

# MEMORANDUM

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**Subject:** December 1, 2010 Planning and Zoning Commission Special Meeting Materials  
**From:** Community Development Staff  
**Date:** November 2010

The intention of this Memorandum is to address the five topic of discussion for the December 1<sup>st</sup> meeting of the McCall Area Planning and Zoning Commission.

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At the October 22<sup>nd</sup> joint meeting with the McCall City Council and McCall Area Planning and Zoning Commission there were five areas of discussion identified for further consideration. They are:

- Non-conforming structures and uses
- Minimum lakefront lot size
- Side property line setbacks
- Energy Efficiency and House Size
- CBD Zoning Boundary

## Non-Conforming Structures and Uses

There has been much discussion of the nonconforming code sections, by the Planning and Zoning Commission, City staff, potential applicants, attorneys, and City Council. At present the nonconforming code is written in a manner that leaves room for interpretation. To address these “grey areas” and to establish consistent policy for these areas that is in accord with the purpose of the nonconforming chapter of the City Code, staff created, and City Council adopted, an extensive administrative determination. However, there has been further discussion that the City Code should not be written in such a manner that administrative determinations are necessary for interpretation, and that a code amendment is necessary to clarify the nonconforming chapter.

The purpose of the Commission’s discussion of the nonconforming chapter at the December 1<sup>st</sup> meeting is to gather ideas and thoughts about those construction and development activities that should or should not be allowed by City Code. This document will provide certain questions to help spur this discussion, including a statement of the current policy, whether or not a code clarification is necessary (i.e. the policy may exist in the administrative determination), and additional related questions.

As a starting point for considering the nonconforming code, it is critical to have the stated intent for the entire nonconforming chapter. Introducing *Title 3, Chapter 11: Nonconforming Buildings, Structures, and Uses*, MCC 3.11.01.A states:

***It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this chapter 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 zone.***

For reference and to help with your discussions, the entirety of McCall City Code Title 3, Chapter 11 and the Administrative Determination regarding nonconforming structures have been attached to this document. Also, a diagram of a typical nonconforming situation is shown below.

The following are some questions for discussion:

**What changes should be allowed to the non-conforming portions of structures?**

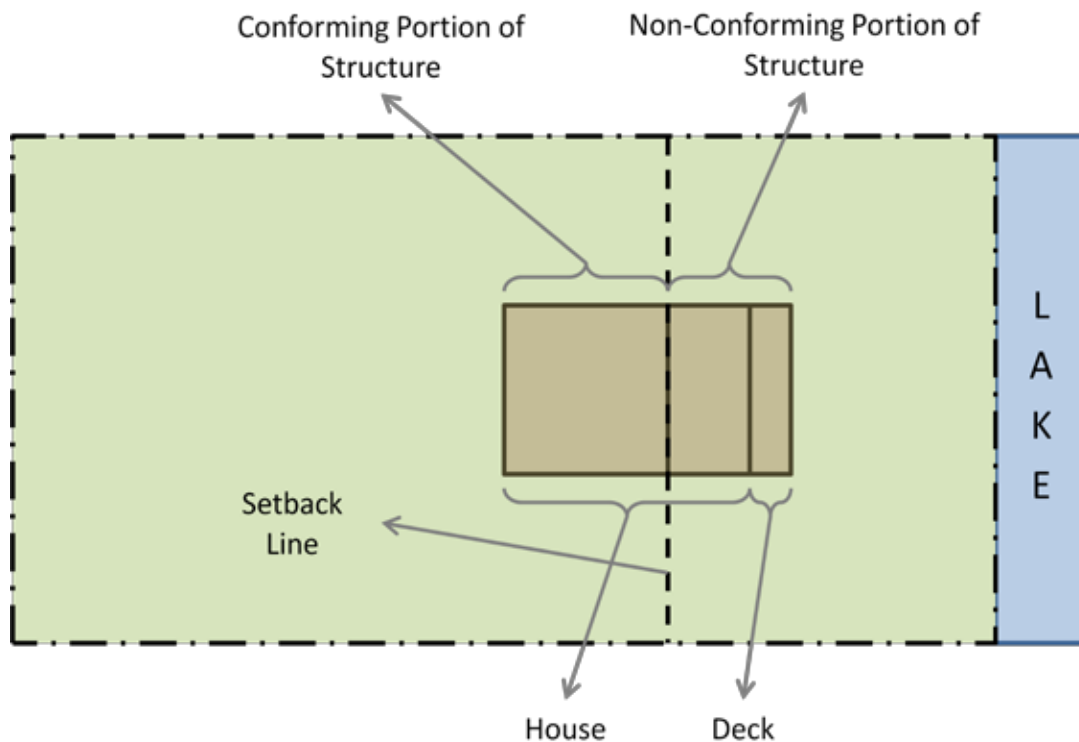
Currently, 10% of the value of the non-conforming portion of the structure could be spent each year to improve features such as roofing, siding, windows, doors, plumbing and electricity.

**What changes should be allowed to the conforming portions of structures?**

Currently, the conforming portion of the structure can be changed in any way, as long as it meets current City regulations regarding, setbacks, lot coverage, applications, etc.

**What changes should be limited? What changes should NOT be limited?**

Currently, changes to roofing, siding, windows, doors, plumbing, electricity and non-bearing walls are allowed on a limited basis. All other interior improvements (not including bearing walls) are not limited by City Code. Further, nothing in any of the currently limitations on changes prevents an owner from making their structure safe.



