

# MEMORANDUM



**TO:** MEMBERS OF THE PLANNING COMMISSION  
**FROM:** JAMES HILL, PLANNER  
**THROUGH:** BARBARA MCBETH, AICP, CITY PLANNER  
**SUBJECT:** INTRO TO TA18.303 – NONCONFORMITIES  
**DATE:** SEPTEMBER 27, 2023

---

## Background

At the July 12 Planning Commission meeting, a proposed rezoning was brought before the Planning Commission at 41700 Eleven Mile Road to rezone a current industrial zoned property to residential so that the property owner can make renovations to the home and detached garage onsite. The rezoning was deemed to be a bit problematic since it did not align with the Master Plan for Land Use and could place a burden on the surrounding industrial-zoned properties. These same concerns were brought up both at the Planning Commission meeting on July 12 and the Master Plan and Zoning Committee meeting held on June 14.

At the Planning Commission meeting, the rezoning was postponed as recommended by staff and agreed upon by the applicant, so that staff could work with the City Attorney on coming up with a potential text amendment that would allow existing nonconforming uses to expand in some cases. Working with the City Attorney's office, the Planning team reviewed other Michigan communities and the language that they incorporated into their Zoning Ordinances to allow for the expansion of nonconforming uses. Staff concluded that some changes could be made to allow for the expansion of nonconforming uses as a Special Land Use permitted by Planning Commission, including factors that the Planning Commission should consider when making such a decision.

## Content

To address the issue with nonconformities, the text amendment amends Section 7.1 "Nonconformities" by modifying the intent section to establish that in some circumstances, existing nonconforming uses should be permitted to expand with proper authorization and approval. The factors that are included in the text amendment for Planning Commission to consider when granting a Special Land Use permit include meeting current building and site standards of the existing zoning district, limiting the amount that the use can expand, and preventing undue hardship on nearby property owners by considering the effect on traffic, noise and vibration levels, and the potential for future development.

The text amendment addressing nonconformities is meant to help longstanding property and business owners who may want to make repairs to restore, reconstruct, or extend their nonconforming use. By providing greater flexibility but maintaining discretion via the Special Land Use permit, the text amendment can provide relief to individuals while ensuring that the uses remain consistent with goals of the Master Plan for Land Use.

### **Other Edits - Fixes to “Net Site Area” Inconsistencies**

Text amendment 18.301, which was brought before the Planning Commission on July 12, consisted of many edits to the Zoning Ordinance to fix inconsistencies, remove an unneeded zoning district, and provide updates to certain standards relating to daycares, microbreweries, carports, and other items. During the public hearing process, the Planning Commission received communication from a resident regarding another inconsistency found within the Zoning Ordinance that should be fixed. This had to do with the term Net Site Area versus Net Site Acre. While the terms are used interchangeably, only Net Site Area is defined under Article 2.2 Definitions, and thus the resident thought that should be the only term used throughout the Ordinance for consistency.

Staff is taking a further look at the request made by the resident and will have proposed changes prepared in the document for the public hearing.

Planning Commission is asked to set the public hearing for Text Amendment 18.303, where the public will be able to provide comment and voice any concerns, in addition to Planning Commission having another opportunity to weigh in on the language of the Text Amendment.

**DRAFT TEXT AMENDMENT 18.303 NONCONFORMITIES**

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI  
ORDINANCE NO. 18.303

**AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 14-271, THE CITY OF NOVI ZONING ORDINANCE, AS AMENDED, AT THE FOLLOWING LOCATIONS: ARTICLE 7 ADMINISTRATION, APPEALS, AND ENFORCEMENT IN SECTION 7.1 "NONCONFORMITIES"**

**THE CITY OF NOVI ORDAINS:**

**Part I. That Article 7, Administration, Appeals and Enforcement, of the City of Novi Zoning Ordinance is hereby amended in the following section:**

Section 7.1 NONCONFORMITIES

1. Intent. It is the intent of this Ordinance to permit legal nonconforming lots, structures or uses to continue until they are removed but not to encourage their survival, in most situations.

It is recognized that there exists within the districts established by this Ordinance and subsequent amendments, lots, structures and uses of land and structures ~~which that~~ were lawful before this Ordinance was passed or amended ~~which but~~ would be prohibited, regulated or restricted under the terms of this Ordinance or future amendments.

Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance 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 district, unless approved as provided in this Ordinance.

A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by addition of other uses of a nature which would not be permitted generally in the district involved, unless approved as provided in this Ordinance.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

The general intent of this Section notwithstanding, it is recognized that some preexisting nonconforming uses, or uses of structures of land, while not in conformance with the requirements of the zoning district in which located, are not detrimental to the surrounding uses, particularly where the activity or structure has been in use for many years and long accepted. An extension or expansion of such uses, or uses of structures and land, may, in some cases, not be detrimental to the surrounding uses. Thus, the Planning Commission has the discretion over whether to allow such extensions or expansions through a special land use approval, as set forth herein.

