

Date..... January 26, 2009

WHEREAS, on January 5, 2009, by Roll Call No. 09-015, it was duly resolved by the City Council that the proposal to enact a new Section 134-1298 to the Zoning Ordinance providing for an adjustment of the required yards and minimum lot area to compensate for a reduction in a yard or lot area resulting from the involuntary conveyance of land for a public purpose as more fully described in Exhibit "A" attached hereto, be set down for hearing on January 26, 2009, at 5:00 p.m., in the Council Chambers at City Hall; and

WHEREAS, due notice of the hearing was published in the Des Moines Register as provided by law on January 15, 2009; and


WHEREAS, in accordance with the notice, those interested in the proposed amendments, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa:

That upon consideration of the facts, statements of interested persons and arguments of counsel, the objections to said proposed amendments to the Zoning Ordinance be and the same are hereby overruled, and the hearing closed.

MOVED by \_\_\_\_\_ to adopt and approve, subject to final passage of the enacting ordinance.

FORM APPROVED:

  
 Roger K. Brown  
 Assistant City Attorney  
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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
<b>TOTAL</b>				

MOTION CARRIED APPROVED

.....  
**Mayor**

**CERTIFICATE**

**I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.**

**IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.**

\_\_\_\_\_  
 City Clerk

**Exhibit "A"**

Proposed amendment to the Zoning Ordinance to automatically adjust the required setback and lot area to compensate for a reduction in the setback or lot area resulting from the involuntary acquisition of land for a public purpose.

**Purpose of Amendment:**

Street widening projects commonly require the acquisition of a portion of the required front yard setback and/or lot area for the existing buildings along the street. Currently a building becomes nonconforming under the Zoning Ordinance if any portion of the required setback or lot area is conveyed to another party. Without relief from the Board of Adjustment, a non-conforming building cannot be expanded, and cannot be rebuilt if destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction. No exception to these rules exist for conveyances to a governmental entity under condemnation or the threat of condemnation.

The Board of Adjustment currently lacks the authority to return any such building to its former conforming status. Any exception or variance granted by the Board of Adjustment to legalize such a building will automatically lapse if the building is thereafter destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction. (See §134-1297(c) below.) As a result, the owner of any building which has been made nonconforming by a street widening project is at risk that the building cannot be rebuilt if it is ever destroyed by more than 60% of its replacement cost. This potential future risk is reported to have an immediate impact upon casualty insurance rates and the market value of the property.

The purpose of this amendment is to create an exception to the rule identified above, to allow such a building to be repaired or replaced on the old footprint if the work is commenced under authority of a building permit within six months of when the damage occurs.

**Sec. 134-1298. Adjustment of setbacks and lot area for partial takings.**

(a) If a portion of a lot is conveyed to the state, the city, or any other political subdivision of the state through condemnation or under threat of condemnation, and the conveyance results in a structure or use of a structure upon the remaining lot becoming nonconforming or more nonconforming with a required yard or minimum lot area, then notwithstanding the limitations set forth in section 134-1297, if such structure is thereafter damaged to any extent or is totally destroyed by any means, the structure may be repaired, restored, or rebuilt to its prior condition, if all of the following conditions are satisfied:

- 1) The nonconformity was created by the conveyance through condemnation or under threat of condemnation;

- 2) Appropriate relief is obtained from the board of adjustment for any nonconformity with the applicable zoning requirements, to the extent that such nonconformity preexisted such condemnation or conveyance;
  - 3) The repair, restoration or rebuilding of the structure does not create any additional nonconformity of the structure beyond that originally created by such conveyance or allowed by any relief granted by the board of adjustment;
  - 4) The repair, restoration, or rebuilding is commenced within six months of such damage under authority of a building permit and is diligently pursued to completion; and,
  - 5) One of the following conditions are satisfied:
    - (i) The acquisition document for such conveyance contains language stating substantially as follows: "The provisions of Section 134-1298 of the City of Des Moines Zoning Ordinance shall apply to this acquisition"; or
    - (ii) The zoning enforcement officer determines after consultation with the real estate division of the engineering department, that the circumstances of such conveyance affirmatively support a finding that any resulting nonconformities with the required yards or minimum lot area were not considered in determining the compensation paid for such conveyance.
- (b) If a portion of a lot is conveyed to the state, the city, or any other political subdivision of the state through condemnation or under threat of condemnation, and the conveyance results in a single-family dwelling upon the remaining lot becoming nonconforming or more nonconforming with a required yard or minimum lot area, then the remaining lot shall be treated the same as a lot of record existing as of July 16, 1965, for the purposes of applying the provisions in Section 134-1296(b) regarding the construction of a single family detached dwelling.
- (c) Any adjustment to the minimum lot area made under authority of this section shall automatically lapse in the event the lot is joined with other adjoining land under common ownership that collectively satisfy the applicable minimum lot area.
- (d) Any adjustment to a required yard made under authority of this section shall automatically lapse in the event the lot is joined with other adjoining land under common ownership that collectively satisfy the applicable minimum required yard.

