

Technical Summary of Code Amendments

**Recommended by the Planning Commission to the City Council
(Attachment B, Ord. 2644; 10-14-14 City Council Study Session Draft)**

**Prepared for the City Council Study Session, Nov. 4, 2014,
by Jessica Numanoglu, Senior Planner
October 24, 2014**

1 NONCONFORMING USES – LOC 50.01.006

The 2010 Code Audit report noted that the current Nonconforming section only covers nonconforming structures and uses and does not address two additional common types of nonconformities: lots and site features (e.g., landscaping and parking). The existing code section also currently uses a number of vague and inconsistent terms and requires a relatively high degree of staff interpretation because many nonconforming issues/topics are not addressed or adequately covered. Though the proposed amendments would actually increase the length of the Nonconforming code section, the additional code text improves understanding and streamlines administration by clarifying code provisions and reducing the amount of staff interpretation that is necessary.

Below is a brief summary of the main amendments. Page references to more detailed notes on these amendments in Attachment B of Exhibit A-1.1 (hereafter “Attachment B”) are provided below.

- a) Provisions for nonconforming lots and site features (e.g., landscaping and parking) are added to reduce the need for staff interpretation (see pages 1-8 of Attachment B).
- b) Language is added to distinguish between “nonconforming” and “illegal” (see page 1, and Footnote 1 of Attachment B).
- c) Nonconforming industrial, commercial, and institutional structures with conforming uses could expand in a conforming manner without having to obtain a conditional use permit (CUP). In most cases the expansion would require approval of Development Review Permit for building design purposes, which is subject to public notice and appeal, but the applicant would no longer be required to also obtain a CUP. This amendment would streamline the process and reduce the costs to the property/business owner while still allowing for public review of the design aspects of the development (see page 3, and Footnote 6 of Attachment B).
- d) Applies nonconforming standards for building expansion to all structures, rather than to a specific list of uses / zones. That would include institutional and public use structures, which were not previously covered in this section, eliminating confusion as to what modifications can be made to nonconforming institutional and public use

structures (see page 3, and Footnote 6 and Page 4, and Footnotes 9 and 10 of Attachment B).

- e) New nonconforming use standards are added, outlining when these uses can be changed or expanded (see page 4, and Footnote 10 of Attachment B).
- f) A provision is added to codify current practice for calculating how much landscaping/open space is required for development projects, e.g., expansion of structures, on sites that are nonconforming to the landscape and/or open space standards (see page 4, and Footnote 11 of Attachment B).
- g) The standards relating to damage and reconstruction of nonconforming single-family, duplex, and accessory structures and historic landmarks are edited and reorganized for clarity. Reference to “destruction due to lack of structural maintenance” is deleted and replaced with “destruction due to an intentional act of an owner” because of the difficulty of determining what constitutes a lack of structural maintenance. “Intentional Act” is a newly defined term (see page 5, and Footnote 12, and page 39 of Attachment B).
- h) A cross-reference to the nonconforming provisions in the Sensitive Lands section is added (see page 6, and Footnote 16 of Attachment B).
- i) The time limitations for the reconstruction of nonconforming structures are consolidated in one section and made consistent (one year) for all types of nonconforming structures. Currently, there are slight differences in the time limitations for reconstructing nonconforming single-family, duplex, accessory and historic structures vs. all other structures. This amendment removes this unnecessary complexity (see page 7, and Footnote 18 of Attachment B).
- j) Per the Commission’s direction, a provision allowing an extension to the time limitation is added to address situations where a nonconforming structure is subject to a pending insurance claim or litigation (see page 7, and Footnote 19 of Attachment B).
- k) The time period after which a discontinued nonconforming use can no longer be restarted is extended from six months to one year, with a new provision for up to two one-year extensions. “Discontinued” is a newly defined term (see page 8, and Footnote 22 of Attachment B).

2 ADJUSTMENTS, ALTERNATIVES AND VARIANCES – LOC 50.08

Currently, there are 11 different procedures by which an applicant may be able to adjust or vary CDC standards. The proposed amendments consolidate and streamline these procedures to increase understanding and simplify administration.

Below is a brief summary of the main amendments proposed to the Variance section. Page references to more detailed notes in Attachment B are provided below.

- a) The R-DD Administrative Modification section (LOC 50.08.001.2.a), which allows a modification to dimensional standards of up to two feet, and the Solar Access Yard Setback Adjustments (LOC 50.08.001.3), which allows changes to the solar access

setback standards, are moved to the outright permitted exceptions in LOC 50.04.003.3. Both are currently based on clear and objective criteria (see page 8-9, and Footnotes 23 and 24 of Attachment B).

- b) The R-6 Administrative Modification procedure (LOC 50.08.001.1) is eliminated because the modifications allowed by this procedure are already available through a minor variance or have never been used by an applicant. However, because a minor variance allows up to a 20% reduction to a yard setback and the R-6 Administrative Modification limits modifications to front yard setbacks in that zone to only two feet, a new limitation for minor variances is added, which limits a variance to a front yard setback in the R-6 zone to a maximum of two feet (see pages 21-22, and Footnotes 44 and 45 of Attachment B).
- c) All of the remaining procedures are consolidated into three broad categories: Minor Variance, Design Variance, and Major Variance. The criteria for these procedures have also been consolidated, although some procedures, such as the LGVCO Major Adjustments and RID Review, largely retain their existing criteria, which have been edited for clarity and easier administration (see pages 20-38 of Attachment B).
 - i. Minor Variance: The existing Minor Variance, LGVCO Minor Adjustments and Reasonable Accommodation Variance are consolidated into the Minor Variance category (see page 21, Footnote 42 of Attachment B). The existing Minor Variance criteria are adapted with edits and additions to apply to all Minor Variances, except Reasonable Accommodation variances, which will retain its existing criteria with edits for clarity (see pages 24-25, and Footnotes 55 and 57 of Attachment B). A new Minor Variance criterion is being added to address the public streetscape environment (see page 25, and Footnote 56 of Attachment B).

