



Bureau of Planning and Sustainability

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MEMO

DATE: March 16, 2015

TO: Planning and Sustainability Commission

FROM: Deborah Stein, Principal Planner

CC: Susan Anderson, Director; Joe Zehnder, Chief Planner; Eric Engstrom, Principal Planner

SUBJECT: **Nonconforming Residential Densities and Uses**

Introduction

On January 27, 2015, one of the topics you focused on was **Nonconforming Commercial Uses**. You will be revisiting this discussion on March 24, 2015 with the help of a revised “decision-tree” to guide you through situations under consideration. These included situations in which a current use (say, retail or office) occurs on a site that is designated or zoned for another purpose (say, residential use).

This memo addresses the issues of **nonconforming residential densities** and **nonconforming residential uses**, which have different implications for property owners than nonconforming commercial uses.

The purpose of this memo is to inform your recommendations about:

- Residential down-designations (e.g., as proposed in Powellhurst-Gilbert), which may result in nonconforming residential densities.
- Residential up-designations (e.g., as proposed in Sunnyside and Buckman), which may remedy existing nonconforming residential densities.
- Application of employment designations on properties with residences (e.g., as proposed in limited situations along 82nd Avenue and in a few other locations), which may result in nonconforming residential uses.

Nonconforming residential densities already occur in numerous locations in the city. For example, Buckman is a neighborhood where there are a number of apartment buildings scattered among single-dwelling structures, duplexes and triplexes. A decision was made in the 1980s to apply R5 zoning broadly



City of Portland, Oregon | Bureau of Planning and Sustainability | www.portlandoregon.gov/bps
1900 SW 4th Avenue, Suite 7100, Portland, OR 97201 | phone: 503-823-7700 | fax: 503-823-7800 | tty: 503-823-6868

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to this neighborhood in order to preserve and stabilize the remaining single-dwelling structures and residential character of the historic neighborhood.

There are also situations in which you may recommend Comprehensive Plan map changes and/or zoning map changes that would create nonconforming residential densities. For example, consider an isolated apartment building in the Powellhurst-Gilbert neighborhood that has 5 units on a 5,000 sq ft lot (i.e., it's built at R1 density), and is in an area proposed to be down-designated/downzoned to R5 because of the area's general lack of services and infrastructure.

What are the implications of having nonconforming density?

Take the Powellhurst-Gilbert situation described above: a 5-unit apartment in an R5 zone. Because the site exceeds maximum allowable density in this zone, it has "nonconforming residential density," which means:

- Additional dwelling units could not be added.
- The site can enlarge existing units as long as the overall number of units stays the same or decreases.
- Any new development will be subject to the standards of the base zone (i.e., R5).

For damage/destruction/vacancy of a development that exceeds maximum density, the following apply:

- The rights to the nonconforming residential density continue even if the building, or some of the units, remain unoccupied for any length of time.
- If the structure(s) is damaged by causes beyond the control of the owner, the density rights are maintained if the structure is rebuilt within 5 years.
- If the damage exceeds 75% of the assessed value, the density rights are maintained (see previous bullet), but the new structure will be subject to the less restrictive of the development standards of either the base zone (in this case R5) or the R2 zone (excluding the density standards). In this case, the structure might need to be 5-feet lower, and the building coverage would need to be reduced from 60% to 50%.

If units in a nonconforming density situation are undocumented (for example, no records of building permits are on file due to the age of the structures or other reasons), these units could not be rebuilt if destroyed by a cause beyond the control of the owner, such as fire or earthquake. Additionally, if an existing apartment building is beyond its lifespan, an owner cannot replace the building with the same number of units. In cases where substantial renovation isn't economically feasible because of the condition of the building, the nonconforming status may result in disinvestment. This can be particularly detrimental to a neighborhood where disinvestment is cumulative because of a concentration of nonconforming residential densities.

A downzoning from R1 to R5 may also cause other elements such as building coverage, height, and parking areas that were in compliance under the old zone to be out of compliance in the new zone. Alterations to this type of nonconforming development would either need to bring the development closer to development standards or request to adjust the standard through a land use review.



Nonconforming residential uses

It is also important to distinguish between nonconforming residential *uses* and nonconforming residential *densities* because the regulations that apply due to accidental destruction differ between the two situations. The existence of a home in an industrial zone is one of *use* because household living is prohibited in industrial zones. Proposed changes to the employment zone (through Task 5 of Comprehensive Plan implementation) would also preclude the ability to develop housing through a conditional use in an employment zone. In mapping new areas of employment, staff has avoided applying the employment Comprehensive Plan designation on properties with residential development allowed through a conditional use process. Staff has also been careful to limit the number of nonconforming residential use situations that would be created through map changes, because of the negative consequences for property owners and residents.

