

Proposed Nonconforming Development Ordinance (49.30)

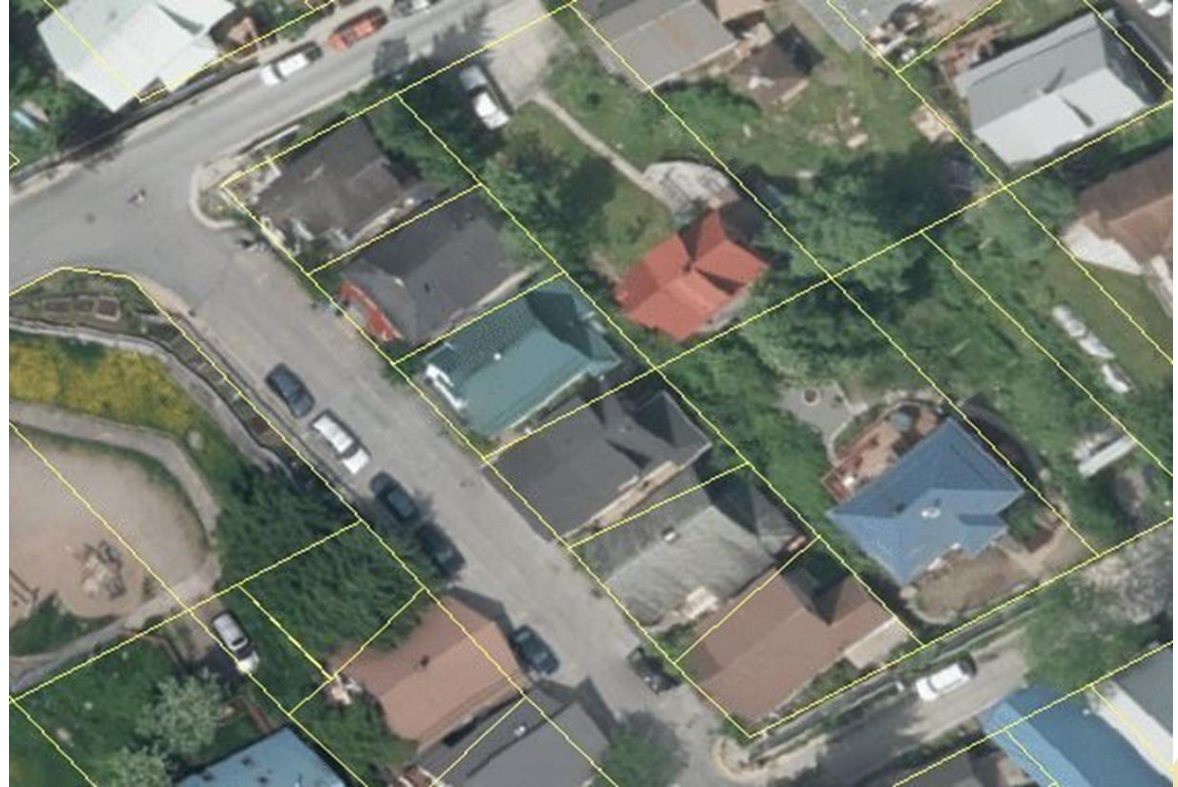
**CBJ Housing and Development Forum
February 28, 2020**



What is “nonconforming”?

Nonconforming situations include existing uses, structures, lots, parking and residential density that were legally established prior to a change in zoning provisions, which do not comply with current zoning regulations.

Commonly referred to as “grandfathered”.



What is the challenge?

- As land use policies and zoning regulations are revised and updated, we are faced with questions regarding the continued use, replacement, or expansion of nonconforming situations.
- In current code the various nonconforming situations are blended into single paragraphs and the reconstruction section is difficult to read, which makes it challenging to understand.
- Certain nonconforming situations may create financing challenges.



49.30.500 - Reconstruction.

(a) Except as provided in subsections (b) and (c) of this section, if a building is damaged by any change so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building shall not be rebuilt, unless the building and its intended use comply with this title. The determination of whether a building is destroyed to the extent described shall be made by the building official.

