



STAFF REPORT

Date of Report: December 29, 2008
Mtg. Date: January 7, 2009
To: Eastern Summit County Planning Commission
From: Jennifer Strader, County Planner
Re: Work Session - Development Code Amendments

Executive Summary

Staff is requesting that the Eastern Summit County Planning Commission ("ESCPC") conduct a work session in order to discuss proposed amendments to the Eastern Summit County Development Code ("Code") including Non-Conforming Uses and Structures and Special Exceptions.

Community Review

This item has been noticed as a work session only. A public hearing will be conducted at a later date.

Background

Staff felt it would be appropriate to begin discussions regarding the possibility of amending the Code language in regard to non-conforming uses and structures because of confusion with past applications that have been reviewed for expansions of non-conforming structures. Additionally, Staff has concluded, through research and discussions with the County Attorney's Office that a Special Exception process should be identified in the Code, specifically for property owners who have no other remedy available to them in certain circumstances.

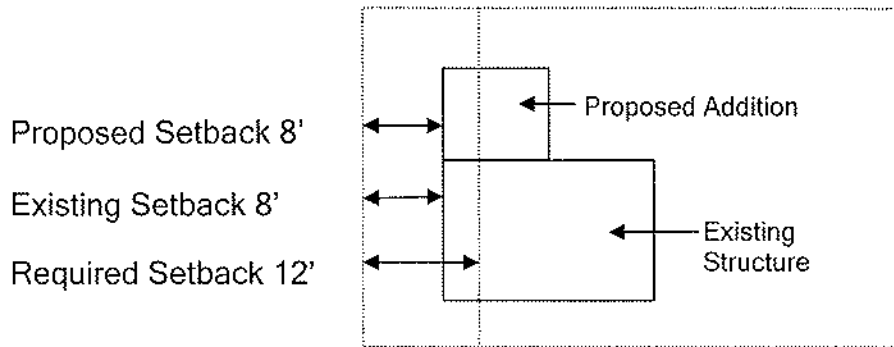
Identification & Analysis of Issues

SECTION 11-6-2: NON-CONFORMING USES, STRUCTURES, LOTS

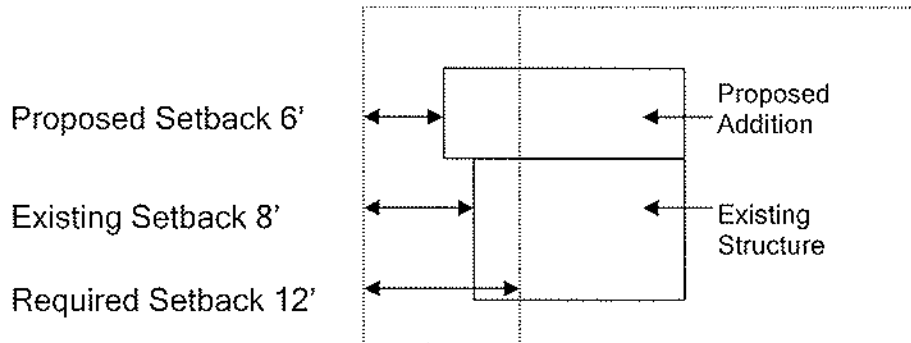
The Code states, "A non-conforming use or structure shall not be enlarged in any way that increases the non-conformity except through the conditional use approval process. This does not include normal remodeling or normal maintenance and repair of an existing non-conforming structure, which is permitted. A structure or use may be altered to decrease its non-conformity".

The Community Development Department currently has an internal policy (Exhibit A) that interprets the aforementioned language as follows:

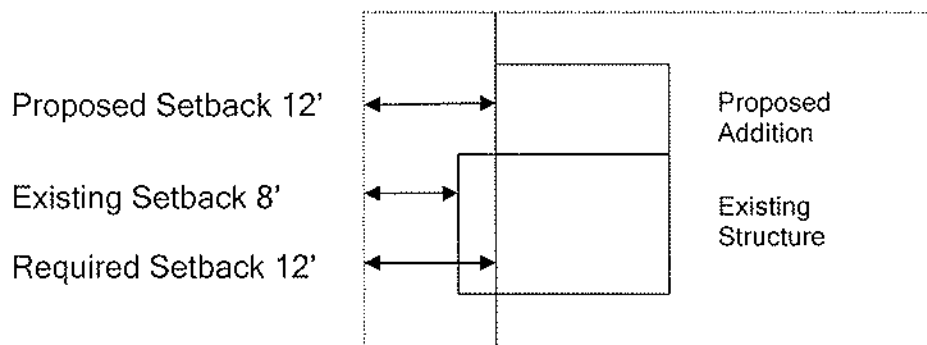
1. If the proposed enlargement does not increase the degree of the existing non-conforming status of the structure, a conditional use permit is required.



