



MEMORANDUM

DATE:	March 9, 2020
TO:	Chairperson Cauley, Members of the Planning Commission, and Administrator Meyer
FROM:	Cynthia Smith Strack, Community Development Director
RE:	6.3 Discussion: Non-Conformance Expansion Permit Code Language

GENERAL INFORMATION

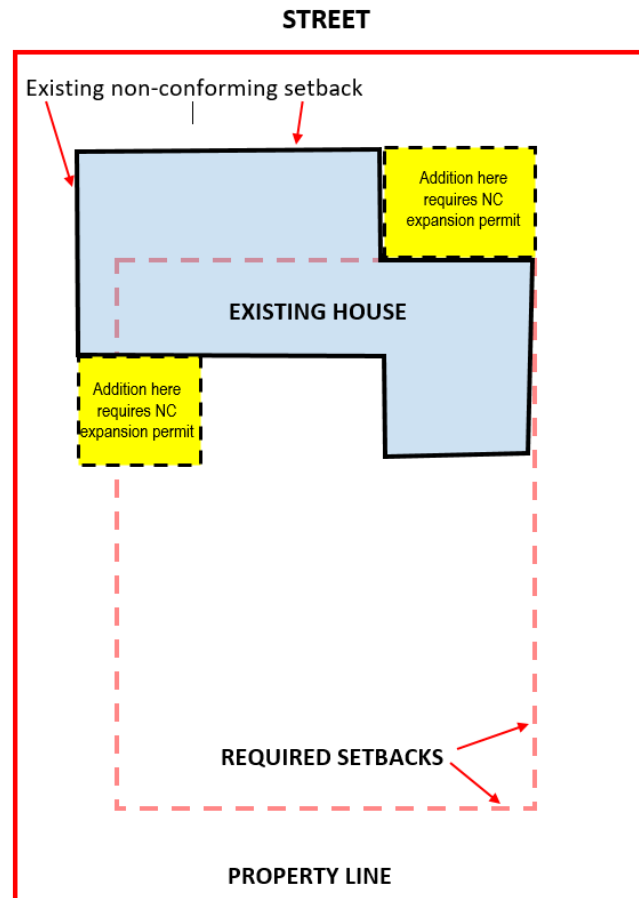
In January the Commission had significant discussion on non-conformance expansion permits. The Commission specifically addressed current criteria for issuing expansion permits, as distinguished from situations where variances are needed.

Currently, non-conformance expansion permit code language assigns review criteria comparative to variance 'practical difficulty' test standards leading to confusion when administering the code.

At the January meeting the Commission requested input from City Attorney Vose on policy approach. The Commission also discussed potentially amending existing language, including by incorporating sample language included in the packet from another jurisdiction.

Attorney Vose notes Belle Plaine's approach to defining 'expansion' of a grandfathered use/structure was to permit some increases to non-conformities while allowing other increases only be variance with the permit being easier to obtain than the variance. The City's approach was to define expansions in a narrow way and require variances where non-conformity was being increased. At this time the City could take a more hands off approach by not even requiring an expansion permit where a non-conforming structure is expanded and non-conformity isn't increased. In the past the approach was to discourage continuance of non-conformities, just not too much.

Based on discussion from previous meeting, the following adjustments to clarify current code language is provided for discussion. Full existing code language is attached.



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;
- e. Will not endanger public safety;
- f. Will not interfere with adopted City plans or regulations requiring additional right-of-way width;
and,
- g. Is not expansion of a non-conformity previously allowed through the non-conformance variance process.

~~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.

SECTION 1102.00 NON-CONFORMING LOTS, USES AND STRUCTURES.

1102.01 INTENT.

Lots, structures and uses of land which were lawful when established, but which would be prohibited under the terms of this Ordinance or future amendment shall be deemed legal non-conforming and regulated in accordance with this section.

It is the intent of this Ordinance to phase out such non-conforming uses within a reasonable time period while retaining full economic value. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, and not be used as grounds for adding other structures or uses prohibited elsewhere in the same district, except in compliance with provisions of this section.

A non-conforming use of a structure, a non-conforming use of land or a non-conforming use of a structure and land may only be extended or expanded, including by expansion of a building or structure, attachment or placement of additional signs or display devices to a building, or on the land outside the building, upon issuance of an expansion permit. The addition uses which would be prohibited generally in the district involved may not be allowed by expansion permit.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun and upon which actual building construction has been diligently continued. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner, and demolition, elimination and removal of an existing structure in connection with such construction, provided that actual construction work shall be diligently continued until the completion of the building involved.

(Ord. 09-05, Section 1102.01, Adopted December 21, 2009.)

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

1102.02 NON-CONFORMITIES.

Any nonconformity, including the lawful use or occupation of land or premises legally existing at the time of establishment may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

1. The nonconformity or occupancy is discontinued for a period of more than one year or;
2. The nonconformity is destroyed by fire or other peril to the extent of greater than fifty (50) percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In this case, the City may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property.

The City may impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare or safety. Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.

Notwithstanding the above, the City shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in the floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flows in the floodway.

(Ord. 09-05, Section 1102, Adopted December 21, 2009.)

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

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 county 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.)