

Dear Council Members,

I regret that I am coming late to the game on this issue, but I hope you will reconsider the amendments made to planning commission recommendations on Ord 12-71, particularly those regarding requirements for non conforming use permits. In recent Saint Paul Area Chamber of Commerce (SPACC) public affairs committee and board strategic planning sessions our membership has asked us to look closely at ways to facilitate, encourage, and attract new development in the City of Saint Paul. There is a strong desire to build on the momentum of major achievements in the City like the Regional Ballpark and the Central Corridor LRT. To make sure we are taking full advantage of those projects and leverage complimentary development (large and small) that will bring new jobs, strengthen the tax base, and encourage more people to live, work, and play in the City.

One area of opportunity to advance that overarching goal is to closely examine City Code requirements for zoning and permitting to identify sensible changes that will remove unnecessary or overly burdensome barriers to expansion or new development. Loosening the requirements for non conforming use permits is a perfect example of where this can be done. The Planning Commission laid out a very reasonable and convincing rationale for their proposed changes in the August 16 report from the Neighborhood Planning Committee (attached). I understand concerns over neighbor input into the process, but the suggested changes retained comprehensive notification requirements for neighbors in close proximity and effected district councils which provides opportunity for all key stakeholders to have input on the process. As it stands now, the petition requirement allows a small number of individuals to block not just the issuance of a nonconforming use but even the ability of a property owner to have a hearing on the matter. In some instances the current system also has the potential to create a much larger burden than was likely intended (i.e. in the case of a condo association where there is a high concentration of owners, making the percentage requirement significantly more difficult to meet). We should be particularly sensitive to such unintended consequences in areas where the City hopes to encourage higher density and mix use development such as along the Central Corridor.

For the reasons above and those more thoroughly outlined in the attached Planning Commission report, I hope you will reconsider adopting the amendments as originally proposed by the Planning Commission. Thank you very much for your consideration. Please feel free to contact me with any questions or comments.

Sincerely,



**James McClean, Esq.**  
Director of Public Affairs  
Direct: 651.265.2795  
[www.saintpaulchamber.com](http://www.saintpaulchamber.com)



**CITY OF SAINT PAUL**  
Christopher B. Coleman, Mayor

25 West Fourth Street  
Saint Paul, MN 55102

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

**TO:** Planning Commission

**FROM:** Neighborhood Planning Committee

**DATE:** August 16, 2012

**RE:** Nonconforming Use Zoning Text Amendments Study – Recommendations

### **Background**

In 2004 and 2005 the Minnesota Legislature adopted changes to Minnesota Statutes Sec. 462.357 regarding nonconforming uses. Local zoning provisions for continuation of structures and uses made nonconforming by adoption of an additional zoning control are governed by, and must be consistent with, the provisions in Minnesota Statutes Sec. 462.357 for such legal nonconforming uses. Minnesota Statutes Sec. 642.357, Subd. 1e, specifically allows legal nonconforming uses to *“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) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property was damaged.”*

While the City zoning staff have been complying with these changes since their adoption, the language in Saint Paul’s zoning code differs from the statute and must be updated. The zoning study also provides an opportunity to correct minor errors, clarify language, and incorporate zoning administrator interpretations into the text of the code.

The draft amendments also propose changes to the consent petition requirement for those nonconforming use permits where they are now required.

Finally, amendments to the special sign district plans in Chapter 64 are proposed to reflect the new statutes and to eliminate repetitive language.

### **Actions to Date**

On April 23, 2010, the Planning Commission adopted resolution 10-43 initiating a study to consider amendments to the Zoning Code regarding the regulation of nonconforming lots, structures and uses found in Chapter 62, as well as nonconforming signs found in Chapter 64.

On February 24, 2012, the Commission released a public review draft and set the public hearing for April 20, 2012.

Four people testified in person at the public hearing, and four letters were received. All of the testimony was related to the proposed changes to the consent petition requirements for nonconforming use permits in Sec. 62.109; none of the other amendments elicited any testimony.

