



Yuma County, Arizona
DEPARTMENT OF DEVELOPMENT SERVICES
 2703 S. Avenue B • Yuma, Arizona 85364

Harold Aldrich
 Director
 (928) 329-2300
 FAX: (928) 726-5626

MEMORANDUM

TO: Interpretation file

FROM: Monty Stansbury, Planning Director *MS*

SUBJECT: What constitutes reasonable repair or alteration as the language relates to pre-ordinance nonconforming residential uses

DATE: June 28, 2004

QUESTION: What defines reasonable repair or alteration as it impacts pre-existing residential structures within or apart from territory in the vicinity?

Article 10, Section 1001.00 reads, "This Article is intended to limit nonconforming uses of land, buildings, or structures existing at the time of its effective date by prohibiting or limiting an enlargement, reestablishment after abandonment, or restoration after destruction of the use. Nothing in this ordinance shall affect existing uses of property or the right to its continued use or the reasonable repair or alteration thereof for the purpose for which used at the time the ordinance affecting the property takes effect."

Similarly, A.R.S. §11-830(A)(1) reads, "Nothing contained in any ordinance authorized by this chapter shall affect existing uses of property or the right to its continued use or the reasonable repair or alteration thereof for the purpose for which used at the time the ordinance affecting the property takes effect."

Article 10, Section 1008.00 reads, "Reasonable repairs and alterations of existing uses of property are permitted. *(For the purpose of this section, uses in the C-1, C-2, LI, HI, and II districts shall be considered business use).*"

Article 10, Section 1010.00 reads, "An increase in the intensity [of a] use does not constitute a change in a nonconforming use. However, a change of the use or addition of new uses constitutes more than an intensification and is not permitted."

Article 10, Section 1011.00 reads, "A nonconforming structure damaged or destroyed may be restored and the nonconforming use may be resumed, provided that the restoration is started within six months and completed within one year from start of restoration and the location and area covered on the lot remains the same or comes more into compliance with the zoning regulations. Structures, as used in this paragraph, include on-premise signs and billboards."

Black's Law Dictionary, sixth edition, defines "alteration" as variation; changing; making different. A change of a thing from one form or state to another; making a thing different from what it was without destroying its identity. And "repair" as mend, remedy, restore, renovate. To restore to a sound or good state after decay, injury, dilapidation, or partial destruction. The word "repair" contemplates an existing structure or thing which has become imperfect, and means to supply in the original existing structure that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, as near as may be.

RESPONSE:

The intent of the Ordinance is to prohibit or limit an enlargement, reestablishment after abandonment, or restoration after destruction of the particular use.

- **Enlargement**; on a case by case basis the existence of a profound enlargement issue will need to be determined. Of primary concern with any enlargement are the adverse impacts to deficient yard spaces that include easements, septic disposal, and distances from other residences. Further decrease in required yard spaces will not be allowed.
- **Reestablishment**; is dealt with sufficiently in Section 1012 of the Zoning Ordinance. Eighteen months are provided for the vacancy affiliated with residential use.
- **Restoration**; is handled by Section 1011 and gives specific timelines to satisfy the restoration.

For purposes of this interpretation, an alteration is synonymous with a residential replacement with a similar residential use, especially if it accommodates greater health, safety and welfare. This does not include the change of use from a single-family to multiple family occupancy; a type of use that is otherwise not allowed. An example of this instance would be the occupancy of a recreational vehicle that is replacing a mobile home in a site-built zoning district. Ultimately the goal of nonconformity is to bring properties more into compliance with the underlying zoning and eventually to comply with said zoning.

Regarding pre-existing residential uses in areas affected by territory in the vicinity (military operations); these are able to be replaced as a function of not creating further irregularities or improvement by meeting requirements of the applicable zoning district. The overall intent of these statutorily designated territories is not to increase densities by allowing further residential occupancy in areas that are presently vacant.