committee chair at 742-4305.

Thank you for taking the time to review our comments noted above. We are eager to see your response and anxious to see how our comments and suggestions will be incorporated into future drafts of the Title 21 re-write.

Sincerely,



Stacy Schubert
President



George Vakalis
Chair of the ad hoc Title 21 committee

From: Dianne [dianneholmes@alaska.net]
Sent: Sunday, September 09, 2007 4:50 PM
To: Title 21 Rewrite; Pierce, Eileen A
Cc: McConnell, Erika B.
Subject: PZC 2007-151, T-21 Chapter 12 comments

Please consider these comments for the P/Z hearing on Title 21, Chapter 12, Non-conformities as well as the Title 21 general public hearings.

Title 21 has been altered in recent years to reflect the public's concern that non-conformities should come into compliance when certain conditions or time periods are met. There is good reason that the public wants gradual compliance because it helps achieve a city that we envisioned when the 2020 Comp Plan was developed in 1999--with much citizen input.

Below are instances (some conflicting) where Title 21 has already included conditions for bringing non-conformities into compliance, such as with signs and self-storage facilities. Yet the current chapter 12 revision does not contain strong enough language to move toward compliance with land and building non-conformities. It is very difficult for the public to know the correct language to request in order that a shift in the direction of this chapter occurs and that eventually non-conformities will be phased out.

Please insert the appropriate language to ensure greater conformity over time when it is reasonable to expect non-conforming land and buildings to come into compliance, such as when the sale of land and buildings occurs.

21.55.140 Self storage and vehicle storage operations.

1. Any self-storage or vehicle storage operation existing prior to the adoption of this section, that does not comply with the requirements of subSections 21.45.290
<javascript:parent.setJumpLink(%2212717%22,%22Section 21.45.290%22,%220-0-0-3859%22);>L.1, L.2., L.3., L.6. and L.7. for sight-obscuring fencing, required landscaping external to said fencing, and elimination of security razor or concertina security wire at the top of a fence, shall submit a site enhancement plan for the property, which is reviewed and approval determined by the Planning Director. The site enhancement plan shall be submitted to the Director within 9 years and 6 months. The plan shall be fully implemented within ten years of the date of the adoption of this section which is October 26, 2004. The intent of this site enhancement plan is to bring property as close as reasonably possible into compliance with the above noted subsections without impeding existing operations.

Thank you

Dianne Holmes



Ted Stevens
Anchorage
International Airport

P.O. Box 196960
Anchorage, Alaska 99519-6960

September 10, 2007

Re: Comments on proposed Title 21,
Chapter 12 (Nonconformities)

Ms. Erika McConnell
Municipality of Anchorage
Physical Planning Division
P.O. Box 196650
Anchorage, AK 99519-6650

RECEIVED

SEP 10 2007

PLANNING DEPARTMENT

Dear Ms. McConnell:

Ted Stevens Anchorage International Airport (ANC) staff appreciates the opportunity to review and comment on the Municipality of Anchorage's (MOA) proposed Title 21, Chapter 12 (Nonconformities).

As we have previously noted, we reserve our contention that Title 21 does not apply on ANC. Applicability of Chapter 12 of Title 21 to ANC and its tenants is also made unclear by the uncertain applicability and final terms of the proposed Airport Development District (AD). The latest draft of the AD did not incorporate ANC's recommended changes. To any extent such a designation may be found to apply to ANC, ANC specifically preserves its previous recommendations. Any affect of Chapter 12 to ANC would also depend on whether ANC's authority to determine issues of conformity, nonconformity and legally allowed nonconforming use within ANC's boundaries will be recognized under Title 21. Nevertheless, ANC provides the following comments in its continuing effort to foster a cooperative relationship with the MOA, in the interest of good public policy and with respect to areas beyond the Airport, without implying their applicability to ANC.

General Points - It is difficult to review Title 21 chapter by chapter without seeing the whole work product. Omissions and deletions in one section/chapter have a direct impact on another section/chapter requiring follow-up to ensure consistency within the code. To help the reviewer, one suggestion would be to identify or footnote where any deleted or removed content will be included in future chapters. Also, in some cases, changes refer to other chapters which have not yet been provided for review. Subsequent review of those chapters may require additional comments on chapters being reviewed.

The ability to comment effectively on Chapter 12 is impaired by the fact the definition of nonconformity and the process for establishing nonconforming status are not contained in this section. It is also unclear whether all uses of "nonconforming" have the meaning of "legal nonconforming", as in "legally entitled to remain despite technically being out of conformity" or whether it sometimes just means "not in conformity."

21.12.010.B.3.a - Under proposed 21.12.010.B.3.a, there is reference to a use pre-dating the effective date of the title "that is permitted as a conditional use.....but which lacks an approved conditional use permit." It is confusing to refer to a use as "permitted" but lacking a permit. It appears that sentence is meant to address a pre-existing use that is "allowable only as conditional use," but lacking a permit. The language should be revised for clarity.

Under proposed 21.12.010.B.3.a, it also appears that a use that exists as of the effective date of the new title but that is allowable only on a conditional basis under the new title, is not to be considered a nonconforming use, but to be considered as if it existed as a conditional use. The language would appear to grant automatic conditional use approval even if the use was flatly prohibited in the district prior to the effective date of the new title. Is that the intent?

Additionally, the "scope of such a conditional use" (considered as if permitted based on its pre-existence) is said to be governed by the same Chapter 12. However, throughout Chapter 12, reference is made only to nonconforming uses, not conditional uses. It's not clear how those rules, then, bear on the scope of a use explicitly declared not to be a nonconforming use. Neither is it clear which of the rules are to be considered to deal with "scope," and therefore is applicable to a "considered" conditional use and which do not apply since such use is not deemed "nonconforming."

21.12.010.F.1.c - Insert "and electrical" after "mechanical".

21.12.030.B.1 - Change "both" to "all".

21.12.030 B.2 - The statement reads "If a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed." Please define and clarify the degree and duration of "superseded". It appears that 21.12.030.B.2 can be deleted as it is covered by 21.12.030.D.1.b.

21.12.030.C.2.a - What is the value in requiring that a use "can be made compatible" if there is no requirement to do so. Propose the language be changed to read "The nonconforming use is compatible, or can and is required to be made compatible, with uses. . ."

21.12.030 C&D - Whatever distinction is intended and the differential applicability between 21.12.030.C (replication of a damaged or destroyed use) and 21.12.040.D (replication of damaged or destroyed structure) is not at all clear. Presumably the latter deals with nonconformity with such issues as setbacks that are unrelated to use. But it's not clear.

21.12.30.D.1.b - The abandonment standard of 21.12.030.D.1.b is unclear as to whether an interim or transitory use constitutes abandonment, and assuming not, what is the threshold if the one year continuous discontinuation of 1.d has not run? Does not the one year period of 1.d suggest that a discontinued use may be restored within that year despite an interim replacement use? A similar question arises from 1.c, concerning removal of a structure given that 21.12.040 allows damaged structures to be replaced.

21.12.030.E.4.a - Revise to read: "Has been engaged in activities that would prove there was no intent to abandon, such as actively and continuously marketing the land or structure for sale or lease." and delete 21.12.030.E.4.b.

21.12.040.A.1 - In the first sentence, replace "may be enlarged" with "may be enlarged, except as provided in 21.12.040.B.2,"

21.12.040.A.1 - The meanings of the phrases "increases its nonconformity" and "intensify the nonconformity" are not clear, nor are they consistent.

21.12.040.D.1.b.iii - Suggest defining what constitutes start of construction and to provide for a reasonable extension of the one year period.

21.12.040.D.2.a - The wording of this paragraph should be consistent with 21.12.030.C.2.a

21.12.040.D.2.c - The meaning of the phrase "moving towards conformity" is not clear.

21.12.040.E - Set-back encroachments have long been regulated by airports rather than Title 21. Without waiving the disclaimer stated above, 21.12.040.E should acknowledge that history with a blanket exemption for airport lease lots from any registration procedure for nonconforming setback encroachments.

21.12.040.F - The first sentence allows preexisting towers to be replaced with a new one of like construction and height, presumably even if the height and construction do not conform to Title 21, but the last sentence requires new construction to comply with the requirements of Title 21. These sentences appear to be in conflict. Any tower or antenna in an Airport Height Overlay District or that otherwise penetrates a Federal Airport Regulation Part 77 imaginary surface with respect to an airport, or that would penetrate such a surface if reconstructed, should be excepted from the automatic allowance for rebuilding a preexisting tower or antenna. Otherwise, the requirement to obtain a permit within 180 days from date the facility is damaged or destroyed seems far too short.

21.12.050 - ANC comprises some 4,600 acres under single ownership by the State of Alaska, but is composed of a great many individual platted parcels, which are, in turn, overlain with ANC's Airport Information Maps (AIMS) describing the ANC's lot and block plan of lease lot configuration. ANC has historically exercised exclusive jurisdiction over lease lot configuration within ANC's boundaries. To try to apply proposed 21.12.050, dealing with lot conformity, on ANC, with its multiplicity of platted and AIMS lots, would be extremely confusing and serve no beneficial purpose. Without waiving the general disclaimer stated above, the ANC should be exempted completely from 21.12.050.

21.12.050.C - Purports to "legalize" pre-existing lots under certain circumstances. The implication is that if the requirements are not met, the pre-existing lot is illegal and may not continue. There is, however, no procedure to accomplish that result, and if it is not clear the MOA may by fiat declare a 30+ year old lot "illegal." Neither is it clear what the impact would be on a lot that does not satisfy the legalization requirement. If the result would regulate the lot into uselessness, the owner would probably be due just

compensation due to regulatory taking. Without waiving the disclaimers stated above, 21.12.050.C should exempt ANC from registration requirements for non-conforming lots.