2. If the proposed enlargement increases the degree of the non-conforming status of the structure, a variance approved by the Board of Adjustment is required.



3. If the proposed enlargement will comply with the zone required setbacks, a building permit is required.



Since it is the intent of the County to bring all non-conforming structures and uses into compliance with the current Code, Staff is recommending that the language in the Code that allows expansions of non-conforming structures and uses be deleted; the current

language that allows non-conforming uses and structures to continue with limited allowances for maintenance and remodeling would remain (Exhibit B).

Staff is further proposing to add a Special Exception section in the Code which would allow a property owner who has a unique circumstance or equitable claim with no other remedy available to them through the provisions of the Code, a process in which they can seek relief (Exhibit C). Some examples of requests that could be considered for Special Exceptions include:

1. The Lot of Record definition in the Code states that any lot created through the recordation of a deed prior to August 1, 1977 is a lot of record and eligible for development. If a lot was created prior to August 1, 1977, but not recorded, an applicant would have the ability to apply for a Special Exception.
2. An applicant is in the process of recording a final subdivision plat; however, they're working on some final adjustments before the plat is ready to record, but they wish to move forward with the construction of improvements on their lot. As Staff doesn't allow any development to occur without the plat being recorded, they would have the option of applying for a Special Exception.

The Board of Adjustment previously had the authority to grant Special Exceptions, however, their equitable power was taken away from them when Senate Bill 60 was passed modifying the Utah Code, and thus they now only have the power to hear variance requests. Because they seek to waive existing laws, Special Exceptions can only be granted by the Legislative Body and the process is completely discretionary. The criteria for approval are also much broader than the variance criteria mandated by the Utah Code and used by the Board of Adjustment in their approval process.

By eliminating the ability to administratively approve expansions of non-conforming structures or uses, the only way to increase the use or structure would be through a legislative special exception process.

These two amendments to the Code are not dependent, but rather independent changes. The need for special exemption language has been identified separate and apart from the policy determination regarding non-conforming uses and structures. However, staff has brought the two changes forward for consideration in an attempt to streamline the process.

Recommendation

Staff recommends that the ESCPC conduct a work session on the proposed amendments to the Code and provide input and direction prior to a public hearing.

ATTACHMENTS

EXHIBIT A: Internal Office Policy

EXHIBIT B: Section 11-6-2 Non-Conforming Uses, Structures, and Lots

EXHIBIT C: Section 11-4-8 Special Exceptions



Expansion of a Non-Conforming Structure Policy

The expansion of a non-conforming structure may be processed as a conditional use permit only if the addition maintains the existing setback. If the proposed expansion/addition will encroach into the setback beyond the existing non-conforming structure, it must be processed as a variance. If the proposed expansion/addition meets the required setbacks, only a building permit is required.

Date Approved: _____

By: _____
Community Development Director

11-6-2: NON-CONFORMING USES, STRUCTURES AND LOTS:

- A. Within the zone districts established in Chapter 3.0 of the Code, there may be existing lots, structures, and uses of land and structures, which were lawfully established before the adoption of the Code, but which are now prohibited, regulated, or restricted. It is the intent of this section to allow these uses and structures to continue until such time as they are removed or otherwise brought into conformance with the Code.
- B. The property owner bears the burden of establishing that any Non-Conforming Use or Non-Conforming Structure lawfully exists.
- C. A non-conforming structure or non-conforming use shall not be enlarged in any way that increases the degree of the existing non-conformity.
- D. A non-conforming structure may be repaired, maintained, or improved, provided that such repair, maintenance, or improvement is in compliance with the provisions of this Title. A structure may be altered to decrease its non-conformity or to be brought into compliance.
- E. If any such non-conforming use, structure, or portion thereof, is demolished or removed at the will of the property owner, any subsequent use, structure, or portion thereof, shall thereafter be required to conform to the regulations specified in the Code for the zone district in which the use or structure is located.
- F. If any non-conforming structure, or portion thereof, is destroyed by fire or other natural cause, it may be replaced. If the structure is not repaired, or replaced within one (1) year from the date of loss, it shall not be reconstructed except in conformance with the provisions of the Code. The CDD or designated planning staff member may grant an extension of time based on demonstrated progress toward compliance with this requirement.
- G. No lot, parcel of land, or interest therein, shall be transferred, conveyed, sold, subdivided or acquired either in whole or in part so as to create a new non-conforming use, structure, or lot/parcel, to avoid or circumvent the requirements of the Code. No building permit will be issued for any lot, parcel, or structure which has been transferred, conveyed, sold, subdivided or acquired in violation of the Code.
- H. A parcel/lot that was lawfully created but does not conform to the minimum area per dwelling unit requirement of the zone district in which it is located shall be considered a lot of record and is entitled to one, but no more than one, dwelling unit thereon.

