



**CITY OF NOVI CITY COUNCIL
DECEMBER 18, 2023**

SUBJECT: Consideration of Text Amendment 18.303 to amend Section 7.1, Nonconformities, of the Zoning Ordinance to provide the option for expanding a nonconforming use through a Special Land Use to be considered and potentially approved by Planning Commission after a public hearing. **FIRST READING**

SUBMITTING DEPARTMENT: Community Development – Planning Division

BACKGROUND INFORMATION:

The attached draft Zoning Ordinance amendment is being proposed by staff in order to provide opportunities to allow for the expansion of nonconforming uses and nonconforming buildings, subject to a number of conditions, and with Planning Commission's consideration and approval of the request following a public hearing.

The Zoning Ordinance defines nonconforming uses and nonconforming buildings as follows:

Nonconforming Use: A use which lawfully occupied a building or land at the effective date of this Ordinance, or amendments thereto, and that does not conform to the use regulations of the district in which it is located.

Nonconforming Building: A building or portion thereof lawfully existing at the effective date of this Ordinance, or amendments thereto, and that does not conform to the provisions of the Ordinance in the district in which it is located.

Nonconforming uses and buildings may come about for developed properties where the property is rezoned to a zoning district that would no longer permit the existing use, or when a section of the zoning ordinance is modified following the construction of the existing use. An example of this situation may be a single-family home that was built as a permitted use within a single-family residential zoning district, but later became a legal nonconforming use when the property was rezoned to an office or industrial zoning district. In this instance, the ordinance allows the single-family home to remain and be occupied on the property that was rezoned to a non-residential district, but the home may not be expanded or extended beyond its original approval. While the home may not be enlarged, the

ordinance allows for necessary repairs to the structure, and modifications to the façade, landscaping, driveway, and parking lot.

The Zoning Ordinance currently does not allow for the expansion of nonconforming uses, with the goal of such uses eventually being replaced by uses that are permitted. Following discussions with two property owners wishing to expand properties that are considered nonconforming uses, staff worked with the City Attorney's office to draft language that amends Section 7.1 Nonconformities to allow for the expansion of nonconforming uses in some circumstances. The ordinance amendment provides the option through a Special Land Use to be considered and potentially approved by the Planning Commission. In addition to the conditions that must be met for Special Land Use Approval, several other criteria must be met.

Section 7.1 Nonconformities

- Section 7.1.1 Intent (changed to allow for the expansion of nonconforming uses in some circumstances)
- Section 7.1.3 Nonconforming Uses of Land
- Section 7.1.5 Nonconforming Uses of Structures and Land
- Section 7.1.7 Repairs and Maintenance
- Section 7.1.11 (new) Special Land Use Approval for Nonconformities

Additional factors the Planning Commission must consider when determining Special Land Use approval for an expansion of an existing nonconforming use:

- i. Expansion must meet the height, setback, parking, and other requirements for the zoning district where the property is located
- ii. Additional traffic shall not pose an undue burden on the surrounding neighborhood and uses
- iii. Expansion shall not go beyond the limits of the parcel
- iv. Lighting, noise, vibration, odor, and other possible impacts that may be generated shall not be increased beyond the levels that existed prior to the expansion
- v. Total added floor space shall not exceed 50% of the existing total floor area

Expansion shall not hinder the future development of surrounding properties in accordance with the Master Plan

The Planning Commission held a public hearing on November 15th and forwarded a favorable recommendation to the City Council.

