

**GRAND JUNCTION CITY COUNCIL  
WORKSHOP**

**MONDAY, JANUARY 5, 2009 11:30 A.M.  
ADMINISTRATION CONFERENCE ROOM  
2<sup>ND</sup> FLOOR CITY HALL  
250 N. 5<sup>TH</sup> STREET**

**CITY COUNCIL AGENDA REVIEW**

**DISCUSSION OF NON-CONFORMING USES RELATIVE TO ZONING AND  
DEVELOPMENT CODE AMENDMENTS**

**[Attach W-1](#)**

**ADJOURN**

## Non-conforming Uses

### CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA			
<b>Subject</b>	Discussion of Proposed Amendments to the Zoning and Development Code Regarding Nonconforming Uses, Structures and Sites		
<b>File #</b>	TAC-2008-314		
<b>Meeting Day, Date</b>	Monday, January 5, 2009		
<b>Placement on the Agenda</b>	<b>Consent</b>		<b>Individual</b> <b>X</b>
<b>Date Prepared</b>	December 31, 2008		
<b>Author Name &amp; Title</b>	Lisa Cox, Planning Manager		
<b>Presenter Name &amp; Title</b>	Tim Moore, Director, Public Works & Planning Dept. Lisa Cox, Planning Manager		

**Summary:** The City of Grand Junction proposes to amend Chapter 3 of the Zoning and Development Code regarding Nonconforming sites, structures and uses,

**Action Requested/Recommendation:** General discussion.

**Attachments:** Staff report

**Background Information:** The Zoning and Development Code is being updated as a part of the Comprehensive Plan process to reflect the vision of the new plan and to remove barriers from achieving the vision. Section 3.8 addresses nonconforming uses, structures and sites but has not been revised or updated since the Code was rewritten in 2000. Code Studio, a member of the consulting team working on the Comprehensive Plan, has worked with staff and community members to propose amendments to Section 3.8. The proposed amendments are included in this report for City Council's review, general discussion and direction to staff regarding major policy issues.

Section 3.8 can be divided into three general categories with a number of issues associated with each category. The categories and some options for implementation include:

- **Non Conforming Sites**

- Options* –
1. Require sites to meet Code at the time of expansion, redevelopment or change of use.
  2. Require some site upgrades at specified trigger points
  3. Develop overlay districts (e.g. North Ave or Downtown) that allow variations to required upgrades to sites
  4. Require no site upgrades at the time of expansion, redevelopment or change of use.

- **Non Conforming Structures**

- Options*
1. Require additions to the primary structure to meet Code at the time of expansion, redevelopment or change of use.
  2. Require some site upgrades at specified trigger points
  3. Develop overlay districts (e.g. North Ave or Downtown) that allow variations to required upgrades.
  4. Require no site upgrades with additions to primary structure.

- **Non Conforming Uses**

- Options*
1. Grandfather existing nonresidential and residential uses
  2. Require upgrades to site/structures at specific trigger points
  3. Allow uses to expand or change with no required upgrades to site or structures.

