

Planning Commission Staff Report

August 11, 2016

Item 5

Applicant: Sandy Swanson

Location: 628 E 1600 South

Prepared by: Brian Tucker

Public Hearing Item: No

Zone: A-2

ATTACHMENTS

1. Zoning Verification Letter
2. Applicant's Appeal
3. Parcel Map
4. Applicable Law

REQUEST

Consideration of an appeal to a zoning verification determination of 'not a zoning lot' and a request for the granting of "nonconforming" status for property at approximately 628 East 1600 South.

BACKGROUND

The appellants own two parcels located at 628 East 1600 South in the A-2 zone. Parcel 27:034:0038 is .5 acres in size and includes a single family residence that was constructed in approximately 1980. Parcel 27:034:0024 is a 1.87 acre undeveloped flag lot. (See attachment #3) There is building on the flag lot that the owner classifies as a garage but the County Assessor classifies as a "Farm Utility Storage- Loafing" building that was built in approximately 1987. Earlier this year the appellants approached the City about building a new residence on the flag lot. Staff requested that a zoning verification application be submitted so staff could determine the legality of the lot.

On July 11, 2016 staff issued a zoning verification letter (see attachment #1) to the property owners that indicated the following:

- Prior to 1980, the property in question was one parcel;
- In 1980, a warranty deed was recorded with the Utah County Recorder creating two separate parcels;
- In 1980, the A-2 zoning district required 2.5 acres of land area, 250' of width each building lot and required City approval for subdivisions;
- The City did not give approval of the subdivision of the subject property;
- Since the City did not approve the subdivision in 1980 or any time after, and since neither lot meets the minimum standards of the A-2 zone, both lots are considered illegal; and
- As a remedy, the property could be made legal if the parcels were recombined into a 2.4 acre parcel. When combined the home could serve as the basis for the planning commission to grant "nonconforming" status to the parcel.

The property owners are appealing staff's determination that the lots are illegal (see attachment #2).

APPLICABLE LAW

Staff has included all relevant municipal code sections for commission reference in attachment #4 of this staff report.

APPEAL

Mr. Swanson’s position and basis for appeal is that “Parcel 27:034:0024 has a structure and should thereby be considered nonconforming and should be buildable.” The “structure” in question is an outbuilding he labels as a garage that he indicates was built in “the 1980’s.” See attachment #2 for lot configuration and location of buildings.

Mr. Swanson has given no indication of any factual inaccuracy with the findings or any reasonable doubt that the conclusions of the Zoning Verification are accurate except as they pertain to his assertion that the planning commission has the power to grant “nonconforming” status for parcel 27:034:0024.

APPEAL ANALYSIS

Mapleton City Code (MCC) Chapter 18.20 governs nonconforming uses, structures and lots (see attachment #4). According to this section, a legal nonconforming lot is a lot that was legal at the time of its creation, meaning it met the standards of the city code at the time of its creation. As described in the zoning verification letter, since the lots were not legal at the time of their creation, they cannot be considered legal nonconforming lots.

MCC Chapter 18.20.060.E states the following regarding the Planning Commission’s ability to grant legal nonconforming status to illegal:

E. Illegal Lots: Any lot that does not meet the strict definition of a "zoning lot" as described in section [18.08.475](#) of this title, and has been created illegally, shall not be issued a building permit. Any home located on a lot that was created illegally, shall not be issued a building permit to expand, enlarge, or rebuild the home, or a building permit to construct an accessory building or structure. Any home or structure located on a lot that was illegally created prior to July 1992, may be granted the status of "nonconforming" by the planning commission with the following criteria and conditions of approval:

- 1. Ownership: The home must not be owned by the person(s) who created the illegal lot nor by anyone related to said person(s) either by blood or adoption to the fourth degree of consanguinity.*

- 2. Setbacks: The creation of the illegal lot did not cause nonconformance to the setbacks of any structure located on the lot or adjacent lots.*

3. Conditions: The planning commission may require that the property owner enter into a signed and recorded agreement stating that if the property that was split away from the parcel containing the existing home is developed, that the lot with the home must become a part of the development either by means of a subdivision lot or as allowed in [title 17](#) of this code. If the lot is adjacent to property that has been improved to meet Mapleton City standards, including the installation of curb, gutter and sidewalk, the planning commission may also require the installation of those improvements, which may have been required when the property was divided or altered. Other conditions may include additional landscaping and/or any other items necessary to bring the property to current standards as directed by this code.