RECOMMENDED ACTION: Approval of Text Amendment 18.303 to amend Section 7.1, Nonconformities, of the Zoning Ordinance to provide the option for expanding a nonconforming use through a Special Land Use to be considered and potentially approved by Planning Commission after a public hearing, subject to further modifications as determined necessary by the City Manager's Office or City Attorney's Office. This motion is made because the ordinance amendment helps existing homeowners and business owners wishing to make renovations or limited expansions without having to seek a rezoning. **FIRST READING**

DRAFT TEXT AMENDMENT 18.303 NONCONFORMITIES

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI
ORDINANCE NO. 18.303

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 14-271, THE CITY OF NOVI ZONING ORDINANCE, AS AMENDED, ARTICLE 7 ADMINISTRATION, APPEALS, AND ENFORCEMENT, SECTION 7.1 “NONCONFORMITIES” IN ORDER TO ALLOW EXPANSION OF NONCONFORMING USES, OR USES OF STRUCTURES AND LAND IN CERTAIN LIMITED CIRCUMSTANCES

THE CITY OF NOVI ORDAINS:

Part I. That Section 7.1, Nonconformities, Article 7, Administration, Appeals and Enforcement, of the City of Novi Zoning Ordinance is hereby amended to read as follows in its entirety:

Section 7.1 NONCONFORMITIES

1. Intent. It is the intent of this Ordinance to permit legal nonconforming lots, structures or uses to continue until they are removed but not to encourage their survival, in most situations.

It is recognized that there exists within the districts established by this Ordinance and subsequent amendments, lots, structures and uses of land and structures ~~which that~~ were lawful before this Ordinance was passed or amended ~~which but~~ would be prohibited, regulated or restricted under the terms of this Ordinance or future amendments.

Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district, unless approved as provided in this Ordinance.

A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by addition of other uses of a nature which would not be permitted generally in the district involved, unless approved as provided in this Ordinance.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

The general intent of this Section notwithstanding, it is recognized that some preexisting nonconforming uses, or uses of structures and land, while not in conformance with the requirements of the zoning district in which located, are not detrimental to the surrounding uses, particularly where the activity or structure has been in use for many years and long accepted. An extension or expansion of such uses, or uses of structures and land, may, in some cases, not be detrimental to the surrounding uses. Thus, the Planning Commission has the discretion over whether to allow such extensions or expansions through a special land use approval, as set forth herein.

2. [unchanged]
3. Nonconforming Uses of Land. Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:
 - A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance, unless approved as a special land use by Planning Commission, as provided herein;
 - B.-D. [unchanged]
4. [unchanged]
5. Nonconforming Uses of Structures and Land. If a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be permitted in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
 - A. No existing structure devoted to a use not permitted by this Ordinance in the district in which is it located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located, unless approved as a special land use by Planning Commission, as provided herein.
 - B.-F. [unchanged]
6. [unchanged]
7. Repairs and Maintenance. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50) percent of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased, unless approved as a special land use by Planning Commission, as provided herein.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official

8.-10. [unchanged]

11. Special Land Use Approval for Nonconformities. As stated in the intent of this section of this Ordinance, there are appropriate circumstances where it may be reasonable to authorize restoration, reconstruction, or extension of nonconforming uses, or uses of structures

and land, as legal conditional uses after proper notification to surrounding property owners as described in Section 6.2 of this Ordinance for special land uses. Such authorizations are subject to special land use approval by the Planning Commission, which shall consider, in addition to standards in Section 6.2 (as applicable), the following factors in exercising its discretion:

i. Any alteration or expansion of the use must meet the height, setback, parking, and other applicable requirements for the zoning district where the property is located, unless the Zoning Board of Appeals grants the necessary variances.

ii. Additional traffic anticipated by an expansion or alteration shall not pose an undue burden on the surrounding neighborhood and uses.

iii. The expansion or alteration shall not go beyond the limits of the parcel of property upon which such use existed at the time it became lawfully nonconforming.

iv. The lighting, noise, vibration, odor and other possible impacts that may be generated shall not be increased beyond the levels that existed prior to the expansion and shall be in compliance with the performance standards of Section 5.14.

v. Total added floor space shall not exceed fifty percent of the existing total floor area as measured in gross square feet. This percentage shall be based on the floor area originally in use when the use became lawfully nonconforming.

vi. The expansion or alteration shall not hinder the future development of surrounding properties in accordance with the Master Plan.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinance or parts of Ordinance in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V.