21.12.060.C.1 - It is not clear what "development project" means as used in this provision. Is this only expansion or alteration, or could it mean repairs? Don't think it was intended to apply to repair projects, so that probably should be clarified.

21.12.060.C.2 - It is not clear that an exaction under 21.12.060.C.3 of 10% of project costs to be paid to the MOA is justified. It may be appropriate to apply the 10% to benefit the facilities, such as appearance. That would be particularly true if applied on a Federally-funded airport—including Merrill Field—where an exaction that goes into the municipal general fund would violate FAA revenue diversion policy. Moreover, it appears the same exaction could be required again and again for a whole series of projects. Yet once a payment is made, it seems that in exchange the nonconformity would have to be deemed cured and not subject to payment again under a subsequent project. Indeed, multiple 10% exactions would actually make resolution of the nonconformity even less likely, as the municipality's 10% "hits" would prevent an owner from building the resources to do the job.

21.12.060.C.2.e - This paragraph implies that the UDC will have decision making authority on appeals. It is our understanding that the UDC has been stripped of its decision making authority and will be an advisory group only.

Again, we appreciate the opportunity to comment. If you have any questions or need additional information, please feel free to give me a call at (907) 266-2544 or send me an e-mail. Many thanks.

Sincerely,


Jack Jones
Planning Manager

CC:

John Johansen, Director of Planning/Environmental/Engineering



ASSOCIATED GENERAL CONTRACTORS of ALASKA

8005 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

September 14, 2007

Ms. Toni Jones
Planning and Zoning Commission
Municipality of Anchorage
Anchorage, Alaska

Re: Comments on Title 21, Chapter 12

Dear Ms. Jones:

On behalf of its 650 member firms, the Associated General Contractors of Alaska would like to submit these comments on the proposed changes to Chapter 12 of Title 21.

Section 21.12.010 G – Replacement Cost

Determination of replacement cost should allow an owner to get an independent appraisal or estimate which should be considered the replacement cost unless the Municipality challenges the estimate with an independent estimate of their own. Replacement costs are influenced by many factors including material costs, labor costs and productivity, insurance, bonding, and many other items. These factors are constantly changing. Just as contractors active in the business rarely agree on the total costs to undertake a renovation, it would be extremely difficult for a building official to have the current knowledge and expertise to properly estimate the replacement cost.

Section 21.12.020 - Single and Two family structures and Mobile Homes

This section is confusing in that (D.3) refers to mobile homes in nonconforming manufactured home communities. This seems to be the only place that manufactured homes are mentioned but the term normally refers to more than just mobile homes.

Section 21.12.030 (2) – Change of Use

If a nonconforming use is superseded by a permitted use even for an instant, the nonconforming use may not thereafter be resumed. Owners should be allowed a reasonable period of time to revert back to the nonconforming use before it is lost. This would allow owners to correct errors or misunderstandings and would also allow

FAIRBANKS
P.O. BOX 6005 • FAIRBANKS, AK 99706
TELEPHONE (907) 452-1809

an owner to test a different business model to a conforming use to determine its viability. A period of at least one year would seem reasonable.

Section 21.12.040 – Nonconforming Structures

(A)(2) Moving a nonconforming structure on a property to allow maintenance, reduce a visual eyesore, or a similar reason would seem to be in the best interests of the community but would be disallowed or penalized by this section. The section should be rewritten.

(D)(1)(b)(iii) – Allowing one year for construction to start after approval from the planning and zoning commission does not recognize the time to design and permit projects prior to initiating construction. This section should be lengthened or eliminated.

(F)(1)(2) – While these requirements are probably reasonable, they place an additional responsibility and cost on a property owner. Requiring an as-built merely provides a base line for future monitoring but imposes a cost on property owners. How do you deal with property owners that are ignorant of this requirement and fail to file the application? Can the director impose any conditions they wish prior to approving the application? Shouldn't the director's authority be limited or defined?

(G) A time limit of 180 days from the date the facility is damaged or destroyed seems unreasonable since Section 21.12.040 (D) allows one years from the approval from planning and zoning. The time lines in this entire section should be consistent.

Section 21.12.050 (C) – Legalization of Lots Created Prior to September 16, 1975

While these requirements are probably reasonable, they place an additional responsibility and cost on a property owner. Requiring an as-built merely provides a base line for future monitoring but imposes a cost on property owners. How do you deal with property owners that are ignorant of this requirement and fail to file the application? Can the director impose any conditions they wish prior to approving the application? Shouldn't the director's authority be limited or defined?

Section 21.12.060(C) (4) – No applicable characteristics

Requiring that at least ten percent of a project cost be used to move a nonconforming structure toward conformity seems reasonable but should have a minimum threshold prior to implementation. Further the ten percent should not be levied as a penalty as it apparently is in this section. Instead the money might better be required to approve the appearance of the property, because if it is viewed as being punitive, the property owner might allow the property to deteriorate rather than improve it.

Thank you for your consideration.



Richard Cattnach
Executive Director

**Minutes of
Planning and Zoning Commission
Meetings**

- **September 17, 2007 (draft)**
- **October 8, 2007 (draft)**

AO 2007-116
Title 21 Rewrite, Chapter 21.12, *Nonconformities*

PLANNING AND ZONING COMMISSION MEETING
Assembly Chambers
Z.J. Loussac Library
3600 Denali Street
Anchorage, Alaska

MINUTES OF
September 17, 2007
6:30 PM

A. ROLL CALL

Present Toni Jones, Chair
 Jim Fredrick
 Jim Palmer
 Nancy Pease
 Andrew Josephson
 Bruce Phelps

Excused Lamar Cotten
 Thomas Vincent Wang
 Art Isham, Vice Chair

Staff Al Barrett
 Angela Chambers
 Sharon Ferguson
 Francis McLaughlin
 Tom Nelson
 Erika McConnell
 Brian Dean
 Jillanne Ingliss

B. MINUTES

COMMISSIONER FREDRICK moved for approval of the minutes of August 6, 2007. COMMISSIONER PALMER seconded.

COMMISSIONER PEASE corrected page 17 to change “Arabs” to “Arabians” in reference to a breed of horses.

AYE: Josephson, Jones, Fredrick, Palmer, Pease
NAY: None

PASSED

AYE: Josephson, Jones, Fredrick, Palmer, Phelps, Pease
NAY: None

PASSED

F. REGULAR AGENDA – None

G. PUBLIC HEARINGS

1. **2007-151** Planning Department Municipality of Anchorage. A review of Chapter 12 of the Title 21 Re-write.

Staff member TOM NELSON explained that, at the request of the Assembly, this matter is being brought forward separately from other chapters. This chapter deals with nonconformities and differs from the existing code significantly. This is largely in recognition of the extensiveness of changes anticipated in Title 21 and the impact they could have on existing properties. When feedback was received on this chapter, there was a concern with the cost and onus of being nonconforming either in terms of getting financing, selling, or getting insurance on a property. For these reasons, the proposal is to craft the chapter in a way that minimizes impacts on existing properties while encouraging the properties to come into conformance in the future.

There are no new proposals regarding nonconforming signs from the sign code amendments adopted by the Assembly in 2006. This chapter also deals with nonconforming structures, lots of record, uses, and characteristics of use. The latter are typically site characteristics such as parking and landscaping. The proposal is that they not be considered nonconforming, although existing parking or landscaping on a sight might not be consistent with the terms of the new code being adopted. The emphasis is to allow them to continue, but making them conforming so the onus on the property is minimized. There is recognition that over the next 10 to 30 years development in Anchorage will be in the form of redevelopment or infill and these provisions should encourage new investment and re-investment. A number of incentives are provided for properties to come toward conformity, but not requiring 100% conformity.

MR. NELSON stated single-family, two-family, and mobile homes are basically exempt from non-conforming provisions. There are some areas that apply having to deal with relief for minimum lot sizes.

These are being rolled over from ordinances recently adopted by the Assembly. This chapter proposes that single-family and two-family structures can be rebuilt in their existing location if they are damaged or destroyed, so long as the nonconformity is not worsened. Typically the nonconformities relate to setback violations. There is a provision to allow a new mobile home to replace an existing mobile home. The most significant new provision in the section of the code dealing with replacement of a nonconforming structure deals with a choice of how that may occur. The applicant either undergoes an administrative review and replaces the existing structure or applies for a conditional use and becomes conforming. There is little change regarding non-conforming lots of record from what is in the existing code. Maximum height is being exempted. Other chapters of the code recommend placing height limitations, for example, in the B-3 district and in other new commercial districts where there are presently no height limitations. There is concern that this could become onerous on a property owner that has a nonconforming building that is higher than is allowed. The code allows exemption of maximum height limit, as well as the maximum setback. The code provides a requirement and incentive to encourage re-use of properties toward conformance by allowing uses that are not consistent with the code to spend 10% of the value of the improvement toward coming into conformance with characteristics of use. This is a negotiated process between the owner and the Planning Department with emphasis placed on maximizing conformance with those elements that would have the greatest impact. MR. NELSON stated this section was developed with Planning, Brian Dean with Code Enforcement, the Mayor's Office, and the Mayor's Real Estate Task Force.

MR. NELSON explained that the Staff anticipates preparing an Issue-Response summary for the Commission. The procedure this evening would be to open the hearing and close the hearing, and the Staff would prepare an Issue-Response based on written and oral comments.

The public hearing was opened and closed without public comment.

MR. NELSON noted written comments, one most recently from the Associated General Contractors. He suggested that this matter be put on the October 8, 2007 agenda.