(b) If a single-family dwelling, duplex, or multifamily dwelling in a residential district is damaged by any involuntary change, including fire, flood, landslide, avalanche, or earthquake, so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building may be replaced or reconstructed to the same footprint on the original location with the exception of encroachments into public rights-of-way or adjacent property; provided, the intended use of the building is the same as, or less intensive than, the prior use and is a permissible use in the district. The determination of whether a building is destroyed to the extent described shall be made by the building official. If the building official determines that the foundation of the building is not reusable due to damage or substantial noncompliance with Title 19, the building regulations code, then the building may be replaced or reconstructed to the same footprint and the footprint shall be relocated on the lot so as to reduce, to the extent reasonably feasible, the occurrence or severity of any nonconforming setbacks, taking into consideration topography, shape, and size of the lot, and all other relevant factors. However, if such relocation is not reasonably feasible, the building may be replaced or reconstructed to the same footprint on the original location. Projections beyond the footprint including architectural features, roof eaves, foundation footings, porches, decks, terraces, patios, unenclosed stairways, and fire escapes, and attached structures, may also be replaced or reconstructed as they existed on the original building, with the exception of encroachments into public rights-of-way or adjacent property. An as-built survey or other proof of the footprint and location of the original building and projections beyond the footprint is to be provided to the City and Borough at the time the building is to be replaced or reconstructed. A building may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building. Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a public right-of-way or adjacent property, nor does it authorize the building or projections beyond the footprint of the building to be replaced or reconstructed so as to encroach into a public right-of-way or adjacent property. Nothing in this subsection waives any other applicable laws or regulations including Title 19, the building regulations code, and this title.

(c) The commission, through the conditional use permit process, may allow the replacement or reconstruction of a multifamily dwelling in any multifamily residential, general commercial, light commercial, mixed use, or waterfront commercial district when the dwelling is damaged by any involuntary change, including fire, flood, landslide, avalanche, or earthquake, and the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, provided the intended use of the building is the same as, or less intensive than, the prior use. The determination of whether a building is destroyed to the extent described shall be made by the building official. A building may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building unless additional spaces are required under the Federal Americans with Disabilities Act. Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a required yard, nor does it authorize the building or projections beyond the footprint of the building to be replaced or reconstructed so as to encroach into a required yard, except as provided in subsection 49.25.430(5). Nothing in this subsection waives any other applicable laws or regulations, including Title 19, the building regulations code; and Title 49, the land use code.

(d) The director may allow a building in the MU zoning district which has been converted from residential to nonresidential use to revert to residential use at the original density and parking

107 word
sentence

99 word
sentence

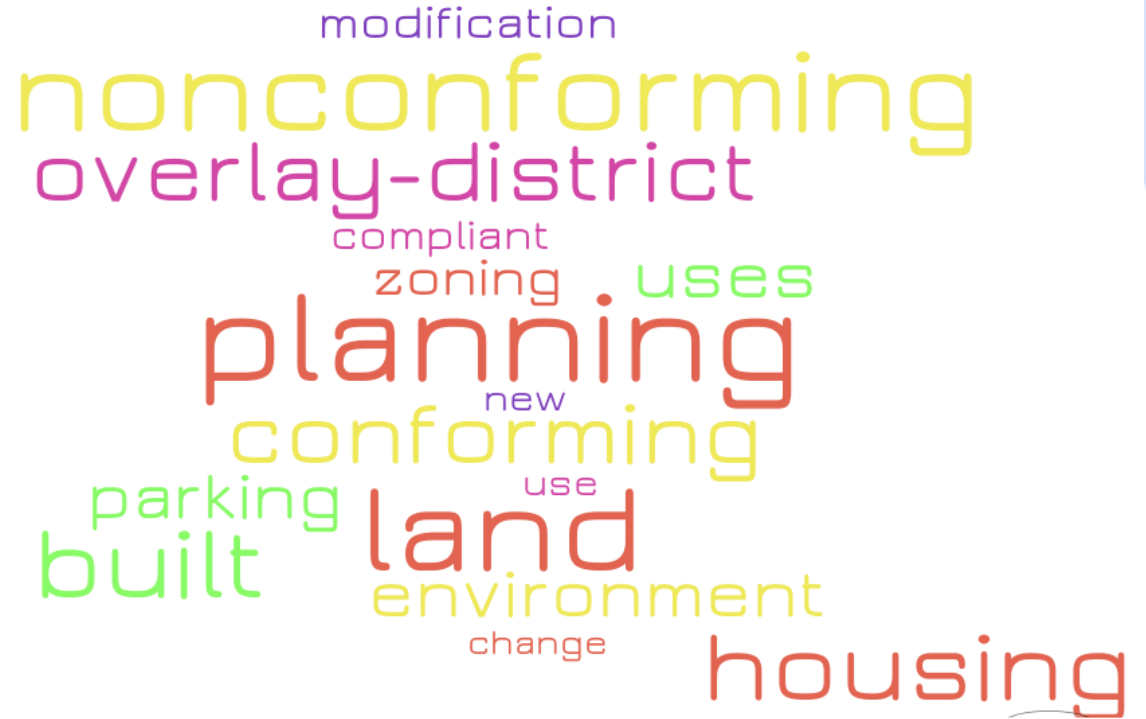
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Options