**Should there be different requirements for structures that are completely nonconforming, versus those that are only partially nonconforming?**

Currently, the code only addresses that portion of the structure which is nonconforming, regardless of whether that is the entire structure or just a portion thereof.

Staff recommends that the Commission discuss the elements of the nonconforming code section in sufficient depth to develop a collective position on the major elements, and then direct staff to draft an update to the current code based on these discussions.

## Lakefront Minimum Lot Size

A code amendment creating a minimum fifty foot (50') frontage for lakefront lots was put forth by the Commission in 2009.. There was some opposition to the amendment from concerned land owners. There was misinformation regarding the proposal, regarding both the reasoning behind its inception and the potential implications were it to be adopted.

The amendment was proposed for a variety of reasons, but primarily to induce more organized development patterns and to protect the lake environment from the effects of docks and boats. After discussions with Idaho Department of Lands, the following are, their general standards regarding the issuance of new docks:

- One dock per parcel of land
- Twenty-Five feet of waterfront required for issuance of dock permit
- Docks may not be issued for easements; land must be deeded or leased with expiration date

(The documents relating to this previously proposed amendment, including maps, lot widths, etc. are attached to this document.)

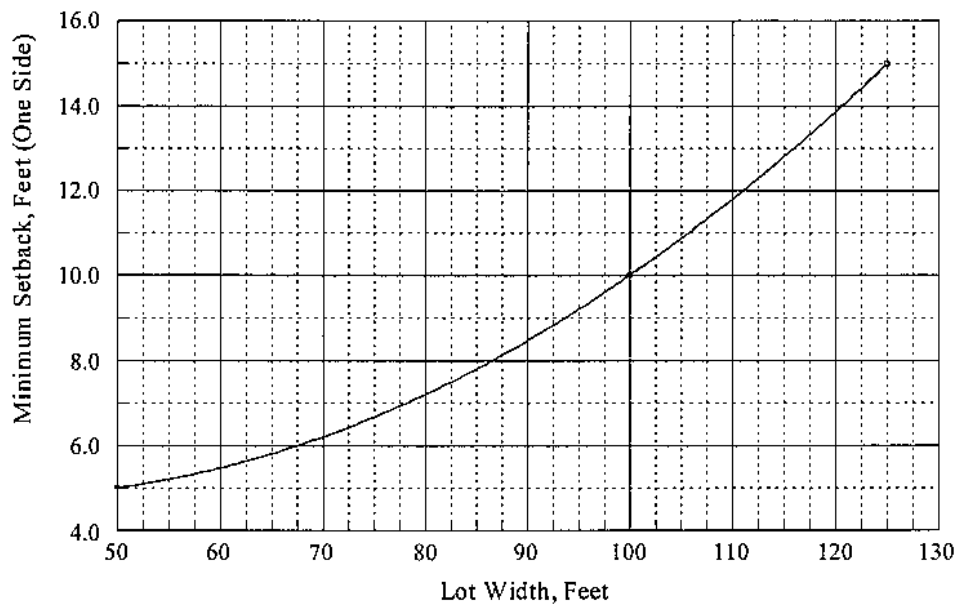
Staff recommends that the Commission carefully considered the desired objectives and then consider whether or not a lakefront minimum lot width is the best tool for achieving that objective.

