

ORDINANCE NO. 2010-11

**AN ORDINANCE AMENDING CITY CODE §§300.29 AND 710.005
REGARDING THE DEFINITION AND EXPANSION OF NON-CONFORMING USES**

The City of Minnetonka Ordains:

Section 1. City code section 300.29, subd 2 is amended as follows:

- a) "Non-conformity" or "non-conforming use" means any land use, structure, physical form of land development, lot of record or sign that is not in full compliance with the regulations of this ordinance and either (1) was legally established before the effective date of the ordinance provision with which it does not comply, or (2) became non-conforming because of other governmental action, such as a court order or a taking by a governmental body under eminent domain or negotiated sale. A non-conformity or non-conforming use does not include a land use, structure, physical form of land development, lot of record, or sign that was allowed to deviate from this ordinance by an approved variance. A non-conformity or non-conforming use is one of two types of physical land development: a non-conforming land use or a non-conforming development.
- b) "Non-conforming land use" means an activity using land, buildings, and/or structures for a purpose that is not currently allowed as a use in the zoning district in which it is located.
- c) "Non-conforming development" means a non-conformity other than a non-conforming land use that does not currently conform to an ordinance standard such as height, setback, or size.
- d) "Expansion," "enlargement," or "intensification" means any increase in a dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any addition of a site feature such as a deck, patio, fence, driveway, parking area, or swimming pool, any improvement that would allow the land to be more intensely developed, any move of operations to a new location on the property, or any increase in intensity of use based on 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.
- e) "Improvement" means making the non-conforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed, but does not include an expansion, enlargement, or intensification.

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

f) "Replacement," "reconstruction," or "restoration" means construction that exactly matches pre-existing conditions.

Section 2. City code section 300.29, subd. 3, paragraphs (a) and (g) are amended as follows:

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 or except as otherwise provided in this subdivision. 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.

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g) Work that constitutes an expansion of any non-conforming use may not be done without first obtaining a variance pursuant to section 300.07 or an expansion permit pursuant to subdivision 7 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 300 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 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 use occupies 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 is reduced but still does not comply with current ordinance standards.

Section 3. City code section 300.29, subd. 7 is amended as follows:

7. Non-conforming Use Expansion Permit.

a) Application.

Application for a non-conforming use 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:

- 1) 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;
- 2) evidence of ownership or an interest in the property;
- 3) the fee required by section 710 of the code of city ordinances; and
- 4) such other information as may be required by the city.

b) 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 400 feet, as reflected in the certified records of the Hennepin county auditor.

c) Decisions.

1) An expansion permit for a non-conforming use may be granted, but is not mandated, when the applicant meets the burden of proving that:

a. the proposed expansion is a reasonable use of the property, considering such things as:

1. functional and aesthetic justifications for the expansion;
2. adequacy of off-street parking for the expansion;
3. absence of adverse off-site impacts from such things as traffic, noise, dust, odors, and parking; and

4. improvement to the appearance and stability of the property and neighborhood.

b. 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

c. the expansion would not adversely affect or alter the essential character of the neighborhood.

2) The planning commission may grant an expansion permit only upon an affirmative vote of at least a majority of its full membership. The planning commission may impose conditions in granting an expansion permit to effect the intent of this ordinance and to protect adjacent properties. The planning commission 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. The planning commission action will be final action subject to the right of appeal, except if the expansion permit is an integral part of another land use application that requires city council action. In those circumstances, the planning commission action will be a recommendation to the city council, which may approve an expansion permit by an affirmative vote of at least a majority of the city council's full membership.

d) 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 on the project prior to December 31 of the year following the year of approval, in which case the permit will be null and void. The planning commission 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 a similar extension of the time period for the site and building plan by the planning commission as required by section 300.27 of this ordinance. Once the project is completed as approved, the expansion permit becomes perpetual.

e) Specific Project.

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 or city council.

f) Appeals.

A person aggrieved by a decision of the planning commission regarding an expansion permit may appeal to the city council pursuant to section 300.04, subd. 6(a).

g) Recording.

A certified copy of the expansion permit must be filed by the applicant with the Hennepin county recorder or the Hennepin county registrar of titles. The expansion permit must contain a legal description of the property affected.

h) 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 845.

Section 4. City code section 710.005, paragraph 14 is amended as follows:

14.	Land use applications		
	conditional use permits		300.060
	home occupations, public buildings, grading permits, accessory apartments, accessory buildings, and transient sales	\$400.00	
	all other land uses	\$800.00	
	evergreen material sales permit refundable after clean-up at end of season	\$100.00	300.15(13)
	grading permit (less than 1,000 cubic yards per acre)		300.28(16)
	up to 500 yards	\$150.00	
	501 to 999 yards	\$450.00	

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guide plan amendment	\$800.00	300.03
rezoning	\$800.00	300.03
non-conforming use expansion permit		300.29
single or double dwelling	\$400.00	
all others	\$800.00	
sign		300.30
permit fee		
permanent or temporary	\$100.00	
sign plan	\$300.00	
retrieval fee		
less than 5 square feet	\$25.00	
over 5 square feet	\$50.00	
site plan or major amendment to master plan		300.22 300.27
administrative site plan review	\$300.00	
other site plan review	\$800.00	
site plan extension	\$800.00	
subdivision or lot division		400.015
administrative lot division	\$500.00	
other lot division	\$800.00	
preliminary plat	\$800.00	

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final plat	\$500.00	400.035
vacation of easement application	\$800.00	400.080
variances		300.07
single or double dwelling	\$400.00	
all others	\$800.00	
wetland, floodplain or shoreland alteration permit	\$800.00	300.03
consolidated development (a single development requiring more than one land use application)		
2 applications	\$1000.00	
3 - 5 applications	\$2400.00	
6 or more applications	\$3200.00	
complexity surcharge based on building square footage	multiplier times base fee	
0 – 25,000	1.0	
25,001 – 50,000	1.5	
50,001 – 100,000	2.0	
100,001 – 200,000	3.0	
200,001 – 300,000	4.0	
300,001 and above	5.0	

Section 5. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 6. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on August 16, 2010.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: June 28, 2010
Date of adoption: August 16, 2010
Motion for adoption: Wiersum
Seconded by: Greves
Voted in favor of: Allendorf, Greves, Hiller, Schneider, Wagner, Wiersum
Voted against:
Abstained:
Absent: Ellingson
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 August 16, 2010.

David E. Maeda, City Clerk

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