

**AGENDA  
PLANNING COMMISSION MEETING  
CITY OF SHOREVIEW**

**DATE: January 24, 2012**  
**TIME: 7:00 PM**  
**PLACE: SHOREVIEW CITY HALL**  
**LOCATION: 4600 NORTH VICTORIA**

**1. CALL TO ORDER**  
**ROLL CALL**  
**APPROVAL OF AGENDA**

**2. APPROVAL OF MINUTES**  
*December 6<sup>th</sup>, 2011*  
*Brief Description of Meeting Process – Chair Larry Feldsien*

**3. REPORT ON CITY COUNCIL ACTIONS**  
*Meeting Date: January 3<sup>rd</sup> and January 17<sup>th</sup> 2012*

**4. NEW BUSINESS**

**A. PUBLIC HEARING –**  
**TEXT AMENDMENT-CHAPTER 200, INCLUDING SECTION 207.050,**  
**NONCONFORMITIES & SECTION 208.080, NONCONFORMING SIGNS**  
*File No: 2438-12-01*  
*Applicant: City of Shoreview*  
*Location: City Wide*

**5. MISCELLANEOUS**

*A. City Council Assignments for February 6<sup>th</sup> and February 21<sup>st</sup>, 2012*  
*Commission Members Wenner and Schumer*

*B. 2012 Planning Commission Chair & Vice Chair recommendations.*

*C. ULI - Navigating the New Normal Workshop- March 12<sup>th</sup>, 2012 – 6:30 pm*

*D. Text Amendments – Environmental Regulations*

*E. Planning Commission Workshop @ 6:00 p.m. before the next regular meeting scheduled*  
*February 28, 2011.*

**6. ADJOURNMENT**

**SHOREVIEW PLANNING COMMISSION  
MEETING  
December 6, 2011**

**DRAFT**

**CALL TO ORDER**

Chair Feldsien called the meeting of the December 6, 2011 Shoreview Planning Commission meeting to order at 7:00 p.m.

**ROLL CALL**

The following members were present: Chair Feldsien; Commissioners Ferrington, Mons, Proud, Schumer, and Solomonson.

Commissioner Wenner was absent.

**APPROVAL OF AGENDA**

**MOTION:** by Commissioner Mons, seconded by Commissioner Solomonson to approve the agenda as submitted.

**VOTE:**                                      **Ayes - 6**                                      **Nays - 0**

**APPROVAL OF MINUTES**

**MOTION:** by Commissioner Mons, seconded Commissioner Proud to approve the October 25, 2011 Planning Commission minutes as submitted:

**VOTE:**                                      **Ayes - 6**                                      **Nays - 0**

**REPORT ON COUNCIL ACTION**

City Planner Nordine reported that the minor subdivision for Robin Morse at 5036 and 5017 Lexington Avenue was approved at the December 19<sup>th</sup> Council meeting.

After the Planning Commission considered the Comprehensive Plan Amendments for Chapters 5 and 10, staff met with Adam Herrington at Metro Transit regarding service to Shoreview, but at this time it appears there is not sufficient ridership to add more service. However, Mr. Herrington would be willing to meet with the Planning Commission in the future to further discuss transit issues.

After the Planning Commission reviewed and approved the Comprehensive Plan amendment regarding the Trout Brook Regional Trail study area, staff was advised that Maplewood and Little Canada have completed a feasibility study to route that trail from Lake McCarron to I-694 and Rice Street. The Metropolitan Council has now determined that the City's Comprehensive Plan does not need to be amended to include that trail, as it will not go through Shoreview. That

amendment was not presented to the City Council. Ramsey County will be reviewing the feasibility study.

After some discussion, it was the consensus of the Planning Commission that access to that trail be provided to Shoreview residents.

The City Council approved the transportation amendments, as recommended by the Planning Commission. Those amendments have been forwarded to the Metropolitan Council for final review.

Commissioner Mons suggested that when public transit issues are to be discussed, the meeting be advertised broadly to solicit public input.

## **NEW BUSINESS**

### **VARIANCE**

**FILE NO.:** 2436-11-29  
**APPLICANT:** CARROLL ROBERTS  
**LOCATION:** 200 DAWN AVENUE

#### **Presentation by Senior Planner Rob Warwick**

The variance application is for a reduced front setback to allow a 6-foot by 19-foot unenclosed porch on the front of her rambler home. The request is to reduce the front setback from 30 feet to 26 feet. The front steps need replacement and with that, the applicant would like to install a porch to reduce ice and snow on the steps and sidewalk. The property is located in an R-1 Detached Residential District and is a standard lot.

