



City of Stanwood
Community Development Department
10220 270th St NW
Stanwood, WA 98292
360-629-2181

ADMINISTRATIVE INTERPRETATION

GENERAL INFORMATION

File Number(s): 22-0014

Project Title: Non-Conforming Setbacks

Applicant: City of Stanwood

Description: Clarify the ability to expand or enlarge existing non-conforming setbacks per SMC 17.25.180 Extension or enlargement of nonconforming situations.

Date of Decision: April 21, 2022

Decision: **APPROVED**

I. NATURE OF APPLICATION

A. Request

To clarify the ability of property owners to expand or enlarge existing development that may be non-conforming to current setback requirements.

B. Project Chronology/Background

The current code section of SMC 17.25.170 Nonconforming situations states that the provisions of Stanwood's nonconforming code (SMC 17.25.170 through 17.25.220) only applies to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. The City of Stanwood has many developed nonconforming lots within its jurisdiction containing substantial structures. Additionally, SMC 17.25.180 provides unclear guidance on extending or enlarging nonconforming situations. SMC 17.25.180.(5) states that structures used for single-family detached residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.

II. FINDINGS OF FACT

Chapter 17.25 SMC, General Provisions	
<p>17.25.170 Nonconforming situations.</p> <p>(1) Unless otherwise specifically provided in this code, nonconforming situations that were otherwise lawful on the effective date of this code may be continued.</p> <p>(2) When a nonconforming lot can be used in conformity with all of the requirements applicable to the intended use, except that the lot is smaller than the required minimums set forth in the dimensional and density requirements for each zoning district, then the lot may be used as proposed just as if it were conforming.</p> <p>(3) When the use proposed for a nonconforming lot is one that is conforming in all other respects, but the applicable setback requirements cannot reasonably be complied with, then the planning director may allow variances from the applicable setback requirements if he/she finds that:</p> <p>(a) The property cannot reasonably be developed for the use proposed without such deviations;</p> <p>(b) These deviations are necessitated by the size or shape of the nonconforming lot;</p> <p>(c) The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety; and</p> <p>(d) Compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, financial hardship does not constitute grounds for finding that compliance is not reasonably possible.</p> <p>(4) SMC 17.25.170 through 17.25.220 apply only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it.</p>	<p>“Nonconforming structure” means a structure that was legally constructed prior to the effective date of this code, but which would not be permitted as a new structure under the terms of this code because such structure is not in conformance with the yard setbacks, height, lot coverage, or open space requirements of the zone in which it is located.</p> <p>Many structures located within the City of Stanwood are historical and were constructed prior to the existing bulk and dimensional standards of the zoning table were adopted. Any legally constructed structure located on a lot that does not meet current setbacks would be considered a “nonconforming structure” in regard to the required setbacks.</p> <p>Nonconforming situations can exist on both developed and undeveloped lots. This administrative interpretation addresses nonconforming situations on developed lots.</p>

17.25.180 Extension or enlargement of nonconforming situations.

(1) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

(a) An increase in the total amount of space devoted to a nonconforming use; or

(b) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, density requirements, or other requirements such as parking requirements.

(2) Subject to subsection (4) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this code, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.

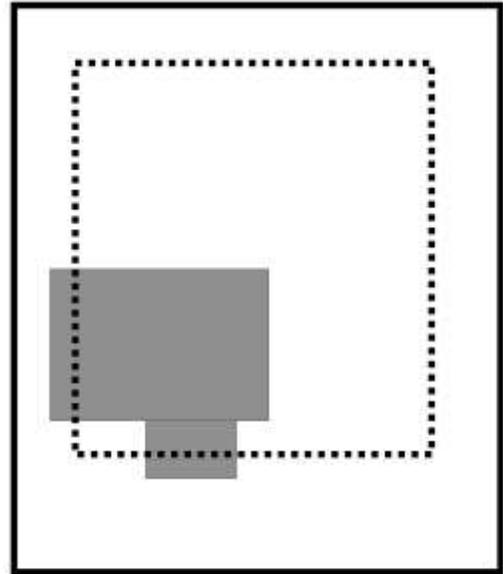
(3) A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

(4) The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased, and the equipment or processes used at a location where a nonconforming situation exists may be changed, if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other requirements of SMC 17.25.170 through 17.25.220 occur.

