

ITEM # 37  
DATE 06/24/08

### COUNCIL ACTION FORM

**SUBJECT: PROPOSED 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 “non-conforming structures” may be allowed to expand. A non-conforming 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 non-conforming 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 non-conforming structure. This interpretation has the affect 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 has 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 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 and meets all the required setbacks. Under this new 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. 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 replace this section with:

“(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 has been incorporated into the site review process, several projects have been delayed or abandoned. The Zoning Board of Adjustment has been addressing about one case every meeting due to this interpretation. Many 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.

#### **ALTERNATIVES:**

1. The City Council can refer this proposed text amendment to the Planning and Zoning Commission for a recommendation. It would be presented to the Planning and Zoning Commission at the July 2 meeting and return to the City Council for adoption as soon as practical.
2. The City Council can choose not to refer this proposed text amendment to the Planning and Zoning Commission for a recommendation.

#### **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.

It is the City Manager's recommendation that the City Council act in accordance with Alternative #1, which is to refer this proposed text amendment to the Planning and Zoning Commission for a recommendation.

**ZONING ORDINANCE TEXT AMENDMENT  
SUPPLEMENTAL INFORMATION**

Reasons for the Zoning Text Amendment

The City legal department has recently opined that the word "it" in the current ordinance refers to the nonconforming structure, rather than an enlargement, expansion or extension. Homeowners now must seek a variance if an existing structure fails to meet zoning requirements, even though the proposed addition does meet them.

As an example: a house that was built prior to the current zoning ordinance has a 6-foot setback on the north side, although the zoning code now requires 8 feet. The homeowner wishes to place a deck on the south side of the house and meets all the required setbacks. With this current interpretation, she would need to seek a variance for the encroachment on the north side before being issued a building permit for the deck. If the amendment were approved, she would be allowed to build the deck since it meets all current zoning regulations.

Previous practice has 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 setbacks.

General Description of Affected Properties

The text amendment would apply to every property within the city which may have a non-conforming structure.

Consistency with the Land Use Policy Plan

This proposed amendment is rather small. There is no indication that it is contrary to the LUPP.

Existing and Proposed Language

This proposed amendment is to the Ames Municipal Code, Section 29.307(3)(d), which currently reads:

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

The proposed text amendment would replace this section with:

"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."