

The first determination that needed to be made was whether or not the entire structure is non-conforming or just the portion within the required setback.

K.C.C. 21A.06.800 states: "Nonconformance; any . . . structure established in conformance with . . ." (emphasis added).

The discussion centered around the fact that the definition did not say structure or portion of structure.

The next question was whether or not the structure can be "modified" (and what does modified mean).

K.C.C. 21A.32.055 states: "Modifications to a nonconforming use, structure, or site improvement may be reviewed and approved by the department . . . provided that:

- A. The modification does not expand any existing nonconformance; and
- B. The modification does not create a new type of nonconformance."

The group discussed the differences between a modification and an expansion and which would apply to the specific situation.

The final question relates to K.C.C. 21A.32.065 and where the 10% expansion is allowed. Is it allowed on the portion of the building within the required setback on only the portion outside the setback?

K.C.C. 21A.32.065 states: "Expansions of nonconforming uses, structures . . . A nonconforming use, structure . . . may be expanded . . . provided that:

1. The expansion shall conform to all other provisions of this title, except that the extent of the project-wide conformance in each of the following may be increased by up to 10 percent:
 - a. building square footage, . . .
 - b. building height"

Conclusion:

The group determined that the entire structure is non-conforming as it does not seem correct to have a building partially conforming and partially non-conforming.

The group then determined that a "modification" to a structure is internal change where an expansion increases square footage, heights, etc. Thus, the specific case would be classified as an expansion.

Finally, the group determined that any portion of the building outside the setback can be modified or expanded, subject to the setbacks, etc. for the zone. The portion inside the setback can be expanded per K.C.C. 21A.32.065.