## Side Property Line Setbacks

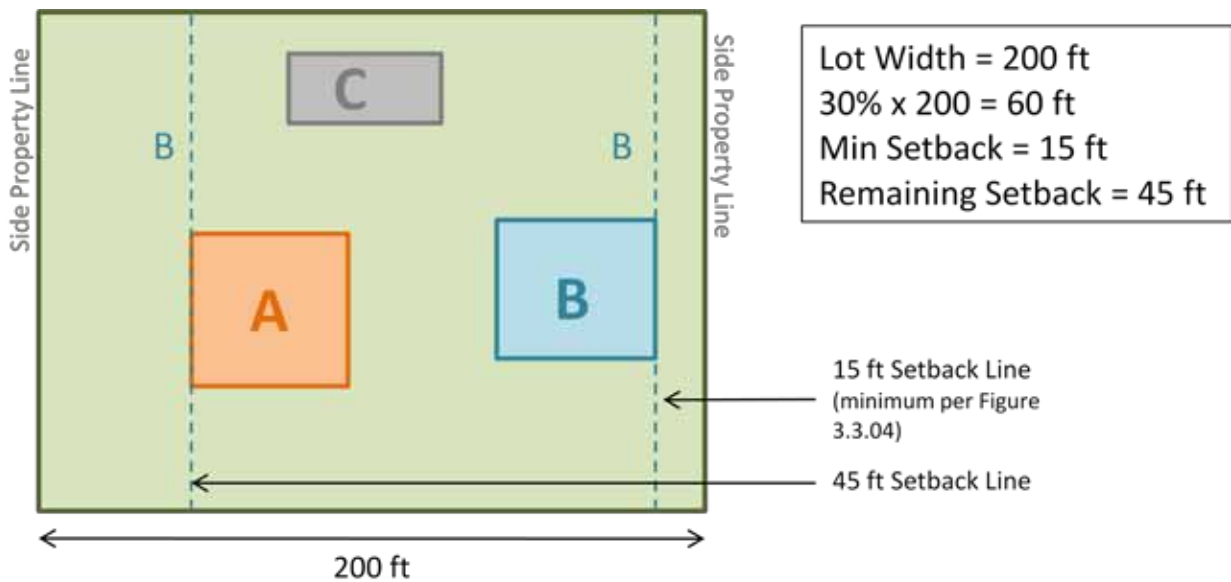
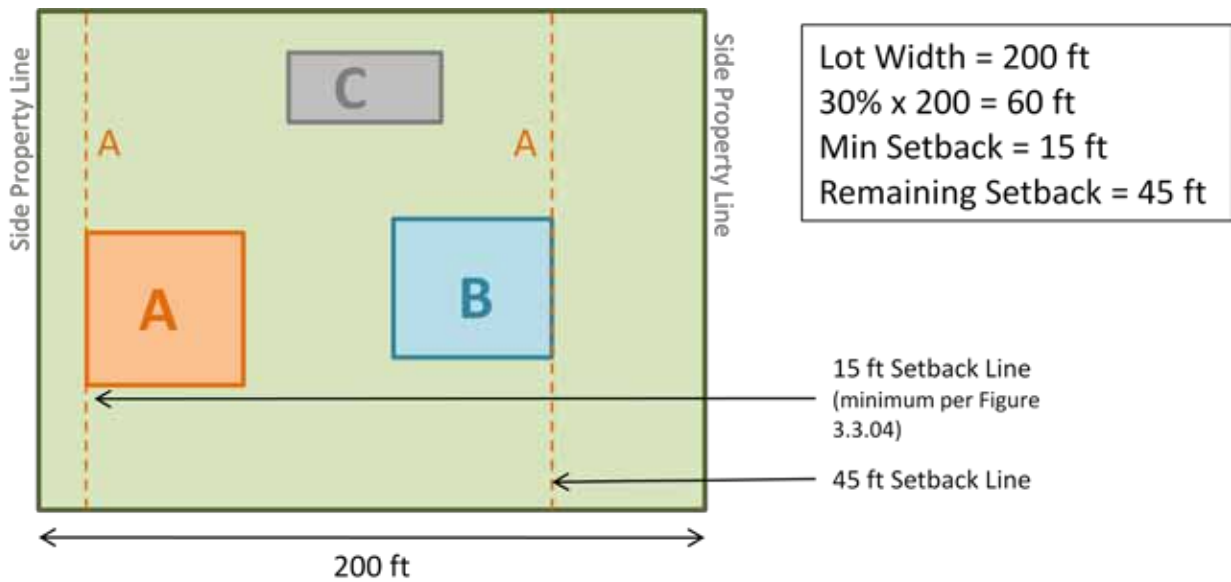
McCall City Code section 3.3.04 (see attached) dictates that two factors are taken into account when calculating side property line setbacks: 1. Lot width; and 2. Building height (see attached). Discussion and questions have arisen regarding the appropriate method for making the lot width calculations.

The McCall City Code currently states the following: *For lots less than one-hundred feet (100') wide, the total of both side property line setbacks must equal twenty percent (20%) of the lot width. (For lots greater than one-hundred feet (100') wide, the total of both side property line setbacks must equal thirty percent (30%) of lot width.) The minimum setback for one of the two side property lines is determined by Figure 3.3.04, so long as the total required side property line setbacks meet the percentage requirements.*

Residential Lot Width vs. Side Yard Setback

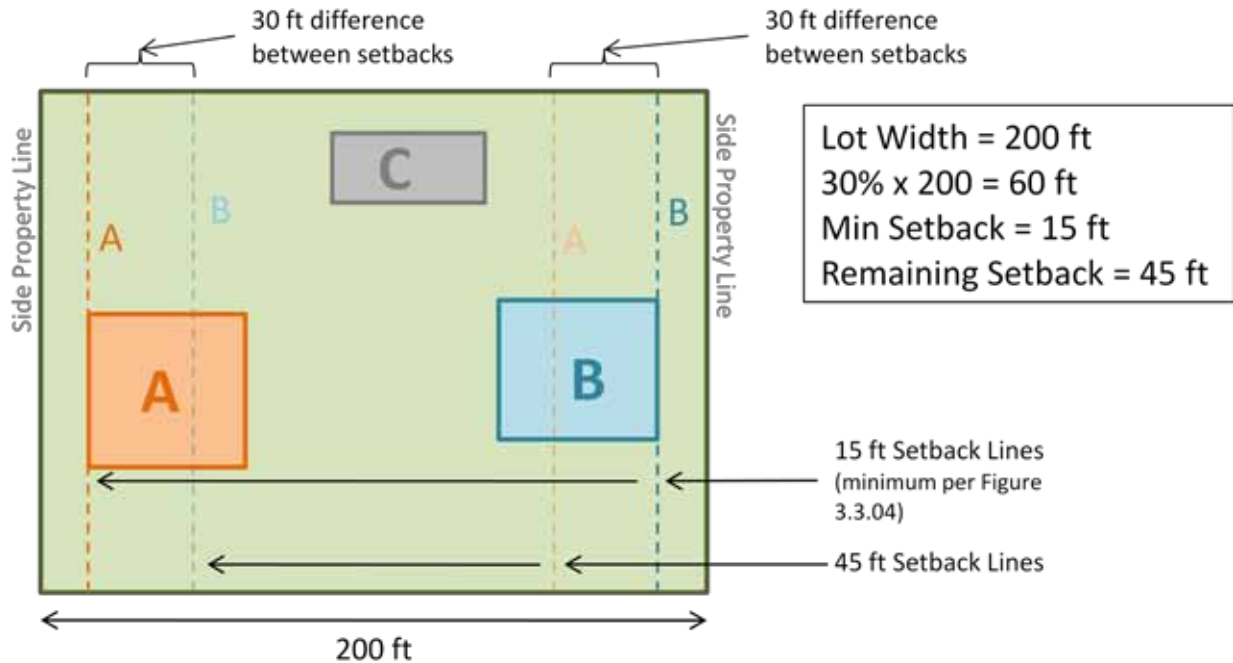


Two examples of calculating side property line setbacks, according to the current code, for a hypothetical lot two-hundred feet (200') wide are illustrated below. The first example starts with Building A against the fifteen foot (15') minimum setback; the second example starts with Building B against the minimum setback.



