



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/21/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Newport Plan Amendment
DLCD File Number 011-09

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Monday, January 04, 2010

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

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

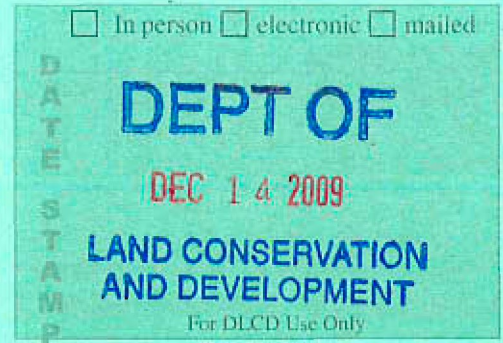
***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Derrick Tokos, City of Newport
Gloria Gardiner, DLCD Urban Planning Specialist

<paa> YA

Notice of Adoption

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



Jurisdiction: **City of Newport**

Local file number: **9-Z-09**

Date of Adoption: **12/7/09**

Date Mailed: **12/11/09**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 9/22/09

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Amendments were made to Section 2-5-1 of the Newport Zoning Ordinance adding criteria for the verification and expansion of non-conforming uses.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location: **City of Newport**

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes **No**

If no, do the statewide planning goals apply?

Yes **No**

If no, did Emergency Circumstances require immediate adoption?

Yes **No**

DLCD file No. _____

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

None.

Local Contact: **Derrick I. Tokos, AICP**

Phone: **(541) 574-0626** Extension:

Address: **169 SW Coast Highway**

Fax Number: **541-574-0644**

City: **Newport**

Zip: **97365**

E-mail Address: **d.tokos@thecityofnewport.net**

ADOPTION SUBMITTAL REQUIREMENTS

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

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

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **larry.french@state.or.us** - **Attention: Plan Amendment Specialist**.

CITY OF NEWPORT

ORDINANCE NO. 1996

**AN ORDINANCE AMENDING THE NEWPORT ZONING ORDINANCE
(ORDINANCE NO. 1308, AS AMENDED) TO CLARIFY TERMS AND
ADD CRITERIA FOR THE VERIFICATION AND
EXPANSION OF NONCONFORMING USES**

Findings:

1. The City of Newport Zoning Ordinance (No. 1308, as amended) contains criteria for the regulation of uses, lots, and structures that were lawfully in existence at the time the Zoning Code was enacted or amended and do not presently comply with the regulations of the zoning district in which they are located. Such uses, lots, and structures are considered to be nonconforming.
2. The City of Newport Planning Commission and its Citizens Advisory Committee completed a comprehensive review of the Nonconforming Use Section 2-5-1 of the Zoning Ordinance and determined that terms need to be clarified and consolidated, that criteria should be added for verifying nonconforming uses or structures, and that standards should be put in place to allow expansion or replacement of nonconforming uses or structures that will not result in a greater adverse impact on neighboring areas. The Planning Commission and Citizens Advisory Committee determined that with these changes, Section 2-4-15 is no longer needed, as the motel use listed could potentially be altered or expanded under the new provisions.
3. The Newport Planning Commission and Planning Commission Citizens Advisory Committee reviewed changes to the Nonconforming Use Section of the Zoning Ordinance (Newport File No. 9-Z-09) at work sessions on September 14, 2009, September 28, 2009, and October 12, 2009. Following a public hearing on November 9, 2009, the Planning Commission voted 6-1 to recommend adoption of the proposed amendments.
4. The City Council held a public hearing on December 7, 2009 regarding the question of the proposed revisions (Newport File No. 9-Z-09), and voted in favor of their adoption after considering the recommendation of the Planning Commission and evidence and argument in the record.
5. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

Based on these findings,

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Section 2-5-1 of Ordinance No. 1308 (as amended), Nonconforming Uses, is deleted in its entirety and replaced with a new Section as shown in Exhibit "A".

Section 2. Section 2-4-15 of Ordinance No. 1308 (as amended), Nonconforming Uses in R-1 Zoning Districts, is repealed in its entirety.

Section 3. The following definition is added to Section 2-1-1.101 of Ordinance No. 1308 (as amended), Definitions:

Nonconforming Lot. A lot legally existing on the effective date of this Ordinance that does not meet the minimum area requirement of the district in which the lot is located.

Section 4. The following definition contained in Section 2-1-1.101 of Ordinance No. 1308 (as amended), Definitions, is amended to read as follows:

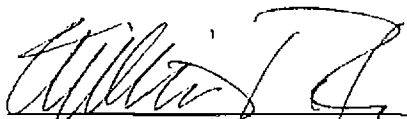
Nonconforming Structure or Use. A legally established structure or use in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the regulations of the zoning district in which it is located. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming.

Section 5. This ordinance shall take effect 30 days after passage.

Date adopted on initial vote and read by title only: December 7, 2009

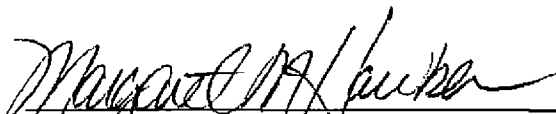
Date adopted on final roll call vote: December 7, 2009

Signed by the Mayor on December 9, 2009.



William D. Bain, Mayor

ATTEST:



Margaret M. Hawker, City Recorder

Exhibit A to Ordinance No. 1996, Amending the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) to Clarify Terms and add Criteria for the Verification and Expansion of Nonconforming Uses

Section 2-5-1. NONCONFORMING USES, LOTS, AND STRUCTURES*

2-5-1.005. Purpose. The purpose of this section is to establish policy and guidelines for the regulation of nonconforming uses, lots, and structures. It is further the purpose of this section to work towards bringing nonconforming uses, lots, and structures into compliance with this Ordinance, the Comprehensive Plan, and other applicable ordinances and regulations.

