

ORDINANCE NO. 2009-12

**AN ORDINANCE AMENDING SECTION 300.29
REGARDING NON-CONFORMING USES**

The City of Minnetonka Ordains:

Section 1. City code section 300.29, subdivision 3 is amended as follows:

3. General Standards.

A nonconforming use may be used and continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, only in compliance with the provisions of this section. The use must have been in compliance with all land use regulations at the time the non-conformity was created in order to be eligible for the benefits of being a non-conforming use.

a) There may be no expansion, enlargement, or intensification, of any use or any site element of any non-conforming use except to make it a permitted use. Normal building maintenance and repair are allowed. Expansion, enlargement or intensification of conforming aspects of a non-conforming development are excepted from this requirement. For example, if a structure has a non-conforming front setback, it may be expanded on the sides that do meet setback requirements as long as the expansion itself meets ordinance requirements.

b) No non-conforming use may be resumed if normal operation of the use has been discontinued, or if a non-conforming building has been removed and not replaced, for a period of 12 or more months. Time will be calculated as beginning on the day following the last day in which the use was in normal operation and will run continuously thereafter. Following the expiration of 12 months, only uses that are permitted by this ordinance are allowed to be established.

c) Full use of a non-conforming use may not be resumed if the amount of land or floor area dedicated to the use is lessened or if the intensity of the use is in any manner diminished for a period of 12 or more months. Time will be calculated as beginning on the day following the last day in which the non-conforming use was in full operation and will run continuously thereafter. Following the expiration of 12 months, the non-conforming use may be used only in the manner or to the extent used during the preceding 12 months. For the purposes of this section, intensity of use will be determined by a review of the original nature, function or purpose of the non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the city.

The ~~stricken~~ language is deleted; the underlined language is inserted.

d) Removal or destruction of a non-conforming use to the extent of more than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, by fire or other peril, excluding land value and as determined by the city assessor, terminates the right to continue or replace any non-conforming use, except if a valid and complete building permit application has been submitted to the city within 180 days after the property was damaged.

e) If replacement, reconstruction, or restoration of a legal non-conforming land use is allowed, it may occur without any land use approval from the city if the resulting use does not create any new adverse impacts on adjacent property and matches exactly the conditions that existed before the work was undertaken or before the use was damaged or destroyed. Work that would not meet this requirement and any work that would be an improvement to a non-conforming land use may not be undertaken unless a conditional use permit has been issued for the property. The city may impose conditions in a conditional use permit to protect the public health, safety, or welfare, and to mitigate any newly created impacts on adjacent property or water body.

f) If replacement, reconstruction, or restoration of a legal non-conforming development is allowed, it may occur without any land use approval from the city if the resulting use does not create any new adverse impacts on adjacent property and matches exactly the conditions that existed before the work was undertaken or before the use was damaged or destroyed, except for internal improvements and improved materials used to replace roof surfaces, siding, windows, doors, and similar components. Work that would not meet this requirement or any other improvement to a non-conforming development may not be undertaken unless the appropriate approval required below has been granted for the property. The city may impose conditions in its approval to protect the public health, safety, or welfare, and to mitigate any newly created impacts on adjacent property or water body.

1) Work that brings a structure into compliance with building code requirements requires approval from the director of planning. The planning director may choose, in his or her sole discretion, to require site plan approval instead of administrative approval.

2) All other improvements require site plan approval notwithstanding any other provision of this ordinance to the contrary.

g) Work that constitutes an expansion of any non-conforming use may not be done without first obtaining a variance. Expansion of a non-conforming land use may be approved only by the city council after receiving the advice of the planning commission. Expansion of a non-conforming development may be approved by the planning

commission. A variance is also required if

1) the use occupies any space within a non-conforming area that was previously not occupied both vertically and horizontally. For example, a variance would be required if a second floor area is expanded into the non-conforming setback even though the non-conformity of the first floor setback dimension is reduced; or

2) the non-conforming aspect of a use is reduced but still does not comply with current ordinance standards.

h) Notwithstanding the prohibitions contained in the foregoing paragraphs of this subdivision, if approved by the city council a non-conforming use may be changed to another non-conforming land use of less intensity if it is in the public interest. In all instances the applicant has the burden of proving that the proposed land use is less intense than the exiting nonconforming land use

i) If a non-conforming use is superseded or replaced by a permitted use, the non-conforming status of the premises and any rights which arise under the provisions of this section terminate.

j) Notwithstanding the foregoing paragraphs of this subdivision, all non-conforming sexually-oriented businesses and sexually-oriented uses, as defined in section 300.33, subd. 3, which were made non-conforming by the zoning ordinance or an amendment to it must be discontinued no later than three years after the adoption of the provision creating the non-conformity.

k) Notwithstanding the foregoing paragraphs, a non-conforming use or structure in a floodplain area may only be repaired, replaced, maintained, improved, or expanded to the extent that it would qualify for eligibility in the National Flood Insurance Program, would not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway, and would comply with the provisions in section 300.24, subd. 14.

Section 2. City code section 300.29 is amended by the addition of a new subdivision 9 to read as follows:

9. Non-conforming Uses in Shoreland District.

a) When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the city may require the structure setback to be

increased, if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

b) The following applies to lots in the shoreland district that were of record in the office of the county recorder on the date of adoption of applicable shoreland controls and that do not meet the requirements for lot size or lot width:

1) A nonconforming single lot of record located within the shoreland district may be allowed as a building site without variances from lot size requirements, if:

a. all structure setback distance requirements can be met;

b. the lot is connected to a public sewer; and

c. the impervious surface coverage does not exceed 25 percent of the lot.

2) In a group of two or more contiguous lots of record under common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if:

a. the lot is at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

b. the lot is connected to a public sewer;

c. the impervious surface coverage does not exceed 25 percent of each lot; and

d. development of the lot is consistent with the comprehensive plan.

3) A lot subject to paragraph (2) that does not meet the requirements of paragraph (2) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

4) Notwithstanding paragraph (2), contiguous nonconforming lots of record in the shoreland district under common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are connected to a public sewer.

5) In evaluating all variances, conditional use permits, other zoning permits,

and building permit applications, the city must require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

6) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

Section 3. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 4. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on September 14, 2009.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: August 3, 2009
Date of adoption: September 14, 2009
Motion for adoption: Allendorf
Seconded by: Wagner
Voted in favor of: Allendorf, Ellingson, Greves, Hiller, Schneider, Wagner, Wiersum
Voted against:
Abstained:

The ~~stricken~~ language is deleted; the underlined language is inserted.

Absent:
Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on September 14, 2009.

David E. Maeda, City Clerk

The ~~stricken~~ language is deleted; the underlined language is inserted.