The appellants argue that because the flag lot has a “structure” on it that the code authorizes the Commission to classify it as a legal nonconforming lot, and therefore a new residence could be constructed on the parcel. Staff does not support the applicant’s position for the following reasons:

- The intent of the ordinance is to provide a possible remedy for a property owner that owns a home on a parcel that is considered illegal through no fault of their own the ability to obtain building permits to maintain and repair the home as needed. It is not the intent of the ordinance to allow for the creation of a new building lot, especially when the building lot would not meet the minimum zoning standards for lot size and frontage.
- There is no evidence that a building permit was issued for the structure on the flag lot, nor could have one been legally issued at the time of its construction as the structure is located on the property line. To grant legal nonconforming status to a lot simply because an unpermitted building occupies it is certainly a stretch and clearly is not what was intended by the code.
- The intent of the code is to allow for nonconformities to be maintained, but not increased or expanded. If the flag lot was deemed legal nonconforming, then rather than having one home that doesn’t comply with the minimum lot size and frontage requirements, there would be two. The intent of the code certainly does not include the creation of new nonconformities.

STAFF RECOMMENDATION

1. Uphold the determination of “illegal lot,” for Utah County Parcel #'s 27:034:0024 and 27:034:0038 and deny the appeal.
2. Grant “nonconforming” status to the subject parcels only if re-combined into the 2.4-acre parcel that existed in 1971 (Utah County Recorder Entry 7136-1971).



MAPLETON CITY CORPORATION

July 11, 2016

Sandy Swanson
628 E 1600 South
Mapleton, UT 84664

**RE: Property located at 628 East 1600 South, Mapleton, UT 84664
Utah County Tax ID#'s 27:034:0024 and 27:034:0038**

Dear Mr. Swanson,

At your request Mapleton City Staff have researched the history of Utah County Parcel #27:034:0024 and have found the following:

1. On November 1, 1969 Mapleton City adopted a zoning ordinance requiring that lots located within the A-2 zone have 2.5 acres, 290' of width as measured at the front building line and frontage on a city street for each lot.
2. In June 1971 the area in the vicinity of 628 East 1600 South, including the subject parcel and adjacent parcels, was zoned A-2.
3. On June 7, 1971 a Warranty Deed, Utah County Recorder Entry 7136-1971, was recorded describing property, later known as Utah County Parcel #'s 27:034:0024 and 27:034:0038, described as follows:

Commencing at a point in a fence line and the South boundary of 800 South Street, Mapleton, Utah, said point being located 496.35 feet West along the Section line and 24.00 feet South from the North quarter corner of Section 23, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence South 0° 14' West 634.60 feet; thence West along a fence line 165.00 feet; thence North 0° 14' East 634.60 feet; thence East along said South Street boundary and said fence line 165.00 feet to the point of beginning.

4. On August 1, 1971 Mapleton City adopted a zoning ordinance requiring that lots located within the A-2 zone have 2.5 acres, 250' of width as measured at the front building line and frontage on a city street for each lot.
5. On September 11, 1980 a Warranty Deed, Utah County Recorder Entry 31388-1980, was recorded describing a 0.5 acre parcel, known as Utah County Parcel # 27:034:0038. The Warranty Deed for Parcel #27:034:0038 is described as follows:

Commencing at a point which is 496.38 feet West and South 32 feet from the North Quarter corner of Section 23, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence South 0 deg. 14' West 158.98 feet; thence West 137 feet; thence North 0 deg. 14' East 158.98 feet; thence East 137 feet to point of beginning.