COMMISSIONER PEASE asked if AMC 21.12.010.B.3.a should read "A use existing prior to the effective date of this title that is permitted as a conditional use, under administrative site plan review, or under a major site

plan review...” MR. NELSON stated either “under” or “through” could be inserted. COMMISSIONER PEASE asked for an example of the land referred to in 21.12.010.D. MR. NELSON explained that characteristics of use are site characteristics such as parking and landscaping. This is a repeat of what is in the code at this time. This addresses a situation where the government acquires property, such as a right-of-way take, and creates a nonconformity as a result. COMMISSIONER PEASE understood the remnant land would not be subject to a nonconforming designation. MR. NELSON stated it is not penalized as a result of government action. COMMISSIONER JOSEPHSON saw this as clean up, not a substantive change. MR. NELSON stated that is correct. He noted that the changes in the highlighted version are from the last public review draft and are not changes from the current code.

COMMISSIONER PEASE had concern that 21.12.030.A.4 is not moving toward conformity. She asked what would prevent an owner from expanding a building stating the intention is not to increase the nonconformity and then a later owner extend the nonconformity into the newly constructed part of the building. MR. NELSON explained that this section speaks to an existing structure and allows the ability to continue to use an existing structure. COMMISSIONER PEASE understood that if the nonconforming building were expanded putting the nonconforming use into that expanded portion would not be allowed. MR. NELSON stated that the language does not allow extension of a nonconforming structure. A nonconforming use can expand within an existing structure.

COMMISSIONER PEASE asked if 21.12.040.E regarding setback encroachments would be interpreted to legitimize an encroachment across a property line. MR. NELSON stated this is existing language that is being rolled over. COMMISSIONER PEASE asked whether it would be appropriate to clarify that this would not apply across property lines. BRIAN DEAN replied that a building could be built across a property line if the proper building code techniques are used. The City looks at the setback on either side of the property line. If the encroachment existed prior to 1986, a certification of nonconformity could be obtained. COMMISSIONER PEASE gave an instance where a property owner has a structure that has encroached over a property line since 1986 with the tacit approval of the adjoining property owner and asked if this code provision could be a vehicle for the structure owner to gain conforming rights. MR. DEAN explained that would be a civil matter between the two property owners.

COMMISSIONER PEASE asked if 21.12.050.C, which speaks to lots existing prior to September 16, 1975, would create a problem in terms of on-site well and septic requirements. MR. NELSON stated that many of cases with this

situation have been processed in the last few years and they primarily involve small lots in the older parts of Anchorage. Those lots were created prior to subdivision regulations. COMMISSIONER PEASE asked whether there is a possibility that this would create a problem with lots that cannot meet water and septic requirements. MR. NELSON replied in the negative. MR. DEAN stated people who build on lots that meet this requirement would still have to meet on-site system requirements and, if not, would need to get a waiver from those requirements separate from this.

COMMISSIONER PEASE thought there was a reference in the code to allowing extension of a building up to two stories if there was that intent. She asked how that moves toward conformity or why it is was recommended. ERIKA McCONNELL stated this is in 21.12.040.B. MR. NELSON explained this is the section dealing with building heights. The emphasis is that adding floors is not permitted unless the building was pre-designed for that number of floors. COMMISSIONER PEASE asked if this is not moving away from conformity. MR. NELSON said it is moving away from nonconformity, but it acknowledges an investment into the structural design of a building with the intention of adding a phase in the future. To disallow this could constitute a regulatory taking. A petitioner would have to prove the building was designed to add stories and that the nature of the project was to add phase(s). This is anticipated with commercial buildings. COMMISSIONER PEASE asked if 21.040 applies to commercial buildings only. MR. NELSON replied that it does not apply to single-family or two-family structures.

COMMISSIONER PHELPS asked that his questions be addressed in the Issue-Response. He suggested that 21.12.030.B.1 should say, "if the following criteria are met" not "if both the following criteria are met." He asked that Staff provide an explanation of the intent of 21.12.050.A.2. He noted regarding 21.12.060.A.1 that there is a distinction between things that are in 21.12.020.B and things that are not; he asked that Staff please explain why the difference between the two and what is meant by "stream, water body, and wetland protection." He stated that he could not follow the example in 21.12.060.B, parking out of compliance.

COMMISSIONER JOSEPHSON on the issue of over height and concerns with regulatory taking, there is a commercial building Supreme Court case on that point regarding an historical district in New York City. The Court said the air space above could not be built higher. He stated the case respects Penn Central. He did not want to see the City in a position of being afraid to use police powers.

COMMISSIONER PEASE stated 21.12.010.B.3.b talks about a conditional use or use with an approved site plan. She felt it was confusing language and asked that it be clarified in mentioning both conditional uses and permitted uses. She asked also if the language that the conditional use permit for the approved site plan shall be null and void means any conditions are, therefore, null and void.

CHAIR JONES asked by what date Staff would like questions for the Issue-Response. MR. NELSON asked that questions be submitted by the end of the week.

CHAIR JONES asked whether any of the Commissioners received an email from Cheryl Richardson, noting that she received a copy of an email Ms. Richardson sent to Mr. Nelson. MR. NELSON stated he responded to Ms. Richardson's email and suggested that if she had any questions or issues, she express them in the public hearing. There was a second email from her saying she intended to do so.

COMMISSIONER JOSEPHSON moved to continue case 2007-151 to October 8, 2007. COMMISSIONER PEASE seconded.

AYE: Josephson, Jones, Fredrick, Palmer, Phelps, Pease

NAY: None

PASSED

- 2. 2007-087** Pura Vida LLC. A request to rezone approximately 3.07 acres from R-2A (Two Family Residential) to R-3 (Multiple Family Residential). T13N, R3W, Section 33, Lots 45, 49A, 49B, 49C and 52, S.M., AK. Located at 2300 East 49th Ct. #200.

Staff member ANGELA CHAMBERS stated this request is to rezone approximately 3.07 acres from R-2A to R-3 SL. The site is on the east side of Lake Otis Parkway, south and east of East 49th Court. This site is comprised of five parcels. There are three lots on the south side occupied by a nonconforming 8-plex and two other parcels at the east end of 49th Court that under separate ownership and developed with single-family homes. The Department finds this to be a spot zoning. A spot zoning exists if all of the following factors are present: (1) a small parcel of land is singled out for special and privileged treatment; (2) the singling out is not in the public interest but only for the benefit of the land owner; and (3) the action is not in accord with a comprehensive plan. As the property

PLANNING AND ZONING COMMISSION MEETING
Assembly Chambers
Z.J. Loussac Library
3600 Denali Street
Anchorage, Alaska

MINUTES OF
October 8, 2007
6:30 PM

A. ROLL CALL

Present Toni Jones, Chair
 Jim Fredrick
 Jim Palmer
 Art Isham, Vice Chair
 Andrew Josephson
 Bruce Phelps
 Lamar Cotten

Excused Nancy Pease
 Thomas Vincent Wang

Staff Mary Autor
 Angela Chambers
 Erika McConnell
 Brian Dean
 Christine Bernardini

B. MINUTES

COMMISSIONER ISHAM moved for approval of the minutes of September 10, 2007. COMMISSIONER PHELPS seconded.

AYE: Cotten, Josephson, Jones, Isham, Fredrick, Palmer, Phelps
NAY: None

PASSED

COMMISSIONER WANG arrived at 6:32 p.m.

Commission could essentially postpone with direction to return with a redesign.

COMMISSIONER JOSEPHSON asked what are the red crosses in front of the bay doors on the north and south. MR. SPRENG explained those are braces for the frame of this entirely steel building. These are usually hidden, but a decision was to express them on the exterior of the building.

COMMISSIONER ISHAM asked when Mr. Spreng would want to return, if this matter were postponed. MR. SPRENG suggested that he return in one month. MS. CHAMBERS suggested that the matter be rescheduled for either early December or late November.

The public hearing was closed.

COMMISSIONER ISHAM moved to continue case 2007-122 to November 19, 2007. COMMISSIONER PALMER seconded.

AYE: Cotten, Josephson, Jones, Isham, Fredrick, Palmer, Phelps, Wang,
Pease

NAY: None

PASSED

COMMISSIONER ISHAM liked the X feature on the sides of the building, but he felt the front of the building is flat. The canopy will protrude and it looks almost Stalinist in its design. He suggested the petitioner might do something to make the west side of the building more interesting.

COMMISSIONER PEASE hoped the building design could tie into the school or there could be some articulation or building material variations. On the sides of the building it still seems to be massive, so something more human scale is desirable. CHAIR JONES thought this project presents a challenge in terms of locating an industrial use adjacent to an elementary school.

E. UNFINISHED BUSINESS AND ACTIONS ON PUBLIC HEARINGS

- 1. 2007-151** Planning Department Municipality of Anchorage. A public hearing on Chapter 12 of the Title 21 Rewrite.

COMMISSIONER ISHAM suggested addressing the amendments first on items supported by Staff and then on issues of contention.

COMMISSIONER ISHAM moved to approve Issues 2, 5, 9, 12, 15, 17, 18, 22, 23, 24, 29, 31, and 33. COMMISSIONER FREDRICK seconded.

COMMISSIONER ISHAM noted that Staff has analyzed these issues and has accepted the suggested changes or amended language based on the issue presented.

COMMISSIONER PEASE stated she had concerns regarding Issues 2, 4, 17, 20, 33, and 34. She also had concerns regarding 21.12.020 C. COMMISSIONER ISHAM clarified that Commissioner Pease has concerns with issues 2, 17, and 33 in the motion.

COMMISSIONER PEASE stated it is not clear in Issue 2 if the phase-out for storage would be obviated because it is a use that lawfully existed prior to the effective date of this title. MS. McCONNELL responded that the specific provisions for nonconforming self-storage uses that were adopted in the self-storage ordinance are carried forward in Chapter 5 and those provisions would override the provisions in this section. COMMISSIONER PEASE no longer had concern with this issue.