Permitted encroachments into the front setback include a covered stoop with a maximum 5-foot depth and 7-foot width. The applicant states that the porch is intended to prevent ice on the steps and sidewalk to improve safety as well as the appearance of the house.

Staff has reviewed the application and believes the proposed improvement is consistent with the City's Comprehensive Plan policies. The proposed unenclosed porch is a common feature that will not encroach any further than an existing sidewalk and landscaping and is a reasonable use of the property. The house faces north and is subject to ice and snow buildup during winter. Ice and snow below the eaves will be remedied with the added porch roof. The encroachment will not alter the character of the neighborhood.

Property owners within 150 feet were notified of the application. No comments were received. Staff is recommending approval of the variance with the conditions listed in the staff report.

Commissioner Solomonson asked the amount of encroachment of the overhang and number of risers to the porch. Mr. Warwick stated that the overhang encroachment is 2 feet and there are 2 risers.



Commissioner Mons asked if the sidewalk from the front door is the only access to the garage from the house, or if there is an interior door.

**Ms. Carroll Roberts**, Applicant, stated that there is a door in the kitchen that goes to the garage. However the sidewalk for visitors to enter the house is very icy and needs to be changed.

MOTION: by Commissioner Proud, seconded by Commissioner Schumer to adopt Resolution 11-88 approving the variance request submitted by Carroll Roberts for 200 Dawn Avenue to reduce the front setback for a 6- by 19-foot unenclosed porch, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Variance application.
2. This approval will expire after one year if a building permit has not been issued and construction commenced.
3. The covered porch shall not be enclosed, unless an amendment is approved to this variance.
4. This approval is subject to a 5-day appeal period.

This approval is based on the following findings:

1. The proposed improvement is consistent with the policies of the Comprehensive Plan, including the Land Use and Housing Chapters.
2. Reasonable Manner. A front porch is a typical feature of detached single-family residences, and so the proposal represents a reasonable use of the property. The proposed setback exceeds the setback that is allowed for a covered stoop, and will not encroach further than the existing sidewalk and landscaping.
3. Unique Circumstances. The north facing home is subject to ice accumulation on the front steps and sidewalk during the winter months that represents a safety hazard to the property owner and visitors.
4. Character of the Neighborhood. The 4-foot encroachment is less than the setback variation permitted in the City Code and so will not alter the essential character of the neighborhood. The visual impact of the porch will be minimized because the porch is not fully enclosed.

VOTE: Ayes - 6 Nays - 0

#### **VARIANCE AND RESIDENTIAL DESIGN REVIEW, 800 COUNTY ROAD I**

**FILE NO.:** 2435-11-28  
**APPLICANT:** ALAN & HEATHER WOLDT  
**LOCATION:** 800 COUNTY ROAD I WEST

**Presentation by Senior Planner Rob Warwick**



A variance application has been submitted to reduce the front setback, as well as a Residential Design Review, both for a tear down/rebuild project. The existing house with tuck-under garage will be removed and a new house constructed on a substandard riparian lot with a 90-foot width on the north side of Turtle Lake. The variance would reduce the front setback from 73.7 feet to 45.1 feet. The new house would be 1 1/2 stories with an attached 2-car garage.

The existing house does not conform to the 50-foot minimum Ordinary High Water (OHW) setback. The new house will comply with the required OHW. The proposed house would be approximately 2,380 square feet with full basement. The 2-car garage would be 506 square feet. The exterior will be cedar shakes with white trim. Four landmark trees will be removed. Replacement trees are required at a ratio of 1 to 1.

The proposal complies with the standards adopted by the City for substandard riparian lots with the exception of the front setback. The required front setback range is between 73.7 and 93.7. The proposed front setback is 45.1 feet.

The applicant states that the depth of the lot creates practical difficulties. Without a reduced front setback, there is no building pad for the house.

Staff finds the proposal to be in compliance with the Comprehensive Plan and the Development Code. The front setback is calculated on the basis of the front setback so the two adjoining properties. The house on the west is at 59.5 feet and the house on the east is at 107.9. Neither comply with the 50-foot OHW setback. Practical difficulties arise with the calculation of the front setback and compliance with the OHW. The required front and OHW setbacks total 125-feet on a lot that is 140 feet deep. The resulting buildable area is less than 1300 square feet. A lot of this size is allowed a foundation area of 2,380 square feet. The proposed 45-foot setback exceeds the minimum 40-foot setback required from an arterial road. Staff believes the proposal is reasonable and addresses the unique conditions on this property.