6. The legal description contained in Utah County Recorder Entry 31388-1980, did not include the entirety of the parcel described in Utah County Recorder Entry 7136-1971. The remainder parcel, 1.87 acres of land area known as Utah County Parcel #27:034:0024, is described as follows:
Commencing at a point which is West along the Section Line 633.38 feet and South 32.00 feet from the North 1/4 corner of Section 23, Township 8 South, Range 3 East Salt Lake Base and Meridian; thence South 0 Deg. 14' West 158.98 feet; thence East 137.00 feet; thence South 0 Deg. 14' West 467.62 feet; thence West 165.00 feet; thence North 0 deg. 14' East 626.6 feet; thence East 28 feet to the Point of Beginning.
7. In 1980 this area was zoned A-2, a zoning district that then required 2.5 acres of land area, 250' of width as measured at the front building line and frontage on a city street for each lot.
8. In 1980 the Mapleton City Subdivision Ordinance defined a "Subdivision" as the "division of a tract or lot or parcel of land" into "three or more lots, plots, sites or other divisions of land of two and one-half areas each, or less, in area, for the purpose, whether immediate or future, of sale, or of building development..." The subdivision ordinance prohibited any person to "subdivide any tract of land which is wholly or in part within the corporate limits of Mapleton City..." In 1980, the creation of lots smaller than 2.5 acres without first having had the lots approved by the City and recorded was a prohibited act.
9. In November 2003, Mapleton City adopted Section 18.20.060: Nonconforming Lots. This section included a subsection E, which created a method for homes and structures located on a lot that was illegally created prior to July 1992 to be granted the status of "nonconforming" by the Planning Commission. Subsection E reads as follows:

E. Illegal Lots: Any lot that does not meet the strict definition of a "zoning lot" as described in section [18.08.475](#) of this title, and has been created illegally, shall not be issued a building permit. Any home located on a lot that was created illegally, shall not be issued a building permit to expand, enlarge, or rebuild the home, or a building permit to construct an accessory building or structure. Any home or structure located on a lot that was illegally created prior to July 1992, may be granted the status of "nonconforming" by the planning commission with the following criteria and conditions of approval:

- 1. Ownership: The home must not be owned by the person(s) who created the illegal lot nor by anyone related to said person(s) either by blood or adoption to the fourth degree of consanguinity.*
- 2. Setbacks: The creation of the illegal lot did not cause nonconformance to the setbacks of any structure located on the lot or adjacent lots.*
- 3. Conditions: The planning commission may require that the property owner enter into a signed and recorded agreement stating that if the property that was split away from the parcel containing the existing home is developed, that the lot with the home must become a part of the development either by means of a subdivision lot or as allowed in [title 17](#) of this code. If the lot is adjacent to property that has been improved to meet Mapleton City standards, including the installation of curb, gutter and sidewalk, the planning commission may also require the installation of those improvements, which may have been required when the property was divided or altered. Other conditions may include additional landscaping and/or any other items necessary to bring the property to current standards as directed by this code.*

Conclusions:

Legal Status of Parcel #27:034:0024: Parcel #27:034:0024 was created in violation of the applicable zoning requirements in place at the time. The parcel lacked the required area and width required in the A-2 zoning district on the day that the parcel was created as a remnant parcel. The creation of this lot was also in violation of the subdivision ordinance. The Community Development Staff must conclude that Utah County Parcel 27:034:0024 is an illegal lot and is therefore not eligible for building permits of any kind.

Legal Status of Parcel #27:034:0038: Parcel #27:034:0038 was created in violation of the applicable zoning requirements in place at the time. The parcel lacked the required area and width required in the A-2 zoning district on the day that the parcel was created. The creation of this lot was also in violation of the subdivision ordinance. The Community Development Staff must conclude that Utah County Parcel 27:034:0038 is an illegal lot and is therefore not eligible for building permits of any kind.

Compliance Options for Parcel #'s 27:034:0024 and 27:034:0038: In 1971 parcels 27:034:0024 and 27:034:0038 were one parcel measuring 165 feet wide and 634.60 feet deep, containing approximately 2.4 acres. This parcel configuration is consistent with that of the parcels with homes to both the east and the west. While none of these lots meet the standards of a legal lot based on the zoning and subdivision ordinances applicable from 1969 onward, they are all eligible for the granting of “nonconforming” status in accordance with Section 18.20.060.E of Mapleton City Code. If the subject parcels were re-combined into the 1971 parcel configuration, that resulting parcel could then be granted the “nonconforming” status by the Planning Commission.

Because parcel 27:034:0024 does not have a home on it, it is not eligible to be granted “nonconforming” status. Because parcel 27:034:0024 cannot become either conforming or legal, nonconforming unless it is combined into the same legal description as an adjacent property, parcel 27:034:0038 cannot be granted “nonconforming” status without provisions having been taken to “legalize” 27:034:0024 since the two parcels are linked by being part of the same illegal act.

