

NELSON'S MARKET

Nelson's Market – Code Compliance Summary

Nelson's Market consists of a mixed use building with a small retail market and deli on the ground floor, and a residential unit on the second (top) floor. The information below is assumed to be true for purposes of this exercise, but may not necessarily be true in reality.

- **Nonconforming Use – Retail sales (including alcohol) in a Residential zone**
- **Nonconforming Building – setbacks, parking design, and # of parking stalls**
- **Obtained a Conditional Use Permit to expand nonconforming retail use (floor area)**
- **Obtained a Conditional Use Permit to allow a café in a RM zone**
- **Obtained a Variance to allow reduce parking for the deli and retail floor area expansion.**

Process to rebuild

- Both a **nonconforming use** and a **nonconforming building** that is more than 50% destroyed may be rebuilt according to a plan approved by the Hearing Examiner.
- Both situations above are required to follow a Type IIIA process (BMC 21.10.040 D and 21.10.120) as summarized below:
 - 1) Pre-application Neighborhood Meeting by the applicant
 - 2) Application – Notice of Complete Application and 2 week comment period sent to all property owners within 500' of the development site, media and neighborhood associations.
 - 3) Staff report with staff recommendation to the Hearing Examiner
 - 4) Hearing Examiner public hearing and decision
- The Hearing Examiner would also be able to consider a proposal for a building larger than the original through the same process. Conditional Use criteria in BMC 20.16 would be used to make this decision.

Summary of Land Use Activity

1916	Grocery store established
1947	First zoning ordinance passed. Property is zoned R-1 for single family homes (apartments allowed with Planning Commission approval). Existing Nelson's Market Use becomes nonconforming
1969	May: Amended zoning ordinance passed. Grocery still nonconforming. November: Nonconforming Use Certificate issued for grocery store + upper apartment
1982	Current zoning established: York Area 5, Residential-Multi, Multiple. 3,000 sq. ft. per unit.
1998	Conditional Use Permit approved to expand retail floor area and add a café.
1999	Variance approved to allow less parking for the expansion.
2006	Subarea in which Market is located is proposed to be rezoned to Single Family Residential. If approved, the cafe would become a nonconforming use and building setbacks would become "more" nonconforming.

Code requirements to rebuild if burned down:

**BMC 20.14.000 NONCONFORMITY
20.14.010 Buildings and Structures**

- A.** Any existing building or structure or portion thereof lawfully erected or altered which does not meet all of the zoning requirements found in this ordinance is hereby declared a nonconforming building or structure and not in violation of this ordinance.
- B.** Any building or structure nonconforming as to lot coverage, yard, height, open space, density provisions or parking requirements may be enlarged, remodeled or renovated provided such alterations do not contribute to additional encroachment or infringement of this ordinance.
- C.** In the event a nonconforming building or structure is less than 50% destroyed by any cause, nothing in this ordinance shall prevent the securing of a building permit within 1 year from the date of destruction for the restoration of the building or structure. The determination of the percentage of destruction shall rest with the Building Official and shall be based upon the actual cost of repairing the portion of the building or structure destroyed in relation to the estimated replacement cost of the entire building or structure.

Any nonconforming building or structure more than 50% or more destroyed may be reconstructed provided it meets all of the regulations of the Use District in which it is located or the structure is rebuilt according to a plan approved by the Hearing Examiner. Such a plan may be approved by the Hearing Examiner if it finds that the proposed reconstruction minimizes infringement of this ordinance consistent with the specific reconstruction needs of the structure. The Hearing Examiner may condition such approval to mitigate the detrimental effects of infringement of this ordinance by any portion of the nonconforming building or structure.

