

August 11, 2015

To: Yachats Planning Commission
cc: Nancy Batchelder, City Recorder

From: Larry Lewis, City Planner

**Re: Yachats Zoning & Land Use Code Chapter 9.76 Nonconforming Lots and Uses
Proposed Amendments**

The Planning Commission discussed the need to look at Chapter 9.76 Nonconforming Lots and Uses to determine if additional language needs to be added to address development activities that were lawful prior to Code amendments. The Planning Commission reviewed a first draft amendment at the July 21, 2015 meeting and recommended changes to Section 9.76.020. The attached draft identifies this recommended change.

Chapter 9.76 - Nonconforming Lots and Uses

Section 9.76.010 Purpose.

There were lots, structures, ~~and uses,~~ **and development activity** that were lawful before the ordinance codified in this title was adopted or amended, but which have become either prohibited, regulated or restricted under the new terms and conditions of this title. They shall hereafter be referred to as pre-existing, nonconforming lots, structures, ~~and uses,~~ **and development activity**.

It is recognized that significant expenditures of personal and financial energy may have been invested in the development of such uses, ~~and structures~~ **and development activity** and that to dismiss these expenditures as no longer relevant would be harmful to the public welfare, both in regards to the community harmony and with respect to support that will be needed to improve the quality, aesthetics and functional aspects of the community.

It is therefore the intent of this title to allow these structures, ~~and uses~~ **and development activity** that existed prior to the adoption of the ordinance codified in this title to continue, including normal maintenance, repair or replacement in case of damage due to disaster or any means of destruction. (Ord. 73E § 11.010, 1992)

Section 9.76.020 Continuation of nonconforming use or structure.

Subject to the provisions of ORS 215.130 and subsequent provisions of this chapter, a lawful nonconforming structure, ~~or use~~ **or development activity** may be continued. ~~The extension of a lawful nonconforming use to a portion of a structure which was arranged or initiated for the lawful nonconforming use at the time of passage of the ordinance codified in this title is not considered an enlargement or expansion of a nonconforming use.~~ (Ord. 73E § 11.020, 1992)

Section 9.76.030 Discontinuance of nonconforming use.

A. If a nonconforming use involving a structure is discontinued or if a nonconforming trailer house is removed for a period of one year, further use of the property shall conform to this title.

B. If a nonconforming use **or development activity** not involving a structure is discontinued for a period of six months, further use of the property shall conform to this title. (Ord. 73E § 11.030, 1992)

Section 9.76.040 Change of nonconforming use.

A. If a nonconforming use not involving a structure is replaced by another use, the new use shall conform to this title.

B. If a nonconforming use involving a structure is replaced by another use, the new use shall conform to this title unless the planning commission determines that such structure is

suitable only for another nonconforming use no more detrimental to surrounding properties than the one to be replaced. (Ord. 73E § 11.040, 1992)

Section 9.76.050 Destruction of nonconforming use.

If a nonconforming structure or structure containing a nonconforming use is destroyed by any cause to an extent exceeding eighty (80) percent of its fair market value as indicated by the records of the county assessor and is not returned to use within one year from the date of destruction, a future structure or use on the site shall conform to this title except that replacement of nonconforming signs shall be in accordance with the provisions of this title. (Ord. 73E § 11.050, 1992)

Section 9.76.060 Expansion of nonconforming uses.

A nonconforming use existing at the time that zoning was or is adopted in the area of such use, or changed in the area, may be expanded if such expanded use does not result in an increase in the degree to which a structure or use is nonconforming. (Ord. 175, 1995; Ord. 73E § 11.060, 1992)

Section 9.76.070 Discontinuance of nonconforming uses.

A nonconforming use [or development activity](#) determined by the planning commission to be detrimental to the public health, safety or welfare shall be discontinued after a period of time determined by the planning commission to be the amortized life of the use. (Ord. 73E § 11.070, 1992)

Section 9.76.080 Undersized lots of record.

A. Any lot having an area or dimension less than the minimum shall be designated a building site provided the following criteria are met:

1. The lot is shown on an officially approved and recorded subdivision map; and
2. The lot was of legal area and dimension for a building site or was a legal nonconforming building site at the time the ordinance codified in this title was adopted.

B. No lot, or combination of contiguous lots, either vacant or containing a single-family dwelling, shall be replatted so that an undersized lot is created, nor shall a lot be replatted if setbacks or dimensions less than the minimum would result. (Ord. 73E § 11.080, 1992)