Fill is proposed for the front yard, raising the grade approximately 4-feet, less than the 5-foot maximum permitted by Code. The house elevation will exceed at 889.0 feet the low floor requirement for County Ditch 8, which is 885.4 feet. The property is outside any flood hazard area. Memos from the Public Works Department indicate that the grading and drainage plan is acceptable provided that the downspouts discharge to the front and lake side yards and not to side yards. A Rice Creek Watershed District permit is required, and Ramsey County has no objections to the proposed grading within the right-of-way of County Road I. A county right-of-way permit is required.

Two shoreland mitigation practices are required. The applicant has indicated that three will be used: 1) architectural mass; 2) removal of an existing nonconforming house; and 3) reduction of existing impervious surface by approximately 10%.

Notices were sent to nearby property owners. No comments have been received. Staff is recommending approval with the conditions listed in the staff report.

Commissioner Mons noted that if the OHW setbacks were met on the two adjoining properties, the front setback proposed would be in compliance. The variance is not caused by the calculation so much as the two adjoining properties are not in compliance.

Commissioner Solomonson asked if the existing driveway will be removed and if there will be impervious material on the west side of the house. Mr. Warwick responded that the proposed driveway runs along the top of the retaining wall along the west lot line. Commissioner Solomonson agreed with Commissioner Mons' assessment regarding the nonconforming setbacks of the two adjoining properties.

Commissioner Ferrington noted that rather than rebuilding on the existing building pad, the applicants have moved the house further away from the lake to conform with the OHW and applauds this redesign, which is an improvement to the property.

**Mr. Alan Woldt**, applicant, stated that he has spoken with nearby residents. A catch basin for roof runoff may be used to increase infiltration.

**MOTION:** by Commissioner Mons, seconded by Commissioner Schumer to adopt Resolution 11-87 approving the variance request and to approve the Residential Design Review application for 800 County Road I, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Residential Design Review/Variance applications. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. Impervious surface coverage shall not exceed 30% of the total lot area as a result of this project. Foundation area shall not exceed 18%. Building height shall not exceed 35-feet, measured peak to lowest grade within 5 feet of the foundation.
4. An erosion control plan shall be submitted with the building permit application, and implemented and maintained during construction.
5. Gutters and downspouts shall discharge runoff into the front and lakeside yards only, and not into either side yard.
6. Four landmark trees will be removed and four replacement trees are required. A surety deposit to insure installation of these trees shall be submitted prior to issuance of a building permit for the new dwelling.
7. The mitigation plan shall be completed within one year of this approval date. A Mitigation Affidavit shall be executed prior to the issuance of a building permit for the new home.



8. The project is subject to the permitting requirements of the Rice Creek Watershed District, and the applicant shall obtain RCWD permits prior to issuance of a building permit for the new house.
9. All work within the right-of-way of County Road I is subject to the permitting requirements of Ramsey County Public Works.
10. The approval is subject to a 5-day appeal period. Once the appeal period expires, a building permit may be issued for the proposed project. A building permit must be obtained before any construction activity begins on the new house.

This approval is based on the following findings:

1. The proposal is consistent with the policies of the Comprehensive Plan.
2. The proposal meets the review criteria for a variance:
  - a. *The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations.* A single-family dwelling with attached garage having a foundation area of 18% of lot area is a reasonable use of this substandard riparian lot.
  - b. *The plight of the property owner is due to circumstances unique to the property not created by the property owner.* The size and location of the houses on the adjacent parcels affect the front setback for the subject property and create unique circumstances with a small, shallow building pad.
  - c. *The variance, if granted, will not alter the essential character of the neighborhood.* Principal and detached accessory structures are located with varying front setbacks along County Road I, so the 45-foot front setback for the subject property will not alter the character of the neighborhood.
3. The proposed dwelling and attached garage conform to the adopted City standards for development on a substandard riparian lot located in the R1 and Shoreland Overlay Districts.

Discussion:

Commissioner Mons offered an amendment for 2.a. to indicate that the front setback, as calculated, is based on artificial setbacks of the two neighboring properties. The 1300 square feet allowed by the existing footprint is reasonable, and rather than saying the applicant should be allowed 18% because that is what the ordinance permits, he would prefer to reference the false front setback on an erroneous calculation from two adjoining lots that do not conform to the OHW setback. Commissioner Schumer seconded the amendment.





Commissioner Ferrington asked the location of the infiltration area. Mr. Warwick stated that it will be west of the garage. There is a basin, and if that basin fills there is an outlet to direct water along the house and toward the bluff. The soil is clay. A good selection of plants can help infiltration.

Commissioner Ferrington asked if pervious pavers have been considered for the driveway to alleviate runoff. Her concern is stormwater runoff. The neighbors to the south have a guest house that already had a gully behind it from water. She would not want this project to add to that neighbor's issue.