In both of these examples the total setback is the same (60 ft total) and one of the two side property lines has the minimum setback and one has a larger setback. Especially for districts where larger lots are required (i.e. R1, RE, RR) this approach creates the separation between adjacent properties that is consistent with this less dense zoning.

However, there has been some discussion that this approach to side property line calculations is incorrect, not what is stated in the code, and that the existing code has a "grey area" that allows for this approach. This method of calculation, with multiple structures on a property, makes the setbacks specific to a structure and not a part of the overall property. This alternative approach is illustrated below:



This approach has been advocated for to allow for fifteen foot (15') setbacks for both side property line setbacks. As suggestion by one of the Commissioners, there may be instances when the latter approach may be appropriate with the approval of conditional use permit.

Staff views this as being inconsistent with the rural zoning of the lots for which this situation is typical. Further, staff sees this method as being inconsistent with the existing code language, and views this as a perceived "grey area" in the code, rather than an actual instance of indeterminacy. Staff recommends continuing with the existing code and existing approach to calculating side property line setbacks. Accordingly, staff has drafted an administrative determination to reinforce the current approach to calculating side property line setbacks.

## CBD Zoning Boundaries

Two recent actions have brought attention to the extent of the CBD zoning boundary. First, the group of citizens living near the intersection of the 4<sup>th</sup> Street and Lenora Street (on the hill behind The Sushi Bar) have indicated that they would like to rezone their property from CBD to some residential zone (ideally R8) so as to make refinancing for residences easier. Second, the Ventress family attempted to expand their single-family dwelling (a non-conforming use), which is located within the CBD, and were unsuccessful because of current zoning regulations.

Both of these instances raise questions about the appropriateness of the CBD boundary. The first is an area that does seem appropriate to be included in the CBD. The lots above The Sushi Bar are physically separated from the CBD by a steep slope, and the use of those properties is clearly residential, not business. The second case raises larger questions about zoning, and is a primary reason behind reconsidering the CBD boundary. The Ventress residence is an example of a few locations in the CBD Zone where there are grandfathered uses that do not conform to the zone's regulations. Being nonconforming, these uses (typically single-family residences) are limited in their development activities. They are not allowed to expand their use and they are limited in the amount they can repair and maintain. This has raised the set of questions:

**Should the zoning regulations be changed to accommodate the existing uses? Should the existing uses be required to conform to the existing zoning? Or should the zoning boundaries be changed to accommodate the existing uses?**

To aid in discussion, maps showing the CBD are attached to this document. Also, in discussing the above questions, it may also be helpful to keep the following questions in mind:

- What is the goal of zoning?
- What pattern of development do different zonings dictate?
- Over what time horizon does zoning have an impact?
- What is the long-term vision for the development of the City? And in which locations?

(Of note, in deciding upon the Code Amendment application related to the Ventress situation, the City Council indicated that the retention of the characteristics of the CBD Zone – prohibiting single-family residences – was more important than the limitations that such a zone placed upon certain uses – being unable to expand a single-family residence.)

Staff recommends that the City initiate the rezone of the properties at the intersection of 4<sup>th</sup> Street and Lenora Street to an R8 designation. Staff further recommends that the Commission consider the issues of zoning and zoning boundaries and direct staff to act accordingly.

### Housing size/energy efficiency

The subject of housing size/energy efficiency standards is an issue that has been discussed by Planning and Zoning Commissioners numerous times in the last 3 year. Some communities, especially in mountain towns, have adopted regulations in the zoning, building, or both codes that set a maximum square footage. For instance, if the square footage is exceeded then there needs to be some way to offset the impact on the environment or community. There are often two issues at play in this discussion; one is the issue of regulating size and bulk of structures and the other issue is that of regulating energy efficiency or green building techniques.

The Council and Commission should consider or discuss the following:

1. Is the Commission interested in having staff research this issue? If so, what types of regulations should staff research? (Similar communities who have implemented regulations for size and green building code, what are standards uses, legal justification, etc.)
2. If so, what is the purpose for limiting housing size? Would there be a way to offset the houses that exceeded maximums?

## Chapter 11

### NONCONFORMING BUILDINGS, STRUCTURES AND USES

#### 3.11.01: NONCONFORMITIES; PURPOSE:

- (A) Within the zones established under this title or amendments that may later be adopted, there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the effective date of the applicable regulations, but which would be prohibited, regulated, or restricted under the terms of this title or future amendment. It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this chapter 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 zone.
- (B) Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the zones involved. A nonconforming use of land or structure, or a nonconforming use of land and structure in combination, shall not be extended or enlarged after passage of this chapter by the addition of other uses of a nature which would be prohibited in the zone.
- (C) To avoid undue hardship, nothing in this chapter shall be taken to prohibit completion of construction of a structure for which a building permit has been issued prior to the adoption of this title.
- (D) Design review (see chapter 16 of this title) is required for all new construction or major exterior remodeling (in the judgment of the administrator) of a principal dwelling unit on nonconforming lots of record.