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Deleted: When a use of the land and structure existed prior to the adoption of the Code but is not permitted by the regulations now imposed by the Code, the use of a structure, or portion thereof, and associated land may continue, provided that:¶

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1. The non-conforming structure and use of land shall not be changed in any way that increases the non-conformity except through the Conditional Use review process. This does not include remodeling or normal maintenance and repair of an existing non-conforming structure, which is permitted. A structure may be altered to decrease its non-conformity.¶

¶

2. Additional structures not conforming to the requirements of the Code shall not be erected in connection with a non-conforming use of land and structure, except when approved as a Conditional Use.¶

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<#>If any such non-conforming use of a structure and land, or portion thereof, ceases for any reason for a period of one (1) year, any subsequent use of such land, structure, or ... {1}

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LANGUAGE FOR WORK SESSION 1.7.09

11-4-8: SPECIAL EXCEPTIONS

- A. Purpose: Where the County Council finds that an applicant has a unique circumstance or equitable claim which makes strict enforcement of the provisions of this Title unduly burdensome, it may, after a public hearing, approve special exceptions to the zoning provisions of this Title so that substantial justice may be done and the public interest secured; provided that the special exemption shall not have the effect of nullifying the intent and purpose of this Title or any provision thereof.
- B. Criteria for Approval: The County Council shall not approve a special exception unless the applicant demonstrates that:
1. The special exception is not detrimental to the public health, safety and welfare.
 2. The intent of the enacted legislation will not be diminished.
 3. The applicant is not eligible for any other remedies provided through the provisions of this Title.
 4. There are equitable claims or unique circumstances warranting the special exception, above and beyond financial hardships or the applicant's self-imposed limitations.
 5. No application for all or part of the same property has been considered through another provision of this Title and denied, unless one (1) year has passed since the date of the denial or the subsequent application is materially different from the previously denied proposal.
- C. Submission Requirements: An application for a Special Exception shall not be accepted as complete unless such application contains enough information in graphic and text form to adequately describe the applicant's intention and all applicable fees paid.
- D. Review Procedure:
1. The CDD or designated planning staff member shall review the Special Exception application and make preliminary findings as to whether or not the application complies with the criteria for approval established in this Title.
 2. If applicable, the CDD or designated planning staff member may secure input regarding the proposed Special Exception from all

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affected agencies and service providers. Upon receiving such information, the CDD or designated planning staff member shall prepare a report and make findings and recommendations and shall schedule a public hearing before the County Council as soon thereafter as may be practicable.

3. The County Council shall review the application and staff report. After conducting a public hearing, the County Council shall approve, approve with conditions, or deny the Special Exception request.

E. Appeal Procedure:

1. An administrative decision of the CDD or designated planning staff member not to forward an application for a Special Exception to the County Council because there are other remedies provided in this Title may be appealed to the County Manager.
2. An appeal of the County Council's decision may be appealed to the District Court, per Section 10-9-22 of this Title.

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11-4-9: LOW IMPACT PERMIT REVIEW:

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- A. Purpose: The purpose of the Low Impact Permit is to provide a process and procedure for reviewing and approving, approving with conditions, or denying a Low Impact Use. Upon compliance with the provisions of this Section, a Low Impact Use approval may be granted by the Community Development Director, with reasonable conditions necessary for the protection and preservation of the public health, safety, and welfare.
- B. Applicability: The Low Impact Review Process can be utilized to obtain administrative approval for projects determined to be low impact and which are in conformance with the Development Evaluation Standards and general regulations of the Code and provisions of the General Plan. An application for approval of a Low Impact Permit shall be commenced by filing a sketch plan and paying the applicable fee with the Community Development Department.