Municipalities vary considerably in how they treat nonconforming situations.

There are four general options:

- Phase out over time;
- Maintain status quo;
- Allow limited modification and expansion;
- Change zoning standards to make certain uses, structures, lots, parking, density conforming.



A word cloud of terms related to urban planning and zoning. The words are arranged in a cluster, with 'planning' being the largest and most central. Other prominent words include 'nonconforming', 'overlay-district', 'land', 'housing', 'conforming', 'built', 'parking', 'environment', 'change', 'use', 'new', 'zoning', 'compliant', 'modification', and 'uses'. The words are in various colors including yellow, purple, green, red, and blue.

modification
nonconforming
overlay-district
compliant
zoning
uses
planning
new
conforming
parking
built
land
use
environment
change
housing

The proposed language would repeal and replace all of 49.30.

The proposed language clarifies and defines the following nonconforming situations:

- Nonconforming uses;
- Nonconforming residential densities;
- Nonconforming structures;
- Nonconforming lots; and
- Nonconforming parking.

Nonconforming Use

Gas station (automotive fuel station 49.25.300.9.200)
in a D-5 zoning district.

Documentation exists showing it was legally permitted
in accordance with zoning regulations at the time of
establishment.



Nonconforming Use

Generally, a use that was allowed or not prohibited by law when established and due to subsequent adoption of amendment of a zoning ordinance fails to conform to this title (Title 49 Land Use Code).

- A property owner may change nonconforming use to a conforming use at any time
- Nonconforming uses may continue to operate if not abandoned;
- Modifications may be allowed if it does not constitute a change or expansion of the use and it does not impose a significant or new impact that is out of harmony with the neighborhood;
- May not be expanded to other structures or to other land beyond the original structure;
- The cost to replace a nonconforming structure or a structure containing a nonconforming use that is damaged accidentally less than or equal to 75 percent of the assessed building value, exclusive of foundation(s), maintains the nonconforming rights.

Nonconforming Residential Density

- Existing 4-plex in D-5 zoning district
 - Use is residential
 - Density exceeds what current zoning allows
- Challenge – if a structure burns only 1 or 2 units could be rebuilt (depending on lot size)



Nonconforming Residential Density

Generally, this applies to nonconforming residential density situations on property located in zoning districts other than industrial and waterfront industrial. *This nonconforming situation is not currently recognized by code.*

- Residential development of a density that was allowed or not prohibited by law when constructed; *and* due to the subsequent adoption or amendment of a zoning ordinance, is of a greater density than allowed under this title.
- In non-industrial districts, a nonconforming situation containing exclusively residential use that was damaged or destroyed accidentally, or by any means beyond the control of the owner or the authorized agent of the owner, may be reconstructed regardless of the cost of replacement of the structure subject to certain requirements (not tied to 75%).