## What are the current standards?

### Nonconforming Structures and Sites:

- a. **Continuation:** A lawful structure or parcel of land existing as of the effective date of this Code that is nonconforming due solely to failure to meet the bulk requirements or performance standards, and criteria of the underlying zone, may be used for any purposes permitted in the zone so long as the use is in conformance with the provisions of the Code.
- b. **Maintenance and Restoration:** In a continuous twelve (12) month period, interior and/or exterior remodeling of nonconforming structures that require a building permit must correct nonconforming parking, landscaping and screening/buffering. The cost of the remodel should be shown on the building permit application and the current market value shall be based on a certified appraiser or the Mesa County Assessor.
  - Projects that cost 25 percent or less of the current fair market value of the structure do not require correction of parking, landscaping and screening/buffering.
  - Projects that cost 26 to 74 percent require a corresponding percentage increase in compliance. For instance, if the cost of the project is 30 percent of the current fair market value, then the corresponding amount of site upgrades would be 30 percent.
  - Projects that cost 75 percent or more require 100 percent compliance with parking, landscaping and screening/buffering.
  - When five or less additional parking spaces are required due to the remodel, no additional parking shall be provided.
- c. **Expansion:** In any continuous five year period, additions to structures on nonconforming sites must correct nonconforming parking, landscaping, and screening/buffering.
  - Expansions that result in less than 35 percent increase in the gross square footage require the corresponding percentage increase in compliance with the Code. For example, if the expansion is 10 percent of the size of the existing building, then only 10 percent of the required landscaping for the entire site must be provided.
  - Expansions that result in a 35 percent or greater increase of the gross square footage requires the property to comply with all parking, landscaping and screening/buffering requirements of the Code.
  - Expansions that necessitate additional parking must provide 100% of the parking required by the Code. The additional parking area must comply with the landscaping and drainage requirements of this Code.
- d. **Change of Use:** Changes of use that require an increase in the number of parking spaces should provide 100% of the required parking spaces in accordance with the Code. The additional parking area must comply with the landscaping and drainage requirements of the Code. Other nonstructural uses (new display, storage or operations) require that the lot meet all of the parking, landscaping and screening/buffering requirements of the Code.
- e. **Destruction:** A nonconforming structure which is damaged to fifty percent (50%) or less of its fair market value, may be restored within the existing footprint. If damage exceeds fifty percent (50%) or more, restoration must comply with the requirements of the Code.

## Nonconforming Uses:

- a. **Continuation:** A lawful use made nonconforming by adoption of this Code may continue only for so long as such use is not expanded, increased or changed, except as provided herein.
- b. **Nonresidential Uses:**
  - Expansion – In nonresidential zone, existing structure may be expanded 20 percent of gross floor area. Nonresidential uses shall not be expanded in residential zone districts.
  - Change of use – Nonconforming uses may change to conforming uses if the new use complies with the Code. No other changes are allowed, even if to a less intensive use.
  - Abandonment – A nonconforming use that has discontinued for any twelve month period is considered abandoned and shall not be reestablished.
- c. **Residential Uses:**
  - Expansion – In all zones, nonconforming dwellings may be expanded by 20 percent of the gross floor area or 20 percent of the fair market value in a five year period.
  - Abandonment – Other than a single family dwelling, a nonconforming residential structure not occupied for a continuous period of twelve months shall not be reoccupied. A single family dwelling not occupied for a continuous period of twelve months shall not be considered abandoned and may be reoccupied if it has not been changed to a nonresidential or multifamily use.
- d. **Destruction:**
  - Structures damaged less than 50 percent of fair market value may be rebuilt if within property lines, there is no increase in dwelling units, construction is in compliance with building and fire codes, a building permit is obtained within one year from date of damage and a Certificate of Occupancy is issued within 2 years of building permit.
  - Structures damaged more than 50 percent of fair market value may be rebuilt if within property lines, there is no increase in dwelling units, construction is in compliance with zoning, building and fire codes, a building permit is obtained within one year from date of damage and a Certificate of Occupancy is issued within 2 years of building permit.
- e. **Density Acceptance:** Owners who are unable to prove that their density was legally established may appeal to City Council to be granted rebuilding rights under the Code. Council shall consider the appeal in a public hearing and consider the request in accordance with the criteria listed in the Code.
- f. **Rebuilding:** All structures damaged to 50 percent or greater of the fair market value shall comply with all provisions of the Code, other than density. Although the property shall retain the right to reestablish the same number of dwelling units, changes may be required in order to meet Code requirements.

## What are the proposed standards?

Proposed substantive changes from the current standards are shown in red. These points are meant to be the basis for discussion for the City's policies regarding nonconformities and will be revised according to Council's final decisions.