COMMISSIONER PEASE stated Issue 17 contains a typographical error where “in” should be changed to “no” before “intent to abandon.”

COMMISSIONER PEASE stated she has an ongoing concern with regard to Issue 33 that lots that were existing prior to 1975 not be made conforming if they have severe problems with on-site well or septic. She wanted to be sure there is not an issue of an owner claiming a taking because a home on an undevelopable lot could not be built. MR. NELSON stated this section deals with lots that were created illegally prior to 1975. To date, all of the lots that have been made legal are in the northern part of Anchorage. Those lots were in the oldest parts of Anchorage and were transferred through quitclaim deed. Providing adequate separation between well and septic would be governed through Title 15, not Title 21. He stated that this provision, approved by the Assembly approximately one year ago, does not address Commissioner Pease’s concern. He added that this provision allows illegal lots to become nonconforming legal lots. COMMISSIONER PEASE stated she has seen advertised in platting, lots that are nonconforming in areas of the Hillside that are served by water and sewer. She asked if it might not be difficult to get sewer and water on these lots and then there would be a legal lot that the city is not allowing be developed. MR. NELSON explained this provision allows an illegal lot to become legally nonconforming. This is being done because people have had difficulty selling these lots. This provision

simply addresses a legal and financing situation by making the lots legally nonconforming. CHAIR JONES stated that an owner must still prove the ability to get water and sewer on a lot, regardless of the conforming or nonconforming status of the lot. COMMISSIONER PEASE asked whether Mr. Josephson could opine on the danger of a taking where a legal lot is created that cannot be developed. COMMISSIONER JOSEPHSON replied that there is some case law in North Carolina that supports Commissioner Pease's contention. However, he deferred to Chair Jones's comment. COMMISSIONER PEASE asked whether the language could be inserted "well and septic separation distances as appropriate." MR. NELSON replied that the issue of separation distances and septic systems and water wells is regulated in Title 15. MR. DEAN explained that this provision recognizes a nonconforming lot and it would be treated as such under the zoning regulations. Most of the lots that would be affected were created before the Title 15 enactment of minimum lot sizes for well and septic. A waiver from that requirement could be sought from the health authority. They could also secure easements on adjacent properties for well and septic separation requirements. COMMISSIONER PEASE had lingering concern that this is creating expectation of a buildable lot where dimensions may not allow it.

COMMISSIONER PEASE had concern with 21.12.040.A. COMMISSIONER ISHAM stated that section of the code is addressed in Issue 21 and is not a part of the motion on the floor.

AYE: Cotten, Josephson, Jones, Isham, Fredrick, Palmer, Phelps, Wang,
Pease

NAY: None

PASSED

COMMISSIONER ISHAM moved to extend to midnight. COMMISSIONER PALMER seconded.

AYE: Cotten, Josephson, Jones, Isham, Fredrick, Palmer, Phelps, Wang,
Pease

NAY: None

PASSED

COMMISSIONER ISHAM moved for approval of Staff's recommendations in Issues 1, 3, 4, 6, 7, 8, 10, 11, 13, 14, 16, 19, 20, 21, 25, 26, 27, 28, 30, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45. COMMISSIONER PALMER seconded.

COMMISSIONER PEASE stated regarding Issue 4 dealing with nonconforming status determination that she is not comfortable that this would be put in policy or regulation rather than code. She was concerned that property owners would be left with the responsibility to obtain a determination of nonconforming status if a government action has caused the nonconformity. MR. NELSON stated the practice over time is that the responsibility lies with the property owner. At such time as a development approval or transaction occurs, a use determination or nonconforming determination will be required. That has been the common practice and he was not aware of a problem associated with that practice. This code section acknowledges that, when a government action creates a situation that is nonconforming, the conforming status of the property remains.

COMMISSIONER PEASE asked if this is not a matter of time and money put on a property owner at a future point in time. MR. NELSON stated the cost for a determination is normally \$115. MR. DEAN explained this typically arises when a bank wants assurances that the loan will be good when a property is sold. COMMISSIONER PEASE felt comfortable that her concern was assuaged.

COMMISSIONER PHELPS was concerned that it is not specified who makes the decision of nonconformity and what are the standards of the decision. MS. McCONNELL noted that Chapter 3 speaks to the process through which a property owner would obtain this verification. COMMISSIONER PHELPS wished to ensure that the code identifies the party responsible for making this determination.

COMMISSIONER PHELPS cited Issue 6 regarding replacement cost and asked if the use of a nationally accepted schedule of costs to evaluate permit applications for the purpose of determining permit fees has been working. MR. NELSON replied that this is a relatively new method being used by Development Services and it is working adequately.

COMMISSIONER PEASE stated that Issue 7 affects 21.12.020 C and D. She thought this section is saying that a single-family, two-family or mobile home will never have to move toward conformity. She proposed the same language used under 21.12.030.C that if structure is damaged 50% or destroyed it should move to conformity, but rebuilding as-is would be permitted with administrative approval. COMMISSIONER ISHAM noted that this code section is the definition of mobile home. COMMISSIONER PEASE had no concern with Issue 7.

COMMISSIONER PHELPS asked regarding Issue 8 if there is a definition of a manufactured home in the code. MR. NELSON replied in the affirmative.

COMMISSIONER PEASE noted that Issue 11 deals with non-residential uses, therefore, she did not have a concern.

COMMISSIONER PHELPS stated he compared the changes in Issue 13 to 21.12.030C.2.c and d and he could not see where exactions were required in this section. MS. McCONNELL did not think exactions are required in this section, rather the commenter is interpreting the provisions of these sections that off-site exactions could be required. COMMISSIONER PHELPS thought these were measures to be taken to ensure the infrastructure is adequate to make the structure work. MS. McCONNELL stated this is correct.

COMMISSIONER PEASE had some concerns regarding Issue 21. CHAIR JONES suggested this item be dealt with separately.

COMMISSIONER ISHAM moved to remove Issue 21. COMMISSIONER PALMER concurred. *This was accepted as a friendly amendment.*

AYE: Cotten, Josephson, Jones, Isham, Fredrick, Palmer, Phelps, Wang,
Pease
NAY: None

PASSED

COMMISSIONER ISHAM moved for approval of the remaining portions of Chapter 12, excepting Issue 21. COMMISSIONER PALMER seconded.

COMMISSIONER PEASE stated she also had concern with 21.12.020.C.2.c and d.

AYE: Cotten, Josephson, Jones, Isham, Fredrick, Palmer, Phelps, Wang,
Pease
NAY: None

PASSED

COMMISSIONER PEASE stated that Issue 21 appears to have something like an amnesty that allows nonconformities to continue. She thought if the community wants to move in the direction of conformity, those structures that are not particularly permanent or principal features, such as storage structures, should be addressed. She moved to require cessation, removal, or

moving of storage structures that are either deemed portable, defined as not on a permanent foundation, or generally designed to be portable, such as freight containers and Conexes, or can be moved at 25% of the cost of the structure's value." COMMISSIONER JOSEPHSON seconded.

COMMISSIONER PEASE questioned why minor structures that are not aesthetically pleasing and may be in setbacks and can be relatively easy to move are allowed to continue. This includes storage trailers and Conexes at school sites.

COMMISSIONER WANG stated this idea had not been ventilated enough for him to support.

COMMISSIONER PHELPS thought this change would have many implications and he would have to see it reviewed before he could support it.

AYE: Pease, Josephson

NAY: Cotten, Jones, Isham, Fredrick, Palmer, Phelps, Wang

FAILED

COMMISSIONER ISHAM moved for approval of the Staff recommendation in Issue 21. COMMISSIONER PALMER seconded.

AYE: Cotten, Josephson, Jones, Isham, Fredrick, Palmer, Phelps, Wang,
Pease

NAY: None

PASSED

COMMISSIONER PEASE stated that 21.12.020 gives single-family and two-family homes permanent infinite status. If they are nonconforming now, they can be damaged or destroyed and recreated in the same location in the same dimensions. There is no movement toward conformity. AMC 21.12.030 C states if there is 50% damage or destruction the structure be built in conformity or explain why that is not possible and the administration has criteria for approving construction. She asked why single-family, two-family and mobile homes should be allowed perpetual nonconformity. MR. NELSON stated this is basically a policy matter. The concern was trying to be the least onerous possible on single-family and two-family homes. Typically nonconformities with those types of structures are related to setbacks. Mobile homes were added to this section in order to provide relief to those persons who are utilizing a mobile home for their primary residence.

COMMISSIONER PHELPS had the same question as Commissioner Pease, but understood the Staff to indicate that with single-family and two-family structure and mobile homes the nonconformity typically is with respect to setbacks and rebuilding can occur on the same foundation; the foundation is the biggest expense of any structure.

COMMISSIONER PEASE moved to amend 21.20.020 to require that if there is 50% damage or destruction the structure be built in conformity or the owner explain why that is not possible and the administration has criteria for approving construction. *The motion died due to lack of a second.*

COMMISSIONER PEASE stated regarding 21.12.020 that she thought single-family and two-family should fall under the same category as other uses with regard to coming into conformity with respect to stream and water body setbacks. MR. NELSON noted that one of the significant recommendations in Chapter 7 is to increase the setback from streams from 25 feet to 50 feet. This will have some impact on single-family dwellings and the concern was to not make it too onerous for those owners in the event the home is damaged or destroyed.

COMMISSIONER JOSEPHSON noted that this would leave almost everything in nonconformity and only new properties in conformity. MR. NELSON stated that in the evaluation of changing the setback from 25 feet to 50 feet Staff identified through aerial photography how many structures might fall into nonconformity. There were far fewer than expected. In many areas, these lots are in older existing neighborhoods and it would be very problematic to locate outside of a 50-foot setback. Watershed Management did the mapping. The judgment was that this was not a major impact cumulatively.