Mr. Warwick stated that the driveway is impervious and runs directly to the bluff. There are check dams shown on the plan that will slow the water. The engineering shows that there will not be a problem with water flowing south to the neighbor's property.

Commissioner Mons recused himself from voting on this matter, as he serves on a Board of Trustees with the applicant's wife.

**Mr. O'Connell** stated that 99% of the water problem was before the City reconstructed the street. Before that, runoff from the street discharged onto their driveway. There is no runoff problem now.

Commissioner Ferrington asked what is planned for the bluff area. **Mr. O'Connell** stated that consideration is being given to unobtrusive retaining walls with plantings.

**MOTION:** by Commissioner Solomonson, seconded by Commissioner Schumer to approve residential design review application submitted by Pat O'Connell for 3244 Owasso Heights Road, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Residential Design Review application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. Impervious surface coverage shall not exceed 30% of the total lot area as a result of this project. Foundation area shall not exceed 18%.
4. One landmark trees will be removed as a result of the development, and one replacement tree is required. A cash surety to guarantee the replacement tree shall be submitted prior to issuance of a building permit.
5. A tree protection plan shall be submitted prior to issuance of a demolition permit. The approved plan shall be implemented prior to the commencement of work on the property

and maintained during the period of construction. The protection plan shall include wood chips and protective fencing at the drip line of the retained trees.

6. A final site grading plan and an erosion control plan shall be submitted with the building permit application and implemented during construction of the new residence.
7. Removal of vegetation on the bluff is subject to review and approval of the City Planner prior to removal of any trees from the bluff pursuant to City Code.
8. A Mitigation Affidavit shall be executed prior to the issuance of a building permit for the new residence.
9. A building permit must be obtained before any construction activity begins.
10. This approval is subject to a 5-day appeal period.

The approval is based on the following finding:

1. The proposal complies with the adopted standards for construction on a substandard riparian lot.

**VOTE:**        **AYES:** 5                    **NAYS:** 0                    **ABSTAIN:** 1 (MONS)

**FINDING THAT THE MODIFICATION OF MUNICIPAL DEVELOPMENT DISTRICT NO. 2 AND THE TAX INCREMENT FINANCING PLAN FOR PROPOSED DISTRICT #7 CONFORMS TO THE GENERAL PLANS FOR THE DEVELOPMENT AND REDEVELOPMENT OF THE CITY**

**APPLICANT: CITY OF SHOREVIEW**

**Presentation by City Planner Kathleen Nordine**

The Commission is asked to make a finding that Tax Increment Financing (TIF) District No. 7 complies with the City's Comprehensive Plan and general development plans of the City, in accordance with state law. The project that was approved in 2008 has been delayed due to housing market conditions and tighter multi-family financing. The subject property is Shoreview Senior Living/Cascades, located on Hodgson Road north of the fire station.

In 2008, the City approved development plans for the project, which included a Comprehensive Plan Amendment, rezoning, PUD and plat. The project was planned with 104 units of mixed care for seniors--55 independent care/catered living units, 33 assisted living units and 16 memory care units. A separate parcel adjacent to Hodgson Road was planned for an office building. The home at 4696 Hodgson Road has been purchased and that property will be incorporated into the development.

The reasons the developer is seeking TIF financing include the following:



1. The high cost of property acquisition from the previous developer;
2. The limited number of financing options including from the Federal HUD program;
3. Recent acquisition of the Schneider residential property; and
4. A desire to upgrade building and site amenities.

TIF financing would be funded through the creation of a new TIF District for the developer to be reimbursed from future property taxes.

The proposed TIF Plan for TIF District No. 7 has been drafted for review by the Economic Development Authority (EDA). In order to utilize temporary authority granted to the cities regarding TIF Districts, construction must begin by December 31, 2011.

The property is located in a Policy Development Area (PDA) No. 9, and the proposal is consistent with the PDA development guidelines. The PUD was approved with site development plans. A separate amendment to the Comprehensive Plan will be submitted to include the Schneider property.

Commissioner Mons noted that TIF financing for SummerHouse and Scandia Shores included affordable housing units. Ms. Nordine stated that there is also an affordable care component of 12 to 15 units that would be set aside for seniors eligible for an Elderly Waiver program.

Commissioner Solomonson noted that part of the site is zoned for residential and asked if there would be an application for rezoning. Ms. Nordine stated that the PUD would be amended to incorporate that parcel into the senior living site.

Commissioner Solomonson also asked if the parking area to be shared by the senior living site and a future office building would be built prior to the office building and used for overflow parking for the senior living facility. Ms. Nordine confirmed that was part of the plan in 2008, but at this time she has not received the revised phasing plan to know whether the parking lot is to be built in phase 1 or 2. The development agreements and covenants are in place for that shared parking.