Effective Date: Publication. Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a

brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ON THE ___ DAY OF _____, 2024.

JUSTIN FISCHER, MAYOR

CORTNEY HANSON, CITY CLERK

Ayes:

Nays:

Abstentions:

Absent:

DRAFT

PLANNING COMMISSION DRAFT MINUTES FROM NOVEMBER 15



PLANNING COMMISSION MINUTES

CITY OF NOVI
Regular Meeting

November 15, 2023 7:00 PM

Council Chambers | Novi Civic Center
45175 Ten Mile Road, Novi, MI 48375 (248) 347-0475

CALL TO ORDER

The meeting was called to order at 7:00 PM.

ROLL CALL

Present: Member Becker, Member Lynch, Chair Pehrson, Member Roney, Member Verma
Absent Excused: Member Avdoulos, Member Dismondy
Staff: Barb McBeth, City Planner; Beth Saarela, City Attorney; James Hill, Planner; Rick Meader, Landscape Architect; Adam Yako, Plan Review Engineer

PLEDGE OF ALLEGIANCE

Member Lynch led the meeting attendees in the recitation of the Pledge of Allegiance.

APPROVAL OF AGENDA

Motion made by Member Lynch and seconded by Member Becker to approve the November 15, 2023 Planning Commission Agenda.

VOICE VOTE ON MOTION TO APPROVE THE NOVEMBER 15, 2023 PLANNING COMMISSION AGENDA MOVED BY MEMBER LYNCH AND SECONDED BY MEMBER BECKER.

Motion carried 5-0.

AUDIENCE PARTICIPATION

Chair Pehrson invited members of the audience who wished to address the Planning Commission during the first audience participation to come forward. Seeing no one, Chair Pehrson closed the first public participation.

CORRESPONDENCE

There was not any correspondence.

COMMITTEE REPORTS

There were no Committee Reports.

CITY PLANNER REPORT

City Planner Barb McBeth introduced new Planner Heather Ziegler. Heather has her Bachelor's degree in Natural Resource Management and a Masters Degree in Urban and Regional Planning from Michigan State University.

CONSENT AGENDA - REMOVALS AND APPROVALS

1. OAK POINTE CHURCH ADDITION AND PATIO JSP23-21

Approval of the request of Oak Pointe Church JSP23-21, Preliminary Site Plan for a building addition for a children's play area totaling approximately 1,000 square feet, and a patio addition. The subject parcel is in Section 20 of the city, east of Napier Road, west of Wixom Road, and north of Ten Mile Road. The property is zoned RA, Residential Acreage and the initial multiple phase site plan for the property was approved in 2001.

Motion to approve JSP23-21 Oak Pointe Church Addition and Patio Preliminary Site Plan made by Member Lynch and seconded by Member Becker.

In the matter of JSP23-21 Oak Pointe Church Addition and Patio, motion to approve the Preliminary Site Plan.

ROLL CALL VOTE TO APPROVE JSP23-21 OAK POINTE CHURCH ADDITION AND PATIO PRELIMINARY SITE PLAN MOVED BY MEMBER LYNCH AND SECONDED BY MEMBER VERMA.

Motion carried 5-0.

PUBLIC HEARINGS

1. TEXT AMENDMENT 18.303

Public hearing of the staff-initiated request for Planning Commission's recommendation to the City Council regarding Text Amendment 18.303 to provide the option to expand nonconforming uses under special circumstances, subject to Special Land Use consideration by the Planning Commission.

Planner James Hill relayed that the text amendment addressing nonconformities was introduced to the Planning Commission on September 27th. The text amendment provides the option to expand nonconforming uses under certain circumstances, subject to Special Land Use consideration by the Planning Commission. Currently, a use that is considered legal nonconforming cannot expand its floor area at all without a use variance from the Zoning Board of Appeals. This text amendment aims to provide greater flexibility to some residents or business owners who find their buildings to be legal nonconforming uses yet wish to expand or renovate their building footprint.