COMMISSIONER PEASE explained she was thinking of homes that are built up to the creek within the 25-foot setback and not allowing those to continue if they are destroyed.

COMMISSIONER PHELPS noted that increasing the setback to 50 feet would be a major change. He would not support an action that has a possibility of compromising that increase in setback size.

AYE: Cotten, Jones, Isham, Fredrick, Palmer, Phelps, Wang
NAY: Josephson, Pease

PASSED

COMMISSIONER ISHAM moved to approve the remaining sections of Chapter 12. COMMISSIONER PEASE seconded.

AYE: Cotten, Josephson, Jones, Isham, Fredrick, Palmer, Phelps, Wang,
Pease

NAY: None

PASSED

I. REPORTS – None

J. COMMISSIONER COMMENTS – None

K. ADJOURNMENT

The meeting was adjourned at 12:00 midnight

AO 2007-116

AM 500-2007

Chapter 21.12, *Nonconformities*

AO 2007-116
Title 21 Rewrite, Chapter 21.12, *Nonconformities*

Submitted by: VICE CHAIR OSSIANDER, on behalf of the
Title 21 Committee

Prepared by: Assembly Counsel

For reading: August 28, 2007

**ANCHORAGE, ALASKA
AO NO. 2007-116**

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY TO PROVISIONALLY**
2 **ADOPT A NEW CHAPTER 21.12, NONCONFORMITIES, AMENDING ANCHORAGE**
3 **MUNICIPAL CODE TITLE 21 SUBJECT TO CONCURRENT FINAL PASSAGE AND**
4 **APPROVAL OF ALL PROVISIONALLY ADOPTED CHAPTERS OF TITLE 21.**
5

6
7 WHEREAS, AR 2007-83 addresses the status of Title 21 chapters as provisionally
8 adopted by the Assembly; and
9

10 WHEREAS, provisional adoption is progressing as set out in AO 2006-172, as modified
11 by AO 2007-82; and
12

13 WHEREAS, Title 21, Chapter 12, Nonconformities, reviewed by the Title 21 Committee,
14 is attached for further action by the Assembly;
15

16 NOW, THEREFORE, THE ANCHORAGE ASSEMBLY ORDAINS:
17

18 **Section 1.** Anchorage Municipal Code chapter 21.12, Nonconformities, is hereby
19 provisionally adopted as set forth in the attachment, and as amended by action of the
20 Assembly in this ordinance, following review and recommendations from the Planning
21 and Zoning Commission, and subject to revision as the Assembly deems appropriate
22 during concurrent final passage and approval of all provisionally adopted chapters of
23 Anchorage Municipal Code Title 21.
24

25 **Section 2.** In keeping with the purposes and intent set forth in AR 2007-83 and
26 AO 2006-172 (as modified by AO 2007-82), Chapter 21.12, Nonconformities, as hereby
27 provisionally adopted, shall not be deemed law of the Municipality nor applied to land
28 use matters until concurrent final passage and approval of all provisionally adopted Title
29 21 chapters. Repeal of existing municipal code necessary to effectuate such final
30 passage and approval shall be implemented as described by ordinance.
31

32 **Section 3.** This ordinance shall become effective immediately upon its passage and
33 approval by the Assembly.
34

35 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
36 _____, 2007.
37

Chair

38
39 ATTEST:
40

41 Municipal Clerk



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
NO. AM 500-2007

Meeting Date: August 28, 2007

From: Vice Chair Ossiander, on behalf of the Title 21 Committee

Subject: AO 2007-116 — AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY TO PROVISIONALLY ADOPT A NEW CHAPTER 21.12, NONCONFORMITIES, AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21 SUBJECT TO CONCURRENT FINAL PASSAGE AND APPROVAL OF ALL PROVISIONALLY ADOPTED CHAPTERS OF TITLE 21.

In furtherance of the review and public hearing process for the ongoing re-write of Anchorage Municipal Code Title 21, AO 2007-116 covers Chapter 21.12, Nonconformities.

The attached PUBLIC HEARING DRAFT OF AUGUST 5, 2007, CHAPTER 12 NONCONFORMITIES has been reviewed by the Title 21 Committee, and is being released pursuant to the Title 21 REWRITE DRAFT SCHEDULE UPDATE, as posted on the Planning Department website.

Upon introduction, AO 2007-116 will be referred to the Planning & Zoning Commission for public hearing on September 17, 2007, prior to public hearing and action by the Assembly. Public hearing before the Assembly on Chapter 12 is requested for October 23, 2007.

Pursuant to the process in place for the Title 21 Rewrite, review and comment by the Planning & Zoning Commission will be available prior to public hearing before the Assembly. Public hearing before the Assembly will provide the opportunity for additional public comment.

Following all public hearing, action by the Assembly may incorporate revisions to the attached PUBLIC HEARING DRAFT OF AUGUST 5, 2007.

Adoption of AO 2007-116 will add Chapter 21.12 (with any revisions approved by the Assembly after public hearing) to the chapters provisionally adopted by the Assembly. All chapters provisionally adopted by the Assembly remain provisional until concurrent final passage and approval of all such provisionally adopted chapters of Title 21, when the on-going re-write of Title 21 is complete.

Respectfully submitted:

Vice Chair Ossiander
Assembly Member, Section 1

TABLE OF CONTENTS

1
2
3 **CHAPTER 21.12: NONCONFORMITIES** **2**
4 **21.12.010 General Provisions** **2**
5 A. Purpose 2
6 B. Authority to Continue 2
7 C. Determination of Nonconformity Status..... 3
8 D. Government Agency Property Acquisitions..... 3
9 E. Change of Ownership or Tenancy..... 3
10 F. Maintenance and Repair 3
11 G. Replacement Cost 4
12 H. Willful Destruction..... 4
13 **21.12.020 Single- and Two-Family Structures and Mobile Homes**..... **4**
14 A. Applicability..... 4
15 B. Expansions and Enlargements..... 4
16 C. Damage or Destruction..... 4
17 D. Mobile Homes..... 4
18 **21.12.030 Nonconforming Uses of Land or Structures**..... **4**
19 A. Limitations on Continuation of Nonconforming Uses of Land or Structures 4
20 B. Change of Use..... 5
21 C. Damage or Destruction..... 5
22 D. Abandonment or Cessation of Use 6
23 E. Overcoming Presumption of Abandonment 7
24 **21.12.040 Nonconforming Structures** **7**
25 A. Continuation of Nonconforming Structures Generally 7
26 B. Overheight Buildings 7
27 C. Buildings Exceeding Maximum Setback 8
28 D. Damage or Destruction..... 8
29 E. Legalization of Nonconforming Dimensional Setback Encroachments..... 9
30 F. Preexisting Tower and Antennas 10
31 **21.12.050 Nonconforming Lots of Record**..... **10**
32 A. Nonconforming Lots 10
33 B. Undivided Parcels..... 10
34 C. Legalization of Lots Created Prior to September 16, 1975 11
35 **21.12.060 Characteristics of Use** **12**
36 A. Developments Are Conforming 12
37 B. Parking Out of Compliance..... 12
38 C. Bringing Characteristics into Compliance..... 12
39 **21.12.070 Nonconforming Signs** **14**
40 A. Effective Date 14
41 B. Amortization Provisions 14
42 C. Termination..... 14
43 D. Maintenance of Nonconforming Signs 15
44 E. Reconstruction of Damaged Sign..... 15
45 F. Historic Signs..... 15
46 G. Extension of Time to Comply 15
47
48
49

CHAPTER 21.12: NONCONFORMITIES

21.12.010 GENERAL PROVISIONS

A. Purpose

1. The purpose of this chapter is to regulate continued existence of legal uses, structures, lots, and signs established prior to the effective date of this title, or the effective date of future amendments to this title, that no longer conform to the requirements of this title. All such situations are collectively referred to in this chapter as “nonconformities.” It is the intent of this chapter to permit these nonconformities to continue until they are removed or brought into conformance with this title, and to encourage their re-use and movement towards conformity. The acknowledgement and relief granted to existing property, land uses, and structures provided in this chapter are intended to minimize negative economic effects on development that was lawfully established prior to the effective date of this title and any subsequent amendments.
2. This chapter also regulates characteristics of use such as parking and landscaping. Section 21.12.060 addresses the requirements for developments that don't comply with the district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, or the design and development standards of chapter 21.07 (except for section 21.07.020B., *Stream, Water Body, and Wetland Protection*).

B. Authority to Continue

1. Generally

Any nonconformity that lawfully existed as of the effective date of this title and that remains nonconforming, and any nonconformity that is created as a result of any subsequent rezoning, amendment to the text of this title, or by the acquisition of property for a public purpose, may be continued or maintained as a nonconformity only in accordance with the terms of this chapter, unless such nonconformity falls within the exception set forth in subsection 21.12.010.B.2.

2. Exception Due to Variances or Minor Modifications

This chapter shall not apply to any development standard or feature that is the subject of a variance or minor modification granted under this title. Where a variance or minor modification has been granted that results in a development standard or feature that does not otherwise conform to the requirements of this title, that development standard or feature shall be deemed conforming.

3. Conditional Uses and Site Plan Reviews

a. A use existing prior to the effective date of this title that is permitted as a conditional use, administrative site plan review, or major site plan review in the district in which it is located under this title, but which lacks an approved conditional use permit or an approved site plan review, shall not be deemed a nonconforming use, but rather shall be considered to exist as a conditional use or to have an approved site plan. The scope of such a conditional use or approved site plan shall be governed by the provisions of this chapter unless modified by the decision-making body in accordance with the appropriate process in chapter 21.03.

b. A conditional use or use with an approved site plan, existing prior to the effective date of this title that is permitted in its entirety as a principal use in the district in

1 which it is located under this title shall not be deemed a nonconforming use.
2 Such use shall be deemed a permitted principal use and the conditional use
3 permit or the approved site plan shall be null and void.