Secs. 134-1298-1299--134-1325. Reserved.

January 16, 2009

Date \_\_\_\_\_

Agenda Item 59

Roll Call # \_\_\_\_\_

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held January 15, 2009, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels				X
Jacqueline Easley	X			
Dann Flaherty	X			
Bruce Heilman	X			
Ted Irvine	X			
Jeffrey Johannsen				X
Greg Jones	X			
Frances Koontz				X
Jim Martin	X			
Brian Millard	X			
Mike Simonson	X			
Kent Sovern	X			

**APPROVAL** of the Amendment to the Zoning Ordinance to automatically adjust the required setback and lot area to compensate for a reduction in the setback or lot area resulting from the involuntary acquisition of land for a public purpose.

(10-2008-5.04)

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends approval of the proposed text amendment.

**STAFF REPORT**

**I. GENERAL INFORMATION**

Street widening projects commonly require the acquisition of a portion of the required front yard setback and/or lot area for the existing buildings along the street. Currently a building becomes nonconforming under the Zoning Ordinance if any portion of the required setback or lot area is conveyed to another party. Without relief from the Board of Adjustment, a non-conforming building cannot be expanded, and cannot be rebuilt if destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction. No exception to these rules exists for conveyances to a governmental entity under condemnation or the threat of condemnation.



CITY PLAN AND ZONING COMMISSION  
ARMORY BUILDING  
602 ROBERT D. RAY DRIVE  
DES MOINES, IOWA 50309 -1881  
(515) 283-4182

ALL-AMERICA CITY  
1949, 1976, 1981  
2003

The Board of Adjustment currently lacks the authority to return any such building to its former conforming status. Any Exception or Variance granted by the Board of Adjustment to legalize such a building will automatically lapse if the building is thereafter destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction. (See §134-1297(c)) As a result, the owner of any building which has been made nonconforming by a street widening project faces a risk that the building cannot be rebuilt if it is ever destroyed by more than 60% of its replacement cost. This potential future risk is reported to have an immediate impact upon casualty insurance rates and the market value of the property.

The purpose of this amendment is to create an exception to the rule identified above, to allow such a building to be repaired or replaced on the old footprint if the work is commenced under authority of a building permit within 6-months of when the damage occurs. Please refer to the underlined text of the attached "Exhibit A" for the proposed text amendment.

### **SUMMARY OF DISCUSSION**

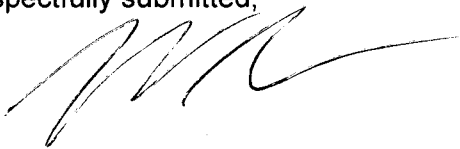
There was no one in the audience to speak on this item and no discussion.

### **COMMISSION ACTION**

Jacqueline Easley: Motion to approve staff recommendation to approve the amendment to the Zoning Ordinance to automatically adjust the required setback and lot area to compensate for a reduction in the setback or lot area resulting from the involuntary acquisition of land for a public purpose.

Motion passed 11-0

Respectfully submitted,



Jason Van Essen, AICP  
Senior City Planner

JMV:clw

cc: File

**Exhibit "A"**

Proposed amendment to the Zoning Ordinance to automatically adjust the required setback and lot area to compensate for a reduction in the setback or lot area resulting from the involuntary acquisition of land for a public purpose.