#### 3.11.02: NONCONFORMING LOTS OF RECORD:

In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by chapters 3 through 7 of this title, a single-family dwelling and customary accessory buildings may be erected on any lot that was of record on the effective date of the applicable regulations. Setback and lot coverage requirements applicable to those nonconforming lots of record shall be those of the zone with the largest lot area requirement within which the lot would be conforming. A lot which fails to be conforming in any zone shall maintain a front yard of twenty feet (20'), side yards of five feet (5'), rear yard of five feet (5'), and maximum lot coverage of fifty percent (50%).

#### 3.11.03: NONCONFORMING STRUCTURES:

Where a lawful structure existed on the effective date of the applicable regulations, that could not be lawfully built under the terms of current regulations, by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (A) No such nonconforming structure may be enlarged or altered in a way which increases the nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- (B) Should such nonconforming structure or nonconforming portion of structure be damaged by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this title; provided, that the owner of such structure may repair or reconstruct the same structure, on the same footprint, and in the process may alter it to decrease its nonconformity, so long as:

1. Within eighteen (18) months after the date of such damage or destruction, the owner commences such repair or reconstruction, and diligently prosecutes the work to completion in accord with then applicable building codes; and
  2. No other nonconforming structure was constructed on that site during the eighteen (18) month period.
- (C) When a nonconforming structure is moved for any reason over any distance, it shall conform to the regulations for the zone to which it is moved.
- (D) A nonconforming residential structure in a residential zone may be enlarged, so long as the addition to the structure conforms to all the requirements of the zone. (Ord. 821, 2-23-2006, eff. 3-16-2006)

#### **3.11.04: NONCONFORMING USES OF LAND:**

Where at the time of the adoption of applicable regulations, lawful use of land existed which would not be permitted by the regulations imposed by this title, and where such use involves no individual structures other than small or minor accessory buildings, the use may be continued so long as it remains otherwise lawful, provided:

- (A) No such nonconforming use shall be enlarged or increased.
- (B) No nonconforming use may be moved in whole or in part to any portion of the lot or parcel other than the nonconforming use occupied at the time of the adoption of regulations prohibiting such use.
- (C) If any nonconforming use of land ceases for any reason for more than eighteen (18) months, any subsequent use of land shall conform to the regulations specified by this title for the zone in which such land is located; provided, however, that the owner of such land may, in writing, file with the administrator during or before such eighteen (18) month period expires, give notice that the owner intends to suspend the use and intends to preserve the right, not exceeding three (3) years, to resume the use.
- (D) No additional nonconforming structure(s) shall be erected in connection with such nonconforming use of land.

#### **3.11.05: USES PERMITTED UNDER CONDITIONAL USE PROVISIONS:**

A use existing on the effective date of the applicable regulations that is permitted as a conditional use in the zone in which it is located under the terms of this title, shall not be deemed a nonconforming use. Such use shall be considered to exist as a conditional use. The use shall not be expanded spatially or otherwise changed or intensified prior to the approval by the commission of conditions of approval for the use. The scope and conditions upon the conditional use shall be governed by the commission pursuant to [chapter 13](#) of this title; the commission may, after notice and hearing, recommend to the council the imposition of conditions of approval.

#### **3.11.06: NONCONFORMING USES OF STRUCTURES:**

If lawful use involving individual buildings or structures, or of structure and land in combination, exists on the effective date of the applicable regulations, that could not be lawfully commenced under the terms of current regulations, the use may be continued, subject to the following provisions:

- (A) No existing structure devoted to use not permitted by this title in the zone in which it is located may be enlarged, extended, constructed, reconstructed, moved, or structurally altered unless the use of the structure is changed to a use permitted in the zone.
- (B) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed expressly for such use on the effective date of the applicable regulations, but no such use shall be extended to occupy any land outside such buildings that existed at the time the use became nonconforming.
- (C) Any structure and land, in or on which a nonconforming use is replaced by a permitted use, shall thereafter conform to the use regulations for the zone, and the nonconforming use may not be resumed.
- (D) If any nonconforming use of a structure and land is discontinued or abandoned for eighteen (18) months, the structure and land shall not be used except in conformity with the regulations of the zone in which it is located; provided, however, that the owner of such use may, in writing, file with the administrator during or before such eighteen (18) months period expires, give notice that the owner intends to suspend the use and intends to preserve the right, not exceeding three (3) years, to resume the use.
- (E) Where nonconforming use status applies to a structure and premises, removal or destruction of the structure shall eliminate the nonconforming status of the land. "Destruction" for purposes of this subsection is defined as damage to an extent of more than fifty percent (50%) of the replacement cost at time of destruction.

#### **3.11.07: REPAIRS AND MAINTENANCE:**

For any nonconforming structure containing a nonconforming or permitted use, ordinary repairs, repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding ten percent (10%) of the current replacement cost of the nonconforming structure or portion of structure may be made. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming structure or part thereof declared to be unsafe by the building inspector.

#### **3.11.08: NONCONFORMING PARKING, LOADING OR OTHER CHARACTERISTICS OF USE:**

If the characteristics of a use, such as off street parking, off street loading, lighting or other matters required by this title in relation to specified uses of land, water areas, structures or premises, are not in accord with this title, no change shall be made in such characteristics of use which increase nonconformity with such requirements. Change shall be permitted in the direction of conformity to these requirements.

#### **3.11.09: CONTINUITY OF PRIOR CONDITIONAL USES AND VARIANCES:**

Any valid then "special use" or variance granted prior to March 16, 2006, shall be permitted to continue in accordance with the terms and conditions of approval for such "special" (now known as "conditional") use or variance.