After the hearing, the amendments and testimony were referred back to the Neighborhood Planning Committee for further consideration. Because all the testimony related to the consent petition requirements, the Committee focused on these issues.

The Committee met on June 20, July 18, and August 15, 2012, to discuss the testimony and consent petition issues. While the testimony specifically addressed only those applications that seek to reestablish a nonconforming use that has been vacant for more than a year, not the other cases where consent petitions are required, the committee recommends that all petition requirements be consistent. The oral and written testimony opposed to making any change can be summarized as follows: requiring the consent of two-thirds of the surrounding properties' owners ensures the right of neighboring property owners and neighborhood councils to control what happens in reestablishing nonconforming uses in their neighborhoods and ensures that the developer/owner/purchaser will talk to the neighbors about their plans. The concerns raised in the draft regarding difficulty in contacting some property owners or language and cultural barriers were not sufficiently burdensome to warrant any changes according to the testimony, including the letters from districts 5 and 16. The two other letters discussed problems with the existing requirement from an applicant's point of view, and suggested possible alternatives that could be considered that would lessen the burden on the applicant.

Staff and the committee discussed issues with the existing consent petition requirements, and most of the committee is persuaded that some changes are in order. The committee agrees that the major advantage of requiring a consent petition is that it necessitates discussing the plans with the neighboring property owners and the larger neighborhood. But the Committee also recognizes that there are significant disadvantages to the current requirement for consent by the owners of two-thirds of the properties within 100 feet as an absolute prerequisite to get a hearing on an application. Among these disadvantages are:

1. The number of signatures can become quite high if, for example, there are condominium units within the 100 ft. radius of the property, or the site is quite large. At some point, it becomes unduly burdensome for an applicant to get a very large number of signatures just to get a hearing on the application. A typical 40 ft., 5000 sq. ft. single-owner lot surrounded by similar lots would normally have 10-12 properties within 100 ft. and would need somewhere in the range of 6 to 10 valid signatures on the consent petition, which only entitles them to get a hearing. With one or more large condominiums within 100 feet of the property, the total number of eligible signatures can exceed 100, requiring 67+ valid signatures in order to get a hearing.
2. In some areas, a number of surrounding properties may be owned by financial institutions located in distant cities (or countries), who, for whatever reason, may not be willing to sign a consent petition or even respond to a request. If the property is adjacent to publicly owned land, some City agencies are advised not to sign these petitions in order to avoid the implication that they have an official position on the issue, even though doing so would only provide an opportunity for a public hearing to determine the merits of the application. Other times, language or cultural barriers may make it difficult to obtain signatures. Under these circumstances, it may be unreasonable to deny an applicant a public hearing for an insufficient petition.
3. Finally, it is unreasonable that the lack of a few signatures can prevent an applicant from getting a public hearing even though a majority of the neighboring property owners have signed the petition. (With 10 property signatures needed, 3 holdouts can prevent a hearing, even though six owners have signed, in addition to the owner of the subject site.)

Another issue identified by staff and some members of the committee is the concern that denying applicants a hearing based on a lack of consent petition signatures may leave the City vulnerable to takings lawsuits if the property cannot be reasonably used for a conforming

purpose. For all these reasons, the committee has developed a revised alternative that reduces the number of signatures required on the consent petition from two-thirds to 51%. In addition, the committee recommends placing a numerical cap of 20 on the number of signatures needed to address those cases where there are an unusually large number of parcel signatures required. While these changes do not completely address the previously outlined disadvantages, they do ease the burden. They are also easier to administer than other alternatives that try to develop a fair and consistent policy about when to move ahead with a public hearing without a sufficient consent petition based on some kind of hardship finding.

### **Committee Recommendation**

The Neighborhood Planning Committee recommends that the Planning Commission approve the attached nonconforming use text amendments study and forward the amendments to the Mayor and City Council for their consideration.