20.14.020 - Uses

- A.** Any existing use lawfully established prior to the passage of this ordinance which is not permitted in the Use District in which it is located is hereby declared a nonconforming use and not in violation of this ordinance.
- B.** A nonconforming use shall not be relocated, expanded, enlarged, or increased in intensity unless such activity is approved through issuance of a Conditional Use Permit as provided by paragraph E below. Such prohibited activities shall include without being limited to:
- (1)** Any activity which would require a building permit other than repair or replacement of existing structures or improvements.
 - (2)** Extension of a nonconforming use to any building or other structure or land area other than one occupied by such use on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that causes such use to become nonconforming).
 - (3)** Extension of a nonconforming use within a building or other structure to any portion of the floor area that was not occupied by such use on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that causes such use to become nonconforming); provided, however, that a nonconforming use may be extended throughout any part of such building or other structure that was lawfully and manifestly designed or arranged for such use on such effective date.

(4) Operation of a nonconforming use in such manner as to conflict with, or to further conflict with if already conflicting on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that results in such use becoming nonconforming), any performance standards established for the district in which the use is located.

(5) Nothing contained in this section shall in any way prohibit a nonconforming use from acquiring additional off-street parking area or from installing any device, equipment, or structure whose sole purpose is to reduce any adverse environmental impact emanating from the nonconforming use.

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E. The Hearing Examiner may grant a Conditional Use Permit allowing a nonconforming use to expand, enlarge, or increase in intensity provided that:

(1) The use may not expand beyond the site, lot, or parcel as defined by the legal description on the Certificate of Occupancy for a Nonconforming Use, or as owned or leased by the nonconforming use as of the date it became nonconforming in the event there is no Certificate of Occupancy,

(2) Uses which are nonconforming due to the number of residential units may not add additional units,

(3) The proposed modification will not result in further infringement of the provisions of this ordinance; modifications shall comply with all regulations (other than use restrictions) including but not limited to lot coverage, yard, height, open space, density provisions, or parking requirements unless waived by the Hearing Examiner through variance as provided by this ordinance,

(4) The nonconforming use must be a permitted use within at least one of the General Use Types, and

(5) The use must not be an industrial use in a Residential Single or Residential-Multi Duplex district. For the purpose of this section, "industrial use" shall mean any use which is permitted only in Industrial general use type districts.

20.14.030 - Termination of Nonconforming Uses

A. A discontinued or abandoned nonconforming use shall not be resumed. Discontinuation or abandonment shall be construed as follows:

(1) When open land shall cease to be used for a nonconforming use for 6 consecutive months.

(2) When a building designed or arranged for a nonconforming use shall cease to be used by that particular use for 12 consecutive months.

(3) When a building designed or arranged for a Permitted Use but used for a nonconforming use shall cease to be used for such nonconforming use for 6 consecutive months.

In any proceedings held relevant to or concerning enforcement of this section, the burden of showing continuous use shall be upon the owner or applicant for a use.

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C. In the event a building or structure which houses a nonconforming use is less than 50% destroyed by any cause, nothing in this ordinance shall prevent the securing of a building permit within 1 year from the date of destruction for the restoration of the building or structure. The determination of the percentage of destruction shall rest with

the Building Official and shall be based upon the actual cost of repairing the portion of the building or structure destroyed in relation to the estimated replacement cost of the entire building or structure. Any building or structure which houses a nonconforming use which is 50% or more destroyed may be rebuilt according to a plan approved by the Hearing Examiner. Such a plan may be approved by the Hearing Examiner if it finds that the proposed reconstruction minimizes detriment to the surrounding properties or the general welfare consistent with the reconstruction needs for the nonconforming use. The Hearing Examiner may condition such approval to mitigate such detrimental effects caused by the nonconforming use.

20.16.000 – CONDITIONAL USES

20.16.010 - General Provisions

A. Certain uses because of their unusual size, infrequent occurrence, special requirements, possible safety hazards or detrimental effects on surrounding properties and other similar reasons, are classified as conditional uses.

B. Certain uses may be allowed in certain General Use Types by a Conditional Use Permit granted by the Hearing Examiner provided such use is specified under the Conditional Use subsection of the appropriate General Use Type Handbook and it is clearly shown that:

(1) The proposed use will promote the health, safety, and general welfare of the community.