## ADMINISTRATIVE DETERMINATION

Date: August, 2010

Made By: Community Development Department and endorsed by McCall City Council on August 12, 2010

Subject: Non-Conforming Structures

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This Administrative Determination is in response to the fact that, in years past, the McCall City Code addressing non-conforming structures has been applied differently, in some cases incorrectly. The different applications have resulted from the change in personnel and a lack of published interpretation from which to operate. The intent of this determination is to provide a singular interpretation so that all future applications of the City Code for non-conforming structures will be consistent and based in an appropriate, accurate, and published interpretation. Because of the variable nature in which previous non-conforming structure situations have been handled, this determination may or may not be a departure from either the interpretation or application of the non-conforming code in the past.

The following Administrative Determination addresses non-conforming structures that violate setback requirements. Other determinations will address the other situations in which structures can be non-conforming.

### **Part I – General**

The intent of the non-conforming chapter in the McCall City Code is stated at 3.11.01(A) as follows:

*“It is the intent of this chapter to permit [non-conforming structures or portions thereof] to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended...”*

This intent articulates the guiding principles behind the specifics of the non-conforming code sections. In all cases of indeterminacy, dispute or other non-agreement the intent of the code shall be relied upon in determining a resolution.

### **Part II – Non-conforming Repairs and Maintenance**

In accord with the above stated intent of the non-conforming portion of the City Code, non-conforming structures may be repaired in a limited fashion. Prior to understanding the details of what repairs and maintenance are allowable, it is crucial to understand some concepts. After the explanation of these

concepts, the explanation of what repairs and maintenance are allowable is noted in the “Thresholds” section.

### **Non-Conforming Structure vs. Portion of a Non-Conforming Structure**

Both MCC 3.11.03.B and 3.11.07 make reference to the non-conforming portion of a structure. That is, allowing for the portion of a structure that is violating City Code – the portion located in a setback – to be considered as a separate piece from the entire structure. This is important in considering the valuation of non-conforming structures in determining what improvements can or cannot be made.

### **Damages vs. Repairs and Maintenance**

MCC 3.11.03.B makes reference to a percentage threshold for the reconstruction of an existing non-conforming structure that has been damaged, whereas MCC 3.11.07 makes reference to a percentage threshold for the repair and maintenance of a non-conforming structure. It is critical to understand the terms “damage” and “repairs and maintenance” in understanding this code section.

The term “damage” includes natural or accidental events, such as fire, flood, lightning, or fallen snow or tree, but does not include incidental harm by the owner to a structure.

The term “repairs and maintenance” includes ordinary repairs, and repairs and replacement of nonbearing walls, fixtures (i.e. doors, windows, etc.), wiring, or plumbing.

### **Valuation of Current Replacement Costs**

MCC 3.11.03.B and MCC 3.11.07 reference the current cost of replacement for determining those improvements which are allowed or not allowed by the City Code. The current replacement cost of an entire non-conforming structure, or the replacement cost for the non-conforming portion of a structure, can be determined, as a baseline for the percentage thresholds, by two methods:

#### *Valuation Method #1*

The applicant may elect to have a qualified third party provide a written estimate detailing the costs of replacement of either the entire structure or non-conforming portion thereof; or

#### *Valuation Method #2*

The applicant may elect to have the City apply the Building Department’s cost-per-square-foot calculation from the Building Permit application process to the square footage of the non-conforming structure, or portion thereof, and utilize the resulting figure.

The current replacement cost needs to be based upon reconstruction to the current basic building codes and requirements.

## Thresholds

MCC 3.11.03.B and MCC 3.11.07 make reference to percentage thresholds which dictate certain allowable action and articulate certain prohibited action. The threshold in MCC 3.11.03.B, relating to the repair of a “damaged” non-conforming structure works in the following manner:

**If a non-conforming structure, or portion thereof, is damaged to an extent where repair would cost more than 50% of the current cost of replacement, then the structure, or portion thereof, if rebuild in conformance with the current requirements of the McCall City Code, except that the same structure may be built on the same footprint and may be modified to decrease the structure’s nonconformity.**

The requirements and stipulations noted above for the reconstruction of a damaged structure also apply in situations in which the cost of the damage is less than 50%.

The threshold in MCC 3.11.07, relating to “repairs and maintenance” works in the following manner:

**If an individual wishes to complete ordinary repairs, repairs or replace nonbearing walls, fixtures, wiring, or plumbing he/she are allowed to do so, as long as these repairs or maintenance do not exceed 10% of the current cost of replacement of the non-conforming structure, or portion thereof. This repair or replacement of the listed features may occur once every 12 months.**

“Repairs and maintenance”, as defined above, neither includes nor limits interior remodeling relating to such items as cabinets, flooring, household fixtures (i.e. faucets, lights, etc.), painting and so forth. The exception to the “damage greater than 50% of replacement cost” scenario only allows for the same structure to be built on the same footprint, and does not allow for designs that are “substantially” similar. The term “same” shall mean “identical” in all regards, including, but not limited to, location, size, material (unless potentially hazardous, i.e. asbestos, lead, etc.), and so forth, for all elements and aspects of the to-be-rebuilt structure, or portion thereof, including walls, roofs, windows, decks, doors, and so forth. This exception does not allow for the alteration of the replacement structure, or portion thereof, except for the deletion of non-conforming portions of the structure and those minimal changes necessary to accommodate the deletion(s).