There is no method by which parcel 27:034:0024 can become a legal, buildable “zoning lot” for the construction of an additional home. A parcel which is part of an unrecorded or illegal subdivision does not qualify as a zoning lot. The only method of creating an additional, buildable lot is through the creation of a subdivision in accordance with the subdivision and zoning ordinances in Mapleton City Code.

Severability & Appeals:

The statements and interpretations of Mapleton City Code sections given in this letter are hereby declared severable, and the invalidity of any statements in this letter shall not affect the validity or enforceability of any other statements or parts thereof (see Mapleton City Code 1.01.060: PROVISIONS SEVERABLE).

If you have any additional information that may affect the conclusions of this letter, please contact Mapleton City Community Development Department. Additionally, please keep in mind that you do have the right to appeal the above decisions to the Planning Commission within 10 business days in accordance with MCC Chapter 18.84.460 (APPEALS).

If you have any questions about this determination, please call me at (801) 806-9108 or e-mail me at btucker@mapleton.org.

Sincerely,

Brian Tucker
Planner
Mapleton City



MAPLETON CITY CORPORATION

Appeal Application

Appellant Information

Appellant: Sandy Swanson Phone #: 801 376-9964

Address: 628 E 1600 S City, State, Zip: Mapleton

Email: Sandy.g@aol.com

Project Location: Same as above

Project Assessor's Parcel #: _____

Appeal Type: Staff Decision Planning Commission Decision

Description of decision being appealed: Parcel 27:034:0024 has
a structure and should thereby be considered
non conforming
~~not conforming~~ and should be buildable.

Appellant's Signature: Sandy Swanson Date: 25 July 2016

Submittal Requirements

- Letter describing the basis for the appeal including applicable code sections and/or general plan references.
- If appeal is in reference to a project, include project plans.
- Plans shall include one (1) 24" x 36" copy, one (1) 11" X 17" copy, and a CD with the PDF drawings

Staff Use Only

Fees: _____ Date: _____ Application #: _____

Assigned Staff Member: _____ Action: _____ Date of Action: _____

Final Decision Maker: PC CC

According to section 18.20.060 of Mapleton City code, a method was created to allow "illegal" lots to be "nonconforming". Seeing as how the almost 1,000 square foot garage built in the 1980s satisfies the definition of a structure, parcel #27:034:0038 falls under the guidelines of lots created prior to July 1992 that were created illegally to be granted the status of "nonconforming".

ATTACHMENT #4 - APPLICABLE LAW

17.02.030: LOTS CREATED BY METES AND BOUNDS DESCRIPTION:

In order to ensure the accurate location of property lines and the location of future construction and land uses within those property lines; and in order to ensure the orderly dedication of rights of way for public thoroughfares; and in order to facilitate the orderly transfer of ownership of buildable lots, no property created by a "metes and bounds" description and recorded with the Utah County recorder shall be considered eligible for the issuance of a building permit unless:

A. The property is recognized as a legal lot of record by the community development director or his or her designee, meets all current zoning standards, and a plat describing such parcel of land is approved by the community development director or his or her designee and recorded with the Utah County recorder; or

B. The property has been recognized by the community development director or his or her designee as a legal nonconforming lot of record, a plat describing such parcel of land is approved by the community development director or his or her designee and the plat is recorded with the Utah County recorder.

A plat authorized by this section shall be prepared in accordance with section [17.08.030](#) of this title and section [18.84.390](#) of this code. (Ord. 2013-05, 6-18-2013, eff. 7-12-2013)

18.08.475: ZONING LOT:

"Zoning lot" means a lot or parcel of land which:

A. Meets all area, width, access, buildable area, utility, setback, and other requirements applicable within the zone in which it is located; or is a nonconforming lot of record which met the requirements of the underlying zone upon its creation; and

B. Is served by the minimum level of improvements required for issuance of a building permit; and

C. Is shown as a separate lot in a recorded subdivision or planned development, or was legally exempted from compliance with the subdivision ordinance prior to July of 1992. A parcel which is part of an unrecorded or illegal subdivision shall not qualify as a zoning lot. (Ord. 2002-19, 10-2-2002)

CHAPTER 18.20

NONCONFORMING USES, STRUCTURES, AND LOTS

18.20.010: PURPOSE:

The purpose of this chapter is to establish regulations governing legally established lots, structures, uses and other nonconformities that do not conform to applicable requirements of this title. They may continue to exist and be put to productive use, but their nonconforming aspects shall be regulated as provided in this chapter. The intent of this chapter is to recognize the interests of property owners while controlling expansion of nonconforming conditions. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.020: SCOPE:

The provisions of this chapter shall apply to all lots, structures, uses and other nonconformities within the city regardless of when the nonconformity was established. Any lot, structure, use or other circumstance governed by this title which does not conform to the provisions of this title may be continued to the extent that it was legally established and complies with applicable provisions of this chapter. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.025: DEFINITIONS:

ILLEGAL LOT: Any lot that does not meet the definition of a "zoning lot" as defined in section [18.08.475](#) of this title.

ILLEGAL NONCONFORMING: Any use, or structure that was created or erected, either contrary to the requirements of the underlying zone, and/or without the required permission from Mapleton City and in conformance with this code.

NONCONFORMING LOT: A lot or a parcel of real property that:

- A. Legally existed before its current zoning designation;*
- B. Has been shown continuously on the records of the Utah County recorder as an independently existing piece of property; and*
- C. As a result of subsequent zoning changes does not conform with the minimum size, width, frontage, depth or other applicable dimensional requirement of the zone where the lot is located.*

NONCONFORMING STRUCTURE: A structure, or portion thereof, that:

- A. Legally existed before its current zoning designation; and*
- B. As a result of subsequent zoning changes does not conform with the setback, height restrictions, or other applicable requirements of this title that govern the structure.*

NONCONFORMING USE: A use of land that:

- A. Legally existed before its current zoning designation;*
- B. Has been maintained continuously since the time the zoning regulation governing the land changed; and*
- C. As a result of subsequent zoning changes does not conform with applicable requirements of this title that govern use of the land.*

OTHER NONCONFORMITY: A circumstance governed by this title other than a nonconforming lot, structure, or use that:

A. Legally existed before the current zoning designation of the lot where the nonconformity is located; an

B. As a result of subsequent zoning changes does not conform with applicable requirements of this title. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.030: COMPLIANCE AND ENFORCEMENT:

A. No building permit may be lawfully issued nor shall a certificate of occupancy be granted until the planning director or his/her designee has given authorization indicating all requirements of this chapter, all conditions and stipulations of approval, and any other specific project related requirements have been met.

B. A person, firm, or corporation violating any of the stipulations, conditions of approval, or any other provision of this chapter shall be guilty of a class C misdemeanor, punishable by a fine or imprisonment, or by both. Any such person, firm, or corporation shall be deemed guilty of a separate offense for each and every day during which any violation occurs.

C. In addition to, or independent of the criminal penalties provided above, the city may bring a civil proceeding in a court of competent jurisdiction to enforce compliance with the terms of this chapter, or to prevent, restrain, or abate any violation of the terms of this chapter.

D. Any violation of this chapter is declared to be a public nuisance, and instead of, or in addition to, any criminal or civil enforcement measure authorized by this chapter, may be enjoined or restrained by the city as other nuisances are abated under authority of Mapleton City. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.035: CHANGE IN NONCONFORMING STATUS:

A nonconforming lot, structure, use or other nonconformity may not be changed except in conformance with the provisions of this title. Whenever any nonconforming use is changed to a less intensive nonconforming use, such use shall not be changed back to a more intensive nonconforming use. Whenever any nonconforming use is changed to a conforming use, such use shall not later be changed to a nonconforming use. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.040: NONCONFORMING USES:

A. Continuation: A nonconforming use which was legally existing when such use became prohibited may be continued as provided in this section and by any other applicable provision of this chapter, so long as it remains otherwise lawful, subject to applicable standards and limitations in this chapter.

B. Expansion Within Conforming Building: A nonconforming use existing within a portion of a conforming building may not be expanded to include the entire floor area of such building.

C. Nonconforming Use Of Open Land: A nonconforming use of open land may be continued provided such nonconforming use shall not be expanded or extended into any building or open land, except as may be required by law.

D. Expansion Of Outdoor Nonconforming Uses: A nonconforming use of a lot where the principal use is not enclosed within a building, shall not be expanded unless the strict provisions of this chapter are met.