### Nonconforming Structures:

- A. **Continuation.** A lawful structure existing as of (*the effective date of this ordinance shall be inserted herein*) that is nonconforming due solely to failure to meet the dimensional standards or performance standards pertaining to a structure and criteria of the underlying zone may be used for any purpose permitted in the zone so long as the use is in conformance with the provisions of this section.
- B. **Maintenance and Restoration.** A nonconforming structure may be maintained or restored provided no expansion of the nonconformity occurs.
- C. **Expansion.** A nonconforming structure may be expanded, provided that no increase in the structural nonconformity occurs. For example, an addition may be constructed, provided it meets the dimensional requirements for the zone. If the expansion results in an expansion of the nonconforming use, then see Section 3.9.
- D. **Destruction.**
  - 1. A nonconforming residential structure which is damaged may be restored within the existing footprint provided that:
    - a. all portions of the structure being restored are not on or over a property line;
    - b. all construction is in compliance with current construction codes, such as the Fire and Building Codes;
    - c. a building permit is obtained within **twelve** months from the date of the damage;
    - d. and the Certificate of Occupancy (or other final inspection) is issued within one year of the issuance of the building permit.
    - e. If damage exceeds 50 percent or more, restoration or improvement shall not be permitted unless the restoration results in a structure and site conforming to all applicable requirements of this Code.
  - 2. A nonconforming nonresidential structure which is damaged to 50 percent or less of its fair market value, based on a market appraisal performed by a certified appraiser, may be restored within the existing footprint provided that:
    - a. all portions of the structure being restored are not on or over a property line;
    - b. all construction is in compliance with current construction codes, such as the Fire and Building Codes;
    - c. a building permit is obtained within **twelve** months from the date of the damage;
    - d. and the Certificate of Occupancy (or other final inspection) is issued within one year of the issuance of the building permit.
    - e. If damage exceeds 50 percent or more, restoration or improvement shall not be permitted unless the restoration results in a structure and site conforming to all applicable requirements of this Code.
- E. **Signs.** This section shall not apply to nonconforming signs (see Sign Regulations Section 4.2).

### Nonconforming Sites:

- A. **Continuation.** A parcel of land existing as of (*the effective date of this ordinance shall be inserted herein*) that is nonconforming due solely to failure to meet the parking, landscaping and/or screening/buffering standards may be used for any

purpose permitted in the zone so long as the use is in conformance with the provisions of this section.

B. **Maintenance and Restoration.** A nonconforming site may be maintained or restored provided no expansion of the nonconformity occurs, unless the expansion occurs in conformance with this section.

C. **Expansion.** Additions to structures, paving, parking and/or outdoor operations/storage/display on nonconforming sites shall require correction of existing nonconforming parking, landscaping and/or screening/buffering as follows:

1. Redevelopment or expansion(s) which result in a **65 percent** or greater increase of the gross square footage of the existing structure, outdoor operations/storage/display, paving and/or parking areas shall require the entire property to meet all the landscaping and screening/buffering requirements of this Code. The increase may be to only one of the gross square footage areas or a combination of increases of the gross square footage areas which result in an overall increase of 65 percent or greater. (For example, if the gross square footage area of the structure increases by 50 percent and the outdoor storage gross square footage area increases by 20 percent, then the overall increase is 70 percent and the entire property shall be required to meet all the landscaping and screening/buffering requirements of this Code.)
2. Redevelopment or expansion(s) which result in less than a **65 percent** increase of the gross square footage of the existing structure, outdoor operations/storage/display, paving and/or parking areas shall require a corresponding percentage increase in compliance for landscaping and screening/buffering requirements of this Code until the site achieves 100 percent compliance. (For example, if the gross square footage area of the structure increases by 10 percent and the outdoor storage gross square footage area increases by 15 percent, then the overall increase is 25 percent and the site contains only 50 percent of the required landscaping, 25 percent of the required landscaping for the entire site must be provided, thereby bringing the site to 75 percent of the total required. Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping.)
3. Redevelopment or expansions that necessitate an increase in the number of parking spaces shall be required to provide **50 percent** of the required parking spaces for the additional floor area in accordance with this Code. The additional parking area shall comply with all associated landscaping and drainage requirements of this Code.
4. Properties that are physically constrained from complying with these provisions shall comply to the maximum extent practicable as determined by the Director using the following criteria:
  - a. Is the general intent of the requirement being met by the applicant, such as landscaping along the site frontage, even if some of it is in the right-of-way?
  - b. Are there other upgrades, amenities, or public benefits being provided, such as upgrades to building façade, relocating landscaping on-site, increasing planting sizes and/or planting density, public art, *etc.*?
  - c. Will the proposed deviation result in a safe, efficient condition?

