



# Staff Report to the Western Weber Planning Commission

Weber County Planning Division

## Synopsis

### APPLICATION INFORMATION

**Application Request:** A public hearing for consideration of a requested rezone from A-1 to C-2 on approximately 0.92 acres.  
**Agenda Date:** Tuesday, December 13, 2022  
**Applicant:** Joshua Skidmore  
**File Number:** ZMA 2022-04

### PROPERTY INFORMATION

**Approximate Address:** 2139 S 4300 W  
**Zoning:** The area to be rezoned is currently A-1  
**Proposed Land Use:** Commercial, C-2

### ADJACENT LAND USE

**North:** New High School  
**East:** Residential  
**South:** Future Nilson Homes project  
**West:** Residential (Plain City)

### STAFF INFORMATION

**Report Presenter:** Steve Burton  
sburton@webercountyutah.gov  
801-399-8766  
**Report Reviewer:** CE

## Applicable Ordinances

§ 102-5: Rezoning Procedures

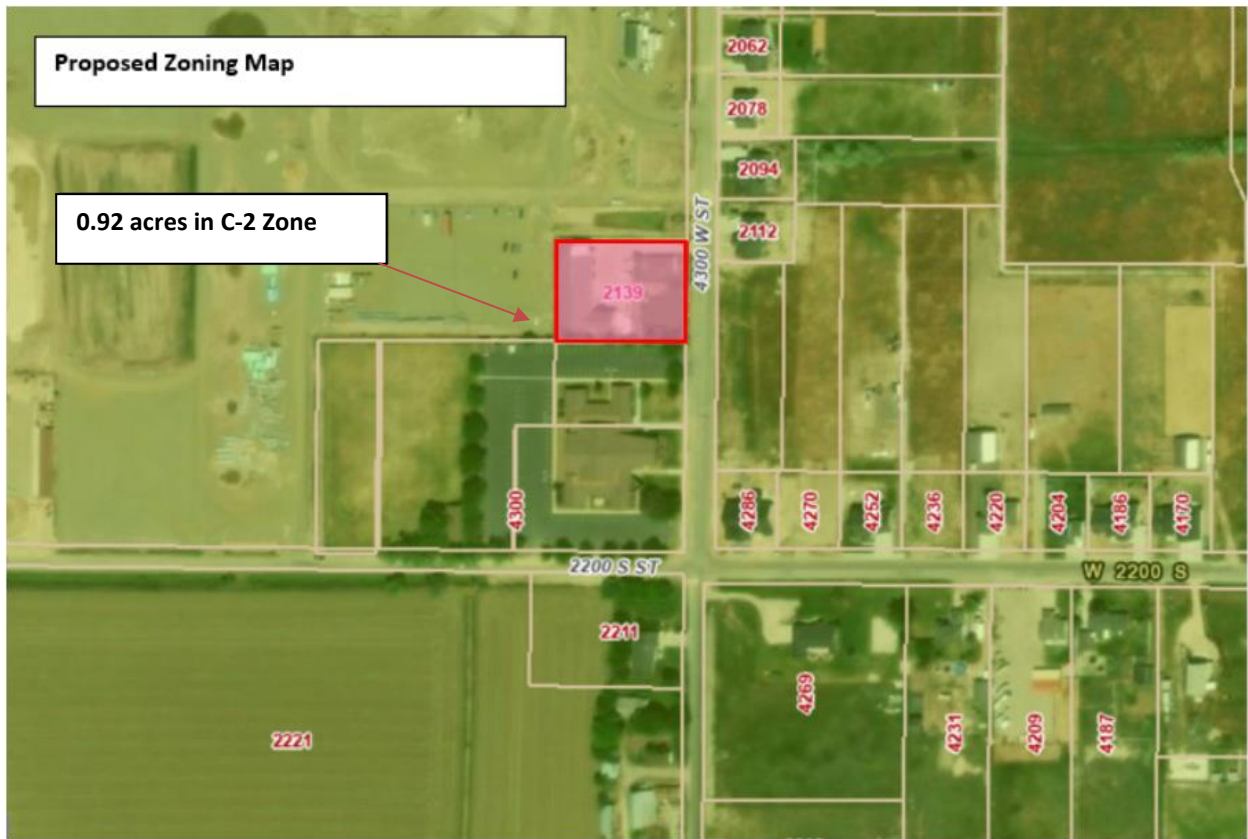
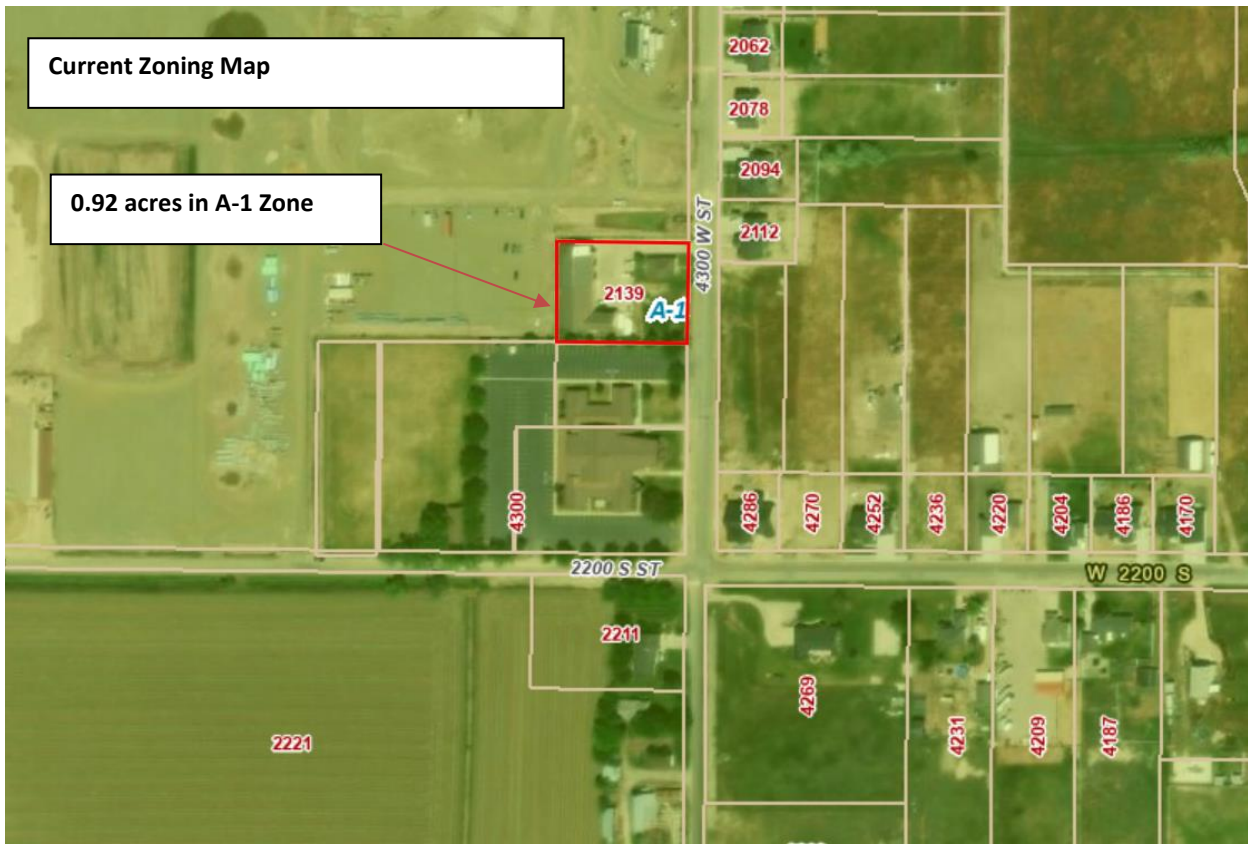
§ 104-20: Commercial Zones (C-2)

## Legislative Decisions

This is a legislative matter. When the Planning Commission is acting on a legislative matter, it is acting to make a recommendation to the Board of County Commissioners. There is wide discretion in making legislative decisions. Criteria for recommendations on a legislative matter suggest compatibility with the general plan, existing ordinances, and best practices. Examples of legislative actions are general plan, zoning map, and land use code amendments.