4 **C. Determination of Nonconformity Status**

5 In all cases, the burden of establishing the existence of a legal nonconformity shall be solely upon
6 the owner of the nonconformity, not the municipality. Verification of nonconforming status may be
7 established through the process set forth in section 21.03.260, *Verification of Nonconforming*
8 *Status*.

9 **D. Government Agency Property Acquisitions**

10 If a structure, use of land, use of structure, or characteristic of use does not comply with the
11 requirements of this title solely as a result of an acquisition of land by a government agency for a
12 public purpose, then such structure, use of land, use of structure, or characteristic of use on land
13 not acquired by the government shall be deemed conforming.

14 **E. Change of Ownership or Tenancy**

15 Legal nonconformities are not affected by changes of ownership, tenancy, or management of
16 property.

17 **F. Maintenance and Repair**

18 1. Repairs or maintenance of nonconformities that are required to keep structures or sites in
19 a safe condition are permitted, provided that the repair or maintenance does not increase
20 the extent of nonconformity. For purposes of this section, "maintenance or repair" shall
21 mean:

22 a. Repairs that are necessary to maintain and to correct any damage or
23 deterioration to the structural soundness or interior/exterior appearance of a
24 building or structure without expanding or altering the building or structure;

25 b. Repair of uses or structures that are damaged or destroyed by 50% or less of the
26 replacement cost of the use or structure at the time of damage;

27 c. Replacement, repair, or maintenance of mechanical equipment;

28 d. Maintenance of land areas to protect against environmental and health hazards
29 and promote the safety of surrounding land uses;

30 e. Repairs that are required to remedy unsafe conditions that cause a threat to
31 public safety; and

32 f. Repairs and maintenance of nonconforming signs as set forth in section
33 21.12.070, *Nonconforming Signs*.

34 2. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a
35 safe condition of any building or part thereof declared to be unsafe by any official charged
36 with protecting the public safety, upon order of such official.

1 G. Replacement Cost

2 Where the term "replacement cost" is used in this chapter, it shall be determined by the building
3 official pursuant to municipal code.

4 H. Willful Destruction

5 In the event of arson or other willful destruction, any rights to reinstate, replicate, rebuild, or
6 otherwise reestablish the nonconforming use or structure, as allowed in this chapter, shall be
7 prohibited if such casualty is traceable to the owner or his or her agent. Such instances shall
8 result in loss of the nonconforming status.

9 21.12.020 SINGLE- AND TWO-FAMILY STRUCTURES AND MOBILE HOMES**10 A. Applicability**

11 In this chapter, only sections 21.12.010, 21.12.020, and 21.12.050 shall apply to lawfully erected
12 nonconforming single- and two-family structures and mobile homes. The other sections of this
13 chapter shall not apply to lawfully erected single- and two-family structures and mobile homes.

14 B. Expansions and Enlargements

15 Any lawfully erected nonconforming single- or two-family structure may be expanded or enlarged,
16 as long as the nonconformity is not increased.

17 C. Damage or Destruction

18 Any lawfully erected nonconforming single- or two-family structure that is damaged or destroyed
19 may be rebuilt in the same location and to the same dimensions so that the nonconformity of the
20 damaged or destroyed structure is not increased, but the structure may be rebuilt in a manner
21 that moves towards conformity.

22 D. Mobile Homes

- 23 1. Lawfully erected nonconforming mobile homes may be repaired or replaced, as long as
24 the nonconformity is not increased.
- 25 2. Lawfully erected nonconforming mobile homes on individual lots may be moved within
26 the lot in compliance with setback regulations.
- 27 3. Mobile homes in nonconforming manufactured home communities may be repaired or
28 replaced, in compliance with setback regulations.

29 21.12.030 NONCONFORMING USES OF LAND OR STRUCTURES**30 A. Limitations on Continuation of Nonconforming Uses of Land or Structures**

31 Nonconforming uses of land or structures may continue, subject to the general provisions of
32 section 21.12.010 and the following limitations, or as provided in C below:

- 33 1. No nonconforming use of land shall be enlarged or increased or extended to occupy a
34 greater area of land than was occupied at the effective date of adoption or amendment of
35 the regulations that make the use nonconforming. Any nonconforming use on a lot or
36 portion thereof may be altered to decrease its nonconformity.

- 1 2. No nonconforming use of land shall be moved in whole or in part to any portion of the lot
2 or parcel other than that occupied by such use at the effective date of adoption or
3 amendment of the regulations that make the use nonconforming.
- 4 3. No existing structure devoted to a use not permitted by this title in the district in which it is
5 located shall be enlarged, extended, or constructed except in changing the use of the
6 structure to a use permitted in the district in which it is located. (For example: a self-
7 storage facility that is a nonconforming use in a district may not construct new storage
8 units.)
- 9 4. Any nonconforming use may be moved or extended throughout any parts of a building
10 that are reasonably adaptable for such use at the time of adoption or amendment of the
11 applicable regulations, but no such use shall be extended to occupy any land outside
12 such buildings. If a nonconforming use is moved to another part of the building, the
13 space vacated shall not be filled with another nonconforming use. (For example: a
14 warehouse that is a nonconforming use in a district and occupies half of a building may
15 expand into the other half of the existing building, but may not begin to store items
16 outside the building.)
- 17 5. No additional structure not conforming to the requirements of this title shall be erected in
18 connection with the nonconforming use of land or structure.

19 **B. Change of Use**

- 20 1. Any nonconforming use may be changed to another nonconforming use if both of the
21 following criteria are met:
- 22 a. The director finds that the proposed nonconforming use is more appropriate to
23 the district than the existing nonconforming use;
- 24 b. Any characteristics of use that are out of compliance with this title are not
25 changed to become less compliant with the requirements of this title; and
- 26 c. No structural alterations are made other than those required by title 23, or minor
27 interior structural alterations, such as cutting a door into a shear wall.
- 28 Appeals of the director's decision shall be made to the zoning board of examiners and
29 appeals in accordance with subsection 21.03.040B.
- 30 2. If a nonconforming use is superseded by a permitted use, the nonconforming use may
31 not thereafter be resumed.

32 **C. Damage or Destruction**

33 Any person wishing to replicate a nonconforming use that has been damaged or destroyed to an
34 extent of more than 50 percent of the replacement cost at the time of destruction shall apply as
35 stated in C.1. below.

36 1. **Administrative Approval**

- 37 a. An application for administrative approval to rebuild a nonconforming use shall
38 contain the information specified in the title 21 user's guide, and shall be
39 submitted to the director.

- 1 **b.** Notice of the application shall be published, mailed, and posted in accordance
2 with section 21.03.020H.
- 3 **c.** There shall be a 30 day comment period, starting from the date of notice, before
4 the director acts on the application as provided in subsection C.1.d. below.
- 5 **d.** The director shall review the application and act to approve, approve with
6 conditions, or deny the application based on the approval criteria of subsection
7 C.2. below. Findings of the director shall be in writing. The director may impose
8 limitations or conditions as may be necessary to meet the approval criteria or to
9 reduce or minimize any potential adverse impact on other property in the area.
- 10 **e.** Appeals of the director's decision may be made to the zoning board of examiners
11 and appeals, pursuant to section 21.03.040B.
- 12 **f.** If the application is approved or approved with conditions, the use shall continue
13 to be a nonconforming use and be subject to the provisions of this chapter.
- 14 **2. Approval Criteria**
- 15 **a.** The nonconforming use can be made compatible with uses allowed on adjacent
16 properties, in terms of site design and operating characteristics (such as lighting,
17 noise, odor, dust, and other external impacts);
- 18 **b.** The nonconforming use will not limit, impair, or impede the normal and orderly
19 development and improvement of surrounding property for uses permitted on
20 those properties;
- 21 **c.** Utilities, access roads, drainage, and other necessary facilities are sufficient to
22 service the use, or will be provided;
- 23 **d.** Adequate measures have been or will be taken to provide ingress and egress
24 that are designed to minimize traffic congestion on the streets; and
- 25 **e.** The nonconforming use will not result in the creation of additional
26 nonconformities or the need for any variances.
- 27 **D. Abandonment or Cessation of Use**
- 28 **1.** A nonconforming use shall be presumed abandoned and its nonconforming rights
29 extinguished where any one of the following has occurred:
- 30 **a.** The owner has indicated, in writing, an intent to abandon the use.
- 31 **b.** A conforming or less intensive nonconforming use has replaced the
32 nonconforming use.
- 33 **c.** The building or structure that houses the nonconforming use has been removed.
- 34 **d.** The use has been discontinued, vacant, or inactive for a continuous period of at
35 least one year.
- 36 **2.** Once abandoned, the prior legal nonconforming status of the use shall be lost and any
37 subsequent use of the property shall comply with all applicable provisions of this title,

1 unless the nonconforming use is reestablished through the process described in E.
2 below.

3 **E. Overcoming Presumption of Abandonment**

4 A presumption of abandonment based on evidence of abandonment, as provided in D. above,
5 may be rebutted upon a showing of all of the following, to the satisfaction of the zoning board of
6 examiners and appeals, that:

- 7 1. The owner has been maintaining the land and structure in accordance with all applicable
8 regulations, including applicable building and fire codes;
- 9 2. The owner has been maintaining or pursuing all applicable permits and licenses;
- 10 3. The owner has filed all applicable tax documents; and
- 11 4. The owner:
 - 12 a. Has been actively and continuously marketing the land or structure for sale or
13 lease; or
 - 14 b. Has been engaged in other activities that would affirmatively prove there was no
15 intent to abandon.

