



Pierce County Council

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Passed at the Community Development Committee Meeting as amended (see oral amendment memo) on August 4, 2014 on a voice vote.

**Committee Amendment No. 15
Proposed Ordinance No. 2013-45s
Gray**

Date: April 7, 2014

To: **Community Development Committee**
Douglas G. Richardson, Vice Chair
Stan Flemming, Member
Connie Ladenburg, Member
Jim McCune, Member

From: Rick Talbert, Council District No. 5

Hearing Date: August 4, 2014

Attachments: Attachment A

Subject: **Proposed amendment to Exhibit G concerning Nonconforming Uses.**

The following amendment to Exhibit G to Ordinance No. 2013-45s would replace the development standards regarding nonconforming uses with the attached development standards.

1. On page 7 of 111, of Exhibit G, starting on line 9, replace subsection "18S.10.055 Recognition of Legally Established Development" in its entirety with the Attachment.

18S.10.055 Recognition of Legally Established Development.

This Section provides standards for legally established development subject to this Title.

- A. **Applicability.** This Section applies to shoreline uses, structures, and land divisions which were lawfully constructed or established prior to the effective date of the Shoreline Management Act (Act) or Shoreline Master Program (Master Program), or amendments thereto, but which do not conform to present regulations of Title 18S PCC.
- B. **General.** Existing legally established structures and uses may continue to exist, be used, maintained and repaired. That is the case even if the Master Program includes regulations that would not allow new uses or development to be configured or built as they exist.
 1. For purposes of this Section, "expanded" or "expansion" means to expand into undeveloped portions of the lot or parcel, expansion of the use onto another parcel, an increase of the square footage of a building or the expansion of a building's footprint or height, an increase in number of buildings/structures, an increase in the hours of the operation, an increase in the noise, an increase in the total area under active cultivation, an increase in the number of motor vehicles associated with the use, an increase in the areas used for storage of equipment or materials, or an expansion of parking areas.
 2. The burden shall be on the property owner and/or applicant to prove that a use or structure was lawfully constructed or established.
 3. If a nonconforming use or use of a non-conforming structure is abandoned or discontinued for more than two years the nonconforming rights shall expire and any subsequent use or structure shall be conforming. A use authorized pursuant to subsection PCC 18S.10.055 E.3. below shall be considered a conforming use for purposes of this subsection.
- 3C. **Residential Structures.** Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for setbacks, buffers, or yard; area; bulk; height; or density may be considered a **conforming** structure. Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure is allowed consistent with the Master Program, including requirements for no net loss of shoreline ecological functions and the following:-
 1. Residential structures that were legally established which do not meet standards for setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon areas where construction or use would not be allowed for new structures.
 2. A residential structure may be moved to a location resulting in greater conformance with the Master Program and the Act, but otherwise, shall not be moved any distance.
 3. Structurally raising the floor elevation of an existing legally established single-family residence, which is necessary to protect the structure from flooding due to sea level rise, shall be allowed in accordance with the height limits set forth in PCC 18S.30.060 Scenic Protection and Compatibility.
 - a4. For purposes of this Section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.
 - b5. Nothing in this Section: restricts the ability of the County to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or affects the application of other federal, state, or local government requirements to residential structures.
- €D. **Nonconforming Structures.**

1. Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction ~~or use~~ would not be allowed for new development or uses structures.
2. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this Section shall apply as they apply to preexisting nonconformities.
- ~~3. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a Shoreline Conditional Use Permit, provided the following findings are met:~~
 - ~~a. No reasonable alternative conforming use is practical; and~~
 - ~~b. The proposed use will be at least as consistent with the policies and provisions of the Act and the Master Program and as compatible with the uses in the area as the preexisting use.~~
 - ~~c. Such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Act, and to assure that the use will not become a nuisance or a hazard.~~
43. A nonconforming structure may be moved to a location resulting in greater conformance with the Master Program and the Act, but otherwise, nonconforming structures shall not be moved any distance.
54. Structurally raising the floor elevation of an existing legally established nonconforming structure, which is necessary to protect the structure from flooding due to sea level rise, shall be allowed in accordance with the height limits set forth in PCC 18S.30.060 Scenic Protection and Compatibility.

DE. Nonconforming Uses.

1. Uses and development that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as nonconforming uses. Such uses shall not be enlarged or expanded. ~~except that nonconforming single family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances upon approval of a Shoreline Conditional Use Permit.~~
2. A use which is listed as a conditional use but which existed prior to adoption of the Master Program or any relevant amendment thereto or which existed prior to the applicability of the Master Program to the site, and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.
3. A structure or site which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a Shoreline Conditional Use Permit, provided the following findings are met:
 - a. No reasonable alternative conforming use is practical; and
 - b. The proposed use will be at least as consistent with the policies and provisions of the Act and the Master Program and as compatible with the uses in the area as the preexisting use.
 - c. Such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Act, and to assure that the use will not become a nuisance or a hazard.

~~3. If a nonconforming use is discontinued for more than two years, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection C.3. above shall be considered a conforming use for purposes of this subsection.~~

EF. Nonconforming Lots.

1. An undeveloped lot, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Act or Master Program but which does not conform to the present lot size standards may be developed if permitted by applicable land use regulations and so long as such development conforms to all other requirements of the applicable Master Program and the Act.

FG. Restoration of Development Due to Damage.

1. If a nonconforming development is damaged ~~to an extent not exceeding seventy-five percent of the replacement cost of the original development,~~ it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within one year of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.