2. [unchanged]
3. Nonconforming Uses of Land. Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:
  - A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance, unless approved as a special land use by Planning Commission, as provided herein;
  - B.-D. [unchanged]
4. [unchanged]
5. Nonconforming Uses of Structures and Land. If a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be permitted in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - A. No existing structure devoted to a use not permitted by this Ordinance in the district in which is it located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located, unless approved as a special land use by Planning Commission, as provided herein.
  - B.-F. [unchanged]
6. [unchanged]
7. Repairs and Maintenance. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50) percent of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased, unless approved as a special land use by Planning Commission, as provided herein.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official

8.-10. [unchanged]

11. Special Land Use Approval for Nonconformities. As stated in the intent of this section of this Ordinance, there are appropriate circumstances where it may be reasonable to authorize restoration, reconstruction, or extension of nonconforming uses, or uses of structures and land, as legal conditional uses after proper notification to surrounding property owners

as described in Section 6.2 of this Ordinance for special land uses. Such authorizations are subject to special land use approval by the Planning Commission, which shall consider the following factors in exercising its discretion:

i. Any alteration or expansion of the use must meet the height, setback, parking, and other applicable requirements for the zoning district where the property is located, unless the Zoning Board of Appeals grants the necessary variances.

ii. Additional traffic anticipated by an expansion or alteration shall not pose an undue burden on the surrounding neighborhood and uses.

iii. The expansion or alteration shall not go beyond the limits of the parcel of property upon which such use existed at the time it became lawfully nonconforming.

iv. The lighting, noise, vibration, odor and other possible impacts that may be generated shall not be increased beyond the levels that existed prior to the expansion and shall be in compliance with the performance standards of Section 5.14.

v. Total added floor space shall not exceed fifty percent of the existing total floor area as measured in gross square feet. This percentage shall be based on the floor area originally in use when the use became lawfully nonconforming.

vi. The expansion or alteration shall not hinder the future development of surrounding properties in accordance with the Master Plan.

## **PART II.**

**Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

## **PART III.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

## **PART IV.**

**Repealer.** All other Ordinance or parts of Ordinance in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

## **PART V.**

**Effective Date: Publication.** Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M.

to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
ROBERT J. GATT, MAYOR

\_\_\_\_\_  
CORTNEY HANSON, CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

DRAFT

**PLANNING COMMISSION MINUTES EXCERPT FROM JULY 12**



- wetland frontage in order to preserve the wetland.
- f. Landscape waiver for insufficient landscaping of interior parking lot areas and trees because the site is otherwise heavily landscaped, and the deficiency is not apparent.
  - g. Landscape waiver for most of the daycare building's foundation landscaping being located away from the building because the alternate locations will be attractive, and the applicant has included landscaping along most of the building frontage facing Ten Mile Road.
  - h. Section 9 Façade Waiver for an overage of Cement Fiber Siding on all elevations of both buildings (0% maximum allowed; ranges from 4% to 10% on the daycare building and 5%-22% on the swim school building) because the use of the materials will not be detrimental to the aesthetic value of the buildings, the use of matching materials & colors on both buildings enhances the overall project, and the overall design is consistent with the intent and purpose of the Façade Ordinance, which is hereby granted.
  - i. The findings of compliance with Ordinance standards in the staff and consultant review letters and the conditions and the items listed in those letters being addressed on the Final Site Plan.

This motion is made because the plan is otherwise in compliance with Article 3, Article 4, and Article 5 of the Zoning Ordinance and all other applicable provisions of the Ordinance.

**ROLL CALL VOTE ON MOTION TO APPROVE THE PRELIMINARY SITE PLAN FOR JSP22-53 PRIMROSE DAYCARE AND SWIM SCHOOL MOVED BY MEMBER AVDOULOS AND SECONDED BY MEMBER RONEY.**

*Motion carried 6-0.*

Motion to approve the Primrose Daycare and Swim School Woodland Permit made by Member Avdoulos and seconded by Member Roney.

**In the matter of Primrose Daycare and Swim School, JSP22-53, motion to approve the Woodland Permit based on and subject to the findings of compliance with Ordinance standards in the staff and consultant review letters, and the conditions and items listed in those letters being addressed on the Final Site Plan. This motion is made because the plan is otherwise in compliance with Chapter 37 of the Code of Ordinances and all other applicable provisions of the Ordinance.**

**ROLL CALL VOTE ON MOTION TO APPROVE THE WOODLAND PERMIT FOR JSP22-53 PRIMROSE DAYCARE AND SWIM SCHOOL MOVED BY MEMBER AVDOULOS AND SECONDED BY MEMBER RONEY.**

*Motion carried 6-0.*

Motion to approve the Primrose Daycare and Swim School Stormwater Management Plan made by Member Avdoulos and seconded by Member Roney.