- d. What other alternatives have been considered that would meet the current standards?

D. **Change of Use.**

1. Changes of use that necessitate an increase in the number of parking spaces shall be required to **provide the difference between the required parking for the prior use and that required for the proposed use in accordance with this Code. Where this calculation results in the addition of five or less spaces, then no additional spaces shall be required.** Any additional parking area shall comply with all associated landscaping and drainage requirements of this Code.
2. New (meaning not having had the accessory use on the site before) outdoor operations/storage/display requires the entire lot or parcel to meet all requirements of this Code.

**Nonconforming Lots/Parcels:**

- A. **Nonconforming Lots/Parcels.** A lot or parcel of land with a lot size and/or minimum street frontage that is less than prescribed in the applicable zone may be used for any purpose permitted in the zone if:
  1. The owner is able to demonstrate to the satisfaction of the Director that the parcel was lawful at the time it was created; and
  2. The use meets all other regulations prescribed for the zone prior to occupancy or use.

**Nonconforming Uses:**

- A. **Continuation.** A lawful use made nonconforming by the adoption of this Code or other City ordinances may continue only for so long as such use is not expanded, increased or changed, except as provided in this section.
- B. **Nonresidential Uses.**
  1. **Expansion.** In a nonresidential zone, an existing structure may be expanded up to 20 percent of the existing gross floor area as it existed on *(the effective date of this ordinance shall be inserted herein)*, provided all other provisions of this Code are met. An outdoor operations/storage/display area may be expanded by up to 20 percent beyond the area of the use [square footage of the structure(s) or square footage operations/storage/display area] as it existed on *(the effective date of this ordinance shall be inserted herein)*, provided all other provisions of this Code are met. A nonconforming use shall not be expanded in any residential zoning district.
  2. **Change of Use.** No use shall be changed to a conforming use until the Director has determined that the requirements of the zone will be met. **The Director may approve a different nonconforming use, provided such use is deemed by the Director to be less intense than the existing use.** Prior to approval, the Director shall determine that traffic generation and parking requirements for the new nonconforming use are less than what was required for the existing use. No change to a more intense nonconforming use is allowed.
  3. **Abandonment.** A nonconforming use that has been discontinued for any 12 month period for whatever reason shall be considered to be abandoned and shall not be reestablished. Any use on the property after that time shall conform to all provisions of this Code. Evidence of intent to abandon is not required.