A 15% variance to maximum lot coverage on a legally substandard lot is reclassified from a Minor Variance to a Major Variance (see page 22, and Footnote 47 of Attachment B). The Village Transition Area (VTA) setbacks next to a residential use in the LGVCO district would no longer be eligible for an LGVCO Adjustment (currently, an adjustment is only prohibited for VTA setbacks next to R-7.5 and R-10 zones) [see page 24, and Footnote 54 of Attachment B].

- ii. Design Variance: The R-DD Administrative Modification (between 2-5 feet), Downtown Redevelopment District (DRDD) Exceptions to Standards, LGVCO Major Adjustments, FMU Exceptions to Standards, and RID procedures are consolidated in the Design Variance category (see pages 26-29 of Attachment B). A set of general criteria will apply to all Design Variances and additional criteria will apply to the DRDD and LGVCO districts and to the RID procedure (see pages 30-36 of Attachment B).

The LGVCO adjustment procedure is amended to allow adjustments to any applicable standard in LOC Chapter 50 instead of only the LGVCO standards

(except certain LGVCO standards that are explicitly prohibited from being adjusted). This aligns the LGVCO adjustments with the DRDD Exception procedure, which has always allowed exceptions to any applicable standard in LOC Chapter 50 through a single process (see page 28, and Footnote 64 of Attachment B).

The LGVCO adjustment criteria requiring the applicant to show that a “regulatory taking” would occur if the adjustment was not granted, and that the proposed adjustment is the “least variance necessary” is deleted because both of these criteria are relevant to hardship variances, not design variances (see pages 31-32, and Footnote 73 of Attachment B).

The LGVCO “reviewing authority considerations” for Major Adjustments is converted to approval criteria and revised for clarity (see pages 32-33, and Footnote 75 of Attachment B).

The RID criteria are edited for clarity and brevity (see pages 33-36 of Attachment B); the RID review procedure would no longer be applicable to residential developments on residentially-zoned lots in design districts (e.g. DRDD, LGVCO and West Lake Grove Design District) [see page 18, and Footnote 34 of Attachment B]; the area around the subject property to be considered in applying the RID criteria would be increased from 200 feet to 300 feet (see page 33, and Footnote 77 of Attachment B); and the review procedures would be changed to be consistent with other minor development applications (see page 15, and Footnote 32 of Attachment B).

- d) Major Variances: Hardship Variances are renamed to Major Variances. The existing hardship criteria are revised for clarity and reorganized (see pages 37-38 of Attachment B). Additionally, the criterion requiring that the request not be in conflict with the Comprehensive Plan and the factor to consider whether a reasonable use similar to “like properties” can be made of the property without a variance have been deleted. These provisions are deleted because purchasers of small or irregular parcels or properties subject to unique constraints are generally not permitted the same size or scale of development as purchasers of unconstrained properties; constrained lots are not “like properties” to unconstrained lots. The criterion that the request is not in conflict with the Comprehensive Plan is deleted because the Code as a whole (including variance procedures) implements the Comprehensive Plan and individual variance requests are very difficult to evaluate in terms of broad Comprehensive Plan goals (see page 37, and Footnotes 87-88 of Attachment B).

The review authority for Major Variances is changed from staff to the Development Review Commission (see pages 13-14, and Footnotes 28-29 of Attachment B).

3 RELATED AMENDMENTS TO OTHER CODE SECTIONS

Following are amendments to code sections other than the Nonconforming and Variance code sections that are necessary to ensure internal consistency and clarity:

Exceptions Projections and Encroachments [LOC 50.04.003]:

The R-DD Administrative Modification (up to two feet) and the Solar Access Yard Setback Adjustment are moved to the General Exceptions to Yard Requirements section because both procedures have clear and objective criteria and are reviewed ministerially. No change to the decision making process is proposed. Minor text edits for clarity are proposed (see pages 8-9 of Attachment B).

Lake Grove Village Overlay District [LOC 50.05.007]:

A definition of “remodel” is being included in the LGVCO district standards in order to establish limits on how much an existing nonconforming building can be remodeled. The intent is to prevent nonconforming buildings from being effectively reconstructed in compliance with LGVCO standards applicable to remodeling instead of standards applicable to new construction (see pages 10-11 of Attachment B).

Review and Approval Procedures [LOC Article 50.07]:

The Summary Procedures Table is edited to reflect three new variance categories: Minor Variance, Design Variance and Major Variance. Additionally, the review authority for Major Variances is changed from staff to the Development Review Commission (see pages 12-14 of Attachment B).

Edits to the Public Notice, Appeal and Minor Development Decision sections are made to provide uniform administrative procedures. This will bring the RID procedure into alignment with all other Minor Development applications; having a different notice and decision procedure for RID applications is confusing (see pages 14-19 of Attachment B).

Definitions [LOC 50.10.003]:

New definitions are provided for Nonconforming situations. New terms “damaged”, “intentional act”, and “maintenance”, and revised terms “alter” and “owner”, are proposed to clarify the code and reduce the need for staff interpretation (see pages 38-39 of Attachment B).