Commissioner Proud expressed concern about the plan in that it would obstruct use of the fire station and that there will be ongoing tenant complaints. The plan is not compatible with City development because of the incompatibility of the proposal with the fire station. Ms. Nordine stated that original approvals did address that concern. Two conditions require an existing fence to be extended towards Hodgson Road, and that the design of the windows on that wall of the building must be constructed with soundproofing to mitigate the noise.

Commissioner Solomonson asked if there is some flexibility, now that the residential property has been purchased, to move the senior living further away from the fire station. Ms. Nordine answered that there is, but she is not aware of any plans. The architectural plans have not been submitted for permit review.

Commissioner Mons stated that the fire station issue was addressed with approval of the PUD, which makes it difficult for him to understand how the Commission would now find this development out of compliance.

Chair Feldsien agreed and stated that his understanding is that the Commission is asked to make a finding that the development plan is not changed from what was previously approved.

Commissioner Solomonson noted that acquisition of the residential property does change the plan that was approved.

Commissioner Mons countered that it was planned to make that purchase and the residential site was identified in the original plan as an outlet to be incorporated into the PUD. The use of this parcel and its proximity to the fire station was resolved by the Planning Commission. Also, the original plan considered two office buildings and it was the developer of the office buildings that attempted to acquire the home. The change is that it was not the office developer who eventually made the purchase, but he does not believe that changes the underlying approval of the PUD.

Commissioner Ferrington asked if the TIF financing is only for the senior housing component. Ms. Nordine answered, yes. The office developer would have to amend the TIF Plan, if TIF financing were requested for the office development.

MOTION: by Commissioner Schumer, seconded by Commissioner Solomonson to adopt the Resolution No. 11-92, finding that the draft Tax Increment Financing Plan for the proposed creation of a new Tax Increment Financing District No. 7 is in conformance to the general development and redevelopment plans of the City as described in the Comprehensive Plan.

Discussion:

Commissioner Proud stated that he will vote against the motion because he does not believe it conforms with the general development and redevelopment plans of the City. That determination and whether it is the same plan as was previously approved are two different issues.

VOTE:           Ayes - 5                           Nays - 1 (Proud)

## **MISCELLANEOUS**

### **City Council Meetings**

Commissioners Mons, Ferrington and Solomonson will attend consecutively the December 19, 29011; January 3, 2012; and January 17, 2012 City Council meetings.

### **2012 Planning Commission Chair & Vice Chair Recommendations**

Chair Feldsien asked if he and Commissioner Mons can vote on this matter, as they are both not seeking to be reappointed.

Commissioner Mons stated that he does not intend to vote on this matter, and Chair Feldsien stated that he would prefer not to vote also.

Commissioner Schumer stated that he would like Chair Feldsien and Commissioner Mons to have input into this decision.

Commissioner Mons noted Commissioner Wenner's absence. As all plan to attend the January meeting, he made the following motion.

**MOTION:** by Commissioner Mons, seconded by Commissioner Ferrington to lay over the matter of a recommendation for Chair and Vice Chair to the January 2012 meeting.

**VOTE:**                   Ayes - 6                   Nays - 0

**Review of 2012 Calendar and City Council Meeting Assignment**

Chair Feldsien referred Commissioners to the information provided in their packets.

**ADJOURNMENT**

**MOTION:** by Commissioner Mons, seconded by Commissioner Solomonson to adjourn the regular Planning Commission Meeting of December 6, 2011, at 9:03 p.m. to convene a workshop meeting.

**VOTE:**                   Ayes - 6                   Nays - 0

ATTEST:

\_\_\_\_\_  
Kathleen Nordine  
City Planner



**PROPOSED MOTION**

**MOVED BY COMMISSION MEMBER \_\_\_\_\_**

**SECONDED BY COMMISSION MEMBER \_\_\_\_\_**

To recommend the City Council approve the text amendment to Chapter 200 of the Municipal Code, Section 207.050 and Section 208.080 pertaining to nonconformities. The ordinance is consistent with the changes in State Law adopted in 2004.

**VOTE:**

**AYES:**

**NAYS:**

Regular Planning Commission Meeting – January 24, 2012

t:\pcf 2012\2438-12-01nonconformities\pcmotion

**TO:** Planning Commission  
**FROM:** Kathleen Nordine, City Planner  
**DATE:** January 19, 2012  
**SUBJECT:** Case File 2438-12-01, Text Amendment – City of Shoreview, Nonconformities, Section 207.050 and Nonconforming Signs, Section 208.080

**Background**

The State Legislature, in 2004, amended the State Statutes relating to nonconformities which expanded the statutory rights of nonconforming structures and uses. Prior to the change, the intent of nonconforming regulations was to phase out these structures and uses within a reasonable time period and bring the structure/use into compliance with the City's zoning regulations. With the change in State Law, any legal nonconformity now generally has a statutory right to continue. Specifically, legal nonconformities may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. For more information, see Minn. Stat. § 462.357.

