Clarification is needed with regard to how nonconforming (NC) structures and NC sites are defined, and specifically whether or not a site or a structure is nonconforming when the maximum allowed density is exceeded by a multifamily building. Maximum density is calculated based on the land area of a site so it is rational to consider that the site has too many dwelling units and is therefore nonconforming. Similarly, it is logical to consider the structure to be nonconforming because it is the characteristics of the structure itself that renders a determination of the maximum allowed density being exceeded.

In 2017, Ordinance No. 5869 was adopted to add standards and regulations to RMC 4-11-020, Nonconforming Site Development Standards, which until then had no content. The nature of the content added to that reserved Section of RMC can be described as: required improvements related to the physical characteristics of the site upon the voluntary actions of the owner to make improvements to the structure. The contemplated “physical site improvements” included the examples provided in the definition of “nonconforming site,” such as landscaping, shoreline stabilization, and parking.

Ordinance No. 5869 also edited the definition of “nonconforming site” in an effort to simplify the definition; however, it seems that effort created, at least in part, the need to clarify the distinction of a NC structure versus a NC site with regard to exceeded density.
The definition was amended as follows (note the struck text of the highlighted portion that previously indicated the distinction between NC structures and NC sites vis-à-vis exceeded density):

“A lot which does not conform to development regulations not related to the characteristics of a structure but to the site and the facilities provided thereon a site including, but not limited to, the vegetation conservation, shoreline stabilization, landscaping, parking, screening fence, driveways, street opening impervious surface coverage, pedestrian amenity, and other regulations of the district in which it is located due to changes in code requirements, or annexation.”

**DECISION:**

If a *multifamily building* has more dwelling units than the zone allows based on the land area of the property, the *structure* is nonconforming vis-à-vis maximum density.

Conversely, if there exists upon a site more legally established detached dwellings (e.g., single-family houses, cottage houses, etc.) than currently allowed by RMC, the *site* is nonconforming related to maximum density. [NOTE: Although a *site is nonconforming* if there are too many detached dwellings, those dwellings themselves are *nonconforming uses* and enjoy the privileges granted by RMC 4-10-060, Nonconforming Uses.]

Another example of a nonconforming site would be a property with too many accessory buildings. Within the R-4, R-6, and R-8 zones, RMC currently allows only two accessory structures each with a maximum area of 720 square feet. If there are three accessory structures on a site then the site is nonconforming. And if any single one of those structures exceed the allowed square footage then that structure itself is nonconforming (i.e., the site is nonconforming because of too many structures, but the structure is nonconforming because its characteristics do not comply with the related standards).

These scenarios are intended to provide examples to distinguish NC structures from NC sites. NC structures relate to the characteristics of the structure regardless of how the standards for that structure are measured or were derived (e.g., building location as determined by yard setbacks, or the number of dwellings a multifamily building may have based on the land area – expressed as the maximum density). Whereas sites are nonconforming, as they relate to structures, based on the number and/or type but not to the size or location of those structures.

**JUSTIFICATION:**

The decisions presented above are justified based on four considerations: (1) the former definition of “nonconforming site;” (2) the intent and applicability of RMC 4-10-020, Nonconforming Site Development Standards; (3) the intent and applicability of RMC 4-10-050, Nonconforming Structures; and (4) the practical means of rectifying a situation where a multifamily building is “over-dense.”
1) The former definition of “nonconforming site” clearly, albeit awkwardly, noted that the characteristics of a structure do not contribute to the determination that a site is nonconforming. The intent of the edits effected by Ordinance No. 5869 was to remove a double-negative from the definition in order to make it easier to read.

2) RMC 4-10-020, Nonconforming Site Development Standards, requires improvements related to the physical characteristics of the site upon the voluntary actions of the owner to make improvements to the structure. This Section does not address the common question of whether or not a multifamily structure that is “over-dense” may be rebuilt if necessitated by severe damage resulting from an act of God.

3) RMC 4-10-050, Nonconforming Structures, does address the opportunities to rebuild a nonconforming structure. The provisions of this Section have historically governed such situations and there is no precedent to now interpret another Section of RMC (e.g., RMC 4-10-020, Nonconforming Site Development Standards) to apply without the code expressly stating such applicability.

**ADMINISTRATOR APPROVAL:**

_______________________________________
C. E. “Chip” Vincent

**EFFECTIVE DATE:**

_______________________________________

**APPEAL PROCESS:** To appeal this determination, a written appeal—accompanied by the required filing fee—must be filed with the City’s Hearing Examiner (1055 South Grady Way, Renton, WA 98057, 425-430-6515) no more than 14 days from the date of this decision. Section 4-8-110 of the Renton Municipal Code provides further information on the appeal process.

**DISCLAIMER:** Excerpts from the Renton Municipal Code shown below may not contain the most recently codified text. In such instances, code amendments implemented through this Administrative Code Interpretation shall be construed to affect the current code and past/future Administrative Code Interpretations not yet codified in the same manner as shown below. Should any conflicts result the Administrator shall determine the effective code.

**CODE AMENDMENTS NEEDED TO IMPLEMENT DETERMINATION(S):** 4-11-140 DEFINITIONS N

**NONCONFORMING SITE:** A lot-site that does not conform to development regulations related to the characteristics of the site and/or the facilities/infrastructure provided thereon including, but not limited to, vegetation conservation, storm drainage facilities, shoreline stabilization, landscaping, parking,
vegetative screening, driveways, impervious surface coverage, pedestrian amenity, the type and/or number of structures (i.e., more accessory buildings than allowed), and other regulations of the district in which it is located due to changes in code requirements, or annexation.

**NONCONFORMING STRUCTURE:** A lawfully established structure that does not comply with the current development standards (yard setbacks, design standards, height, number of dwelling units in a multifamily building, etc.) for its zone, but which complied with applicable regulations at the time it was established. Such structures may or may not be in compliance with other relevant building codes and regulations.

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