16 **21.12.040 NONCONFORMING STRUCTURES**

17 **A. Continuation of Nonconforming Structures Generally**

18 Nonconforming structures may continue, subject to the general provisions of section 21.12.010
19 and the following limitations:

- 20 1. No nonconforming structure may be enlarged or altered in a way that increases its
21 nonconformity. Any structure or portion thereof may be altered to decrease its
22 nonconformity, or may be altered or enlarged if the alteration does not intensify the
23 nonconformity. This subsection shall not be construed to allow the expansion of a
24 nonconforming use of structure, which is governed by section 21.12.030 above.
- 25 2. Should a nonconforming structure be moved for any reason for any distance whatever, it
26 shall thereafter conform to the regulations for the district in which it is located after it is
27 moved.

28 **B. Overheight Buildings**

- 29 1. If a lawful building erected prior to [date of passage] does not comply with the
30 requirements of this title with regard to height, such building shall be deemed conforming
31 with regard to height.
- 32 2. Where a lawful structure, existing on [date of passage], is engineered and constructed for
33 enlargement by the addition of one or more stories, such structure may be enlarged
34 within the full plan dimensions of the existing structure by the addition of not more than
35 two stories.

1 **C. Buildings Exceeding Maximum Setback**

2 If a lawful building erected prior to [date of passage] does not comply with the requirements of
3 this title with regard to maximum structure setbacks, such building shall be deemed conforming
4 with regard to setbacks.

5 **D. Damage or Destruction**

6 A person wishing to replicate a nonconforming structure that has been damaged or destroyed to
7 an extent of more than 50 percent of the replacement cost at the time of destruction, shall choose
8 one of the two application and approval methods in subsection D.1. below. The application shall
9 be made within one year of the damage or destruction.

10 **1. Application and Approval Methods**

11 **a. Administrative Approval**

12 i. An application for administrative approval to rebuild a nonconforming
13 structure shall contain the information specified in the title 21 user's
14 guide and shall be submitted to the director.

15 ii. Notice of the application shall be published, mailed, and posted in
16 accordance with section 21.03.020H.

17 iii. There shall be a 30 day comment period, starting from the date of notice,
18 before the director acts on the application as provided in subsection a.iv.
19 below.

20 iv. The director shall review the application and act to approve, approve with
21 conditions, or deny the application based on the approval criteria of
22 subsection D.2. below. Findings of the director shall be in writing. The
23 director may impose limitations or conditions as may be necessary to
24 meet the approval criteria or to reduce or minimize any potential adverse
25 impact on other property in the area.

26 v. Appeals of the director's decision may be made to the zoning board of
27 examiners and appeals, pursuant to section 21.03.040B.

28 vi. If the application is approved or approved with conditions, the structure
29 shall continue to be a nonconforming structure and be subject to the
30 provisions of this chapter.

31 **b. Conditional Use Approval**

32 i. An application for conditional use approval shall contain the information
33 specified in the title 21 user's guide, and shall be submitted to the
34 director.

35 ii. The conditional use application shall be processed in accordance with
36 the procedures of section 21.03.080B., except that a community meeting
37 is not required, and the planning and zoning commission shall base their
38 decision on the approval criteria of subsection D.2. below. The
39 commission may impose limitations or conditions as may be necessary
40 to meet the approval criteria or to reduce or minimize any potential
41 adverse impact on other property in the area.

- 1 iii. An approved replication conditional use shall expire if start of
2 construction has not begun within one year of the planning and zoning
3 commission's approval. For the purposes of this section, "replicate" shall
4 mean to rebuild to the same dimensions and in the same location as the
5 damaged or destroyed structure, but this shall not prevent moving
6 towards conformity.
- 7 iv. A nonconforming structure that is approved to be rebuilt per this
8 conditional use process shall henceforth be considered a conditional use
9 and shall no longer be subject to the provisions of this chapter.

10 **2. Approval Criteria**

- 11 a. The nonconforming structure is or can be made compatible with uses allowed on
12 adjacent properties, in terms of site design and operating characteristics (such as
13 lighting, noise, odor, dust, and other external impacts);
- 14 b. The nonconforming structure will not limit, impair, or impede the normal and
15 orderly development and improvement of surrounding property for uses permitted
16 on those properties;
- 17 c. The parking, landscaping, and lighting either conform to the requirements of this
18 title, or are moving towards conformity to the maximum extent feasible;
- 19 d. Utilities, access roads, drainage, and other necessary facilities are sufficient to
20 service the use, or will be provided; and
- 21 e. Adequate measures have been or will be taken to provide ingress and egress
22 that are designed to minimize traffic congestion on the streets.

23 **E. Legalization of Nonconforming Dimensional Setback Encroachments**

24 **1. Generally**

25 Existing structures with dimensional encroachments into required setbacks that were
26 constructed prior to January 1, 1986, may continue in existence provided the following
27 requirements are met:

- 28 a. An application for the registration of nonconforming encroachment is submitted to
29 the department; and
- 30 b. The encroachment is determined not to be a life safety hazard by the director.

31 **2. Procedures for Registration**

32 a. Application for the registration of nonconforming encroachment shall be
33 submitted to the department, on a form provided by the department. The
34 application shall require an as-built drawn by a land surveyor registered in the
35 state of Alaska, which shows all structures existing on the lot at the date of
36 application. The application shall also require information supporting the
37 assertion that the structure and encroachments were constructed prior to
38 January 1, 1986. The director may require the petitioner to provide additional
39 information to support this application.

40 b. Within 30 days of receipt of all requested information, and upon an adequate
41 showing that the requirements stated in subsection 21.12.040E.1. above are met,
42 the director shall issue or deny a certificate permitting the continued use and

1 existence of the encroachment. The director may impose such conditions on the
2 certificate as he/she may determine are appropriate to protect the general
3 welfare. The certificate shall note the size and characteristic of the setback
4 encroachment and the structure. A copy of the required as-built shall be
5 attached thereto.

6 **3. Operation**
7 Once registered, the encroachment shall enjoy all the protections and privileges afforded
8 to a nonconforming structure under the provisions of this chapter.

9 **4. Appeal**
10 Any aggrieved person may appeal the grant or denial of a certificate to the zoning board
11 of examiners and appeals.

12 **F. Preexisting Tower and Antennas**

13 Except for abandoned towers and/or antennas, preexisting tower structures shall be allowed to
14 continue their usage as they presently exist, or may be replaced with a new tower structure or
15 antenna of like construction and height. Building permits to rebuild the facility shall be obtained
16 within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if
17 said permit expires, the tower or antenna shall be deemed abandoned. New construction other
18 than routine maintenance on a preexisting tower structure shall comply with the requirements of
19 this title.

20 **21.12.050 NONCONFORMING LOTS OF RECORD**

21 **A. Nonconforming Lots**

22 **1.** In any residential zoning district, notwithstanding limitations imposed by other provisions
23 of this title, dwellings and customary accessory buildings may be erected on any lot,
24 provided the underlying zoning district and dimensional and design standards, such as
25 setbacks, parking, open space, landscaping, etc. can be met, that is of record at the
26 effective date of the original adoption or amendment of applicable regulations, except as
27 restricted in subsection B. below. This provision shall apply even if the lot fails to meet
28 the requirements for the area or width, or both, that are applicable in the district.
29 Furthermore, setback and lot coverage requirements applicable to nonconforming lots of
30 record shall be those of the zone with the largest lot area requirement within which the lot
31 area would be conforming. A lot that fails to be conforming in any zone shall maintain a
32 front setback of 20 feet, side setbacks of five feet, a rear setback of five feet, and
33 maximum lot coverage of 50 percent.

34 **2.** In any nonresidential zoning districts, notwithstanding limitations imposed by other
35 provisions of this title, any use allowed in the district by table 21.05-2 may be erected on
36 any lot (through the appropriate review and approval procedure), provided the underlying
37 zoning district and dimensional and design standards, such as setbacks, parking, open
38 space, landscaping, etc. can be met, that is of record at the effective date of the original
39 adoption or amendment of applicable regulations, except as restricted in subsection B.
40 below. This provision shall apply even if the lot fails to meet the requirements for the
41 area or width, or both, that are applicable in the district.

42 **B. Undivided Parcels**

43 **1.** If two or more contiguous lots in single ownership, either of which contains less than
44 5,500 square feet of area are of record on or after November 27, 1990, and either is

1 nonconforming by virtue of this title or any amendment thereto, the lands involved shall
2 be considered to be an undivided parcel for the purpose of this title, and no portion of
3 such parcel shall be sold or used that does not contain a lot area and lot width equal to or
4 greater than the minimum lot area and width required in the zoning district it is in. If a lot
5 that results from being combined through this provision does not meet the dimensional
6 requirements of the zoning district or of chapter 21.08, the lot shall be considered a legal
7 nonconforming lot at the time of recordation.

- 8 2. This provision shall not apply to those lots legally created as part of a townhouse
9 development, a cluster housing development, a zero lot line development, or a planned
10 unit development.

11 **C. Legalization of Lots Created Prior to September 16, 1975**

- 12 1. Lots existing prior to September 16, 1975 may continue in existence provided the
13 following requirements are met:

- 14 a. An application for the registration of nonconforming lot is submitted to the
15 department; and
- 16 b. The lot is determined to be sufficient in size to allow construction of a structure
17 and comply with associated district-specific, dimensional, and development and
18 design standards such as setbacks, parking, landscaping, etc.

- 19 2. The application shall be on a form provided by the department, and shall be
20 accompanied by an as-built drawn by a land surveyor registered in the state of Alaska,
21 which shows the lot boundaries. The department may require additional information to
22 support the application.