**In the matter of Primrose Daycare and Swim School, JSP22-53, motion to approve the Stormwater Management Plan based on and subject to the findings of compliance with Ordinance standards in the staff and consultant review letters, and the conditions and items listed in those letters being addressed on the Final Site Plan. This motion is made because the plan is otherwise in compliance with Chapter 11 of the Code of Ordinances and all other applicable provisions of the Ordinance.**

**ROLL CALL VOTE ON MOTION TO APPROVE THE STORMWATER MANAGEMENT PLAN FOR JSP22-53 PRIMROSE DAYCARE AND SWIM SCHOOL MOVED BY MEMBER AVDOULOS AND SECONDED BY MEMBER RONEY.**

*Motion carried 6-0.*

**2. JZ23-16 GABRIEL REZONING WITH MAP AMENDMENT 18.742**

Public hearing at the request of Paul Gabriel for Planning Commission's recommendation to City Council for a Zoning map amendment from Light Industrial (I-1) to Residential Acreage (RA). The subject site is approximately 3.98 acres and is located at 41700 Eleven Mile Road, which is on the north side of Eleven Mile Road and west of Meadowbrook Road (Section 14). The applicant has indicated that the proposed rezoning is being requested to allow for the existing home and pole

barn onsite to be remodeled and expanded.

Planner James Hill relayed the requested Zoning Map amendment for a 3.98-acre parcel at 41700 Eleven Mile Road, is located on the north side of Eleven Mile Road, west of Meadowbrook Road, in section 14 of the City. The applicant is seeking to rezone the parcel from I-1 Light Industrial to RA Residential Acreage, so that they may remodel or expand the current residence and pole barn on the property. Currently, the residence is a legal nonconforming use and is allowed to remain but is not permitted to expand its footprint. The site has been zoned with its current I-1 Light Industrial zoning since November 1985, and at the time the property owners, who are not the same as the current property owners, understood that the residential function would become non-conforming.

As stated, the current zoning of the site is I-1 Light Industrial and the surrounding zoning has the same Light Industrial zoning. The uses of the surrounding properties primarily include office uses as permitted by the current zoning. As stated in the review letter, a rezoning to RA Residential Acreage would put stricter development standards on the surrounding I-1 Light Industrial zoned properties due to their adjacency to residential zoned property.

The Future Land Use map indicates that this parcel has a Future Land Use as Industrial Research Development and Technology, in addition to all the surrounding properties having the same Future Land Use, which is consistent with the current I-1 Zoning District. The proposal to rezone this parcel to RA Residential Acreage, therefore, does not align with the intent of the 2016 Master Plan for Land Use.

Natural features on the site include a considerable amount of wetland including the waterway that bifurcates the parcel in addition to the wetlands in the rear of the site. The proposed renovations and expansion of the house or barn are not expected to have any effect on the natural features.

On June 14 of this year, the rezoning was brought before the Master Plan and Zoning Committee for informal review due to the fact that it does not align with the intent of the 2016 Master Plan for Land Use. Committee members in attendance agreed that it made sense for the property owner to expand or renovate the existing residence but also showed concern for the impact a rezoning would have on neighboring properties.

After receiving feedback and discussing with Planning staff, the applicant is requesting to postpone the public hearing so as to explore other options that would allow them to make those changes to the home. The postponement is supported by Staff.

Staff suggested an alternative option to work with the applicant on drafting a text amendment that would allow some expansion of the legal nonconforming use to take place. A text amendment of this sort could also seek to alleviate some restrictions on other select property owners in the City that have longstanding uses that have become nonconforming but would like to expand to some extent.

The Planning Commission is asked tonight to postpone the consideration to a later date. The applicant is here tonight and is available to answer any questions the Planning Commission may have. Staff is also available to answer any questions regarding the proposed rezoning.

Paul Gabriel, 24010 Meadowbrook Road, relayed he is in support of postponing this matter as alternative options for the rezoning are explored.

Chair Pehrson opened the Public Hearing and invited members of the audience who wished to participate to approach the podium. Seeing no one, Chair Pehrson asked Member Lynch to read the correspondence.

Member Lynch relayed that an objection was received from Joseph Kosik, JFK Investment Company, representing four different properties at 41551 Eleven Mile Road, 41541 Eleven Mile Road, 41650 Gardenbrook and 41700 Gardenbrook. The objection has to do with this being a lone parcel in a business park and he doesn't see a need for residential.

