

Memorandum

To: Planning and Zoning Commission

From: Katherine Daniel, AICP, CFM and Deputy P&Z Director

Date: November 5, 2018

Re: Explanatory Statement for Text Amendment #762, Section 6-2: Non-Conforming Buildings and Structures

History

Section 6-2 contains two areas where the regulation is either inconsistent (Sections 6-2.1 vs. Section 6-2.2) or is inaccurate (Section 6-2.1.4).

An inconsistency or a contradiction in Section 6: Non-Conforming Uses, Buildings & Lots has resulted in variance requests that may have been unnecessary. The contradiction arises when comparing the first sentence in **Section 6-2.1 Expansion, Extension or Alteration** and the first sentence in **Section 6-2.2 Coverage**. Section 6-2.1 states that a “...*non-conforming structure may not be expanded, extended, relocated, or altered if such expansion, extension, relocation or alteration would increase the degree of non-conformity.*” The first sentence of Section 6-2.2 does not contain the language underlined above, but merely states that “[i]f an existing building or structure does not conform to the building (or total) coverage requirements...it shall not be expanded or extended.”

Planning and Zoning Department staff take taken the most conservative approach to the interpretation of the regulations as instructed in Section 2: Interpretation. In the past when an applicant proposed to alter a structure that is over coverage in such as was that it does not increase the coverage, the applicant was required to seek a variance based on the language of Section 6-2.2. For example, when an applicant proposes to add a dormer to a dwelling that is over the allowable coverage, but the dormer is within the existing footprint of the dwelling, in the past, the applicant would have needed a variance.

In an effort to resolve this contradiction, P&Z department staff sought clarification and advice on these two portions of Section 6 with Attorney Peter Gelderman whose email to K. Daniel is attached. Attorney Gelderman recognized the conflict between Sections 6-2.1 and Section 6-2.2 and recognized that there is a contradiction in these two sections. He states his opinion in the attached email that the language in Section 6-2.2 could be eliminated leaving the clearer language in Section 6-2.1.

While reviewing staff's concern regarding the inconsistency discussed above, Attorney Gelderman noted that Section 6-2.1.4 is inaccurate. This section states that a structure or building permitted by variance remains "non-conforming". This is not accurate. As Attorney Gelderman points out the granting of a variance makes that structure or building legal. It is, therefore, not non-conforming, as the variance granted bestows conformance.

Proposed Revision

This text amendment proposes two changes to Section 6-2.

The first change would clarify the need for a variance when a non-conforming building or structure is proposed to be expanded, extended, relocated or altered if such change would increase the degree of non-conformity by eliminating the language in Section 6-2.2 that does not contain the language about increasing the non-conformity.

The second change would modify the single sentence that forms Section 6-2.1.4, because a building or structure that receives a variance is no longer non-conforming due to the granting of the variance.