4. **Destruction.** A nonconforming use that is damaged may be reestablished following approval by the Director in accordance with the following:
  - a. A nonconforming use may only be reestablished within a conforming structure.
  - b. All restorative and other work must conform to adopted building codes.
  - c. A building permit must be issued within two years from the date of the damage.
  - d. The Certificate of Occupancy (or other final inspection) must be issued as provided by adopted codes.
- C. **Residential Uses.** As used in this paragraph, a “nonconforming residential use” is a structure(s) which contains more dwellings than allowed by the zone or is a dwelling(s) located in a nonresidential zone that does not permit residential uses.
  1. **Expansion.** In all zones, a nonconforming residential use may be expanded by up to 20 percent beyond the area of the use [square footage of the structure(s)] as it existed on (*the effective date of this ordinance shall be inserted herein*), if no additional dwelling units are created and all other provisions of this Code are met. **Accessory structures for a nonconforming residential use such as a garage or storage shed shall be allowed if the provisions of Section 4.1 are met. Accessory dwelling units shall not be permitted.**
  2. **Abandonment.**
    - a. A nonconforming residential use, other than a single family dwelling, that has not been occupied for a continuous period of 12 months, for whatever reason, shall be considered to be abandoned and shall not be reoccupied except in conformance with all applicable provisions of this Code. Evidence of intent to abandon the nonconforming use is not required.
    - b. A nonconforming single-family dwelling that has not been occupied for a continuous period of 12 months or longer shall not be considered to be abandoned and may be reoccupied at any time provided the structure has not been changed, legally or illegally, to a nonresidential use or multiple-unit residential use.
    - c. Removal of a nonconforming mobile home or manufactured home, not in a mobile home park, from its foundation or pad for a continuous period of 12 months shall constitute abandonment of the use and placement of a new unit must comply with the provisions of this Code. Evidence of intent to abandon the nonconforming mobile home or manufactured home use is not required.
  3. **Destruction.** Nonconforming residential uses that are damaged may be reestablished in accordance with the following:
    - a. All portions of a structure being restored are not on or over a property line;
    - b. The number of dwelling units does not increase;
    - c. All construction is in compliance with current construction codes, such as the fire and building codes;
    - d. A building permit is obtained within two years from the date of the damage; and

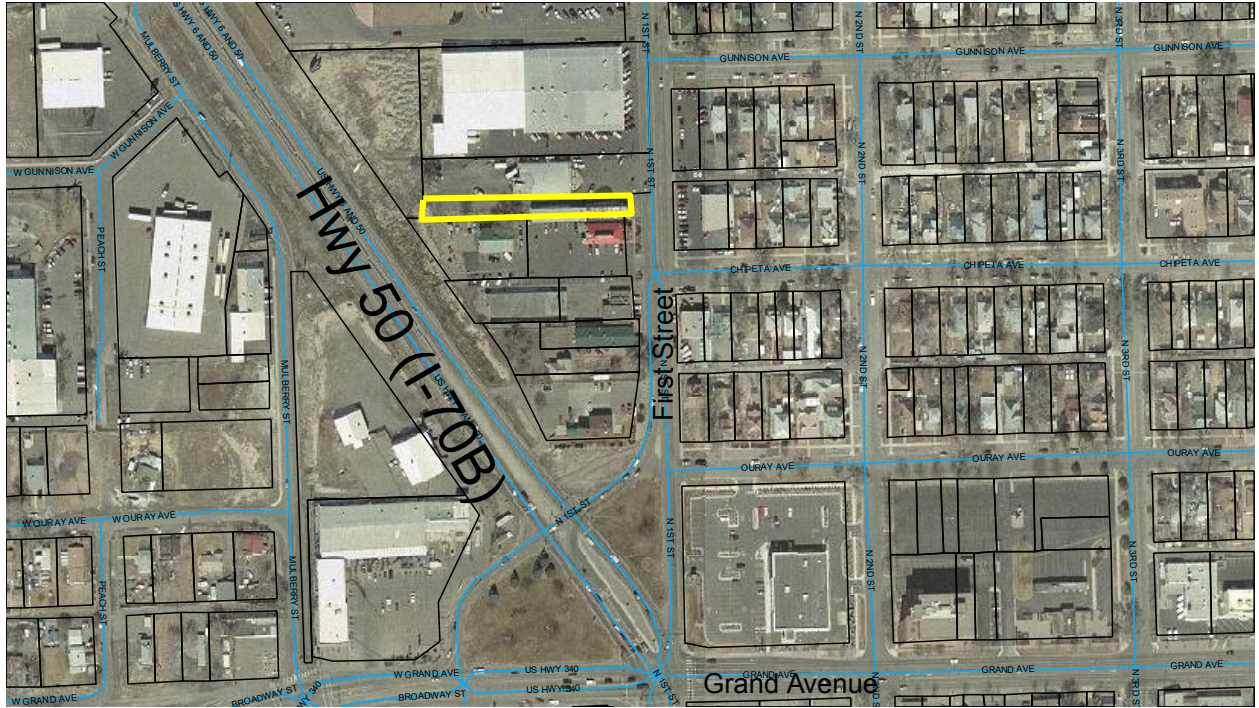
- e. The Certificate of Occupancy (or other final inspection) is issued within two years of the issuance of the building permit.

