



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

Telephone: 651-266-6700
Facsimile: 651-228-3220

DATE: November 19, 2012
TO: Councilmember Russ Stark
FROM: Patricia James, Wendy Lane, Allan Torstenson
RE: Ord 12-71. Nonconforming Use Text Amendments – Proposed Language by Councilmember Stark

On November 16, 2012, we met at your request to discuss three of Council President Lantry's proposed changes to the Planning Commission's recommended amendments to Chapter 62, Nonconforming Lots, Uses and Structures. These changes affect Sections 62.105(b), 62.106(h), and 62.106(m). You requested alternative language for these sections.

The format below first provides the current Legistar version, with the changes introduced by Kathy Lantry, and with her changes highlighted in yellow. The next paragraph suggests alternative language for your consideration, with the suggested language and other changes from current Legistar version 4 shown in turquoise highlight. A brief justification for the changes is also provided.

1. **Sec. 62.105. Nonconforming structures with conforming uses.**

The current version of the ordinance contains Council President Lantry's amendment to the Planning Commission recommendation for Sec. 62.105(b). It would prevent vertical expansions for structures with nonconforming setbacks, thus requiring the owner to apply to the Board of Zoning Appeals for a variance:

(b) A nonconforming structure may be enlarged physically expanded or altered so long as such enlargement expansion or alteration does not increase its nonconformity and the use in the expanded or altered area of the structure meets any zoning separation requirement. Accessory buildings may be added so long as they conform in all respects to the requirements of section 63.501, accessory buildings. A structure with a nonconforming setback shall not be expanded horizontally or vertically within the setback area, but may be expanded vertically within the setback area by up to ten (10) feet to a total of no more than two (2) stories, subject to the height limits of the district.

*Language proposed for introduction by Councilmember Stark essentially restores the Planning Commission's recommended language. However, it makes an exception for structures in the River Corridor Critical Area, which was of specific concern to Council President Lantry, while continuing to permit vertical expansions of nonconforming structures in other parts of the city. This section is typically used by smaller single family homes in single family districts with a yard setback that doesn't meet the existing code requirement. It is important to remember that this section applies to nonconforming **structures** only; the **use** itself is permitted in the zoning district.*

(b) A nonconforming structure may be enlarged-physically expanded or altered so long as such enlargement-expansion or alteration does not increase its nonconformity and the use in the expanded or altered area of the structure meets any zoning separation requirement. Accessory buildings may be added so long as they conform in all respects to the requirements of section 63.501, accessory buildings. A structure with a nonconforming setback shall not be expanded horizontally or vertically within the setback area, but may be expanded vertically within the setback area by up to ten (10) feet to a total of no more than two (2) stories, subject to the height limits of the district. Except in the River Corridor Overlay Districts, a structure with a nonconforming setback may be expanded vertically within the setback area by up to ten (10) feet to a total of no more than two (2) stories, subject to the height limits of the district.

2. Sec. 62.106. Nonconforming uses of structures, or structures and land in combination.

The current Legistar version includes a change to Sec. 62.106(h) that deletes the Planning Commission recommendation permitting legal nonconforming residential uses to be reestablished with the number of units they had when originally constructed and require that they go through the process of reestablishing the nonconforming use.

(g-h) When a legal nonconforming use is discontinued or ceases to exist for a continuous period of ~~three hundred sixty-five (365) days more than one (1) year~~, the building, or building and land in combination, shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e). A residential building vacant for more than one (1) year may be re-established at the number of units for which it was originally constructed and used provided that it has not been physically converted to a fewer number of units. If the building has been converted to fewer units, the use may be re-established up to the reduced number of units.

Language proposed for introduction by Councilmember Stark restores the original Planning Commission recommendation but clarifies the method by which the original number of units would be determined and also makes it clear that if the original number of units cannot be clearly established, the use would need to go through the process for reestablishing the nonconforming use. This section would most often be used by nonconforming duplexes in single family zones where it is clear that the structure was originally built as a duplex. There are many of these duplexes through out the city, since prior to 1975 duplexes were permitted in every zoning district. The amendment would also apply to residential uses in non-downtown business districts, where they are generally not permitted. This proposed language incorporates a suggestion by the City Attorney's Office that offers further clarity.

(g-h) When a legal nonconforming use is discontinued or ceases to exist for a continuous period of ~~three hundred sixty-five (365) days more than one (1) year~~, the building, or building and land in combination, shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e). A residential building vacant for more than one (1) year may be reestablished at the number of units for which it was originally constructed provided that it has not been physically converted to a fewer number of units. If the building has been converted to fewer units, the use may be re-established up to the reduced number of units. The zoning administrator shall determine the number of units at the time of original construction by any of the

following methods: an onsite inspection, building permit records, county assessor records, or similar public records. If the original number of units cannot be clearly established by the zoning administrator, the process for reestablishment of a nonconforming use in section 62.109(e) shall be followed.

3. Sec. 62.106. Nonconforming uses of structures, or structures and land in combination.

The current version of Sec. 62.106(m) is based on a misunderstanding of the Planning Commission's language. Council President Lantry will be proposing changes that essentially restore the Planning Commission's recommended language, and may also include an additional staff recommendation deleting the reference to the percent of lot coverage. Since the lot coverage percentage is the same for all residential zoning districts, it does not need to be specifically referenced in (m).

Staff therefore recommends the following additional change:

62.106(m) In RL--R4 districts, existing legal nonconforming two-family residential uses may be enlarged ~~expanded, extended, reconstructed or altered.~~ The two-family uses expansion must meet the yard setbacks, ~~and the percentage of lot coverage requirements of the schedule of regulations, section 61.101, as required in the zoning district in which it is located or in the RT1 district, whichever is greater, the height limit of the district in which located,~~ and the requirements for off-street parking, ~~section in article 63.200. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.~~

The suggested amendments, without explanatory text, are also provided on the following page.

Ricardo Cervantes
Peter Warner
Kathy Lantry
Cecile Bedor

Sec. 62.105. Nonconforming structures with conforming uses.

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Sec. 62.106. Nonconforming uses of structures, or structures and land in combination.

(g-h) When a legal nonconforming use is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days more than one (1) year, the building, or building and land in combination, shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e). A residential building vacant for more than one (1) year may be reestablished at the number of units for which it was originally constructed provided that it has not been physically converted to a fewer number of units. If the building has been converted to fewer units, the use may be re-established up to the reduced number of units. The zoning administrator shall determine the number of units at the time of original construction by any of the following methods: an onsite inspection, building permit records, county assessor records, or similar public records. If the original number of units cannot be clearly established by the zoning administrator, the process for reestablishment of a nonconforming use in section 62.109(e) shall be followed.