Chair Pehrson noted the public hearing would remain open due to the postponement and turned the matter over to the Planning Commission for consideration.

Motion to postpone JZ23-16 Gabriel Rezoning made by Member Lynch and seconded by Member Roney.

**In the matter of JZ23-16 Gabriel Rezoning, with Zoning Map Amendment 18.742, motion to postpone consideration to a later date in order for the applicant to have more time to explore alternative options available to them.**

**ROLL CALL VOTE ON MOTION TO POSTPONE JZ23-16 GABRIEL REZONING MOVED BY MEMBER LYNCH AND SECONDED BY MEMBER RONEY.**

***Motion carried 6-0.***

**3. TEXT AMENDMENT 18.301**

Public hearing of the staff-initiated request for Planning Commission's recommendation to the City Council regarding Text Amendment 18.301 to remove the EXPO Zoning District, modify use standards for microbreweries and brewpubs, update standards related to daycares, update standards related to site lighting, fix inconsistencies, and remove or modify some conflicting sections of the Zoning Ordinance.

Planner Hill relayed the text amendment contains several changes including both the addition and removal of language within the Zoning Ordinance. Staff introduced the text amendment to Planning Commission on May 24, and since then has made some changes such as the edited use matrix provided in the packet as attachment A, which is included at the beginning of the Zoning Ordinance for users to have a quick reference for if a certain use is allowed in a specific Zoning District. We've made edits to ensure that the use matrix accurately reflects the uses laid out in the ordinance.

In addition, a provision was added for carports that will allow for both regulation and to permit them more easily when needed. Major changes that remained include removing the EXPO zoning district, modifying microbreweries and brewpubs use standards to match restaurant uses more closely, updating standards related to daycares due to a change in state law, updating some standards related to site lighting, and the removal or modification of some conflicting sections of the Zoning Ordinance.

Staff is available to answer any questions you may have regarding the Text Amendment or its content and changes to the Zoning Ordinance.

Chair Pehrson opened the Public Hearing and invited members of the audience who wished to participate to approach the podium. Seeing no one, Chair Pehrson asked Member Lynch to read the correspondence.

Member Lynch relayed that correspondence was received from Andrew Mutch requesting as part of the Text Amendment 18.301 clean-up, that the Planning Commission consider some additional sections for inclusion. Mr. Mutch referenced inconsistent terms in section 3.29 Residential Unit Development, 4.70 Low-Rise Multiple-Family Residential Uses in the PSLR District and 4.71 Live/Work Units.

Chair Pehrson closed the public hearing and turned the matter over to the Planning Commission for consideration.

Member Lynch inquired as to if there was any reason Mr. Mutch's comments wouldn't be considered as the comments lead him to believe there is confusion regarding dwelling units per acre, as to whether it is net acre excluding the wetlands as opposed to net site acreage.

City Planner McBeth relayed that the communication from Mr. Mutch was just received the afternoon of this evening's Planning Commission meeting and believes that it is meant to clarify in case there is some confusion in reading the definitions versus the language. We do appreciate the comments but cannot recommend that the Planning Commission include any changes at this time as they were not advertised

**EMAIL COMMUNICATION REGARDING ADDITIONAL CLEANUP LANGUAGE**

July 12, 2023

Chairman Pehrson and members of the Planning Commission,

As part of the consideration of Text Amendment 18.301 - Zoning Ordinance Cleanup, I would ask that the Commission review the following sections of the ordinance for inclusion in this clean-up amendment. Throughout the Zoning Ordinance, density is calculated based on the “**net site area**”, a term that is defined in **Article 2.0 - Definitions**. However, in three sections of the ordinance, an inconsistent term is used for calculating density, none of which is defined in the ordinance. Those include:

3.29 RUD Residential Unit Development:

- 3.29.3.A Density by Zoning District
  - “Dwelling Units Per **Net Site Acre**”
  - “Density shall be measured based upon **net site acreage**”

4.70 Low-Rise Multiple-Family Residential Uses in the PSLR District

- “In the PSLR district, low-rise multiple-family residential uses are permitted as a special land use up to a maximum of six and one-half (6.5) dwelling units per **net acre**”

4.71 Live/Work Units

- 5. “Maximum six and one-half (6.5) dwelling units per **net acre** excluding existing road rights-of way”

While staff and applicants may have used these terms interchangeably, for consistency and clarity and to avoid any potential legal challenges, the term “**net site area**” should be the only term used as it’s the only term that is defined in the ordinance.

Thank you,

Andrew Mutch  
24740 Taft Road  
Novi, MI 48375