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The Board of Adjustment currently lacks the authority to return any such building to its former conforming status. Any exception or variance granted by the Board of Adjustment to legalize such a building will automatically lapse if the building is thereafter destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction. (See §134-1297(c) below.) As a result, the owner of any building which has been made nonconforming by a street widening project is at risk that the building cannot be rebuilt if it is ever destroyed by more than 60% of its replacement cost. This potential future risk is reported to have an immediate impact upon casualty insurance rates and the market value of the property.

The purpose of this amendment is to create an exception to the rule identified above, to allow such a building to be repaired or replaced on the old footprint if the work is commenced under authority of a building permit within 6 months of when the damage occurs.

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**Sec. 134-1297. Abandonment of variances, exceptions and conditional uses.**

- (a) Uses of land, structures and uses of structures which would otherwise be prohibited under this chapter but have been allowed by the granting of an exception or variance or have been allowed as a conditional use may continue until such exception, variance or conditional use lapses as provided in this section.
- (b) If any such use of land or of a structure is not commenced by July 1, 1995, or within two years of the allowance of the variance, exception or conditional use, whichever is later, or is discontinued for a period of one year after July 1, 1993, such variance, exception or conditional use shall lapse, and any subsequent use of such land or structure shall conform to the district regulations for the district in which such land or structure is located.
- (c) If the event the construction of any such structure is not commenced by July 1, 1995, or within two years of the issuance of the variance, exception or conditional use for such

structure, whichever is later, and diligently pursued to completion, such variance, exception or conditional use shall lapse, and any subsequent use of such land shall conform to the district regulations for the district in which such land is located. If any such structure, except those within an R-HD residential historic district, is destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction, it shall not be reconstructed; any such variance, exception or conditional use permit for such structure shall lapse; and any subsequent use of such land shall conform to the district regulations for the district in which such land is located.

**Sec. 134-1298. Adjustment of setbacks and lot area for partial takings.**

(a) If a portion of a lot is conveyed to the state, the city, or any other political subdivision of the state through condemnation or under threat of condemnation, and the conveyance results in a structure or use of a structure upon the remaining lot becoming nonconforming or more nonconforming with a required yard or minimum lot area, then notwithstanding the limitations set forth in section 134-1297, if such structure is thereafter damaged to any extent or is totally destroyed by any means, the structure may be repaired, restored, or rebuilt to its prior condition, if all of the following conditions are satisfied:

- 1) The nonconformity was created by the conveyance through condemnation or under threat of condemnation;
- 2) Appropriate relief is obtained from the board of adjustment for any nonconformity with the applicable zoning requirements, to the extent that such nonconformity preexisted such condemnation or conveyance;
- 3) The repair, restoration or rebuilding of the structure does not create any additional nonconformity of the structure beyond that originally created by such conveyance or allowed by any relief granted by the board of adjustment;
- 4) The repair, restoration, or rebuilding is commenced within six months of such damage under authority of a building permit and is diligently pursued to completion; and,
- 5) One of the following conditions are satisfied:
  - (i) The acquisition document for such conveyance contains language stating substantially as follows: "The provisions of Section 134-1298 of the City of Des Moines Zoning Ordinance shall apply to this acquisition"; or
  - (ii) The zoning enforcement officer determines after consultation with the real estate division of the engineering department, that the circumstances of such conveyance affirmatively support a finding that any resulting nonconformities with the required yards or minimum lot area were not considered in determining the compensation paid for such conveyance.

(b) If a portion of a lot is conveyed to the state, the city, or any other political subdivision of the state through condemnation or under threat of condemnation, and the conveyance results in a single-family dwelling upon the remaining lot becoming nonconforming or more nonconforming with a required yard or minimum lot area, then the remaining lot shall be treated the same as a lot of record existing as of July 16, 1965, for the purposes

of applying the provisions in Section 134-1296(b) regarding the construction of a single family detached dwelling.

- (c) Any adjustment to the minimum lot area made under authority of this section shall automatically lapse in the event the lot is joined with other adjoining land under common ownership that collectively satisfy the applicable minimum lot area.
- (d) Any adjustment to a required yard made under authority of this section shall automatically lapse in the event the lot is joined with other adjoining land under common ownership that collectively satisfy the applicable minimum required yard.

Secs. 134-1299--134-1325. Reserved.