(2) The proposed use will satisfy the purpose and intent of the General Use Type in which it is located.

(3) The proposed use will not be detrimental to the surrounding neighborhood.

C. Nonconforming uses may be allowed to expand, enlarge, or increase in intensity by a Conditional Use Permit granted by the Hearing Examiner provided that the added impacts from the proposed modification are shown to be consistent with the standards set forth in Section 20.14.020.E. and in paragraph B(1) and (3) above.

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E. In applying the standards set forth in paragraph B above the Hearing Examiner shall consider the following factors as to whether the proposed use will:

(1) Be harmonious with the general policies and specific objectives of the Comprehensive Plan.

(2) Enable the continued orderly and reasonable use of adjacent properties by providing a means for expansion of public roads, utilities, and services.

(3) Be designed so as to be compatible with the essential character of the neighborhood.

(4) Be adequately served by public facilities and utilities including drainage provisions.

(5) Not create excessive vehicular congestion on neighborhood collector or residential access streets.

(6) Not create a hazard to life, limb, or property resulting from the proposed use, or by the structures used therefore, or by the inaccessibility of the property or structures thereon.

(7) Not create influences substantially detrimental to neighboring uses.
"Influences" shall include, but not necessarily be limited to: noise, odor, smoke, light, electrical interference, and/or mechanical vibrations.

(8) Not result in the destruction, loss, or damage to any natural, scenic, or historic feature of major consequence.

F. The Hearing Examiner shall not waive or reduce the minimum requirements of this title or any other title of the city code, unless upon proper variance petition.

The public notice and hearing process is outlined in Bellingham Municipal Code Sections 21.10.040 D. and 21.10.120.

Supporting Comprehensive Plan Goals and Policies

VB 5 – A large number of historic structures remain, providing a sense of place and history for existing and future citizens. Incentives assist in retaining and restoring historic structures and encouraging new development, which is complementary in terms of architectural style and scale. These incentives may include property tax breaks, zoning and building code flexibility for adaptive uses, and density or other bonuses that encourage good design.

FLU-1 It is the City's overall goal to preserve and protect the unique character and qualities of the existing neighborhoods. All policies, proposed development code and zoning changes should be reviewed with this goal in mind.

FLU-9 Successful commercial and industrial areas and a strong and diverse economy should be promoted by encouraging office, retail, high technology, light and heavy industrial uses in appropriate locations. Enough appropriately zoned developable land should be available to accommodate the forecasted 20-year employment growth.

LU-46 Commercial land use designation shall provide a well-distributed system of commercial uses that serve community residents

TV-2 Development patterns that encourage walking, biking and transit use are fostered through incentives and zoning regulations, including provisions for developments which allow people to live within walking distance of shopping and employment. These provisions may encourage small scale neighborhood centers as well as cottage industry or home occupations.

FLU-18 A master plan must be developed for each of the proposed urban centers. (The City Center and Fairhaven areas are exempt from this requirement.) The planning process to site urban centers should include neighborhood groups, residents, property owners, business owners and others. Although the process to develop the master plans and the contents may vary depending on the location and size of the center proposed, some common elements can be identified

FLU-17 The eventual number of housing units built at the various urban centers will depend on a number of factors, including availability of infrastructure (roads, water, sewer, schools, parks, police and fire protection), transit service and neighborhood character

CDG-17 Neighborhood and pocket urban villages are compatible with the scale and character of the surrounding neighborhood.

CDG-18 Neighborhood and pocket urban villages provide a focal point for commercial, civic and recreational activities within a neighborhood.

CDG-19 Neighborhood and pocket urban villages are designed to promote reduced dependency on automobiles and provide opportunities for increased pedestrian, bicycle, and public transit access.

CDG-20 Neighborhood and pocket urban villages are accessed by pedestrian scale streets that may include narrow pavement widths, on-street parking, landscaping strips, setback sidewalks, buildings close to the street, and parking in side and/or rear yards.