## Summary

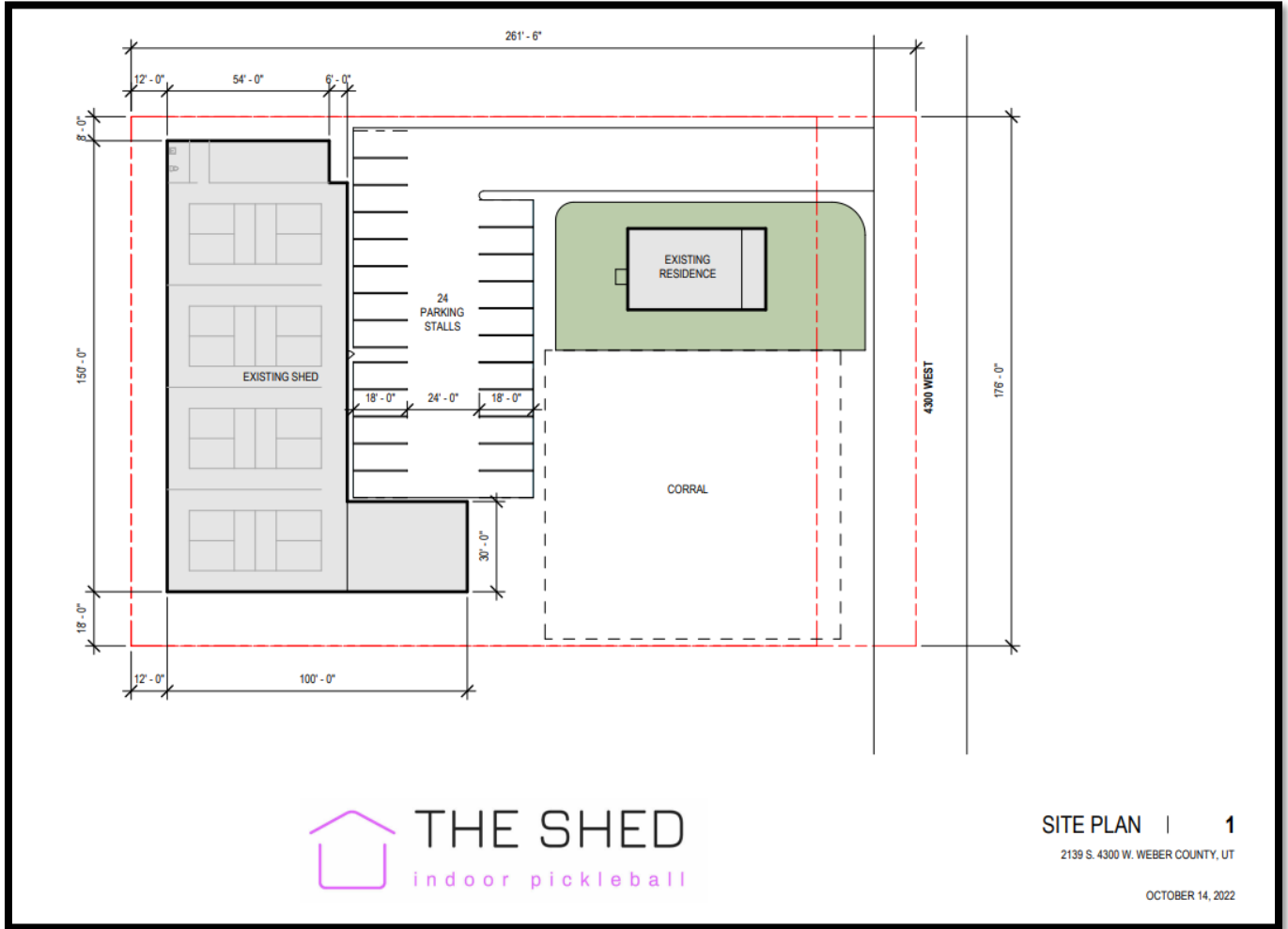
This item is an applicant-driven request to amend the zoning map from A-1 to C-2 on 0.92 acres. The owner seeks this zoning to allow a commercial pickleball court on the property. The C-2 zone lists "fitness, athletic, health, or recreation center, or gymnasium" as a permitted use in the C-2 zone. The following maps show the existing zoning and the proposed zoning for this project.