**Proposed Text Amendment**

Section 207.050, Nonconformities, and Section 208.080, Nonconforming Signs, need to be amended so as to be consistent with State Law. The scope of the changes proposed to Section 207.050, is limited to those regulations pertaining to the elimination of legal nonconforming structures and uses. Section 208.080 is proposed to be removed in its entirety because nonconforming signs are considered structures and regulated in Section 207.050. The proposed text amendment is attached for your review and comment. Some minor changes have been made since the Commission reviewed this at the December meeting.

The Commission should note that nonconformities are also addressed in Section 209.080, Shoreland Management. At this time, no changes are proposed to this Section. Staff will be working further with the City Attorney and Department of Natural Resources to determine if an amendment is needed due to the changes in Minnesota State Statute.

**Recommendation**

Staff is presenting these regulations for consideration by the Planning Commission at the public hearing. The proposed amendment has been reviewed by the City Attorney and is consistent with the changes in State Law. Staff is recommending the Commission recommend approval of the text amendment to the City Council.

**Attachments**

- 1) MN Statutes 462.357 Subd 1e
- 2) LMC – Land Use Nonconformities
- 3) Draft Text Amendment

text underlined is proposed to be added, text stricken is proposed for deletion

## SHOREVIEW DEVELOPMENT CODE

### 207.050 Nonconformities.

(A) Purpose. The purposes for the City's Nonconforming Use Regulations are:

- (1) To recognize the existence of uses, structures and lots which were lawfully established but which do not currently comply with the City's Development Regulations.
- (2) To prohibit the enlargement, expansion or extension of nonconforming principal uses and structures.

~~(3) To require the elimination of nonconforming accessory uses, and structures utilized in connection therewith, within a reasonable period of time.~~

~~(4)~~(3) To regulate nonconforming uses and structures that are located in flood hazard areas in a manner consistent with State and Federal regulations in order to preserve the public health, safety and welfare.

(B) Nonconforming Use Restrictions.

- (1) A nonconforming ~~principal~~ use shall not be enlarged or extended to occupy a greater area of land or a larger portion of a structure, but may continue at the size, intensity and in the manner of operation existing upon the date on which the use became nonconforming.
- (2) A nonconforming ~~principal~~ use may be changed to lessen the nonconformity of the use.
- (3) When a nonconforming ~~principal~~ use has been changed to a conforming use, it shall thereafter comply with the City's Development Ordinance.
- (4) A nonconforming ~~principal~~ use shall not be re-established if discontinued for a continuous twelve-month period.

~~(5) A nonconforming accessory use shall be terminated as provided in Section 207.050(G).~~

~~(6) A nonconforming principal use, which is damaged by fire, wind, or other causes to the extent of 50% or more of its value, as determined by a qualified appraiser, shall not be resumed except in conformity with the City's Development Ordinance, unless a building permit to restore the damage is applied for within 180 days of the event causing the damage. In the event~~



~~restoration work exceeds 50% of the value, the City may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property.~~

(7)(5) Any nonconforming use located in a flood hazard zone is also subject to the regulations of Section 205.091(K)(4).

(C) Nonconforming Lot Restrictions. The following requirements shall apply to all substandard non-riparian lots that do not satisfy the minimum dimension standards set forth in Development Ordinance. Substandard riparian lots shall comply with the requirements set forth in Section 209.080(L).

(1) Lot Standards:

(a) Residential design review approval, in accordance with Section 203.034, must be obtained prior to improvement of any nonconforming lot of record for use as a separate home site if the lot was not in separate ownership on August 1, 1983, or any time thereafter.

(b) No structures shall be expanded or; constructed ~~or reconstructed~~ on a substandard lot of record unless Residential design review approval is first obtained from the City in accordance with Section 203.034, unless otherwise in conformance with Section 207.050 (F).

(c) Reconstruction of a structure is defined to mean replacement of three or more of the structure's six structural components (roof, floor, and four walls). Determination as to the extent of structural component replacement shall be made by the Building Official.

(d) A dwelling shall not be constructed ~~or reconstructed~~ on a nonconforming lot of record unless, the lot meets or exceeds 80% of the minimum required lot width, area and depth standards.