Nonconforming Residential Density

- There is no threshold for the cost repair as there is for reconstruction of nonconforming uses or non-residential structures or residential structures in industrial zoning districts (I and WI);
- Reconstruction may be in the same footprint on the original location if the structure was nonconforming for setbacks or lot coverage, but cannot encroach into rights-of-ways or adjacent property;
- If a TCO is not obtained within three years of issuance of a building permit, nonconforming density rights are lost and redevelopment must comply with current codes;
- Nonconforming residential density rights are lost when the structure is intentionally destroyed.

Residential Use in Industrial Districts

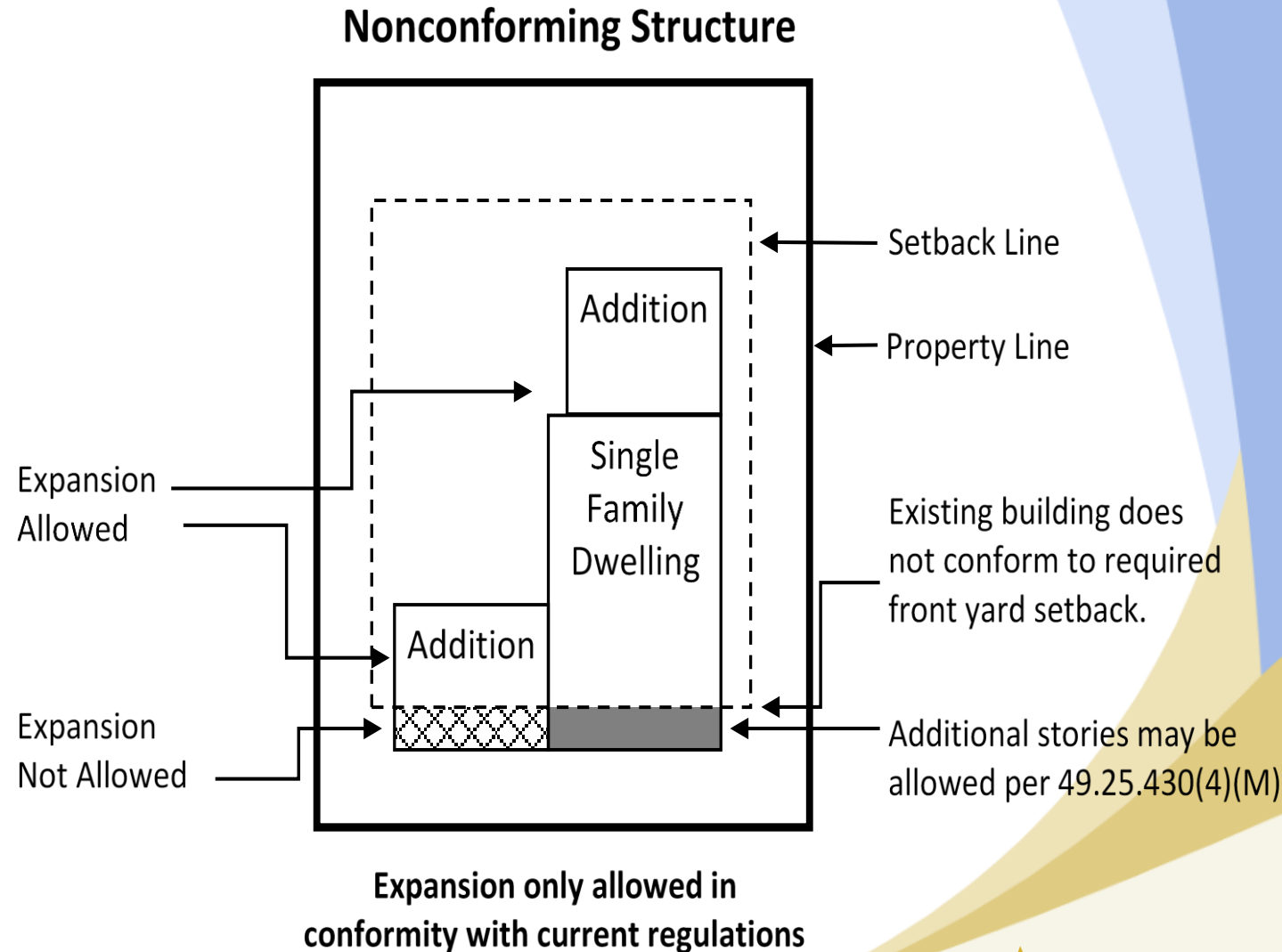
When a residential use is located in an industrial zoning district (I and WI):

