



# MEMORANDUM

DATE:	January 13, 2020
TO:	Chairperson Cauley, Members of the Planning Commission, and Administrator Meyer
FROM:	Cynthia Smith Strack, Community Development Director
RE:	6.1 Discussion: Non-Conformance Expansion Permit Code Language

## GENERAL INFORMATION

Several years ago the City placed code language into effect providing for expansion of non-conformance in certain situations, including when:

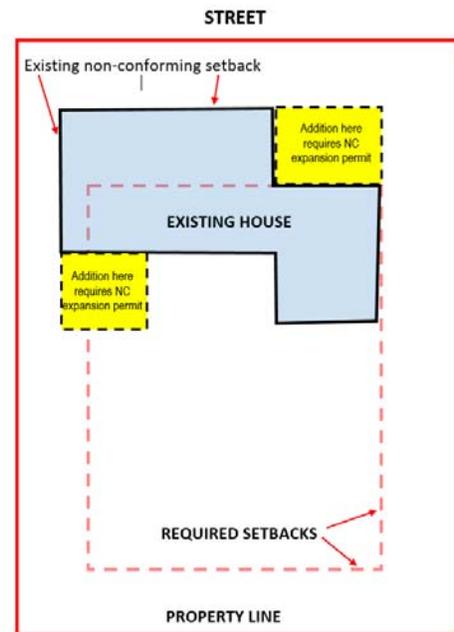
- A. *The proposed expansion will occupy any space within a non-conforming area that was previously not occupied both vertically and horizontally. For example, an expansion permit would be required if a second floor area is expanded into the non-conforming setback over an existing non-conforming first floor even though the non-conformity of the first floor setback dimension stays the same or is reduced; or*
- B. *The non-conforming aspect of a use or structure is reduced but still does not comply with current ordinance standards.*

The current language (attached) requires a **variance** in situations where a *“proposed expansion intrudes into one or more setback areas beyond the distance of the existing structure or if the expansion will exceed the height or size limitations in this section by a distance or amount greater than the existing structure”*.

The code language also assigns review criteria comparative to variance ‘practical difficulty’ test standards, including: *The circumstances justifying the expansion are unique to the property, are not caused by the landowner, are not solely for the landowner’s convenience, and are not solely because of economic considerations”*.

We have had several requests for non-conformance expansion permits over the past few years. Review of existing language is requested, specifically:

1. Does the Commission favor a variance for intensification? I’ve reached out to City Attorney Vose to gain insight as to discussion surrounding current language.
2. The practical difficulty test can be a high bar to achieve and often repeated requests for relief indicate a standard that should be examined. Would the Commission consider streamlining the process by allowing building additions like those illustrated above (yellow) as a right with conditions versus through a hearing? See sample language on next page.
3. Other comments/thoughts on non-conforming uses?



Sample as a right (conditional) language:

*A structure may extend horizontally and vertically along existing building setbacks if the proposed expansion:*

- A. Will not endanger public safety.*
- B. Will not interfere with adopted City plans or regulations requiring additional right-of-way width; and,*
- C. It is not an expansion of a setback previously authorized through the variance process.*
- D. Will not create any new nonconformance in height or setback.*

## 1102.03 EXPANSION PERMIT, NON-CONFORMING USE OR STRUCTURE.

### 1102.03 Subd 1. INTENT.

An expansion of a non-conforming use may not be done without first obtaining a variance pursuant to section 1103 or an expansion permit pursuant to subdivision 2 of this section.

1. A variance is required if the expansion will intrude into one or more setback areas beyond the distance of the existing structure or will exceed the height or size limitations in this section by a distance or amount greater than the existing structure. Otherwise, an expansion permit is required. For example, if the building currently has a front setback of 25 feet when 30 feet is required, and the expansion would reduce the setback to 24 feet, then a variance is required. In contrast, if only a portion of the building has a front setback of 25 feet when 30 feet is required, and the expansion brings the rest of the building to the same setback of 25 feet, then an expansion permit is required rather than a variance.
2. An expansion permit is also required if:
  - A. The proposed expansion will occupy any space within a non-conforming area that was previously not occupied both vertically and horizontally. For example, an expansion permit would be required if a second floor area is expanded into the non-conforming setback over an existing non-conforming first floor even though the non-conformity of the first floor setback dimension stays the same or is reduced; or
  - B. The non-conforming aspect of a use or structure is reduced but still does not comply with current ordinance standards.

### 1102.03 Subd 2. PROCEDURE.

#### 1. Application.

Application for a non-conforming use or structure expansion permit must be made to the zoning administrator. The application must be on forms provided by the city and must be accompanied by the following:

- A. A plat or map of the property which shows, at a minimum, all lot lines, existing and proposed structures, driveways and parking areas, significant topographical features and mature trees;
  - B. Evidence of ownership or an interest in the property;
  - C. The fee set by the annual fee schedule; and
  - D. Such other information as may be required by the city.
- #### 2. Public Hearing.

Upon receipt of a completed application, a date will be set for a public hearing before the planning commission. The public hearing will be held only after notice has been sent by mail to the owners of all properties situated wholly or partially within 350 feet, as reflected in the certified records of the Scott County Auditor.

### 3. Decisions.

A. An expansion permit for a non-conforming use or structure may be granted, but is not mandated, when the applicant meets the burden of proving that:

1. The proposed expansion is a reasonable use of the property, considering such things as:

a. Functional and aesthetic justifications for the expansion;

b. Adequacy of off-street parking for the expansion;

c. Absence of adverse off-site impacts such as things as traffic, noise, dust, odors, and parking; and

d. Improvement to the appearance and stability of the property and neighborhood.

2. The circumstances justifying the expansion are unique to the property, are not caused by the landowner, are not solely for the landowner's convenience, and are not solely because of economic considerations; and

3. The expansion would not adversely affect or alter the essential character of the neighborhood.

B. The city council may grant an expansion permit. The city council may impose conditions in granting an expansion permit to affect the intent of this ordinance and to protect adjacent properties. The city council must accompany its decision to deny an expansion permit with a statement of its findings and must serve a copy of its decision upon the applicant by mail.

### 4. Term of Expansion Permit.

An expansion permit granted by the city will run with the land and will be perpetual unless no building permit has been issued or substantial work performed within one (1) year following the approval, in which case the permit will be null and void. The city council may extend the period for construction upon finding that the interest of the owners of neighboring properties will not be adversely affected by such extension. If the expansion permit is part of an approved site and building plan, extension of the time period for construction will be contingent upon similar extension of the time period for the site and building plan by the planning commission as required by section 1103.07 of this ordinance. Once the project is completed as approved, the expansion permit becomes perpetual.

### 5. Specific Period.

An expansion permit is valid only for the project for which it was granted. Construction of any project must be in substantial compliance with the building plans and specifications reviewed and approved by the planning commission and city council.

6. Appeals.

A person aggrieved by a decision of the city council regarding an expansion permit may appeal to the city council pursuant to section 1103.04.

7. Recording.

A certified copy of the expansion permit must be filed by the applicant with the Scott count recorder or the Scott county registrar of titles. The expansion permit must contain a legal description of the property affected.

8. Violations.

A person who violates, fails to comply with or assists, directs or permits the violation of the terms or conditions of an expansion permit is guilty of a misdemeanor. A violation is a violation of the expansion permit and renders the permit null and void. A violation also constitutes a public nuisance that may be abated in accordance with the provisions of section 1103.03.

*(Ord. 11-14, Section 1102.01, 1102.02 and 1102.03, Adopted December 19, 2011.)*