

**Community Planning and Economic Development Planning Division Report
Zoning Code Text Amendment**

Date: July 21, 2008

Initiator of Amendment: Council Member Hodges

Date of Introduction at City Council: June 29, 2007

Specific Site: Citywide

Ward: Citywide **Neighborhood Organization:** Citywide

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Intent of the Ordinance: To revise the length of time that a legal nonconforming single or two-family structure containing a conforming use has to apply for building permit to legally rebuild such a structure.

Appropriate Section(s) of the Zoning Code: Chapter 531.40 Loss of nonconforming rights

Background: The State of Minnesota regulates the length of time a nonconforming use or structure has to be rebuilt when damaged to an extent greater than 50 percent its market value before the nonconforming rights are lost. The State offers nonconforming uses and nonconforming structures 180 days from the date the property is damaged to apply for a building permit to rebuild or replace the structure or use to the pre-existing conditions. If a building permit has not been applied for in the 180 days any subsequent use or structure must comply with the zoning ordinance.

The City of Minneapolis's Ordinance follows the State's Ordinance regarding the 180 days to apply for a permit without the loss of the nonconforming rights. Section 531.40 of the Zoning Ordinance further differentiates between two types of nonconformities: legal nonconforming structures containing a conforming use, such as a single family home in the R1 Single Family district that is nonconforming to the performance standards such as side yard setbacks. And legal nonconforming uses, such a commercial use in the R1 Single Family district. The proposed text amendment will only address legal nonconforming structures containing a conforming use. Staff is not proposing to change the length of time a legal nonconforming use that has been damaged or destroyed has to apply for a building permit before the nonconforming rights are lost. That length of time will remain 180 days.

Purpose for the Amendment:

What is the reason for the amendment?

What problem is the Amendment designed to solve?

What public purpose will be served by the amendment?

What problems might the amendment create?

Community Planning and Economic Development Planning Division Report

In June of 2007 Council Member Hodges introduced a text amendment to reexamine how long a nonconforming structure that was damaged or destroyed has to be rebuilt before the nonconforming rights are lost. The text amendment was introduced because of concerns about legal nonconforming structures that were created by the adoption of the infill housing text amendment in July of 2007 which addressed building area, lot coverage, structure height and impervious surface coverage of single and two-family dwellings. Citizens were concerned that the 180 days granted by the current ordinance did not offer enough time for the for the owners of a legal nonconforming structure to get plans together to apply for a building permit after it was damaged or destroyed.

The general purpose of the amendment is to revise the length of time that a damaged nonconforming single or two-family structure containing a conforming use can be replaced before its nonconforming rights are lost. The Zoning Ordinance currently allows 180 days from the time of the damage to apply for permits to allow for a nonconforming structure to be replaced without the loss of its nonconforming rights. After 180 days the rights have been lost and the replacement structure must be in compliance with the current zoning ordinance.

The proposed amendment will increase the length of time to replace the nonconforming single or two-family structure containing a conforming use from 180 days after the damage to one year after the damage before the nonconforming rights are lost. The amendment will allow for reasonable time to recover from the incident, develop plans, and submit an application to rebuild a nonconforming single or two-family structure containing a conforming use.

The proposed amendment will not extend the length of time to replace damaged or destroyed nonconforming uses, such as a commercial use in a residence district. Minnesota State law grants nonconforming uses 180 days to apply for a permit after being damaged or destroyed before their nonconforming rights are lost. Staff believes that offering further flexibility for nonconforming uses would be inconsistent with adopted City policies and regulations.

Staff does not anticipate that the amendment will create significant problems. However, the amendment allows for an increase in the length of time that a structure sits damaged or a lot sits vacant before a property owner applies for a building permit. This may prolong the length of time a structure sits damaged or a lot vacant which will impact immediate neighbors or the neighborhood.

Timeliness:

Is the amendment timely?

Is the amendment consistent with practices in surrounding areas?

Are there consequences in denying this amendment?

The amendment is timely because a year has passed since the infill housing text amendment was passed and this text amendment was introduced to directly address the concerns of Minneapolis residents over the infill housing text amendment.

Community Planning and Economic Development Planning Division Report

A review of the zoning ordinances of peer cities demonstrates that the proposed amendment is consistent with the ways surrounding Minnesota communities handle the loss of rights to nonconforming structures that have been damaged or destroyed.

City	Length of Time to Repair Before Rights are Lost	Percent Damage to Structure When Rights are Lost
<i>Minneapolis</i>	<i>6 months</i>	<i>Have rights if repair cost is 50% or more of Mrkt Value</i>
<i>Hopkins</i>	<i>6 months</i>	<i>Have rights if repair cost is 50% or more of Mrkt Value</i>
<i>Richfield</i>	<i>6 months, 1 year for SFD built prior to 1968</i>	<i>Have rights if repair cost is 50% or less of Mrkt Value</i>
<i>Roseville</i>	<i>6 months</i>	<i>Have rights if repair cost is 50% or more of Mrkt Value</i>
<i>St. Louis Park</i>	<i>1 year</i>	<i>Have rights if repair cost is 50% or more of Mrkt Value</i>
<i>St. Paul</i>	<i>None</i>	<i>Have rights if repair cost is less than 60% of cost to replace</i>
Chicago, Illinois	18 months	None
Cleveland, Ohio	None	Have rights if less than 50% of structure destroyed
Denver, Colorado	None	Have rights if repair cost is less than 75% of Mrkt Value
Madison, Wisconsin	None	Have rights if repair cost is less than 50% of Mrkt Value
Milwaukee, Wisconsin	None	Have right if repair cost is less than 50% or damage occurred after March 2, 2006
Omaha, Nebraska	None	Rebuild if not increasing nonconformity
Portland, Oregon	2 years	None

The Minnesota examples provide the most guidance due to the Minnesota state law. A good way to think about the Minnesota state law is that it creates a ‘floor’ that guarantees nonconforming rights up to 180 days after the damage or destruction. Communities such as Richfield and St. Louis Park have chosen to offer additional rights, above the ‘floor’ created by the state law by guaranteeing nonconforming rights, for up to one year after the damage. Richfield has chosen to further restrict these rights to a specific type of nonconforming structure, single family homes built before 1968. This date corresponds with the adoption of a new zoning ordinance in Richfield that changed performance standards such as setbacks.

Comprehensive Plan:

How will this amendment implement the Comprehensive Plan?

Policy 4.14 of the Minneapolis Plan states that “Minneapolis will maintain the quality and unique character of the city's housing stock, thus maintaining the character of the vast majority of residential blocks in the city.” The following implementation step is listed under this policy: “provide the flexibility in the city's ordinances to improve and maintain existing structures.”

A variety of development patterns and architectural styles make up the character of the City’s neighborhoods. Development occurred prior to the adoption of recent zoning regulations that govern setbacks, structure height and size and lot coverage. Allowing single or two-family

Community Planning and Economic Development Planning Division Report

structures containing conforming uses that have been damaged or destroyed to be rebuilt maintains the character of the residential areas and provides further flexibility in the zoning ordinance, which aids in the implementation of the Comprehensive Plan.

Recommendation of The Community Planning and Economic Development--Planning Division:

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission and City Council adopt the above findings and **approve** the zoning code text amendment, amending section 531.40.