## **Safety Exception**

Nothing in this Determination or the City Code shall prevent an individual from strengthening, or restoring to a safe condition, any non-conforming structure, or portion thereof. The term "unsafe" shall have a high standard for interpretation. "Strengthening" and "restoring" are terms to be narrowly construed. To understand the limitations of these terms it is important to look at their definitions. The definition of "restoring" includes:

*"to bring back to a former, original, or normal condition..."*

The definition of "strengthen" includes:

*"to make stronger; give strength to"*

These definitions imply the following, regarding the extent of construction in fixing an "unsafe" situation:

- Limiting the restoration and strengthening to only that portion of the structure that is "unsafe"
- Returning of the "unsafe" condition to its original form, material(s), or design, but not an upgrade of the "unsafe" condition to a new form, material(s), or design (except for those minimal changes necessary to meet current building code)

A report from a structural engineer or certified architect may be required to determine whether or not a structure, or portion thereof, is "unsafe". Once determined "unsafe", plans regarding the repairs to the structure will need to be submitted as a part of a building permit application. No repairs to unsafe conditions may occur without the issuance of a building permit.

The Community Development Department Administrator will determine whether the "unsafe" clause is being used to circumvent the letter or intent of the McCall City Code relating to the reconstruction of non-conforming structures and is leading to the undue perpetuation of the nonconformity in question.

## **Part III – Expansions and Enlargements of Non-Conforming Structures**

The phrase "shall not be enlarged upon, expanded upon or extended in any way", means that in no way may the dimensions of any part of the structure be increased either by length, width, or height, including any increase through the expansion of inside or outside volume dimensions of the structure. That is to say, alterations that increase any of the measurements or volume of the current non-conforming portion of the structure are prohibited.

## **Part IV – Appendix**

The three major sections relating to non-conforming structures are MCC 3.11.01, 03, and 07. They are copied, in their entirety from the McCall City Code, below:

### **3.11.01: NONCONFORMITIES; PURPOSE:**

- (A) *Within the zones established under this title or amendments that may later be adopted, there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the effective date of the applicable regulations, but which would be prohibited, regulated, or restricted under the terms of this title or future amendment. It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this chapter 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 zone.*
- (B) *Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the zones involved. A nonconforming use of land or structure, or a nonconforming use of land and structure in combination, shall not be extended or enlarged after passage of this chapter by the addition of other uses of a nature which would be prohibited in the zone.*
- (C) *To avoid undue hardship, nothing in this chapter shall be taken to prohibit completion of construction of a structure for which a building permit has been issued prior to the adoption of this title.*
- (D) *Design review (see [chapter 16](#) of this title) is required for all new construction or major exterior remodeling (in the judgment of the administrator) of a principal dwelling unit on nonconforming lots of record.*

### **3.11.03: NONCONFORMING STRUCTURES:**

*Where a lawful structure existed on the effective date of the applicable regulations, that could not be lawfully built under the terms of current regulations, by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:*

- (A) *No such nonconforming structure may be enlarged or altered in a way which increases the nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.*
- (B) *Should such nonconforming structure or nonconforming portion of structure be damaged by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this title; provided, that the owner of such structure may repair or reconstruct the same structure, on the same footprint, and in the process may alter it to decrease its nonconformity, so long as:*

1. *Within eighteen (18) months after the date of such damage or destruction, the owner commences such repair or reconstruction, and diligently prosecutes the work to completion in accord with then applicable building codes; and*
  2. *No other nonconforming structure was constructed on that site during the eighteen (18) month period.*
- (C) When a nonconforming structure is moved for any reason over any distance, it shall conform to the regulations for the zone to which it is moved.*

*A nonconforming residential structure in a residential zone may be enlarged, so long as the addition to the structure conforms to all the requirements of the zone.*

**3.11.07: REPAIRS AND MAINTENANCE:**

*For any nonconforming structure containing a nonconforming or permitted use, ordinary repairs, repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding ten percent (10%) of the current replacement cost of the nonconforming structure or portion of structure may be made. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming structure or part thereof declared to be unsafe by the building inspector.*



## Average Lake front lot widths in Feet

|                    | Zone #1 |            | Zone #2 |            | Zone #3 |                          | Zone #4 |            | Zone #5 |            | Zone #6 |            | Zone #7 |            | Zone #8 |            |
|--------------------|---------|------------|---------|------------|---------|--------------------------|---------|------------|---------|------------|---------|------------|---------|------------|---------|------------|
|                    |         | Width (ft) |         | Width (ft) |         | Width (ft)               |         | Width (ft) |         | Width (ft) |         | Width (ft) |         | Width (ft) |         | Width (ft) |
|                    |         | 80         |         | 43         |         | 56                       |         | 43         |         | 109        |         | 56         |         | 53         |         | 215        |
|                    |         | 78         |         | 35         |         | 127                      |         | 53         |         | 120        |         | 58         |         | 58         |         | 289        |
|                    |         | 64         |         | 55         |         | 98                       |         | 49         |         | 210        |         | 81         |         | 91         |         | 234        |
|                    |         | 61         |         | 90         |         | 99                       |         | 51         |         | 114        |         | 69         |         | 72         |         | 206        |
|                    |         | 110        |         | 86         |         | 58                       |         | 99         |         | 56         |         | 69         |         | 77         |         | 120        |
|                    |         | 82         |         | 49         |         | 69                       |         | 91         |         | 55         |         | 43         |         | 102        |         | 107        |
|                    |         | 50         |         | 76         |         | 120                      |         | 102        |         | 67         |         | 43         |         | 103        |         | 210        |
|                    |         | 60         |         | 87         |         | 108                      |         | 98         |         | 63         |         | 62         |         | 91         |         | 112        |
|                    |         | 84         |         | 96         |         | 87                       |         | 81         |         | 93         |         | 63         |         | 61         |         | 100        |
|                    |         | 57         |         |            |         | 94                       |         | 101        |         | 54         |         | 54         |         |            |         | 100        |
|                    |         | 75         |         |            |         | 175                      |         | 55         |         | 72         |         | 59         |         |            |         | 100        |
|                    |         | 94         |         |            |         | 47                       |         | 84         |         | 49         |         | 84         |         |            |         | 100        |
|                    |         | 40         |         |            |         | 62                       |         | 56         |         | 53         |         | 62         |         |            |         | 100        |
|                    |         | 35         |         |            |         | 62                       |         | 123        |         | 49         |         | 63         |         |            |         | 84         |
|                    |         |            |         |            |         |                          |         |            |         |            |         |            |         |            |         |            |
| Avg Lot Width (Ft) |         | 64.67      |         | 61.70      |         | 84.13                    |         | 72.40      |         | 77.60      |         | 57.73      |         | 70.80      |         | 138.47     |
|                    |         |            |         |            |         |                          |         |            |         |            |         |            |         |            |         |            |
|                    |         |            |         |            |         | TOTAL Avg Lot Width (Ft) |         |            |         | 78.44      |         |            |         |            |         |            |