The following examples on pages 10, 11 and 12 are recent developments with nonconforming sites that were upgraded when the structures were remodeled. The photos on pages 13, 14 and 15 are examples of existing non conforming sites, structures and uses.



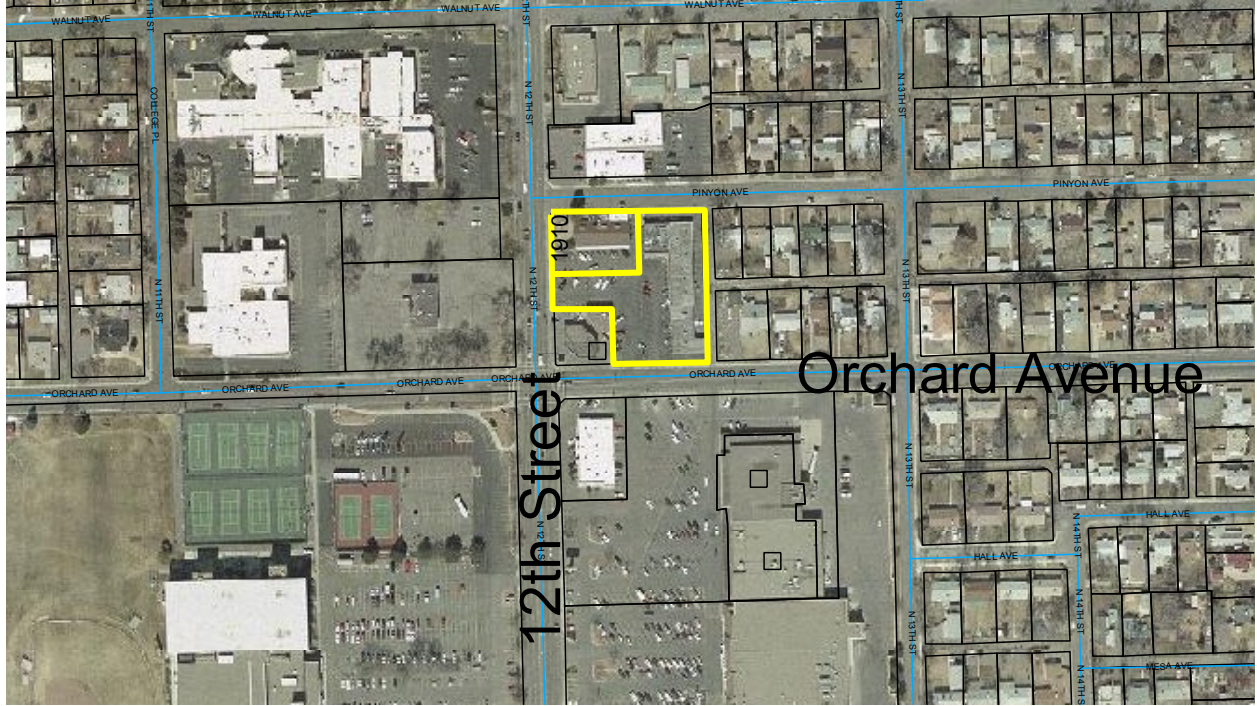
Bassett Furniture





Tile Meister





Kannah Creek Brewing Company





Grand Junction Pipe / Non Conforming site



Pine Country / Non Conforming site



Qwik Crete - Hwy 6&50 / Non Conforming use



5<sup>th</sup> and North Ave (looking south)  
Non Conforming sites and structures



Teller Arms / Non Conforming site



North Ave City Market  
Upgraded to conform to standards