



PLANNING COMMISSION STAFF REPORT

PC MEETING DATE: JUNE 28, 2010

ITEM FOR PLANNING COMMISSION CONSIDERATION:

Public hearing to consider an amendment to the nonconformities Subsection of the Richfield Zoning Code (509.25). The proposed amendment will define terms to provide additional clarity and allow for expansion of nonconforming uses in some instances.

I. RECOMMENDED ACTION:

Conduct and close a public hearing and by motion: Recommend approval of the attached ordinance amending Richfield City Code Subsection 509.25 related to nonconformities.

II. BACKGROUND

Nonconformities regulations are intended to provide for the regulation of uses, structures, lots or site improvements which lawfully existed prior to the effective date of current regulations. These regulations are commonly referred to as "grandfather clauses." The State of Minnesota sets minimum standards for the continuation of legal nonconformities and Richfield's Code language is based on language in State Statute Section 462.357 Subd. 1e.

Richfield City Code Subsection 509.25 Subd. 2 [paraphrased]

Continuance of nonconformities. Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

- a) The nonconformity or occupancy is discontinued for a period of more than one year...; or
- b) The nonconforming use is destroyed by fire or other disaster to extent of greater than 50 percent of its market value and no building permit has been applied for within 180 days.

Neither State Statute nor the Richfield Code currently defines the terms repair, replacement, restoration, maintenance, improvement or expansion. To clarify the Code, staff recommends amending it to include definitions of these terms. These definitions will be used specifically to interpret the nonconformities subsection of the Code. The following definitions are proposed to be added:

Repair – For the purposes of nonconformities, repair means to restore to good condition by replacing or reassembling broken, worn out or malfunctioning components. Repair does not include expansion.

Replacement – Construction that provides a substitute substantially equivalent to the pre-existing conditions that preceded damage or destruction.

Restoration – For the purposes of nonconformities, restoration means to restore or repair to good condition by replacing or reassembling broken, worn out or malfunctioning components. Restoration does not include expansion.

Maintenance – Normal repair, restoration, and improvement including cosmetic changes. For the purposes of nonconformities, maintenance does not include new construction or expansion of a use or structure.

Improvement – Where a nonconforming use is made more compatible with the use of adjacent properties, efficient, and/or more aesthetically pleasing. For the purposes of nonconformities, an improvement does not include an expansion.

Expansion – For the purposes of nonconformities, expansion includes, but is not limited to, intensification of the use, expansion of the use to a portion of the property not previously used, or increased structure dimension(s).

While the City of Richfield is prohibited from more strictly regulating nonconformities, cities are permitted to be more lenient than Statute. For instance, in regard to the rezoning of properties along Interstate 494, the Mixed Use Districts allow for up to a 10% expansion of legally nonconforming uses with a Conditional Use Permit approved by the Council. Structural expansion is also allowed if the expansion brings the property into greater conformance with City regulations.

Staff recommends a similar special permission as follows:

Construction which would allow additions and alterations to buildings containing nonconforming dwelling units complying with the following conditions shall be permitted when:

- a) The construction will not result in an increase in the number of dwelling units;
- b) The building or parcel is not located in an area which the Council has designated as a high priority for redevelopment according to an adopted redevelopment strategy or plan. For the purpose of this section, a redevelopment strategy or plan shall be defined as a document and/or process which specifically outlines the area to be redeveloped and may include timelines and/or action steps to be taken, or which are being taken, to achieve the redevelopment. These action steps may include, but are not limited to, solicitation of developers, the purchase of property, environmental testing or remediation, demolition of structure and other similar activities; and
- c) The construction would not extend any farther into the required setback than the existing structure. (This provision would allow an expansion that is in line with the existing side setback of the home, rather than requiring compliance with the larger setback required in a multi-family or commercial district.)

This provision is primarily intended to allow expansion of single-family homes in areas that are not expected to be redeveloped in the near future. In the case of a single-family home in the Multi-Family Residential (MR-2) District, this would allow a homeowner to expand based on the setbacks of the Single-Family Residential (R) District.

