

MEMORANDUM

To: Polson City – County Planning Board

From: Dave DeGrandpre, AICP, Land Solutions

Copy: Polson Development Code Update Committee
Joyce Weaver and Thomas Fleming, Polson Building and Planning Department
LaDana Hintz, Lake County Planning Department
Mark Shrives, Polson City Manager
Rich Gebhardt, Polson City Attorney
Joel Nelson, Land Solutions

Date: July 14, 2014

RE: Polson Development Code updates regarding nonconformities (uses, buildings and lots) and lot coverage requirements

The next Planning Board workshop to discuss revisions to the Polson Development Code (PDC) will take place on *Monday, July 21 at 6:00 p.m. in the large conference room on the 3rd floor of the Lake County Courthouse*. Please take the elevator accessed from the law enforcement entrance on the west side of the courthouse building.

Two of the subjects the PDC Update Committee thought would be important for the City-County Planning Board to consider are text regarding nonconformities and also lot coverage. Below is the proposed text and an analysis of each subject for the Planning Board’s review. Definitions have been included as footnotes for your convenience.

NONCONFORMITIES (page 75 of the PDC Draft for Planning Board and Public Review, June 10, 2014)

FF. Nonconforming Uses, Buildings and Lots. A nonconforming use, building or lot complied with the regulations that were in effect at the time of its development, but would not comply with these regulations, if submitted for approval after their effective date. Nonconforming uses, buildings and lots may continue as provided here.

1. Any nonconforming use abandoned for more than 18 months shall be terminated. Abandonment shall not be measured by the owner’s intent, but solely by the fact that use ceases for a period of 18 or more months.

2. There shall be no limit on the maintenance and repairs of nonconforming uses or buildings, provided that:
 - a. No such activity increases the degree of nonconformity (see definition for nonconforming)¹;
 - b. No permit for such activity shall be issued until existing on-site sewage disposal systems are either, i. abandoned by connection to the municipal sewerage system or, ii. inspected and brought into compliance with current design standards, if necessary and;
 - c. All such activity complies with the city's fire and building codes when the nonconforming use or building is located within the city limits.
3. Requests for minor changes of occupancy² in nonconforming buildings or lots shall be processed as applications for special use permits, with compliance with this sub-paragraph added to the determinations made on the special use permit criteria. The use of nonconforming buildings or lots may be changed only where:
 - a. The new use is no more intense (with intensity measured by anticipated traffic and noise generation, the number of parking spaces required, the number and size of signs proposed, and similar factors) than the existing use;
 - b. The degree of nonconformity is not increased;
 - c. Existing on-site sewage disposal systems are either, i. abandoned by connection to the municipal sewerage system or, ii. inspected and brought into compliance with current design standards, if necessary and;
 - d. The proposed use complies with the city's fire and building codes when the nonconformity occurs within the city limits. No permit is required for the continuing residential use of a nonconforming building or lot where there is simply a change in the occupants but not a change in land use.
4. Nonconforming buildings that have been destroyed by catastrophic event³ may be replaced upon approval of a zoning conformance permit, with compliance with this sub-paragraph added to the determinations made by the administrator in deciding whether or not to approve the application.

¹ **Nonconforming.** A nonconforming use or building complied with the regulations that existed at the time of its development, but would not comply with these regulations, if submitted for approval after their effective date. The degree of nonconformity is the measured extent to which an existing building or use fails to comply with the standards of this ordinance. For example, the degree of nonconformity of a parking lot that has four spaces, but serves a use requiring nine, is five parking spaces. No change in the nonconforming building could be permitted that would reduce the number of parking spaces, because that would increase the degree of nonconformity.

² **Occupancy.** The use of a building or lot. A minor change in occupancy is a change to any occupancy that has identical parking requirements, similar traffic generation potential, creates no additional signage, and has, as determined by the administrator, similar or lesser impacts on neighboring land uses.

³ **Catastrophic Event.** A natural or manmade incident which results in extraordinary levels of damage or disruption. This includes, but is not limited to, fire, explosion, flood, tornado, riot, act of the public enemy or accident of any kind which destroys 50% or more of a structure.

Other requests for replacement of nonconforming buildings shall be processed as applications for variance.

5. Nonconforming buildings may be replaced only where:
 - a. The degree of nonconformity is not increased;
 - b. The degree of nonconformity is decreased to the fullest extent possible;
 - c. Existing on-site sewage disposal systems are either, i. abandoned by connection to the municipal sewerage system or, ii. inspected and brought into compliance with current design standards, if necessary and;
 - d. All construction complies with the city's fire and building codes when the nonconformity occurs within the city limits.
6. Nonconforming buildings may be altered, including enlargements and expansions, when the proposed alteration complies with all applicable lot and building standards. For example, a building with a nonconforming front setback may be expanded to the rear so long as the rear expansion complies with the applicable rear setback and other lot building standards.
7. Nonconforming lots may be developed with a permitted or special permit land use in the district in which they are located following the procedures in III.J., and III.K., above. Development on nonconforming lots must comply with the building standards of the zoning district and all performance standards unless a variance is granted by the BOA following the procedures in III.Q., above. Nonconforming lots may not be adjusted in size or shape to increase the degree of nonconformity.
8. Temporary nonconforming uses or structures shall not be made permanent without full compliance with these regulations.