- Reconstruction may be approved with nonconforming certification;
- May not be altered or reconstructed until proof of nonconforming status is established;
- Cost to replace the structure is less than 75 percent of the assessed building value, exclusive of foundation(s);
- Written notice of intent to reconstruct to CDD within 365 days of the accidental damage as determined by the building official;
- If a TCO is not obtained within three years of issuance of a building permit, nonconforming density rights are lost and redevelopment must comply with current codes;
- Nonconforming rights are lost when the structure is intentionally destroyed.

Nonconforming Structures

Nonconforming structures are those that do not meet one or more of the dimensional standards such as height, setbacks, or lot coverage.

- May be continued and maintained;
- May be expanded, but only if the change does not increase the nonconformity
- CBJ 49.25.430(4)(M) nonconforming structures may add additional stories with a CUP.
- If a nonconforming structure is moved, it must conform to current code requirements.



Nonconforming Structures continued....

- All other nonconforming structures must be reconstructed in compliance with current regulations when they are accidentally damaged and the cost of repair is greater than 75% of the assessed building value;
- If a nonconforming structure is intentionally destroyed, it may only be reconstructed in accordance with current codes.
- When a nonconforming structure is abandoned or brought into conformity, the nonconforming status is lost;
- Nonconforming rights may be lost when the damage is intentional.



Nonconforming Lot

A nonconforming lot is one that does not comply with the minimum lot area, depth or width, or other lot requirements for the zoning district.

- May be developed for any use permitted in the zoning district if associated requirements can be met, such as setbacks and parking;
- Lots to be developed, must nonconforming certification;
- As current code allows, when an undeveloped nonconforming lot adjoins and has continuous frontage with one or more undeveloped lots and are under common ownership, each lot may be developed with a single family dwelling.



D-5 zoning required setbacks:

Front yard setback 20 ft.

Rear yard setback 20 ft.

Side yard setback 5 ft.

Nonconforming Parking

Nonconforming parking means dimensional standards and types of off-street parking and loading that were not in effect when the development was established, and due to the subsequent adoption or amendment of a zoning ordinance, are now required under this title.

Nonconforming parking situation may continue if:

- Number of parking spaces does not increase;
 - Type of parking spaces remains the same or becomes more conforming;
 - Reconstruction is determined to not endanger public health and safety – by entity controlling the road (AKDOT or CBJ).
- ❖ When nonconforming parking becomes more compliant it can not go back to its earlier noncompliance. Parking waivers and variances may be applied for.



Abandonment

The abandonment of a nonconforming situation relinquishes all nonconforming rights associated with that situation. The existence of an abandoned nonconforming situation becomes a noncompliant situation and subjects the property to enforcement actions consistent with Title 49.

Proposed ordinance language creates a method for a property owner to “overcome” a determination that a nonconforming situation has been abandoned.

Determination of abandonment shall be made by the director and supported by written findings.

Nonconforming Certification

- Creates a new review process to establish nonconforming certification;
- Places the responsibility on the property owner to provide evidence proving that the nonconforming situation was allowed when it was established and has been continuously maintained over time;
- Nonconforming certification is approved by the Director and may be appealed;
- Examples of standard evidence to prove the nonconforming situation are listed, as are examples for proving the situation was maintained over time;
- Runs with the land.

Examples of Standard Evidence

- Building, land use, or development permits;
- Zoning codes or maps;
- Recorded plats;
- Dated photographs;
- Insurance records and maps that identify use or development, e.g. Sanborn Maps;
- Utility bills;
- Property tax records;
- Business licenses;
- Telephone listings;
- Advertisements in dated publications; or
- Leases.