(5) Notwithstanding subsection (1) of this section, any structure used for single-family detached residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities

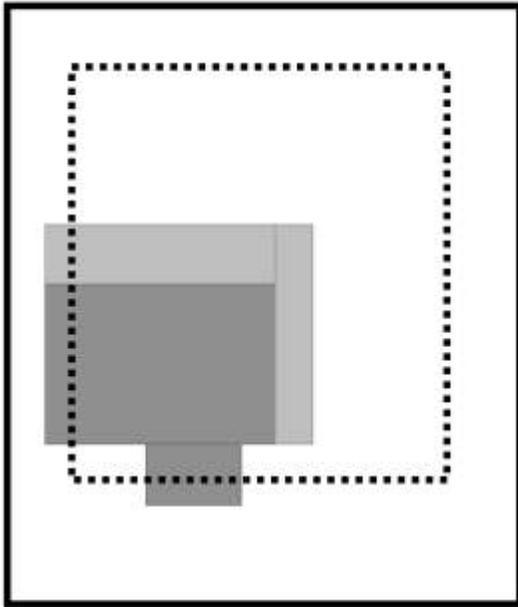
“Nonconforming situations” are allowed to be extended or enlarged so long as the proposed expansion does not increase the extent of the nonconformity.

“Setback” means the horizontal distance between the front line, sideline, or rear line of the building site to the front, side, or rear of the building or structure, respectively. Setbacks shall be measured perpendicular to and parallel with property or right-of-way lines and footprint of the building or structure.

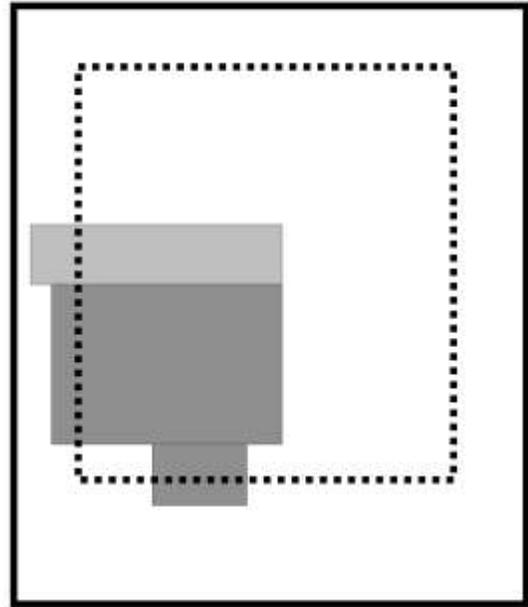


Existing NonConforming Structure
-existing structure does not meet
required setbacks

An existing, nonconforming setback may be maintained at its current distance from the lot line to the structure and the structure may be expanded along the current nonconforming setback.



Example of allowable expansion of nonconforming structure; nonconformity of setback is ***not*** increased by expansion



Example of prohibited expansion of nonconforming structure; nonconformity of setback ***is increased*** by expansion

III. CONSISTENCY WITH TITLE 17 SMC, ZONING

A. Applicable Review Criteria and Process

The administrative interpretation is subject to review for conformity with the Stanwood Municipal Code (SMC), including but not limited to the following:

Chapter 17.80.150 SMC, Rule Making Authority		
<p>(1) The community development director may, consistent with the intent of the Comprehensive Plan, zoning code and other applicable laws and regulations, issue written rules as he/she deems necessary to carry out the provisions of this code. Such rules shall include but are not limited to the following: (a) Information to be required in the application, including, without limitation, proof of legal interest in the property, authority to sign the application, drawings, maps, data, and charts concerning land and uses and areas in the vicinity of the proposed development, and appropriate supplementary data reasonably required to describe and evaluate the proposed development and to determine whether the proposed development complies with statutory criteria under which it might be</p>	<p>The Community Development Director has the authority to issue this administrative interpretation regarding Stanwood Municipal Code Chapter 17.25.180, Extension or enlargement of nonconforming situations.</p> <p>The administrative interpretation for this section of code will clarify the ability of property owners to expand or enlarge existing development that may be non-conforming due to current setback requirements.</p>	<p>Yes</p>