Discussion of the Proposed Text

1. Only paragraph numbers 6, 7 and 8 are newly proposed text. The rest of this section is almost identical to the existing PDC, with the exception of a few minor clarifications.
2. State law regarding county zoning addresses this subject (76-2-208, MCA, Continuation of nonconforming uses), by saying, "Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution." The proposed text conforms with this section of state law. State municipal zoning law does not address nonconformities.
3. Some people view nonconformities as adding character to a community or being part of the community's fabric. Other people value order and consistency and take the approach that nonconformities should be removed over time through enforcement of tighter standards. In my opinion the existing and proposed text on nonconformities is fairly permissive, meaning it allows

nonconformities to continue unless the use or building is abandoned for 18 months. This means that some nonconforming uses are likely to continue until they are abandoned.

LOT COVERAGE (in the Hillside Development section on Page 80 PDC Draft for Planning Board and Public Review, June 10, 2014)

Lot coverage is the percent of a lot or parcel that is covered by rooftops (including eaves and soffits), paving, and other surfaces that prevent direct infiltration of precipitation or runoff into the soil. Surfaces like gravel driveways and permeable pavers may be assessed for lot coverage based on relative imperviousness factor guidance provided by MDEQ or other credible sources. Slotted decks are not considered lot coverage where the ground under the deck is pervious. (Note: The underlined text is new.)

Each zoning district includes a maximum lot coverage allowance for mild terrain (0-8% slope). The table below shows a comparison of the existing and proposed lot coverage allowances on 0-8% slope. In general, the changes are not terribly substantial, but do allow a bit more lot coverage in certain districts.

	PLZD	RRZD	LRZD	MRZD	OTZD	XRZD	TZD
Existing	Outside WPOD* 20% Inside WPOD 10%	Outside WPOD 20% Inside WPOD 10%	35%	55%	New district	Single family lot 10,000 sf or greater – 35%, 10,000 sf or less – 55% townhouse – 65%	55% and up to 75% for block conversions
Proposed	20%, 40% for cluster development	25%, 45% for cluster development	40%, 45% for cluster development	55%	55%	Single family or 2-family lot 10,000 square feet or greater – 35%, Single family lot <10,000 square feet – 55% Multi-family – 65%*	65% and up to 75% for block conversions
	RZD	HCZD	CBZD	CIZD	RVZD	HMZD	
Existing	55% , 75% if public lakeshore access included in a development	80%	100%	80%	60%	New district	
Proposed	55%, 75% if view corridors are preserved	80%	100%	80%	60%	65%	

*WPOD = Wellhead protection overlay district, an area intended to protect municipal water wells from contamination.

The existing and proposed Hillside Development standards (Page 80 of the draft PDC) are proposed to change as shown below. Beneath the table is all new language (underlined text).

Existing Text	Slope*	Maximum Lot Coverage
	0-8%	Determined by the character of the zoning district
	8-15%	With slight to moderate erosion hazard ⁴ – 20% Severe erosion hazard – 15%
	15-25%	5%
	25% plus	1%
Proposed Text	Slope*	Maximum Lot Coverage
	0-8%	Determined by the character of the zoning district – see the specific zoning districts in Chapter II
	9-35%	With slight to moderate erosion hazard – 20% Severe erosion hazard – 15%
	36% plus	1% by right, up to 10% maximum with runoff management plan and engineer’s certification (see b. below)

*“Slope” shall be the average natural slope of the entire lot.

- b. Exception. On lots with an average slope 9-35% where a suitable building site exists⁵, the maximum allowed lot coverage percentage is the maximum allowed for slopes of 0-8%, if the following conditions are met:
- i. A runoff management plan meeting the requirements of IV. B (above) is submitted; and
 - ii. An engineer or architect licensed in the State of Montana certifies the development adequately addresses all safety, slope stability and erosion control concerns based on soil types and geologic conditions prior to lot disturbance.

Discussion of the Proposed Changes

The proposed lot coverages are more permissive than the existing text by allowing more development on steeper slopes, so long as certain protective steps are taken. The idea is to allow development on steeper terrain when runoff management plans are developed, approved and implemented. Runoff management plans are intended to address erosion and protect water quality. Under the proposed text, runoff management plans are required when 5,000 square feet of impervious surface is proposed instead of the existing 20,000 square feet of impervious surface, which is a more stringent standard.

The advantage of this approach is to encourage development in the Polson area where services can be effectively provided, as opposed to having tighter restrictions in the Polson area that force development into rural areas by requiring larger lots and less lot coverage. It also modernizes the PDC by acknowledging that steeper slopes can be built on using today’s engineering, erosion control and water quality protection techniques. The disadvantage of this approach is runoff plans must be implemented and enforced over time, which can be a challenge.

⁴ Soil erosion hazard ratings may be found at <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>

⁵ For the purposes of this section, a suitable building site is a reasonably shaped area at least 2,500 square feet in size on a ≤ 35% slope, that is accessible by a 12-foot wide driveway with a maximum grade of 12%, is located more than 4 feet above seasonal high groundwater and outside of required building setbacks, and that has a maximum 5% slope for the initial 20 feet from the primary access road when accessing a collector or arterial street.