# Policy Analysis

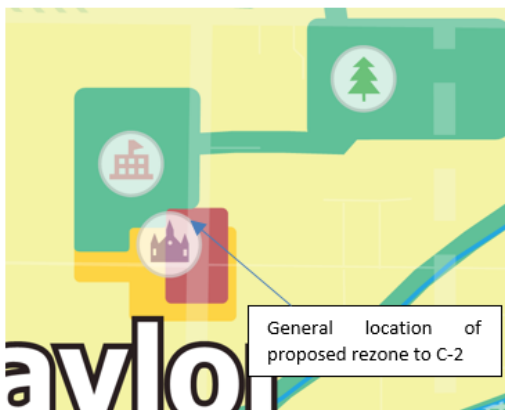
## Concept Plan

The concept site plan that was provided with this application is below.



## Western Weber County General Plan

The Western Weber County General Plan Future Land Use Map shows this site in a future “mixed-use” commercial area. The general plan states the following regarding mixed-use commercial, “The areas of the future land use map designated as mixed-use commercial are intended to provide a village center in which a variety of land uses can occur nearby....In each mixed-use area there should be at least one community “main street.” The main street should provide retail sales, services, eateries, and related activities that make the street interesting to use. These uses should be located behind building facades that are at the level of the street and directly adjacent to the street’s sidewalk, with plenty of window and door openings facing the street to capture the attention and interests of pedestrians as they engage their public spaces, browse, shop, eat, and play” (Western Weber Planning Area General Plan (2022), pg. 35).



This proposal is not considered ‘mixed-use commercial’, however, a rezoning to C-2 with a covenant (or development agreement) to reserve the first 40 feet of front yard adjacent to the street would establish an

area for a future mixed-use commercial street anticipated by the general plan. Reserving the first 40 feet of front yard and restricting the allowed C-2 uses to only those that are not automobile-intensive will preserve a corridor for the planned mixed-use, pedestrian friendly, commercial street in this location.

### **Zoning**

The C-2 zone does not have a minimum lot area or lot width requirement. The current buildings comply with the front yard setback of the C-2 zone, which is 50 feet from the centerline of 4300 W, a collector street. The existing building that the pickleball court will be located in does not comply with the side yard (north property line) setback of 10 feet. The building is currently eight feet to the north side property line. The owner has an option to be closer than 10 feet to the side property line if they obtain a perpetual building maintenance agreement, as outlined in 104-20-4(e). The existing building meets the rear yard requirement of 10 feet.

The C-2 zone allows a maximum building height of 35 feet. The existing building height is 26 feet.

The C-2 zone does not list “single-family dwellings” as an allowed use. If the proposed rezone is approved, then the existing single-family dwelling will be considered a non-conforming use. Attached to this report as Exhibit A is the county’s non-conforming use chapter.

### **Public Roads and Trails**

The Western Weber General Plan shows 4300 West as a minor collector street that should be 80 feet wide. The parcel on which the rezone is proposed has dedicated a 33 foot half width to 4300 W, and an additional 7 feet should be dedicated so that enough right-of-way exists for 40 foot half width.