(e) No lot of record shall be used or reused as a separate home site unless it abuts an improved public right-of-way or, if the lot was legally accessed via a private way prior to December 10, 1992, said access may continue to be utilized provided:

(i) There is no practical way to extend a public street to the property;

(ii) The private access is protected by a permanent easement recorded to run with the title of the property; and

(iii) The private way complies with the fire apparatus requirements set forth in the Uniform Fire Code.

(D) Design Standards. Except as herein provided, ~~Any~~ structures constructed, ~~reconstructed~~ or expanded on a nonconforming lot shall comply with the following site and building design requirements:

- (1) Impervious Surface Coverage. Lot coverage shall not exceed 30%.
- (2) Building Height. The height of the proposed dwelling shall not exceed 28 feet from roof peak to grade (as defined by the Uniform Building Code) on the street side of the dwelling, and the dwelling shall not exceed two stories as viewed from the street.
- (3) Foundation Area. The foundation area of all structures, including dwellings and attached accessory structures, cantilevered areas, detached accessory structures greater than 150 square feet, and covered porches, covered decks, and covered patios shall be limited to 18 percent of the lot area or 1,600 square feet, whichever is greater. If the existing foundation area exceeds the allowed foundation area, the foundation area percentage may be maintained but not increased. Existing foundation area is the foundation area legally present on the property on or before April 17, 2006 or approved thereafter by the City.
- (4) Minimum Setback from the Property Front Line: 30 feet. However, in those cases where the existing setbacks for the two adjacent dwellings exceed this requirement, the setback of the new dwelling or any new addition shall be equal to the average setback of the two adjacent dwellings, plus or minus 10 feet. If one of the immediately adjacent dwellings is located on a lakeshore lot, the front yard setback of such dwelling shall not be utilized. In those cases where there is only one existing adjacent structure which has a setback greater than 30 feet, then the setback for the new dwelling or addition shall be equal to the average of 30 feet and the setback of the existing adjacent structure, plus or minus 10 feet.
- (5) Architectural Mass. The architectural design and mass of the structure is determined by the City to be compatible with the existing neighborhood character.
  - (a) When determining compliance with the existing character of a neighborhood, the City Council may require revisions that include, but shall not be limited to the alteration of: dwelling style (2-story walkout, rambler, etc.); roof design; garage width, height, and depth; garage style (attached versus detached); location and amount of driveway/parking/sidewalk area; and/or the location and design of doors, windows, decks and porches. The City may also restrict deck enclosures; prohibit

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accessory structures except for a garage; and require greater than standard setbacks.

(6) Legally established nonconforming structures may continue but shall not be expanded or moved to a different location on a parcel, except as provided for in Section 207.050 (F).

(E) Residential Design Review Conditions. The City may impose any or all of the following requirements as a condition of approval in order to construct or reconstruct a single family dwelling on a nonconforming lot of record:

- (1) If the nonconforming lot adjoins a lot in the same ownership that exceeds minimum dimension standards, the adjoining lot may be required to be subdivided, to the extent practical, to increase the size of the nonconforming lot in order to reduce the amount of the non-conformity.
- (2) Any other conditions that the City deems necessary in order to satisfy the intent of the Development Ordinance.

(F) Nonconforming Structure Restrictions.

- (1) A structure which is nonconforming due to dimensions or setbacks from property lines may remain at its current size and location and/or may be structurally altered, including an area expansion, provided that the alteration complies with the City's current development regulations and procedures. ~~If the nonconforming structure is a single family dwelling, its location on a substandard lot shall not be considered relevant for purposes of administering this provision.~~
- (2) A structure which is nonconforming due to setbacks from property lines, where such nonconformity is the result of a government taking for the construction or improvement of streets, drainage areas, storm water ponding areas, public recreational areas, or public utilities, may be structurally altered so long as the alteration is in compliance with the setback standards. ~~which were applicable when the structure was originally constructed, but, in no event, shall the alteration result in a front yard setback of less than 20 feet without an approved variance.~~
- (3) A nonconforming structure which is destroyed by fire or other peril to the extent of greater than 50% of its estimated market value as indicated in the records of the county assessor at the time of damage, may be continued through repair, replacement, restoration, maintenance or improvement provided a building permit has been applied for within 180 days of the date of damage. In this case, the City may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a non-conforming structure in the



Shoreland District with less than 50% of the required setback from the ordinary high water is destroyed by fire or other peril to greater than 50% of its estimated market value as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

~~damaged by fire, wind or other causes to an extent of less than 50% of its fair market value, as determined by the real estate tax statement for the parcel exclusive of land value, may be restored to its former condition and in its former location if the restoration is completed within twelve (12) months after the date of damage. A nonconforming structure which is damaged by fire, wind or other causes to an extent of 50% or more of its fair market value, as determined by the real estate tax statement for the parcel exclusive of land value, shall not be repaired or rebuilt except in conformity with the City's Development Ordinance, unless a building permit to restore the damage is applied for within 180 days of the event causing the damage. In the event restoration work exceeds 50% of the value, the City may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property.~~