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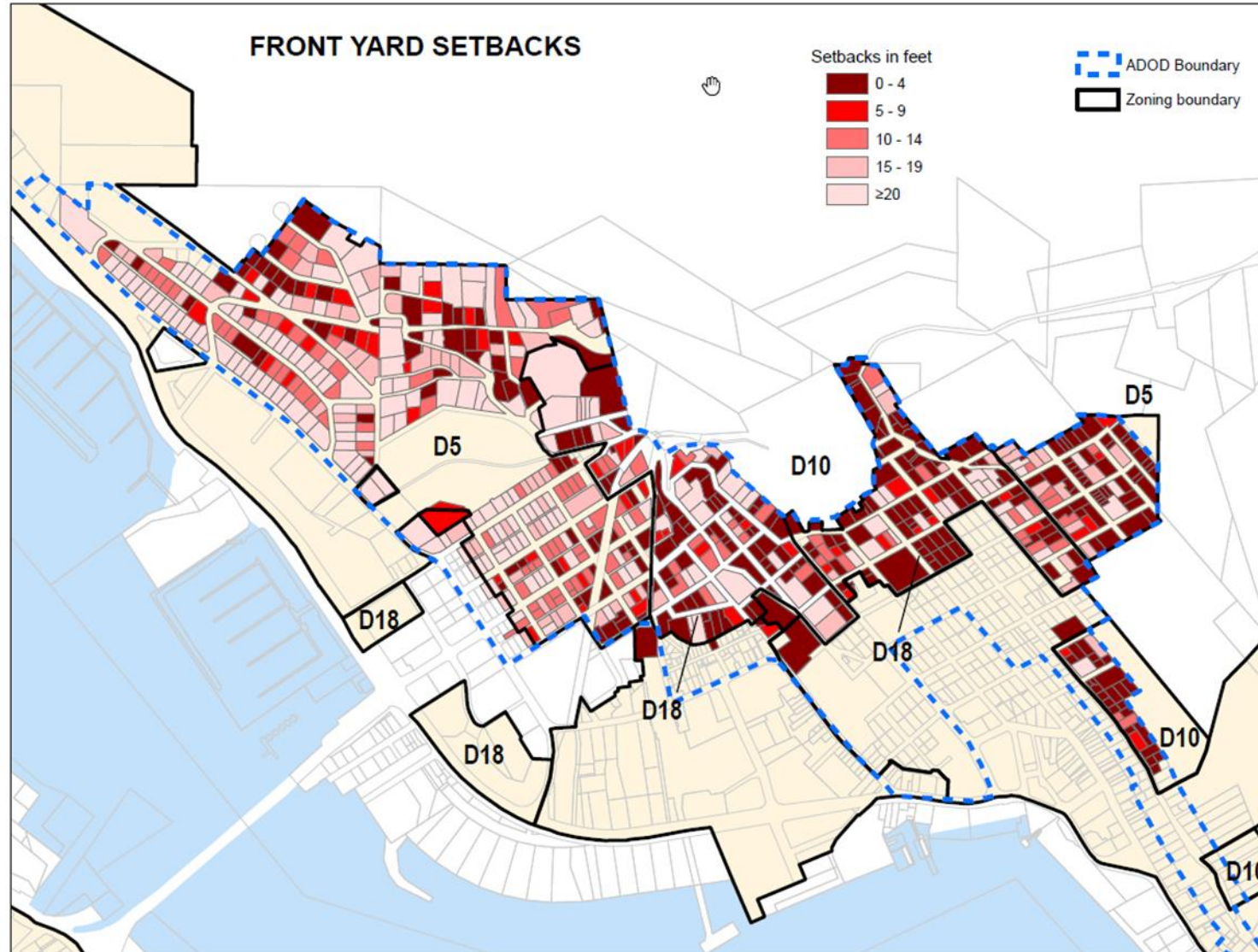
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QUESTIONS

Nonconforming front yard setbacks –downtown Juneau



Nonconforming lots - downtown Juneau