### **County Rezoning Procedure**

The land use code lists the following as considerations when the Planning Commission makes a recommendation to the County Commission:

*A decision to amend the zoning map is a matter committed to the legislative discretion of the County Commission and is not controlled by any one standard. However, in making an amendment, the County Commission and Planning Commission are encouraged to consider the following factors, among other factors they deem relevant:*

- a. Whether the proposed amendment is consistent with goals, objectives, and policies of the County’s general plan.*
- b. Whether the proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.*
- c. The extent to which the proposed amendment may adversely affect adjacent property.*
- d. The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, wastewater, and refuse collection.*
- e. Whether the proposed rezone can be developed in a manner that will not substantially degrade natural/ecological resources or sensitive lands.*
- f. Whether proposed traffic mitigation plans will prevent transportation corridors from diminishing below an acceptable level of service.*

## Staff Recommendation

Staff recommends that the Planning Commission forward a recommendation to the County Commission to approve the proposed rezone of approximately 0.92 acres from A-1 to C-2, File #ZMA 2022-04. This approval is based on the following conditions:

1. Prior to consideration by the County Commission, the owner will enter into a development agreement with the County, that development agreement will include provisions to ensure that 7 feet of right-of-way adjacent to 4300 W will be dedicated to the county. The agreement will also specify that the first 40 feet of front yard adjacent to 4300 West (after the 7 foot dedication) will be reserved for multi-use commercial. The agreement will also include provisions to ensure that the allowed uses in the first 40 feet will be pedestrian friendly and not vehicle intensive.
2. The existing building in which the use will occur will need to receive approval from the building Official and the fire marshal, as the building may not have been constructed to a commercial occupancy.

This recommendation comes with the following findings:

1. The proposal implements certain goals and policies of the West Central Weber General Plan.
2. The development is not detrimental to the overall health, safety, and welfare of the community.

## Exhibits

Exhibit A: County's nonconforming use ordinance.

## **Chapter 108-12 Noncomplying Structures, Nonconforming Uses, And Nonconforming Lots**

[Sec 108-12-1 Purpose And Intent](#)

[Sec 108-12-2 Maintenance, Repairs, And Alterations](#)

[Sec 108-12-3 Additions And Enlargements](#)

[Sec 108-12-4 Alteration Where Parking Insufficient](#)

[Sec 108-12-5 Moving Noncomplying Structures](#)

[Sec 108-12-6 Restoration Of Damaged Buildings](#)

[Sec 108-12-7 One-Year Vacancy Or Abandonment](#)

[Sec 108-12-8 Change Of Use](#)

[Sec 108-12-9 Expansion Of Nonconforming Use](#)

[Sec 108-12-10 Legal Use Of Nonconforming Lots](#)

[Sec 108-12-11 Subdivision Plat Requirements For Nonconforming Lots; Exemptions](#)

[Sec 108-12-12 Reconfiguring Nonconforming Lots](#)

[Sec 108-12-13 Setback Requirements For Nonconforming Lots](#)

[Sec 108-12-14 Parcels Previously Combined For Tax Purposes](#)

[Sec 108-12-15 Effect Of Public Right-Of-Way Expansion](#)

**Editor's note**—Ord. No. 2015-8, Exh. A, adopted May 5, 2015, substantially amended portions of ch. 12 to add provisions for nonconformities due to public right-of-way expansions, including retitling ch. 12 from "Noncomplying Structures and Nonconforming Uses/Parcels" to read as herein set out.

### **Sec 108-12-1 Purpose And Intent**

The purpose and intent of this chapter is to provide standards for the development and use of noncomplying structures, nonconforming uses, and nonconforming lots. These structures, uses, and lots are considered legal, despite not meeting the current requirements of the zone in which they are located.

(Ord. of 1956, § 28-1; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015)

### **Sec 108-12-2 Maintenance, Repairs, And Alterations**

- (a) Maintenance, repairs, and structural alterations may be made to noncomplying structures on lots of record.
- (b) Dwellings or other structures built on lots or parcels which were once legal, but have since been modified in a manner that is in violation of applicable laws, shall not be issued land use or building permits, unless the structure is being strengthened or restored to a safe condition, or the lot or parcel is made to conform to current zoning regulations. In restoring the structure to a safe condition, no expansion of the structure is allowed.

