

Midway City Council
6 July 2021
Work Meeting

Ordinance 2021-13 /
Non-Conforming Buildings
and Uses



CITY COUNCIL WORK MEETING STAFF REPORT

DATE OF MEETING: July 6, 2021

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Amendment of Section 16.26.8:
Nonconforming Buildings and Uses

ITEM: 3

Midway City is proposing to amend Section 16.26.8 Nonconforming Buildings and Uses of the Midway City Municipal Code. The potential amendment would clarify regulations regarding nonconforming buildings and uses.

BACKGROUND:

The City is proposing an amendment to the City's Municipal Code in the Land Use Chapter, Title 16. The proposed code would clarify when nonconforming buildings and structures can be enlarged. Specifically, in certain situations it would allow a property owner to enlarge some legally nonconforming buildings or structures if the proposed addition complies with current land use requirements. The current nonconforming building and use code allows a property owner to maintain and rebuild a nonconforming structure if certain requirements are met, but it does not allow for the enlargement of a nonconforming structure.

Many nonconforming structures in Midway tend to be historically significant and therefore contribute to the rural heritage of the city. Nonconforming codes, including our own, typically allow for the upkeep of nonconforming structures, but are written with the anticipation that one day it will be removed and replaced by something that complies with land use requirements. The intent of the proposed code amendment is to allow for some flexibility with certain nonconforming structures so that they are not

only maintained, but property owners have the ability to enlarge the structure if the enlargement meets current land use requirements.

The following is the proposed amended language that would regulate nonconforming buildings and uses:

Section 16.26.8 Non-Conforming Buildings and Uses

*In view of the fact that no further development or change in use can be undertaken contrary to the provisions of this Code, it is the intent of this Chapter that non-conforming uses shall not be increased nor expanded except where a health or safety official, acting in his official capacity, requires such increase or expansion. Such expansion shall be no greater than that which is required to comply with the minimum requirements as set forth by the health or safety official. Nevertheless, a non-conforming building or structure or use of land may be continued to the same extent and character as that which legally existed on the effective day of the applicable regulations. Repairs may also be made to a non-conforming building or to a building housing a non-conforming use. **The property owner bears the burden of establishing that any nonconforming use or nonconforming building or structure lawfully exists.***

A. Damaged Building may be Restored. A non-conforming building or structure or a building or structure occupied by a non-conforming use which is damaged or destroyed by fire, flood, wind, earthquake, or other calamity or act of nature may be restored, and the occupancy or use of such buildings, structure, or part thereof which legally existed at the time of such restoration is started within a period of one year from the date of destruction and is diligently prosecuted to completion, and provided that such restoration does not increase the floor space devoted to the non-conforming use over that which existed at the time the building became non-conforming.

B. Discontinuance or Abandonment. A non-conforming building or structure or portion thereof or a lot occupied by a non-conforming use which is, or hereafter becomes abandoned or is discontinued for a continuous period of 365 days or more shall not thereafter be occupied, except by a use which conforms to the use regulations of the zone in which it is located.

C. Change to a Conforming Use. A non-conforming use or building may be changed to a

conforming use or building. Any non-conforming use or building which has been changed to a conforming use or building shall not thereafter be changed back to a non-conforming use *or building*.

D. Change to Another Non-Conforming Use Prohibited. A non-conforming use of a building or lot shall not be changed to another non-conforming use whatsoever. Changes in use shall be made only to a conforming use.

E. Reclassification of Territory. The provision pertaining to non-conforming uses of land and buildings shall also apply to land and buildings, which hereafter become non-conforming due to an amendment in the Land Use Title.

