

BOARD OF ALDERMEN

ITEM NO. B(4)

AGENDA ITEM ABSTRACT

MEETING DATE: May 25, 2004

TITLE: Public Hearing to consider a LUO Text Amendment related to the issuance of permits where nonconforming situations may be allowed to remain

DEPARTMENT: PLANNING	PUBLIC HEARING: YES <u>X</u> NO <u> </u>
ATTACHMENTS: A. Draft Ordinance B. Excerpt of Articles IV and VIII C. Planning Board recommendation	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327 Mike Brough – 929-3905

PURPOSE

A draft ordinance that clarifies the ordinance requirements associated with nonconforming situations has been prepared. Following the receipt of public comments, the Administration recommends that the Board of Aldermen adopt the draft ordinance, with the noted change.

INFORMATION

Since the adoption of the Land Use Ordinance and on a fairly regular basis, the Town has adjusted its development requirements. Some of these changes have been narrow and some broad in their applicability, but many have had some effect on existing activities. For the most part, the nonconforming provisions of the ordinance allow the continuation of these activities without specific review or approval. It is only when a property owner seeks to make a change that questions regarding the expansion, continuation, or replacement arise.

Staff has identified the need for additional clarification regarding the extent to which a project with existing nonconformities must be brought into compliance with new regulations when a request for a new permit or a request for a modification to an existing permit is submitted. Such a request may be made when a change in use or the expansion of an existing use is proposed. The existing language either does not provide specific direction on the extent to which nonconformities may be allowed to remain or must be required to be removed or does not address the matter at all. A draft ordinance has been prepared that seeks to provide some guidance in making these determinations. Copies of the draft ordinance and the applicable ordinance provisions are attached (*Attachments A and B*). The ordinance includes four sections, two of which address the circumstances noted here. The two substantive sections are described below. Recommended Actions are noted the table that follows these descriptions.

Section 1. Adds language to Section 126, Change in Use of Property where a Nonconforming Situation Exists, to expand the reasons that might be considered in making a determination on the extent to which a property can reasonably comply with the provisions of the Land Use Ordinance. Though the existing language excludes “mere financial hardship” as the basis for making a determination, the new text outlines a method of considering the costs and benefits of any changes that would be needed to eliminate a nonconformity.

Section 2. Adds a new subsection to Section 15-64, Amendments to and Modifications of Permits, to provide some parameters for determining whether nonconforming situations should be allowed to remain or must be removed when an existing projects is seeking approval of a change. *Please note that some additional language, similar to that proposed in the first section, has been proposed in the May 20, 2004 draft of the ordinance*

Section #	Change in Use where Existing Nonconformity	New or Modified Permit where Existing Nonconformity	Recommended Action
1	√		<i>Adopt</i>
2		√	<i>Adopt Option 2 as shown in 05-20-04 draft ordinance</i>

Per the requirements of the Joint Planning Agreement and the Land Use Ordinance, the draft ordinance was referred to Orange County and the Planning Board, respectively. A copy of the Planning Board recommendation is attached (*Attachment C*).

FISCAL IMPACT

No fiscal impacts are expected in association with the adoption of the draft ordinance.

ADMINISTRATION'S RECOMMENDATION

The Administration recommends that the Board of Aldermen adopt the draft ordinance relating to clarifying which nonconforming situations may be permitted to continue in association with new or modified permits (*Attachment A*), including the underlined text that has been added to the 05-20-04 draft of the ordinance.