(Ord. of 1956, § 28-2; Ord. No. 2009-2; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015)

### **Sec 108-12-3 Additions And Enlargements**

- (a) Except as provided in subsection (c), a structure which is occupied by a nonconforming use shall not be added to or expanded in any manner, unless such expansion is made to conform to all yard and use regulations of the zone in which the structure is located.
- (b) Except as provided in subsection (c), a noncomplying structure (main or accessory) shall not be added to or enlarged in any manner, unless such addition or enlargement conforms to all the

regulations of the zone in which it is located, or conforms to the reduced yard setbacks as allowed in section 108-12-13.

- (c) A legally constructed dwelling or other structure on a lot of record, which has yard setbacks that are less than the required yard setbacks for the zone in which it is located, shall be allowed to have an addition, provided that:
- (1) The addition does not encroach into the required yard setbacks further than the existing dwelling or other structure; and
  - (2) The addition is located completely on the same property as the existing structure and does not encroach into a road right-of-way or on to adjacent property.
- (d) A legally constructed dwelling or other structure on a lot of record, which is located within a stream corridor setback (as defined by the Weber County Land Use Code sections 108-7-23 and/or 104-28-2), may be added to or enlarged, provided that:
- (1) The addition does not encroach into the stream corridor setback further than the existing dwelling or other structure; and
  - (2) The addition meets the yard setback requirements of the zone in which it is located or conforms to the reduced yard setbacks as allowed in section 108-12-13; or
  - (3) The addition does not encroach into the required yard setbacks further than the existing dwelling or other structure.

(Ord. of 1956, § 28-3; Ord. No. 2008-7; Ord. No. 2009-2; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015; Ord. No. 2018-2, Exhs. A, B, 2-6-2018)

#### **Sec 108-12-4 Alteration Where Parking Insufficient**

A structure lacking sufficient automobile parking space as required by this chapter may be altered or enlarged, provided additional automobile parking space is supplied to meet the requirements of the Weber County Land Use Code.

(Ord. of 1956, § 28-4; Ord. No. 2010-22, § 1, 9-14-2010)

#### **Sec 108-12-5 Moving Noncomplying Structures**

A noncomplying structure shall not be moved in whole or in part to any other location on a lot or parcel, unless every portion of such structure is made to conform to all regulations of the zone in which it is located, or made to conform to the reduced yard setbacks as allowed in section 108-12-13.

(Ord. of 1956, § 28-5; Ord. No. 2008-7; Ord. No. 2009-2; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015)

#### **Sec 108-12-6 Restoration Of Damaged Buildings**

A noncomplying structure which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity, act of God, or the public enemy, may be restored and the occupancy or use of such structure or part thereof, may be continued or resumed, provided that such restoration is started within a period of one year, by obtaining a land use permit, and is diligently pursued to completion.

(Ord. of 1956, § 28-6; Ord. No. 2010-22, § 1, 9-14-2010)

#### **Sec 108-12-7 One-Year Vacancy Or Abandonment**



- (a) A legal structure, or portion thereof, which is occupied by a nonconforming use, and which is or hereafter becomes vacant and remains unoccupied for a continuous period of one year, except for dwellings and structures to house animals and fowl, shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located. Wherever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established and any future use shall be in conformance with the current provisions of the Weber County Land Use Code.
- (b) Any building or structure for which a valid building permit has been issued and actual construction was lawfully begun prior to the date when the structure became noncomplying, may be completed and used in accordance with the plans, specifications and permit on which said building permit was granted. The term "actual construction" is hereby defined to be the actual placing of construction materials in their permanent position, fastened in a permanent manner, actual work in excavating a basement or the demolition or removal of an existing structure begun preparatory to rebuilding; provided that in all cases actual construction work shall be diligently carried on until the completion of the building or structure involved.

(Ord. of 1956, § 28-7; Ord. No. 2008-7; Ord. No. 2010-22, § 1, 9-14-2010)

### **Sec 108-12-8 Change Of Use**

The nonconforming use of a legal structure may not be changed except to a conforming use. Where such a change is made to a conforming use, the use shall not thereafter be changed back to a nonconforming use.