<p>approved; and (b) Requirements for the conduct and continuance of public hearings and the methods of providing public notice on projects and permits. (2) The community development director may administratively determine the format and contents of permits, application forms, application checklists, additional information needs, and notices above and beyond the minimums set forth in this code.</p>		
Chapter 17.80.160 SMC, Administrative Interpretations		
<p>This section establishes the procedure and criteria that the city will use in deciding upon a written request to interpret the provisions of this title, Zoning. The interpretation of the provisions of a development agreement or concomitant agreement will be treated as an interpretation of the zoning code.</p>		
<p>(1) Applicability. This section applies to each written request to interpret the provisions of the zoning code, with the exception of unclassified uses as outlined in Chapter 17.30 SMC, Permitted Land Uses.</p>	<p>The City of Stanwood has requested the interpretation of code section SMC 17.25.180.</p>	Yes
<p>(2) Purpose. An interpretation of the provisions of the zoning code clarifies conflicting or ambiguous wording or the scope or intent of the provisions of the zoning code. A request for a zoning code interpretation must relate to a specific site, land use district, classified use or application within the city of Stanwood. An interpretation of the provisions of the zoning code may not be used as, or considered to be, an amendment to the zoning code.</p>	<p>The administrative interpretation will clarify the ability of property owners to expand or enlarge existing development that may be non-conforming due to current setback requirements. This administrative interpretation is intended to clarify existing code and not to amend the existing code.</p>	Yes
<p>(3) Applicable Procedures. (a) The community development director shall interpret the provisions of the zoning code in conformance with this section. (b) A zoning code interpretation requested by a person other than the project proponent or property owner must be requested prior to the date of expiration of any applicable administrative appeal period for a land use decision on the application to which the request relates. Any zoning code interpretation requested after the applicable administrative appeal period shall not affect an issued permit or decision. (c) Unclassified use applications shall be interpreted by the hearing examiner and</p>	<p>The administrative interpretation shall follow the provisions of the zoning code by the completion of this staff report and analysis.</p> <p>The administrative interpretation will be processed pursuant to SMC 17.80.230.(2), as a Type I Administrative Approval.</p>	Yes

processed in accordance with SMC 17.30.020.		
(4) Submittal Requirements. Any person requesting an interpretation of the zoning code shall submit a written request on a form provided by the city specifying each provision of the zoning code for which an interpretation is requested, why an interpretation of each provision is necessary, and any reasons or material in support of a proposed interpretation.	The City of Stanwood has submitted an application, and explanation of the code section and all documentation for the requested interpretation of SMC 17.25.180.	Yes
(5) Factors for Consideration. In making an interpretation of the provisions of the zoning code, the director shall consider the following factors:		
(a) The applicable provisions of the zoning code, including their purpose, intent, and context;	The interpretation clarifies the expansion of nonconforming situations based on Ordinance 1084, adopted in 2000.	Yes
(b) The impact of the interpretation on other provisions of the municipal code;	The interpretation will not impact other provisions of the Municipal Code, as it only affects existing nonconforming situations.	Yes
(c) The implications of the interpretation for development within the city as a whole;	The City of Stanwood has a large stock of historical structures, both residential and commercial. These historical structures contribute to the vision, vitality, and community of Stanwood. Existing, historical housing stock often does not meet the current bulk and dimensional standards of the zoning code but are consistent with the intent and standards of the zoning code in all other regards. This interpretation increases flexibility for property owners to continue utilizing and rehabilitate the historical housing stock in Stanwood. This interpretation is solely in relation to bulk and dimensional standards, and the interpretation would not result in allowing any new uses that would otherwise not be allowed. The implication of the interpretation is to allow continued re-development or expansion of existing nonconforming structures.	Yes

