

ITEM # 26  
DATE 07/15/08

## COUNCIL ACTION FORM

**SUBJECT: ZONING CODE TEXT AMENDMENT REGARDING NONCONFORMING STRUCTURES**

**BACKGROUND:**

The Ames Municipal Code, Section 29.307(3)(d) currently reads:

“(d) Enlargement and Expansion. A nonconforming structure may not be enlarged, expanded or extended unless it conforms to the requirements of this ordinance.”

This section describes when “nonconforming structures” may be allowed to expand. A nonconforming structure is one that does not meet the current zoning ordinance, such as required setbacks, lot coverage, height limits, etc. Limits are generally placed on expansions of nonconforming structures so that improvements and additions do not increase the degree of non-conformity, thus impacting adjacent properties and the neighborhood.

In a recently proposed development, the City legal department has given the opinion that the word “it” in the current ordinance refers to the nonconforming structure, rather than to any enlargement, expansion, or extension of the nonconforming structure. This interpretation has the effect of requiring the existing structure, even if legally built at one time, to be brought into conformance with the existing code before any addition can be added. As a result, homeowners must now seek a variance (or physically alter the existing structure) if the structure fails to meet current zoning requirements, even though the proposed addition does meet them.

Previous interpretations of this section of the Code have been that if an addition is proposed for a structure that does not currently meet setbacks, the addition would be allowed as long as it meets the required setbacks.

As an example: a house that was built in 1945, prior to the current Zoning Ordinance, has a 6-foot setback on the north side (the requirements at the time it was built). Since then, the zoning code has been rewritten and side setbacks now require 8 feet. The homeowner wishes to place a deck on the south side of the house. The south side of the house and the proposed deck meet all the required setbacks. Under this current legal interpretation, she would need to seek a variance for the encroachment on the north side before being issued a building permit for the deck on the south side. If the proposed amendment were approved, she would be allowed to build the deck without seeking a variance since the deck itself would meet all current zoning regulations.

The proposed text amendment would amend Section 29.307(3)(d) to read:

“(d) Enlargement and Expansion. A nonconforming structure may not be enlarged, expanded or extended unless it the enlargement, expansion, or extension conforms to the requirements of this ordinance.”

This proposed text amendment restores what staff assumes was the City Council's original intent when dealing with nonconforming structures.

Since this interpretation was released, it has been incorporated into the site review process resulting in several projects being delayed or abandoned. The Zoning Board of Adjustment has been addressing about one case every meeting due to this interpretation. Most of the requested variances or exceptions have been granted, but have added additional delays and costs to the project. Many of the projects are small residential projects proposed by homeowners, although a couple have been larger, commercial redevelopments.

In a continual effort to reduce delays and costs to homeowners as they seek to improve and invest in their homes, while still protecting the intent of the zoning code, staff has formulated the proposed text amendment as a means to restore what staff believes was the City Council's intent when the zoning ordinance was adopted and to restore what has been previous practice and interpretation.

The proposed text amendment would have an impact on customer service and development costs. Since December 2007, there have been at least five cases referred to the Zoning Board of Adjustment to resolve the nonconformity of an existing structure prior to an addition being approved. There are currently four cases on hold pending adoption of this text amendment. Most of these cases have been homeowners who wish to make an improvement to their homes yet have found that there is a pre-existing encroachment into the setbacks. This has also impacted commercial developments. Staff is asking that the City Council waive the rules and pass the ordinance on third reading.

**Recommendation of the Planning & Zoning Commission.** At its meeting of July 2, 2008, with a vote of 4-0, the Planning & Zoning Commission recommended that the City Council adopt the language to amend Section 29.307(3)(d) to allow nonconforming structures to be enlarged provided the enlargement conforms to the requirements of the Zoning Ordinance.

#### **ALTERNATIVES:**

1. The City Council can adopt the language to amend Section 29.307(3)(d) to allow nonconforming structures to be enlarged provided the enlargement conforms to the requirements of the Zoning Ordinance.
2. The City Council can deny the language as proposed by staff to amend Section 29.307(3)(d).
3. The City Council can refer this back to staff for additional analysis.

**MANAGER'S RECOMMENDED ACTION:**

This proposed text amendment would bring the language concerning nonconforming structures back in line with previous understandings and practices. This would better serve the customer and the City's interests. The customer is better served by reducing time delays and costs for minor home improvements. The City is better served by reducing barriers to continuous improvements to neighborhoods and investments in private property.

Therefore, it is the City Manager's recommendation that the City Council act in accordance with Alternative #1, which is to amend Section 29.307(3)(d) to allow nonconforming structures to be enlarged provided the enlargement conforms to the requirements of the Zoning Ordinance. And because there are a number of home-owner projects in the queue awaiting approval of this text amendment. It is further recommended that the City Council suspend the rules and pass on third reading.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY AMENDING SECTION 29.307(3)(d), FOR THE PURPOSE OF ALLOWING FOR ENLARGEMENT OF NONCONFORMING STRUCTURES; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**BE IT ENACTED**, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by amending Section 29.307(3)(d) as follows:

**“Sec. 29.307(3)(d).** Enlargement and Expansion. A nonconforming structure may not be enlarged, expanded or extended unless the enlargement, expansion, or extension conforms to the requirements of this ordinance.”

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable by a penalty of \$500 for a first violation and \$750 for each repeat violation.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Diane R. Voss, City Clerk  
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Ann H. Campbell, Mayor