(Ord. of 1956, § 28-8; Ord. No. 2008-7; Ord. No. 2010-22, § 1, 9-14-2010)

### **Sec 108-12-9 Expansion Of Nonconforming Use**

A nonconforming use may be extended to include the entire floor area of the existing legal structure in which it was conducted at the time the use became nonconforming; provided, however, that a land use permit is first obtained for such extension of use.

(Ord. of 1956, § 28-9; Ord. No. 2009-2; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015)

### **Sec 108-12-10 Legal Use Of Nonconforming Lots**

Development on a nonconforming lot is permitted. Development on a nonconforming lot is limited to only those permitted and conditional uses allowed on the smallest minimum lot size for the applicable zone. A new use on a nonconforming lot is prohibited if the proposed use requires a lot size larger than the smallest lot size permitted in the zone. A legally established use may continue on a nonconforming lot regardless of the lot size requirements of the use.

(Ord. of 1956, § 28-10; Ord. No. 2001-9; Ord. No. 2008-7; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015)

**Editor's note**—Ord. No. 2015-8, Exh. A, adopted May 5, 2015, retitled § 108-12-10 from "Legal use of parcels" to read as herein set out.

### **Sec 108-12-11 Subdivision Plat Requirements For Nonconforming Lots; Exemptions**

All lots and parcels shall be platted as part of a subdivision in conformance with the requirements of title 106 of this Land Use Code, unless otherwise exempted by state code or this Land Use Code. The platting of nonconforming lots, and the amendment to a platted subdivision containing nonconforming lots are governed as follows:

- (a) The following rules govern the treatment of an unplatted lot that does not conform to the current lot standards and may not have complied with the requirements of the subdivision code in effect at the time of the lot's creation:
- (1) If the existing lot can be defined as a lot of record, as defined in section 101-1-7, the lot shall be exempt from subdivision platting requirements.
  - (2) If the existing lot was created prior to July 1, 1992 and contained a lawfully permitted single family dwelling unit, then the lot shall be exempt from subdivision platting requirements, and is a nonconforming lot.
  - (3) If the existing lot was created prior to July 1, 1992, and does not qualify for the provisions of subsections (a)(1) and (a)(2), then the lot shall be platted in accordance with title 106 of this Land Use Code. Lot standards applicable for such subdivision lot may be reduced to meet the minimum standards of the zone in effect at the time of the lot's creation so long as it does not create any more lots than currently exist, and the current lot size is not materially reduced from its current acreage, except for minor adjustments necessary to facilitate a more accurate legal description. All such platted lots that do not conform to current zoning standards shall thereafter be considered nonconforming lots. A lot that does not meet the minimum standards of the zone in effect at the time of the lot's creation may be reconfigured upon platting to comply with such standards as long as the reconfiguration does not cause any other lot to become nonconforming or more nonconforming. A lot platted pursuant to this subsection may be further reduced in size to accommodate any right-of-way dedication as may be required by title 106 of this Land Use Code. No unplatted lot or parcel governed by this subsection shall be granted a land use permit prior to subdivision platting.
- (b) Any lot legally platted within the bounds of a subdivision that was created pursuant to the standards of the zoning code and subdivision code in effect at the time of its creation, but no longer complies due to subsequent changes to these codes, may be amended pursuant to the minimum standards in effect at the time of its creation. The amendment shall not create any new lots. An amended plat shall be required.

(Ord. of 1956, § 28-11; Ord. No. 2003-17; Ord. No. 2008-7; Ord. No. 2008-19; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015; Ord. No. 2018-2, Exhs. A, B, 2-6-2018)

**Editor's note**—Ord. No. 2015-8, Exh. A, adopted May 5, 2015, retitled § 108-12-11 from "Parcels in areas subjected to change in zoning" to read as herein set out.