<p>(d) The applicable provisions of the Comprehensive Plan and other relevant codes and policies; and</p>	<p>The Comprehensive Plan encourages rehabilitation of older housing and infrastructure (<i>Housing Goal 6</i>). Existing, historical housing stock may often not meet the current bulk and dimensional standards of the zoning code. This interpretation is intended to allow continued re-development or expansion of existing nonconforming structures including historical housing stock. The Comprehensive Plan also provides guidance for re-vitalizing and reinforcing the character of Stanwood’s existing residential and commercial neighborhoods as infill and redevelopment occur, including the encouragement of restoration of existing, older structures (<i>Land Use Goal 2</i>).</p> <p>The interpretation is consistent with the Comprehensive Plan, Stanwood Municipal Zoning Code, and Ordinance 1084 which gave authority for the Planning Director to allow setback variances for nonconforming lots.</p>	<p>Yes</p>
<p>(e) Any applicable state statutes and court decisions</p>	<p>There are no state statutes or court decisions that influenced or dictated the interpretation of the zoning code.</p>	<p>Yes</p>
<p>(6) Effect of Interpretation. An interpretation of the zoning code issued under this section shall have the same effect as any provision of the zoning code.</p>	<p>This interpretation of SMC 17.25.180 shall regulate the expansion of existing non-conforming structures.</p>	<p>Yes</p>
<p>(7) Time Limitation. An interpretation of the zoning code remains in effect until rescinded in writing by the director or this title, Zoning, is amended.</p>	<p>This interpretation shall remain in place until a revision of the zoning code is completed.</p>	<p>Yes</p>
<p>(8) Appeals. Interpretations may be appealed to the hearing examiner following the appeal procedures contained in this chapter.</p>	<p>This decision may be appealed pursuant to SMC 17.80.390, which provides for an open record appeal of an administrative decision before the Hearing Examiner. Appeals may be submitted by any person who submitted written comments prior to the date the decision was issued.</p>	<p>Yes</p>
<p>Chapter 17.80.230 SMC, Permit Review Procedures – Permit Types</p>		
<p>(2) (a) Type I Review – Administrative Decisions without Notice. A Type I process is an administrative review and decision by the appropriate department or division. Applications reviewed under the Type I process are minor administrative decisions and are exempt from certain administrative</p>	<p>A Type I submittal for an Administrative Interpretation was submitted on behalf of the City. The notice of application was not needed and the community development director is responsible for the permit decision and the decision will be appealable to the hearing examiner.</p>	<p>Yes</p>

procedures, such as complete application review, noticing, and decision time frames.						
Table 17.80-3A: Decision Making and Appeals: Nonshoreline Permits						
Permit Type	Public Meeting With PC	Open Record Public Hearing	Project Decision	Open Record City Appeal	Closed Record Appeal	Noncity or Judicial Appeal ¹
Type I	No	No	CDD	HE	No	Yes
<ul style="list-style-type: none"> • PC: Planning Commission • CDD: Community Development Director • CE: City Engineer 			<ul style="list-style-type: none"> • 1 Noncity or judicial appeals are filed with Snohomish County Superior Court. • HE: Hearing Examiner 			

IV. INTERPRETATION

1. Stanwood Municipal Code section 17.80.150 Rule Making Authority subsection (1) allows the Community Development Director to issue written interpretations as they deem necessary to carry out the provisions of this code.
2. Stanwood Municipal Code section 17.80.160 Administrative Interpretations subsection (5) defines five factors of consideration (a-e) that shall be used when making an interpretation of the provisions of the zoning code. An analysis of (5) (a-e) shows consistency with these considerations.
3. Existing nonconforming structures may maintain existing nonconforming setbacks, and these structures may be expanded parallel to the existing nonconforming setback.

V. CONCLUSIONS

1. The administrative interpretation meets the criteria set forth in Stanwood Municipal Code Chapter 17.80.
2. This Administrative Interpretation clarifies the ability of property owners to expand or enlarge existing structures that are non-conforming to current setback requirements. The clarification will be applied to all existing nonconforming structures within the City of Stanwood.

VI. ADMINISTRATIVE DECISION

It is the decision of the Director of Community Development that existing nonconforming structures may maintain existing nonconforming setbacks, and these structures may be expanded parallel to the existing nonconforming setback. The administrative interpretation is hereby APPROVED, subject to the above interpretation and conclusions.

VII. APPEAL

This decision may be appealed pursuant to SMC 17.80.390, which provides for an open record appeal of an administrative decision before the Hearing Examiner. Appeals may be submitted by the applicant or any person who submitted written comments prior to the date the decision was issued. The completed appeal must provide specific reasons set forth in SMC 17.80.390.(5) (a-e). Appeals shall be filed in writing to the department of community development within 14 days of the notice of decision. Appeals shall be delivered to the City of Stanwood, at 10220 270th Street NW, Stanwood, WA 98292, by,

Thursday, May 5, 2022 at 4:30 pm. Appeals must provide specific reasons for the appeal and shall be accompanied by a \$500 non-refundable filing fee.

Prepared by: Tansy Schroeder, City Planner

Date: April 21, 2022

Approved by:

Signature: Patricia Love Date: April 21, 2022

Patricia Love
Community Development Director