~~(4) If a nonconforming structure is moved to another zoning district, it shall comply with all regulations applicable to such district.~~

~~(54) Normal repairs and maintenance necessary to keep a nonconforming structure in sound condition shall be permitted.~~

~~(65) If a nonconforming accessory use terminates, the nonconforming accessory structure which it utilizes shall be removed unless such structure can be adapted to conform with the use regulations of its particular zone.~~

~~(6) Any nonconforming structure located in a flood hazard district is also subject to Section 205.091(K)(4).~~

~~(7) The provisions of Section 207.050 (F) apply to all structures, including signs.~~

~~(G) Termination of Nonconforming Accessory Use. A nonconforming accessory use shall be removed within a reasonable time as determined by the City Council. In making such determination as to the time for the removal of such use, the City Council shall take the following factors into consideration:~~

~~(1) The date on which the accessory use was created.~~

~~(2) The date when the accessory use became nonconforming.~~

~~(3) The value of the structure utilized by the nonconforming accessory use.~~

- ~~(4) The property owners' investment in the structure which supports the nonconforming accessory use.~~
- ~~(5) The adaptability of the structure to other allowable uses.~~
- ~~(6) The nature of the nonconforming accessory use.~~
- ~~(7) The detriment caused by the existence of the nonconforming accessory use.~~
- ~~(8) The character of the neighborhood surrounding the property on which the nonconforming accessory use is located.~~

~~(H) Nonconforming Commercial Antennas or Towers.~~

- ~~(1) Existing commercial antennas or towers legally existing prior to the adoption of Ordinance No. 738, adopted by the City Council on March 19, 2001 except for towers used for public safety communications, shall be considered a legal non-conforming use.~~
- ~~(2) Expansion of a legal non-conforming use shall be subject to City regulations pertaining to commercial antennas, towers and WTFs that are in effect at the time such expansion is proposed. Additional antennas may be placed on legal non-conforming commercial towers by existing users for the purposes for expanding capacity or for collocation by new users when a WTF permit is obtained pursuant to City regulations. The height of legal non-conforming commercial towers shall not be increased.~~
- ~~(1) If a legal non-conforming antenna, tower or WTF is damaged to the extent of its estimated market value, as indicated in the records of the Ramsey County Assessor, or destroyed due to any reason or cause whatsoever, the antenna, tower or WTF may be repaired and restored to its former use, location and physical dimensions upon obtaining a building permit and commencing construction within 180 days of the date of the damage or destruction.~~
- ~~(2) Routine maintenance of legal non-conforming commercial antennas and towers and WTFs is permitted.~~
- ~~(3) If a legal non-conforming commercial antenna, tower and/or WTF is unused or abandoned for a period of one year, the antenna, tower and/or WTF shall lose its legal nonconforming status and shall be considered an illegal nonconforming use. If not removed, the City may remove the antenna, tower and/or WTF and assess the costs of removal to the property owner.~~

~~(I) Nonconforming Signs. As regulated in Section 208.070, Alteration and/or Removal of Legal Nonconforming Permanent Signs.~~

~~(J) Hearings. Property owners who receive notices to remove nonconforming accessory uses may file a request for a hearing on forms provided by the City Manager. Upon the receipt of the hearing request, the City Manager shall schedule a hearing before the City Council within sixty (60) days.~~

(K) Illegal Uses. Owners of illegal uses or structures shall terminate such use and/or remove such structure or otherwise adapt such structure to a permissible use.

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*text underlined is proposed to be added, text stricken is proposed for deletion*

Section 208, Signs

~~**208.080 — Alteration and/or Removal of Legal Nonconforming Permanent Signs.** Signs shall lose their legal nonconforming status if moved, replaced or altered in any way, except toward compliance with Section 208. Signs that are in good repair, were legally in existence before this Section was adopted, and which are not obsolete but which do not otherwise comply with the standards set forth in this Section, shall be removed or brought into conformance if damaged beyond 50 percent of its value prior to being damaged, as determined by an independent appraisal. Damaged, nonconforming signs shall be completely removed within 90 days of written notification from the City. If compliance is not obtained within 90 days of property owner notification, the City may cause the sign to be removed in accordance with Subsection 208.070(D).~~

- ~~(1) A legally nonconforming billboard may be converted to a billboard with a dynamic display provided the conditions identified in Section 208.040(B)(2) are met.~~