



To: Mayor and City Council

From: Kelly Diekmann, Planning & Housing Director

Date: January 10, 2023

Subject: Downtown Nelson Building at 5th and Burnett

BACKGROUND:

On December 20th, City Council referred to staff a communication from Jerry Nelson regarding a property they own at 412 Burnett Avenue. This property is the result of the Mr. Nelson acquiring three separate parcels and recently merging them together in order to pursue the rehabilitation of the existing Burnett building and to do an addition to the building.

Notably, a merger of lots is not permissible unless it conforms to the zoning standards or would maintain its status of conformity upon merger. Essentially, no one can create a lot that causes a nonconformity or worsens a degree of conformity. Staff approved the Nelson lot merger conditioned upon the property owner constructing their proposed addition to the building in order for the site to be compliant with zoning requirements, specifically the minimum floor area ratio (FAR) requirement of 1.0, meaning the building area must be equal to or greater than the lot area.

Mr. Nelson described to City Council a situation regarding their current building that resulted from them working towards their plans of expanding the existing building that they do not currently want to undertake due to circumstances with their prior contractor and prospective tenants. **As a result of the property merger, the current lot is not a legal lot without conforming to the approval conditions, and the building is nonconforming with the limitations regarding remodeling.**

Mr. Nelson requests the City Council consider an amendment of the Zoning Ordinance that would allow for a lot merger and allow for remodeling of a nonconforming building. If this request were to be granted with the approval of a text amendment, it would allow them to keep their merged lot with the vacant area,

remodel their building, add an exit to the east side to the vacant area, and bring a sewer service connection through the vacant area at this time to meet the needs of their prospective tenant.

Staff has been in communication with Jerry Nelson since early December once we were made aware of their desire to change plans. The merger of the parcels was predicated on the original plan and is a key issue to them remodeling the building. Staff outlined to the owner options to remove the nonconforming lot configuration or to proceed with construction of the addition over the next two years.

Under the current Code, if the site was redivided into two parcels, one with the current building and one that is vacant, Mr. Nelson could remodel the existing building and the vacant lot could be developed in the future. The other option available to Mr. Nelson currently is to proceed with development consistent with the approved Site Development Plan which would grant him up to three years to complete the addition and conform to the approved plan. If after three years the project is not complete, then the property owner would be subject to a zoning enforcement action that could include fines.

At this time the Mr. Nelson does not want to undue the lot merger and return to multiple parcels as it would cause them additional costs to remodel their existing building due to use of the vacant area to support the existing building's remodeling. They also find the risk of completing their addition within the next three years too great to proceed at this time. Therefore, they are asking for a zoning text amendment.

DOWNTOWN SERVICE CENTER (DSC)- Current Zoning:

DSC zoning has two key design standards to support a traditional two-story "main street" type of appearance for buildings and to efficiently use centrally located land with higher intensity uses. The first standard is the requirement that all buildings have a minimum floor area ratio of 1.0. Secondly, DSC zoning has a requirement for two-story buildings. Buildings that do not meet these requirements are considered nonconforming. Furthermore, lots cannot be created or modified that also do not result in a conforming configuration or maintain conformance to a standard related to lot dimensions.

The issue of FAR and height has come up previously, with City Council choosing not to remove these standards for the core of the Downtown area. **Due to the importance of these two standards, staff does not support removing the requirements in their entirety as a text amendment.**

If City Council wants to pursue an amendment to facilitate Mr. Nelson's maintaining their merger of lots and continuing to remodel their existing building, staff has identified two options to minimize potential undesirable outcomes while addressing this customer's issues:

Option A. Add an exception to Section 29.303 (2) Lots- that excludes conformity with minimum FAR for boundary line adjustments and lot mergers.

29.303 (2) Lots.

(a) Change in Lot Size or Shape Regulated.

No lot shall be reduced in size or changed in shape so that the total area, minimum frontage, setbacks, lot area per dwelling unit, or other development standards required by this Ordinance are not maintained. Maintaining minimum Floor Area Ratio requirements is excluded for Boundary Line Adjustments and Lot Mergers, however this does not exclude use of a lot from meeting all development standards and nonconformity requirements related to buildings and site improvements. No lot shall be divided so as to create an additional lot that is not in conformity with this Ordinance unless such lot is deeded, dedicated and accepted for public use.

This option would likely be the preference of the applicant because it would allow the current configuration of one lot to remain, and they could use the vacant land area as they desire for the sewer service and exiting. Since the building itself would still be nonconforming due to FAR and height, it could be remodeled, but not structurally changed as limited by the Zoning Ordinance. Any future changes or addition would be required to fully conform to zoning standards, including minimum FAR and height. If this change were to be approved, it may be prudent to add a plat requirement for a notice of limitations regarding future use if the lot mergers are approved to provide notice to future property owners.

This type of text amendment could impact other properties in Downtown and potentially Campustown. These are currently the only two areas with minimum FAR requirements. The issue would arise again when a property owner owns multiple properties and it would be beneficial to merge properties for convenience of parking, building renovations, or other site changes where they do not want to do an addition and bring the site into conformance with zoning standards.

Option B. Modify Zoning Ordinance Procedures and Enforcement requirements related to finishing construction of a building within three years by removing the financial penalty for noncompliance and only withhold future permits until the project is complete.

The City does not currently have a phasing option for Site Development Plan approvals. Completion of a project is required within two years with an option for a one-year extension. In this case, the applicant could proceed with their approved plan, but they are concerned that they would not complete their addition within the three-year allowance and then be subject to enforcement actions by the City.

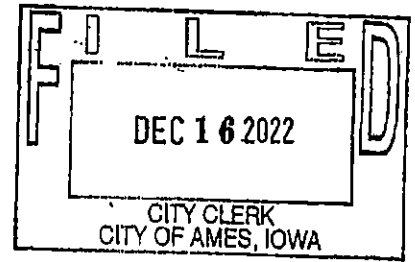
This option would not remove any development standards, but would eliminate the most onerous enforcement language of a daily financial penalty for delaying completion of a project. This would mean that the applicant could proceed with remodeling of the site in manner consistent with their approved Site Development Plan and if they do not complete the addition, they would not be able to get other permits in the future until the addition is complete.

This choice would ensure that lot mergers only occur with the approval of a conforming Site Development Plan vs allowing for a merger of lots for the convenience of using existing sites. This option is in the spirit of allowing for phased implementation and provides very limited flexibility to a property owner related to the phasing of their project.

STAFF COMMENTS:

City Council would need to refer this issue to a future agenda if there is interest in considering a text amendment. If there is no interest to refer the item, the property owner would need to choose how to proceed under one of the two options allowable under the current Code to complete the remodeling project.

December 16, 2022



Dear Honorable Mayor and City Council Members:

Our project at 5th and Burnett has encountered a complex issue with the zoning code relating to non-conforming structures that is preventing us from completing the renovation of the existing building. We still consider this project to be something that will be an asset to the Downtown area and respectfully ask that you direct staff to provide options to Council that would fix the issue and reasonably allow us to finish the project, provide flexibility to future projects in Downtown, and continue to support making the area more energetic and vibrant. Time is of the essence as this was surprise and we have leases in place and contractors ready to begin work for the space in the existing building. We appreciate your commitment to Downtown and your consideration.

Thank you,

Jerry Nelson
Onondaga Investments