**3.3.04: RESIDENTIAL ZONE LOT WIDTH VERSUS SIDE YARD SETBACK:** *(excerpt)*

...for lots up to one hundred feet (100') wide, the sum of both side yard setbacks shall equal a minimum of twenty percent (20%) of the lot width when measured at the location of the setback. For lots over one hundred feet (100') in width, the requirement is for the sum of both side yard setbacks to equal at least thirty percent (30%) of the lot width when so measured.

## ADMINISTRATIVE DETERMINATION

Date: July, 2010  
 Made By: Bradley Kraushaar, City Planner  
 Subject: Side Property Line Setbacks (percentage width)

The following Administrative Determination addresses the application of the side property line setback percentage width calculations to lots that have multiple structures.

**The side property line setback percentage width calculations apply to lots with multiple structures.**

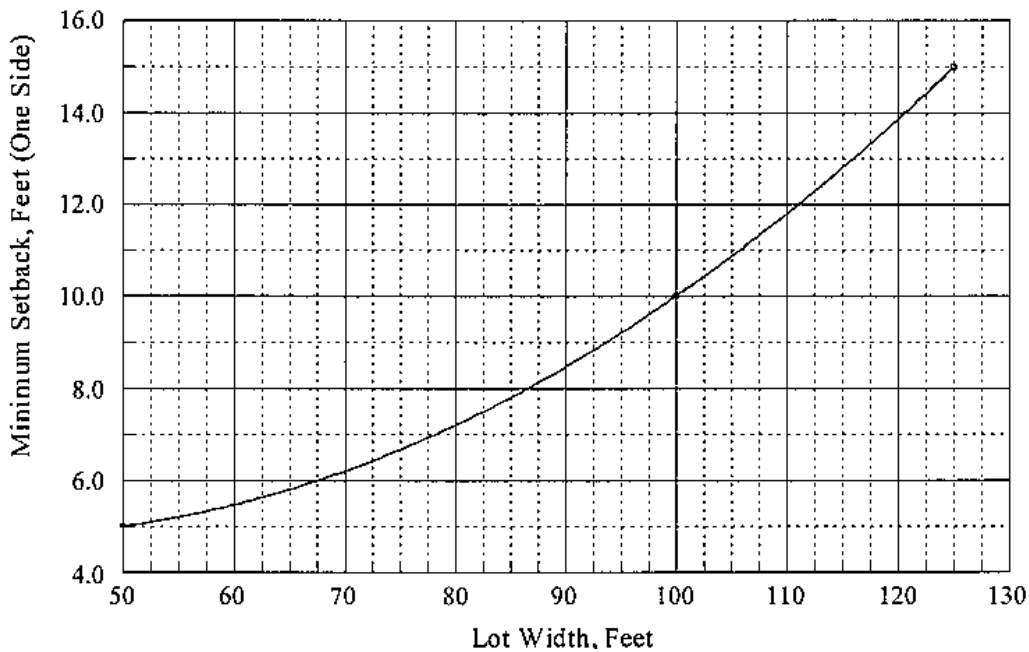
### 3.3.04: RESIDENTIAL ZONE LOT WIDTH VERSUS SIDE YARD SETBACK:

See figure [3.3.04](#) of this section to determine side yard setback. For example:

|   |                             |
|---|-----------------------------|
| Home sites less than 50 feet wide                 | 5 foot minimum either side  |
| Home sites 100 feet wide                          | 10 foot minimum either side |
| Home sites equal to or greater than 125 feet wide | 15 foot minimum either side |

Figure [3.3.04](#)

**Residential Lot Width vs. Side Yard Setback**





However, for lots up to one hundred feet (100') wide, the sum of both side yard setbacks shall equal a minimum of twenty percent (20%) of the lot width when measured at the location of the setback. For lots over one hundred feet (100') in width, the requirement is for the sum of both side yard setbacks to equal at least thirty percent (30%) of the lot width when so measured. The administrator may approve, for lots up to one hundred twenty five feet (125') wide, a relaxation of total side yard setback to up to twenty five percent (25%) of the lot width if conditions of topography, adjacent buildings, vegetation, or wetlands impact the location of the proposed building site.





# City Of McCall

-  Single Family Dwelling
-  Multi - Family Dwelling