2-5-1.010. General Provisions.

- A. For purposes of this section, the effective date of this ordinance is September 7, 1982, or the adoption date of any amendment if the amendment, rather than the ordinance originally adopted, creates a nonconforming situation.
- B. A nonconforming use, as defined in this ordinance, may be continued and maintained at its lawful nature and extent.
- C. Normal maintenance and repair of nonconforming structures is permitted.
- D. Nonconforming uses or structures may be altered, expanded, or replaced as provided in subsections 2-5-1.035 and 2-5-1.040 after verification under 2-5-1.030.
- E. An application to alter, expand, or replace a nonconforming use or structure may be processed and authorized under a Type II or Type III decision making procedure as provided by Section 2-6-1, Procedural Requirements, in addition to the provisions of this section.
- F. A nonconforming use may expand onto neighboring properties.
- G. If a nonconforming use or structure is discontinued for a period of one year (12 continuous months) or more, further use of the property shall conform to the requirements of this ordinance.

2-5-1.015. Approval Authority. Upon receipt of an application the Community Development Director or designate shall determine if an alteration, expansion or replacement of a nonconforming use or structure qualifies for Type II or Type III review based on the standards established in this sub-section. There shall be no appeal of the Director's determination as to the decision making process, but the issue may be raised in any appeal from the final decision on the application.

- A. An application shall be processed and authorized using a Type II decision making procedure when characterized by the following:
 - (1) The request is to alter, expand, or replace a nonconforming single-family dwelling or structure accessory thereto; or
 - (2) Alteration or expansion of a nonconforming use or structure is necessary in order to satisfy health and safety or Americans with Disabilities Act (ADA) requirements.
- B. All other applications for the alteration, expansion, or replacement of non-conforming uses or

structures shall be processed and authorized using a Type III decision-making procedure.

2-5-1.020. Application Submittal Requirements. In addition to a land use application form with the information required in Section 2-6-1.020, the application shall include the following:

- A. For requests involving structures that do not satisfy required setbacks, the site plan shall also show survey monuments along the property line(s) adjacent to the encroachment.
- B. For requests involving structural work within required setbacks or construction that exceeds building height limitations, the application shall include exterior architectural elevations, drawn to scale, illustrating the proposed structure and adjoining finished ground elevations.

2-5-1.025. Nonconforming Lots.

- A. When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in this Ordinance, then the lot may be used as proposed just as if it were conforming.
- B. This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has had no structures upon it from the effective date to the date of intended use.

2-5-1.030. Verification of Status of Nonconforming Use or Structure.

- A. Upon receiving an application to alter, expand, or replace a nonconforming use or structure the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

- (1) The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
- (2) The use has not been discontinued for a continuous 12 month period.

The approval authority may require the applicant provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

- B. The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the approval authority shall consider:

- (1) Description of the use;
- (2) The types and quantities of goods or services provided and activities conducted;
- (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

- (4) The number, location and size of physical improvements associated with the use;
- (5) The amount of land devoted to the use; and
- (6) Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.
- (7) A reduction of scope or intensity of any part of the use as determined under this sub-section for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

2-5-1.035. Alteration, Expansion, or Replacement of Nonconforming Uses or Structures.

- A. After verification of the status of a nonconforming use pursuant to subsection 2-5-1.030, the approval authority may authorize alteration, expansion or replacement of any nonconforming use or structure when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.
- (1) The character and history of the use and of development in the surrounding area;
 - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;
 - (3) Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water and streets;
 - (4) The comparative numbers and kinds of vehicular trips to the site;
 - (5) The comparative amount and nature of outside storage, loading and parking;
 - (6) The comparative visual appearance;
 - (7) The comparative hours of operation;
 - (8) The comparative effect on solar access and privacy;
 - (9) Other factors which impact the character or needs of the neighborhood.
- B. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.
- C. To the extent there is a rational nexus, and the City can establish that needed improvements are

roughly proportional to proposed development, an alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to:

- (1) Surfacing of parking areas and landscaping;
- (2) Exterior design of structures;
- (3) Outdoor displays, storage, and signage.

D. Nonconforming residences in nonresidential zones may be altered, expanded, or replaced without the procedure outlined in subsections (A) through (C), above, provided such alteration, expansion, or replacement complies with the siting criteria contained in the R-4 zoning district.

2-5-1.040. Alteration, Expansion, or Replacement Due to Casualty Loss or Health, Safety and Related Standards. Notwithstanding the provisions of subsection 2-5-1.035, after verification of the status of a nonconforming use, the approval authority may authorize the alteration, expansion, or replacement of a nonconforming use or structure based on findings that:

- A. The alteration or replacement is made necessary by fire, other casualty or natural disaster, provided the restoration or replacement is "in-kind" and an application is submitted within one year from the date of occurrence, or;
- B. The alteration, expansion or replacement is necessary in order to satisfy health and safety or Americans with Disabilities Act (ADA) requirements.

U.S. POSTAGE
PAID
NEWPORT, OR
97365
DEC 11, 09
AMOUNT
\$1.73
00035099-05



97301



1000

City of Newport
169 SW Coast Hwy
Newport, OR 97365

TO

*ATTN: PLAN AMENDMENT SPECIALIST
DEPT. OF LAND CONSERVATION & DEV.
635 CAPITAL STREET NE, STE 150
SALEM, OREGON 97301-2540*