### **Sec 108-12-12 Reconfiguring Nonconforming Lots**

Nonconforming lots may be reconfigured in a manner that complies with the standards of the zone in effect at the time of the lot's creation if the reconfiguration does not create any more lots than currently exist. The reconfiguration shall not cause any other lot to become nonconforming or more nonconforming. If the nonconforming lot is part of a platted subdivision an amended subdivision plat is required.

(Ord. of 1956, § 28-12; Ord. No. 2007-4; Ord. No. 2008-7; Ord. No. 2009-2; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015; Ord. No. 2018-2, Exhs. A, B, 2-6-2018)

**Editor's note**—Ord. No. 2018-2, Exhs. A, and B, adopted Feb. 6, 2018, retitled § 108-12-12 from "Enlarging nonconforming lots" to read as herein set out.

### **Sec 108-12-13 Setback Requirements For Nonconforming Lots**

A nonconforming lot that has a smaller width than is required for the zone in which it is located may be developed in a manner that does not exceed the following allowed reduction in side yard setbacks:

- (a) A nonconforming lot's actual width (v) may be divided by the current required frontage/width (w) in order to formulate a ratio or proportional relation (x). (Formula: "v" divided by "w" equals "x".)
- (b) The ratio may then be multiplied by the current zone's side yard setback requirement (y) in order to establish a reduced setback (z). (Formula: "x" multiplied by "y" equals "z".)
- (c) The reduced side yard setback is subject to the conditions listed below.
  - (1) Under no circumstances shall an interior lot be allowed to reduce the side-yard setback requirement below five feet on one side and eight feet on the other.
  - (2) Under no circumstances shall a corner lot be allowed to reduce the side-yard requirement below ten feet when the side yard fronts on a street.

(Ord. of 1956, § 28-13; Ord. No. 2009-2; Ord. No. 2010-22, § 1, 9-14-2010; Ord. No. 2015-8, Exh. A, 5-5-2015)

**Editor's note**—Ord. No. 2015-8 Exh. A, adopted May 5, 2015, retitled § 108-12-13 from "Small lots/parcels created prior to zoning" to read as herein set out.

#### **Sec 108-12-14 Parcels Previously Combined For Tax Purposes**

- (a) Parcels that have been combined by the county recorder's office for tax purposes shall be allowed to separate one or more of the combined parcels on an approved and recorded form if:
  - (1) The parcels that are being separated were originally created prior to July 1, 1992;
  - (2) The properties as configured prior to the combination met area and frontage/width requirements for the zone in which they were created, or were considered nonconforming lots;
  - (3) The combination was done by the current owner or same owner acting as trustee, and was done by a quit claim, combination form, or other instrument, which states the consolidation of parcels is for tax purposes;
  - (4) No new lots are being created; and
  - (5) The separation of parcels results in a configuration consistent with the original parcels and conforms to the ordinance that was in place prior to the recording of the combination form, and the resulting lots conform with the provisions of section 108-12-11.
- (b) The separation of combined parcels authorized under this section does not authorize a change in the configuration of an approved and recorded subdivision or lots within such subdivision. Any change to the configuration of a subdivision must comply with title 106 of the Land Use Code, and any applicable state law.

(Ord. No. 2015-8, Exh. A, 5-5-2015)

#### **Sec 108-12-15 Effect Of Public Right-Of-Way Expansion**

- (a) Any structure that legally existed with conforming or nonconforming setback prior to the expansion of a public right-of-way where the expansion of such public right-of-way makes the structure noncomplying or more noncomplying to the setback requirements of this Land Use Code shall be deemed a legal, noncomplying structure.

- (b) Any lot that legally existed in a conforming or nonconforming status prior to the expansion of a public right-of-way where the expansion of such public right-of-way makes the lot nonconforming or more nonconforming to the standards of this Land Use Code shall be deemed a legal, nonconforming lot.
- (c) This section does not excuse or exempt any past or future action that creates or modifies a lot in a manner that is in violation of applicable laws.

(Ord. No. 2015-8, Exh. A, 5-5-2015)