Supporting York Neighborhood Plan policy language

Although there are no sites in the York Neighborhood that are currently on the National Register, there are areas that are of local historical interest that should be conserved as the neighborhood is upgraded.

Alternative Solutions

1. Amend the Conditional Use “Criteria” to better accommodate rebuilding of desirable nonconforming uses.

Factors to consider:

This is not considered a feasible option. Each nonconforming use is generally a unique use in a unique location, few of which would have common characteristics that could be addressed by specific development standards.

2. Amend the Nonconforming Use and Building Code regulations to allow reconstruction even if more than 50% destroyed.

Factors to consider:

- This would simplify the process for desirable nonconforming uses/buildings, but what if the nonconforming use/building is largely perceived as a nuisance?
- How similar would the redevelopment have to be to the original?
- Should it be allowed outright (same as if less than 50% destroyed) or should there be some public process?
- Are there some nonconforming buildings or uses that “should not” be allowed to be rebuilt or reestablished? Can this easily be applied across the whole spectrum of nonconforming uses/uses for all locations? Use X might be acceptable or even desired in one location, but not necessarily in another location.

3. Amend the allowed “Conditional Uses” to allow more special uses such as small neighborhood oriented retail and services as Conditional Uses in residential zones with specific criteria.

Factors to consider:

- Assists in implementing Comprehensive Plan goals and policies that encourage small scale retail and service uses within walking distance of residential uses.
- Would set up a process for how “new” small scale retail and service establishments could be approved as a mixed use in specified residential zones.
- Each request would be evaluated on a case-by-case basis through a public process with a decision by the Hearing Examiner.
- May not adequately address the design/character issues for rebuilding nonconforming uses in sensitive areas.
- Could allow additional uses that meet the criteria.

How:

- Adopt additional conditional uses to be allowed within certain zones along with specific development/design criteria for each use in the development code – Type VI approval (Planning Commission public hearing and recommendation to City Council followed by City Council public hearing and decision).
- Approval of each Conditional Use thereafter would follow the Conditional Use process with a Hearing Examiner public hearing and decision.

4. Rezone the property to Neighborhood Commercial or Planned Commercial with specific development standards unique to the location.

Factors to consider:

- Assists in implementing Comprehensive Plan goals and policies that encourage small scale retail and service uses within walking distance of residential uses.
- If property is rezoned by itself, it could be construed to be a spot zone.
- Would require processing in the annual Comp Plan amendment process – time consuming with lack of certainty.

How: Type VI approval (Planning Commission public hearing and recommendation to City Council followed by City Council public hearing and decision).

5. Look at a larger area that includes the commercial and multifamily uses across the street and address redevelopment from a holistic urban village approach.

Factors to consider:

- Assists in implementing Comprehensive Plan goals and policies that encourage small scale retail and service uses within walking distance of residential uses.
- Takes a comprehensive and unifying approach at how surrounding uses should relate to each other and the surrounding community.
- Sets up a process for how “new” small scale retail and service establishments could be approved as a mixed use in specified residential zones.
- Would minimize, if not eliminate, the “spot zone” issue.
- Would require processing in the annual Comp Plan amendment process – time consuming with lack of certainty.
- Could result in additional development and density within the urban village.

How:

- Adopt an urban village overlay zone designation with general development standards that could be used for developing urban villages citywide - Type VI approval (Planning Commission public hearing and recommendation to City Council followed by City Council public hearing and decision).
- Specific design and development standards could be tailored to each identified urban village.
- Each project within the village would then be reviewed/approved individually on a case-by-case basis.

Supporting Comprehensive Plan Goals and Policies

The following are to be considered in addition to the comprehensive plan goals and policies listed above:

FLU-18 A master plan must be developed for each of the proposed urban centers. (The City Center and Fairhaven areas are exempt from this requirement.) The planning process to site urban centers should include neighborhood groups, residents, property owners, business owners and others. Although the process to develop the master plans and the contents may vary depending on the location and size of the center proposed, some common elements can be identified

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