E. Restoration: A nonconforming use in a conforming structure damaged by fire, wind, earthquake, or other natural disaster or calamity may be restored as it existed previously and its use may be continued so long as restoration is complete within one year. A building permit necessary for the restoration shall be applied for no later than six (6) months after the damage occurred. An extension may be granted by the planning and zoning director for up to an additional six (6) months if the applicant has shown a diligent effort to complete the restoration. Said restoration must be completed to the extent that no less than fifty percent (50%) of the necessary work has been completed within the one year period as determined by the Mapleton City building official. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.050: NONCONFORMING STRUCTURES:

A. Continuation: A nonconforming structure in any zone may be continued as provided in this section and any other applicable provision of this chapter so long as no additions or enlargements are made thereto and no structural alterations are made therein, except as provided in this section or as may be required by law. If any nonconforming structure is removed from the lot where it was located each future structure thereon shall conform to applicable provisions of this title.

B. Maintenance And Repair: A nonconforming structure may be maintained. Repairs and structural alterations may be made to a nonconforming structure within the existing footprint thereof provided that the degree of nonconformity is not increased.

C. Expansion And Enlargement: No nonconforming structure may be enlarged, altered or expanded unless such alterations make the structure conforming to the requirements in the underlying zone. Buildings or structures that are nonconforming due to the fact that they do not meet the setback requirements in the zone, may be expanded so long as the expansion does not further violate the setback requirements. Any additions to a building or structure that will increase the height of a structure may be permitted only if the addition can meet the requirements in the underlying zone, including setback. Therefore, if an existing home had a side yard less than what was required in the zone, and the homeowner wished to add a second story to the building, the second story would be required to meet the setback requirement.

D. Relocation: If a nonconforming structure is relocated within the city, it must be made to become conforming to the zone wherein the structure is placed. A conditional use permit obtained from the planning commission shall also be required.

E. Restoration: A nonconforming structure in a conforming structure damaged by fire, wind, earthquake, or other natural disaster or calamity may be restored as it existed previously and its use may be continued so long as restoration is complete within one year. A building permit necessary for the restoration shall be applied for no later than six (6) months after the damage occurred. An extension may be granted by the planning and zoning director for up to an additional six (6) months if the applicant has shown a diligent effort to complete the restoration. Said restoration must be completed to the extent that no less than fifty percent (50%) of the necessary work has been completed within the one year period as determined by the Mapleton City building official. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.060: NONCONFORMING LOTS:

A. Continuation: A nonconforming lot may continue to be occupied and used although it may not conform in every respect with the dimensional requirements of this title, subject to the provisions of this section and any other applicable provision of this chapter.

B. Residential Zones: A new dwelling may be constructed on a legally established lot which is nonconforming as to area and frontage provided the dwelling conforms to all other requirements of this title and other applicable codes.

C. Nonresidential Zones: A new building may be constructed on a legally established lot which is nonconforming as to area, frontage and/or width provided the building conforms to all other requirements of this title and other applicable codes.

D. Lot With Existing Building Or Structure: If a nonconforming lot contains a legally established structure the owner may continue the legal use of such structure and may expand the structure so long as the expansion conforms to applicable requirements of this title. Residential structures located on a nonconforming lot may be enlarged or rebuilt provided that it meets the requirements of the underlying zone.

E. Illegal Lots: Any lot that does not meet the strict definition of a "zoning lot" as described in section [18.08.475](#) of this title, and has been created illegally, shall not be issued a building permit. Any home located on a lot that was created illegally, shall not be issued a building permit to expand, enlarge, or rebuild the home, or a building permit to construct an accessory building or structure. Any home or structure located on a lot that was illegally created prior to July 1992, may be granted the status of "nonconforming" by the planning commission with the following criteria and conditions of approval:

1. Ownership: The home must not be owned by the person(s) who created the illegal lot nor by anyone related to said person(s) either by blood or adoption to the fourth degree of consanguinity.

2. Setbacks: The creation of the illegal lot did not cause nonconformance to the setbacks of any structure located on the lot or adjacent lots.

3. Conditions: The planning commission may require that the property owner enter into a signed and recorded agreement stating that if the property that was split away from the parcel containing the existing home is developed, that the lot with the home must become a part of the development either by means of a subdivision lot or as allowed in [title 17](#) of this code. If the lot is adjacent to property that has been improved to meet Mapleton City standards, including the installation of curb, gutter and sidewalk, the planning commission may also require the installation of those improvements, which may have been required when the property was divided or altered. Other conditions may include additional landscaping and/or any other items necessary to bring the property to current standards as directed by this code.