The text amendment will allow for the expansion of nonconformities as a Special Land Use permitted by the Planning Commission and includes additional factors that the Commission must consider when making such a decision. It is meant to help longstanding property and business owners in the City who may wish to make repairs, to restore, reconstruct, or extend their nonconforming use.

Factors that must be considered include the extension of the nonconforming use meeting current building and site standards of the existing zoning district, limiting the amount that the use can expand, and preventing undue hardship on nearby property owners through the effect of traffic, noise, odor, and vibration levels, and the potential for future development. These factors need to be considered in addition to the regular Special Land Use considerations that already exist within the Zoning Ordinance, including the impact on utilities and public services, compatibility with adjacent uses, and consistency with the goals and intent of the Master Plan.

The Planning Commission is asked to hold the public hearing tonight for Text Amendment 18.303 and make a recommendation to City Council for approval or denial of the text amendment. Staff is available to answer any questions.

Chair Pehrson opened the Public Hearing and invited members of the audience who wished to participate to approach the podium.

Mike Duchesneau, 1191 South Lake Drive, relayed he totally supports the text amendment and is aware of at least three cases where someone could have used help through this process.

Seeing no one else, Chair Pehrson confirmed that there was no correspondence, closed the Public Hearing, and turned the matter over to the Planning Commission for consideration.

Member Lynch relayed his understanding is this started with someone who had a residence in an industrial zone and wanted to put up a pole barn. There were a lot of hurdles that they had to jump through. Some of the adjacent neighbors in industrial districts were worried that they were going to have an additional burden placed on them if residential expansion was allowed.

Based on the overview just presented by Planner Hill, the adjacent property owners who bought their property as Industrial can still use it as industrial and won't have an additional burden that we place on industrial sites next to residential. This basically removes some unintended consequences of our existing ordinance to allow somebody to in this case put up a pole barn in a residential area and not affect anybody. Member Lynch does not have an issue with the text amendment.

Member Becker inquired to staff, in looking at the annotated draft on page two, that Special Land Use will be the process to allow an existing non-conforming to change the footprint and do some expansion rather than other types of mechanisms. Planner Hill confirmed this is correct.

Member Verma had no comments.

Member Roney inquired, in reference to what Member Lynch relayed, that this amendment also will benefit the Gatsby property. Planner Hill confirmed this is correct. Member Roney is in support.

Chair Pehrson inquired, in reference to the second paragraph, would the amendment include a change of use of the venue or the installation as opposed to any kind of expansion. For example, if nothing is being changed relative to the building footprint, but if the use changes drastically from A-Z, is there any recourse in the wording for that to take place.

City Planner McBeth responded that this amendment was not intended for that, rather it was intended for uses that are currently existing and non-conforming and takes away the strict restriction that those uses cannot be expanded. It wasn't intended to allow other uses to make themselves non-conforming.

Chair Pehrson inquired regarding allowed repairs and maintenance without making physical changes, would that also include painting. For example, going from red to blue.

City Planner McBeth responded that typically the painting or maintenance of a building is permitted, whether it's an existing non-conforming use or not. Sometimes if it's a commercial building we'd be concerned about the color, so it might trigger the facade ordinance and we'll take a look at that to see.

Motion to recommend Text Amendment 18.303 for approval to City Council made by Member Lynch and seconded by Member Roney.

In the matter of Text Amendment 18.303 motion to recommend approval of the text amendment to City Council.

ROLL CALL VOTE TO RECOMMEND APPROVAL OF TEXT AMENDMENT 18.303 MOVED BY MEMBER LYNCH AND SECONDED BY MEMBER RONEY.

Motion carried 5-0.

2. TEXT AMENDMENT 18.304

Public hearing of the staff-initiated request for Planning Commission's recommendation to the City Council regarding Text Amendment 18.304 to update and clarify language pertaining to home occupations in the City.