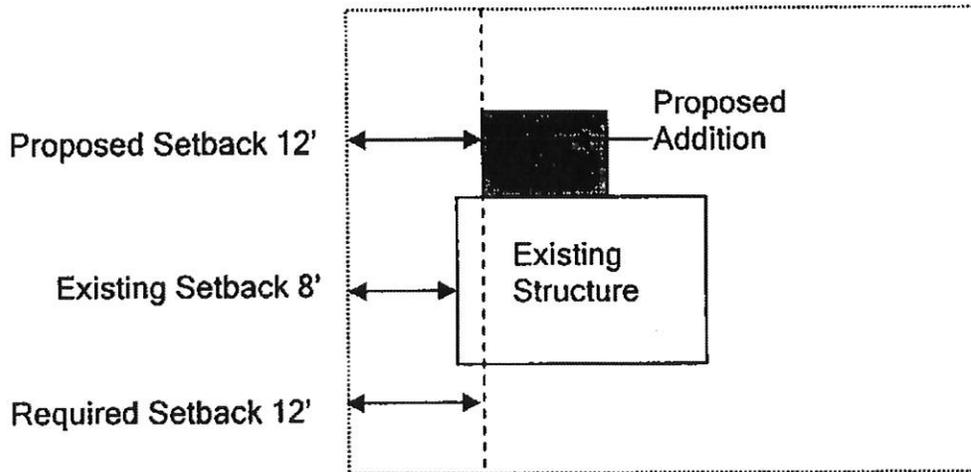
F. Permits Granted Prior to Passage of Amendments to this Chapter. Notwithstanding the issuance of a permit therefore, no building which becomes non-conforming due to an amendment to this Chapter shall be built unless construction has taken place thereon to the extent of at least \$500.00, or an amount set by City Council from time to time, in replaceable value by the date on which said amendment becomes effective. Replaceable value shall be construed to mean the expenditure necessary to duplicate the materials and labor at market prices.

H. Enlargement of a Nonconforming Residential Building. A residential building that is nonconforming due to height or setback may be enlarged through the building permit process only if the enlargement complies with all applicable zoning requirements, including current height and setback requirements. See figure 1 of this section.

1. In the commercial zones, to preserve the historical character of Midway, enlargement of a non-conforming residential structure may be allowed if it meets all other requirements of this section. All modifications to the structure shall not detract from the historical nature of the existing nonconforming structure. The new modification shall be compatible regarding size, location, and design style as compared to the existing structure. Designs shall be reviewed by the city staff and VAC committee.

G. Enlargement of a Nonconforming Agricultural or Detached Accessory Building. An agricultural or detached accessory building that complies with current front setback requirements but is considered nonconforming due to side and rear setbacks, may be enlarged through the building permit process only if the enlargement complies with all applicable zoning requirements, including current side and rear setback requirements. See figure 1 of this section.

Figure 1.



It is anticipated that adding the proposed language could result in more nonconforming buildings and structures, many being historic and of cultural value to Midway, being preserved by creating more flexibility in allowing property owners to enlarge structures.

PLANNING COMMISSION RECOMMENDATION:

Motion: Commissioner Bouwhuis: I make a motion that we recommend approval to amend Section 16.26.8 Non-Conforming Buildings and Uses of the Midway City Municipal Code. The potential amendment would clarify regulations regarding non-conforming buildings and uses. With the addition of another paragraph in the commercial zones that in order to preserve the historical character of Midway, enlargement of a non-conforming residential structure may be allowed if it meets all other requirements of this section. All modifications to the structure shall not detract from the historical nature of the existing nonconforming structure. The new modification shall be compatible in regard to size, location and design style as compared to the existing structure. Designs shall be reviewed by the city staff and VAC committee.

Seconded: Commissioner Simons

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

Ayes: Commissioners Whitney, Bouwhuis, Garland, Simons, Ream and Wardle

Motion: Passed

POSSIBLE FINDINGS:

- The proposed code would address when and how certain nonconforming buildings and structures can be enlarged.
- The proposed code would allow for legally conforming additions to structures that were legally built but are now nonconforming due to current land use code requirements.
- The proposed code would only allow the enlargement of residential buildings and structures that are nonconforming due to height and/or setback requirements and agricultural or accessory structures that are non-conforming due to side and rear setbacks (must comply with current front setbacks). Structures that are deemed nonconforming due to other current land use code requirements would not qualify.
- The proposed amendment would allow for the enlargement of some nonconforming historic buildings and structures that otherwise would not be possible.