

19 May 21 PB Meeting Notes

Non-Conforming Use 4-Step Test Summary

Overall change has a justified investment-backed expectation pre-dating the ordinance.

(A) Is the change required for the purpose of making the *already-existing* use more available or workable to the owner; or does it constitute a new and different use?

- Phrased as “whether the use at issue is merely a different manner of utilizing the same use, or constitutes a use different in character, nature and kind.”

(B) Does the proposed change arise “naturally” (through evolution, such as new and better technology, or changes in society) out of the “grandfathered” use

- Expressed as “the extent to which the use in question reflects the nature and purpose of the prevailing [i.e. pre-existing] nonconforming use.”

(C) Will the change or expansion render the premises proportionally less adequate for the use, in terms of the requirements of the ordinance?

(D) Will the change or expansion have a substantially different effect or *impact on abutting property or the neighborhood*?

- *Per the law, it doesn't really matter whether that impact is better or worse.*

Question inherent in all of the steps: is the preexisting use a specific kind of business or a more general category of commercial use?