F. Accessory Buildings: Accessory buildings customarily incidental to a main building or structure may be constructed on a nonconforming lot provided the accessory building and its location on the lot meets all other applicable building and zoning requirements. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

G. Boundary Line Adjustments: A legal nonconforming lot of record may be altered in size and configuration without losing its legal nonconforming status if the alteration is part of a boundary line adjustment to correct boundary overlaps, gaps or fence line disputes. (Ord. 2014-02, 1-7-2014, eff. 2-2-2014)

18.20.070: OTHER NONCONFORMITIES:

A. Application And Intent: This section shall apply to any other circumstance which does not conform to the requirements of this title including, but not limited to, fence height or location; lack of buffers or screening; lack of or inadequate landscaping; lack of or inadequate off street parking; and any other nonconformity not covered by sections [18.20.040](#), [18.20.050](#), and [18.20.060](#) of this chapter. Because the nonconformities regulated by this section involve less investment and are more easily corrected than those regulated by sections [18.20.040](#), [18.20.050](#), and [18.20.060](#) of this chapter, the intent of the city is to eliminate such nonconformities as quickly as practicable. The degree of such nonconformities shall not be increased.

B. Nonconforming Development With Approved Site Plan: Any nonconforming development which is governed by an approved site plan shall be deemed to be in conformance with this title to the extent such development conforms to the plan.

C. Compliance Required: A nonconformity other than one enumerated in sections [18.20.040](#), [18.20.050](#), and [18.20.060](#) of this chapter shall be brought into conformance upon the occurrence of any one of the following:

- 1. Any action which increases the floor area of the premises by more than twenty five percent (25%). (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)*

18.20.080: NONCONFORMITIES RESULTING FROM PUBLIC ACTION:

When area or yard setbacks of a legally established lot are reduced as the result of conveying land to a federal, state or local government for a public purpose, such as a city street for use by the general public, such lot and yards shall be deemed to be in compliance with the minimum lot size and yard setback standards of this title without any need for a variance. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.090: ABANDONMENT OF NONCONFORMING STRUCTURE OR USE:

A. Presumption Of Abandonment By Passage Of Time: Any nonconforming structure or use which is not occupied or used for a continuous period of six (6) months shall be presumed abandoned and shall not thereafter be reoccupied or used except in a manner that conforms to the requirements of this title unless the presumption of abandonment is overcome as provided in subsection C of this section.

B. Presumption Of Abandonment By Event: Independent of the six (6) month requirement set forth in subsection A of this section, a nonconforming structure or use shall be presumed abandoned when any of the following events occur:

- 1. The owner has in writing or by public statement indicated intent to abandon the structure, use or other nonconformity;*

2. *A less intensive use has replaced the original nonconforming use;*
3. *The owner has physically changed the structure or its permanent equipment in a way that reduces or eliminates the nonconformity; or*
4. *The structure has been removed through applicable procedures for the abatement or condemnation of unsafe structures.*

C. Overcoming Presumption Of Abandonment: A presumption of abandonment may be rebutted upon evidence presented by the owner showing no intent to abandon the structure or use. Such evidence may include proof that during the alleged period of abandonment the owner has done either of the following:

1. *Maintained the structure or use, if any, in accordance with the applicable codes; or*
2. *Has actively and continuously attempted to sell or lease the property where the structure or use is located. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)*

18.20.100: DETERMINATION OF NONCONFORMING STATUS; EFFECT OF DETERMINATION:

A. Procedure: The planning director, or his/her designee, shall determine the existence, expansion, or modification of a nonconforming lot, structure, use or other nonconformity as provided in the following procedure:

1. *If a determination of the nonconforming status of a property is desired, the owner or his designee shall make application for a zone verification with the department of planning. The planning director shall then investigate the factual and legal history of the subject property and shall thereafter make a preliminary determination of nonconforming status of the property.*
2. *Notice of the preliminary determination of nonconforming status shall be mailed to the owners of the subject property and immediately abutting properties, and to the chairman of the neighborhood where the property is located.*
3. *If within fourteen (14) days after notice is mailed, information is received by the planning director which may affect the validity of the preliminary determination, the director shall make an amended preliminary determination. Notice of the amended preliminary determination shall be given. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)*
4. *If no new information is received by the planning director within fourteen (14) days after notice of a preliminary determination is mailed, the preliminary determination shall become final. The notice shall include a statement that the final determination may be appealed to the planning commission as provided in section [18.84.460](#) of this title, and shall state the date by which the appeal must be filed. (Ord. 2013-04, 2-19-2013, eff. 4-1-2013)*

B. Burden Of Proof: In all cases, the property owner shall have the burden of proving by a preponderance of evidence that a lot, structure, use or other circumstance which does not conform to the provisions of this title complied with applicable ordinance requirements in effect when the nonconforming circumstance was established.