- 23 3. Within 30 days of receipt of all requested information and upon an adequate showing that
24 the requirements stated in subsection C.1. above are met, the director shall issue or deny
25 a certificate for the lot. The director may impose such conditions on the certificate as he
26 or she determines appropriate to protect the general welfare. A copy of the required as-
27 built shall be attached to the certificate.

- 28 4. Once registered, the lot shall enjoy all the protections and privileges afforded to a
29 nonconforming lot under the provisions of this chapter.

- 30 5. Any aggrieved person may appeal the grant or denial of a certificate to the zoning board
31 of examiners and appeals within 30 days of the director's determination.

- 32 6. Nothing in this section shall preclude relief for nonconforming lots by means of a
33 variance.

- 34 7. Nothing in this section shall exempt any lots from the provisions of subsection B. above.

- 35 8. The department shall publish the registration of a nonconforming lot including the street
36 address and legal description of the property in a newspaper of general circulation in the
37 municipality within seven days of the issuance of the certificate.

21.12.060 CHARACTERISTICS OF USE

A. Developments Are Conforming

- 1. Development that was legally established before [date of passage] that does not comply with the district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, or the design and development standards of chapter 21.07 (except for section 21.07.020B., *Stream, Water Body, and Wetland Protection*) shall be considered conforming on [date of passage], and subject to this section. Development that does not conform to section 21.07.020B., *Stream, Water Body, and Wetland Protection*, shall be considered nonconforming.
- 2. No change shall be made to any development unless the change is in the direction of conformity to the requirements of this title.

B. Parking Out of Compliance

Notwithstanding section C. below, if changes to a use or development increase the minimum number of required parking spaces, the number of spaces related to the increase shall be provided. For example, if a use or development that is required to have 30 spaces only has 20 spaces, and changes to the use or development allowed through this title create a total minimum requirement of 35 spaces, the use or development shall, at a minimum, provide the additional 5 spaces. The addition of more spaces may be negotiated through the process outlined in section C. below.

C. Bringing Characteristics into Compliance

- 1. **Applicability**
This section 21.12.060 applies to all multi-family, commercial, mixed-use, public/institutional, and industrial development projects that:
 - a. Do not comply with the district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, or the design and development standards of chapter 21.07 (except for section 21.07.020B., *Stream, Water Body, and Wetland Protection*);
 - b. Involve a development project costing more than 2.5 percent of the assessed value of the structure (or, if no structure over 150 square feet exists, the assessed value of the land); and
 - c. Require a permit through title 21 and/or title 23.
- 2. **Standard**
 - a. An applicant for a building or land use permit for a multi-family, commercial, mixed-use, or industrial development that meets the applicability thresholds of section C.1. above, shall be required to spend 10 percent of the total project costs on bringing the development towards compliance with the district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, and/or the design and development standards of chapter 21.07 (hereafter called "characteristics").
 - b. If the applicant can bring the development into full compliance with title 21 for less than 10 percent of the total project costs, then no additional monies need be

- 1 spent. The municipality shall not require more than 10 percent, but the applicant
2 may choose to spend more.
- 3 c. If the applicant chooses to spend more than 15 percent, the amount in excess of
4 15 percent may be credited, as outlined in the user's guide, towards future
5 improvements under this section.
- 6 d. The director, in consultation with the applicant, shall determine which
7 characteristics shall be addressed, within the expenditure requirements noted
8 herein. The director and the applicant shall consider how to maximize the public
9 benefit and minimize the economic impact to the property owner. The director
10 shall not require compliance with a standard that would create non-compliance
11 with a different standard (i.e., the director shall not require the addition of
12 landscaping that would cause the development to fall under the minimum
13 required number of parking spaces).
- 14 e. The applicant may appeal the director's decision to the [urban design
15 commission], which shall hold a non-public hearing on the appeal.
- 16 f. For the purposes of this section, "total project costs" shall be determined by the
17 building official pursuant to municipal code, and shall be exclusive of all costs of
18 improvements that move the development in the direction of conformity to the
19 requirements of this title.
- 20 **3. Insignificant Change**
21 If the director and the applicant concur that 10 percent of project costs is not enough
22 money to result in a significant change to any characteristic, the applicant shall place the
23 required 10 percent of project costs as outlined in subsection B.4. below.
- 24 **4. No Applicable Characteristics**
25 If no characteristics can be brought towards conformity without causing other
26 characteristics to come out of compliance, or if the only characteristics left to be
27 addressed are so major as to require relocating the structure, or something of similar
28 magnitude, then the applicant shall not be required to perform such work. Instead, the
29 applicant shall place the required 10 percent of project costs in a municipal account
30 dedicated to public improvements (such as pedestrian or landscaping improvements) in
31 the census block group (based on the 2000 census) that the development is in, or an
32 adjacent census block group.
- 33 **5. Large Commercial Establishment**
34 If the development project is a Large Commercial Establishment, as defined in section
35 21.07.120, then the applicant shall spend an additional 10 percent of the total project
36 costs on bringing the structure into compliance with the design standards of section
37 21.07.120. If the structure already complies with section 21.07.120, then this subsection
38 C.5. shall not apply.
- 39 **6. Timing of Work**
40 The characteristics of use shall be brought towards compliance with all applicable
41 provisions of this title prior to the issuance of the building or land use permit or shall be
42 included in the work to be accomplished under the permit.

21.12.070 NONCONFORMING SIGNS

A. Effective Date

The effective date of this section 21.12.070 is October 1, 2003.

B. Amortization Provisions

1. Legal Nonconforming Permanent Signs

Any permanent freestanding or building sign lawfully built prior to the adoption of this title that does not comply with the maximum height, maximum area, or the number of signs permitted as set forth in this title shall be considered a legal nonconforming sign.

2. Amortization of Permanent Signs

Any permanent sign exceeding current size or height requirements by greater than 50 percent must be brought into compliance with this title before May 16, 2016, which is ten years from the date of adoption of this provision.

3. Amortization of Illuminated Signs

Any illuminated sign that does not meet the requirements of subsection 21.11.090A., with the exception of subsection 21.11.090A.3.a., shall be altered to comply with the requirements of this title by May 31, 2008. All LED signs shall comply with the luminance standards of subsection 21.11.090A.3.d. by November 30, 2005.

4. Amortization of Animated Signs

Any sign that contains non-complying animation, changeable copy, or flashing or moving parts shall be altered to comply with the requirements of this title within 180 days from the effective date of this section.

C. Termination

Except as provided in subsection 21.11.090D., a nonconforming sign shall immediately lose its legal nonconforming status, and therefore shall be brought into conformance with this title or removed, when any of the following occur:

1. The size or shape of the sign is changed.

2. The location of the sign is changed.

3. The business is sold and there is a change of use of the premises. A change of use occurs when the type of use is not within the same use category as the immediate prior allowable use type, determined by reference to the tables of allowed uses under this title.

4. The nonconforming sign is accessory to a nonconforming use that has lost its nonconforming status.

5. If more than 50 percent of the assessed value of the principal structure on a property is replaced, repaired, or renovated, the existing sign(s) for the principal structure shall be removed or brought into compliance with the provisions of this title at the time of replacement, repair, or renovation.

6. Change is permitted in the direction of conformity to the requirements of this title. A sign will lose its legal nonconforming status immediately upon any change which increases nonconformity. Municipal permit fees are waived for nonconforming signs to be brought

1 into full conformity, if an estimate by a licensed and bonded contractor with a designated
2 date of completion of the new conforming sign is provided by May 16, 2008, which is two
3 years from the date of passage of this provision.

4 **D. Maintenance of Nonconforming Signs**

5 Nonconforming signs shall continue to be maintained in safe condition pursuant to the building
6 regulations of the municipality until such sign is required to be removed as set forth in this
7 section.

8 **E. Reconstruction of Damaged Sign**

9 If a sign and/or its support are damaged to the extent where the repair costs exceed 50 percent of
10 the replacement cost of the sign, the sign shall be removed or brought into compliance. If the
11 repair costs do not exceed 50 percent of the replacement cost of the sign, the director may
12 authorize the sign to be repaired, provided all repair work is completed within 90 days, subject to
13 the director extending the time for good cause, of the date the director determines the damage
14 requires replacement or permits repair. In no event may a sign be maintained in an unsafe
15 condition during the process of this determination or the period necessary for repairs.

16 **F. Historic Signs**

17 The urban design commission may grant exceptions to these standards whenever a sign or
18 property has been designated an historic sign pursuant to the guidelines and criteria established
19 and adopted by the urban design commission.

20 **G. Extension of Time to Comply**

21 The dates established in this section for a sign to be brought into compliance with the
22 requirements of these regulations may be appealed to the zoning board of examiners and
23 appeals by the owner or lessee of the nonconforming sign pursuant to section 21.03.040B.,
24 *Appeals to Zoning Board of Examiners and Appeals*. In evaluating the extension of time for a
25 nonconforming use, the zoning board of examiners and appeals shall consider the following
26 factors to determine whether the owner of the sign has had reasonable amount of time to recoup
27 his or her investment:

- 28 1. The value of the sign at the time of construction and the length of time the sign has been
29 in place;
- 30 2. The life expectancy of the original investment in the sign and its salvage value, if any;
- 31 3. The amount of depreciation and/or amortization of the sign already claimed for tax or
32 accounting purposes;
- 33 4. The length of the current tenant lease or expected occupancy compared to the date the
34 sign is to be brought into compliance;
- 35 5. The extent to which the sign is not in compliance with the requirements of this chapter;
36 and
- 37 6. The degree to which the board determines that the sign is consistent with the purposes of
38 this chapter.