III. BASIS OF RECOMMENDATION

A. POLICY

- The proposed amendment seeks to clarify the intent of existing regulations.
- Clear Ordinance language makes City regulations more accessible to the general public.
- The purpose of nonconformity regulations is twofold:
 - 1) To allow for the continuation of structures and uses that legally existed prior to the adoption of subsequent regulations to continue; and
 - 2) To encourage nonconformities to be brought into compliance when it is reasonable to do so.

B. CRITICAL ISSUES

- Ambiguous Code language can lead to confusion, frustration and, in extreme instances, lawsuits.
- The proposed amendment will allow the expansion of some nonconforming dwellings in areas that are not considered priority redevelopment areas.

C. FINANCIAL

- N/A

D. LEGAL

- Notice of this public hearing was published in the Sun Current in accordance with State and Local requirements.
- Other Actions:
 - Council: The recommendation of the Planning Commission will go to the City Council for two readings. If the City Council adopts the recommended changes, they will take effect 30 days after the approved Council resolution is posted in the Sun Current newspaper.

IV. ALTERNATIVE RECOMMENDATION(S)

- Recommend approval of the proposed amendments with additional changes.
- Recommend denial of the proposed amendments.

V. ATTACHMENTS

- Ordinance

VI. PRINCIPAL PARTIES EXPECTED AT MEETING

- N/A

BILL NO. _____

AMENDMENT TO RICHFIELD CITY CODE

SUBSECTION 529.25 RELATED TO
NONCONFORMITIES

THE CITY OF RICHFIELD DOES ORDAIN:

Section 1 Subsection 509.25 of the Richfield City Code is amended by adding a new Subdivision 2 to read as follows, and by now renumbering all subsequent subdivisions:

Subd. 2. Definitions. The following terms and accompanying definitions are used in the context of nonconformities:

a) Expansion - For the purposes of nonconformities, expansion includes, but is not limited to, intensification of the use, expansion of the use to a portion of the property not previously used, or increased structure dimension(s).

b) Improvement - Where a nonconforming use is made more compatible with the use of adjacent properties, efficient, and/or more aesthetically pleasing. For the purposes of nonconformities, an improvement does not include an expansion.

c) Maintenance - Normal repair, restoration, and improvement including cosmetic changes. For the purposes of nonconformities, maintenance does not include new construction or expansion of a use or structure.

d) Repair – For the purposes of nonconformities, repair means to restore to good condition by replacing or reassembling broken, worn out or malfunctioning components. Repair does not include expansion.

e) Replacement - Construction that provides a substitute substantially equivalent to the pre-existing conditions that preceded damage or destruction.

f) Restoration - For the purposes of nonconformities, restoration means to restore or repair to good condition by replacing or reassembling broken, worn out or malfunctioning components. Restoration does not include expansion.

Sec. 2 Subsection 509.25, Subdivision 2b of the Richfield City Code is amended to read as follows:

b) ~~Any nonconforming use~~nonconformity is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In this case, the city may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property.

Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. The nonconforming use status of the premises and any right which arise under the provisions of this subsection shall terminate.

Sec. 3 Subsection 509.25, Subdivision 3 of the Richfield City Code is amended to read as follows:

Subd. 3. Nonconforming use. Except as otherwise noted in this code, there shall be no enlargement, expansion, intensification, or relocation of any building or premises devoted to a nonconforming use except to make it a conforming use.

- a) Exception. Expansion which would constitute addition and alteration to buildings containing nonconforming dwelling units complying with the following conditions shall be permitted:
- i. The construction will not result in an increase in the number of dwelling units;
 - ii. The building or parcel is not located in an area which the Council has designated as a high priority for redevelopment according to an adopted redevelopment strategy or plan. For the purpose of this section, a redevelopment strategy or plan shall be defined as a document and/or process which specifically outlines the area to be redeveloped and may include timelines and/or action steps to be taken, or which are being taken, to achieve the redevelopment. These action steps may include, but are not limited to, solicitation of developers, the purchase of property, environmental testing or remediation, demolition of structure and other similar activities; and
 - iii. The construction would not extend any farther into the required setback than the existing structure.

Sec. 4 This Ordinance is effective in accordance with Section 3.09 of the Richfield City Charter.

Passed by the City Council of the City of Richfield, Minnesota this 27th day of July 2010.

Debbie Goettel, Mayor

ATTEST:

Nancy Gibbs, City Clerk