C. Abatement Or Compliance: If a property owner is unable to demonstrate that a lot, structure, use or other nonconforming circumstance was legally established, it shall be deemed illegal and shall be abated or brought into conformance with applicable provisions of this title. Abatement or compliance shall be achieved within thirty (30) days, unless the work which must be undertaken to achieve compliance cannot be accomplished in that time period. In such case the owner of the property shall enter into a legally binding agreement wherein the owner agrees to a schedule to achieve conformity as soon as reasonably practicable, so long as compliance is achieved within six (6) months. (Ord. 2003-23, 11-5-2003, eff. 12-11-2003)

18.20.110: APPEALS:

Any person aggrieved by a decision of the community development director, planning commission, city council or other official enforcing the provisions of this chapter may appeal for relief therefrom as provided in section [18.84.460](#) of this title. (Ord. 2013-04, 2-19-2013, eff. 4-1-2013)

18.84.050: CREATION OF ILLEGAL PARCELS PROHIBITED:

No parcel of land shall be severed from another parcel of land which would leave either parcel with less than the minimum frontage and area requirements for the zone in which it is located. (Ord. 2002-05, 3-20-2002)

18.84.140: LOTS TO ABUT UPON A PUBLIC STREET:

At least one side of each zoning lot shall abut upon and have direct access to a designated city street. The minimum lot width and the length of the side abutting on the street shall conform to the minimum standards of the zone in which it is located. (Ord. 2002-05, 3-20-2002)

18.84.350: BUILDINGS TO BE ON ZONING LOT:

No permit authorizing the construction or moving of a building on a lot shall be issued unless the parcel of land upon which said building is to be constructed qualifies as a "zoning lot" as defined by section [18.08.475](#) of this title. (Ord. 2002-05, 3-20-2002)

18.84.460: APPEALS:

A. Appeals To The Planning Commission: Decisions made by the community development director or other official enforcing the provisions of this chapter may be appealed to the planning commission by filing a notice of appeal in writing with the planning commission secretary. All valid appeals shall be filed within ten (10) business days of the date of action and shall include payment of the required filing fees as established by city council resolution.

- 1. Such notice of appeal shall set forth specifically the ground or grounds upon which such appeal is taken, and the name, address and signature of the appellant.*
- 2. Within ten (10) business days after receipt of a valid appeal the planning commission secretary shall set a date for public hearing at which the appeal shall be considered by the planning*

commission. All appeals shall be set for the next regular planning commission meeting unless insufficient time exists for public notice as established by state code.

B. Appeals To The City Council: Decisions made by planning commission to approve or deny projects or appeals may be appealed to the city council by filing a notice of appeal in writing with the city recorder. All valid appeals shall be filed within ten (10) business days of the date of action and shall include payment of the required filing fees as established by city council resolution.

1. Such notice of appeal shall set forth specifically the ground or grounds upon which such appeal is taken, and the name, address and signature of the appellant.

2. Within ten (10) business days after receipt of a valid appeal the city recorder shall set a date for public hearing at which the appeal shall be considered by the city council. All appeals shall be set for the next regular city council meeting, unless insufficient time exists for public notice as established by state code.

C. Stay Of Proceedings Pending Appeal: An appeal stays all proceedings in furtherance of the action appealed from, unless the community development director, planning commission or city council certifies after the notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would cause eminent peril of life or property. In such case proceedings shall not be stayed otherwise than by restraining order which may be granted by the district court on application and notice and on due cause shown.

D. Judicial Review Of City Council's Decision: Any person aggrieved by any decision of the city council may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction; provided petition for such relief is presented to the court within thirty (30) days after the final decision by the city council. (Ord. 2013-04, 2-19-2013, eff. 4-1-2013)