

Date November 9, 2009

WHEREAS, on October 26, 2009, by Roll Call No. 09-1918, it was duly resolved by the City Council that the proposal to amend Section 134-278 and subsection (b) of Section 134-1296 of the Zoning Ordinance, regarding the repair and replacement of non-conforming single-family dwellings in the "A-1" Agricultural District and on lots platted or of record as of July 16, 1965, as more fully described in Exhibit "A" attached hereto, be set down for hearing on November 9, 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 October 29, 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

Roger K. Brown
Assistant City Attorney

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(Council Communication No. 09-776)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

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"

Amendments to the Zoning Ordinance:

- 1. To allow legal nonconforming single-family dwellings in the "A-1" Agricultural District to be repaired or replaced if substantially destroyed by any means; and,
- 2. To require that any legal non-conforming single-family dwelling which is substantially destroyed and allowed to be repaired or replaced, be repaired or replaced in substantial conformance with the single-family design standards.

Sec. 134-278. Future annexation of territory.

A. All territory which may be annexed to the city shall be considered as lying in the A-1 agricultural district until such classification shall have been changed by amendment in accordance with this chapter. The necessary procedures for amending the A-1 agricultural zoning district classification may be commenced prior to annexation and shall be completed within a reasonable period of time after annexation.

B. Any legal non-conforming single family dwelling which lawfully existed when it was annexed into the city, can be used, maintained and reconstructed, provided however that if the dwelling 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 unless such reconstruction is commenced within six months of the destruction of the original dwelling and diligently pursued to completion, and the dwelling as reconstructed complies with the following design standards:

- (1) The dwelling shall remain within the original building footprint without an increase in the gross floor area;
- (2) The dwelling shall have a minimum width facing the street of the smaller of 24 feet or the width of the dwelling prior to such destruction;
- (3) The dwelling shall have a minimum depth perpendicular to the street of the smaller of 20 feet or the depth of the dwelling prior to such destruction.
- (4) A minimum of 15 percent of the facade of the dwelling facing the street shall consist of windows, doors and other building openings;
- (5) The dwelling shall have a door facing the street that appears to be a primary entrance;
- (6) The main part of the dwelling shall have a minimum roof pitch of 3:12.
- (7) The dwelling shall have a roof overhang around the entire perimeter; and,
- (8) Any foundation skirting material shall have the appearance of masonry or poured concrete typical of site-built homes.

Sec. 134-1296. Permitted.

- (a) *Scope.* The regulations specified in this chapter shall be subject to the exceptions and interpretations of this section.
- (b) *Use of existing lots of record.* In any district where dwellings are permitted, a single-family detached dwelling may be located on any lot platted or of record as of July 16, 1965, regardless of its area or width; provided, however, that the following shall apply:

- (1) The front yard setback requirements for the district in which such lot is located shall apply, except where such lot is a corner lot, in which case the front yard setback requirement shall apply only to the shorter street side of the lot.
- (2) The sum of the side yard widths of any such lot shall not be less than 30 percent of the width of the lot, but in no case less than ten percent of the width of the lot for any one side yard. Additionally, where such lot is a corner lot, the width of the side yard on the longer street side of the corner lot shall not be less than (i) 50 percent of the front yard required on the lot to the rear if there is reverse frontage, or (ii) the side yard setback for the district in which the corner lot is located if there is no reverse frontage.
- (3) The depth of the rear yard of any such lot shall not be less than 20 percent of the depth of the lot, but in no case less than ten feet.
- (4) If the application of any of the requirements of subsections (b)(1), (2) and (3) of this section to a particular lot would impose a greater setback than required under the regulations of the district in which the lot is located, the lesser setback requirements of the district regulations shall control.
- (5) Notwithstanding the setback requirements set forth above, ~~the minimum single-family dwelling design requirements set forth in section 134-342(1)(a) and (b), and the restrictions on nonconforming lots and structures set forth in section 134-1352,~~ a legal non-conforming single-family dwelling on such a lot within the R1 one-family residential districts, the R-2 one- and two-family residential districts and the R-3 and R-4 multiple-family residential districts can be ~~repaired or replaced provided the dwelling remains within the original building footprint without an increase in the gross floor area, and further provided the construction of such replacement is commenced within six months of the destruction of the original dwelling and diligently pursued to completion.~~ used, maintained and reconstructed, provided however that if the dwelling 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 unless such reconstruction is commenced within six months of the destruction of the original dwelling and diligently pursued to completion, and the dwelling as reconstructed complies with the following design standards in lieu of the minimum single-family dwelling design requirements set forth in section 134-342(1)(a) and (b), and the restrictions on nonconforming lots and structures set forth in section 134-1352:
 - (a) The dwelling shall remain within the original building footprint without an increase in the gross floor area;
 - (b) The dwelling shall have a minimum width facing the street of the smaller of 24 feet or the width of the dwelling prior to such destruction;
 - (c) The dwelling shall have a minimum depth perpendicular to the street of the smaller of 20 feet or the depth of the dwelling prior to such destruction.
 - (d) A minimum of 15 percent of the facade of the dwelling facing the street shall consist of windows, doors and other building openings;
 - (e) The dwelling shall have a door facing the street that appears to be a primary entrance;
 - (f) The main part of the dwelling shall have a minimum roof pitch of 3:12.
 - (g) The dwelling shall have a roof overhang around the entire perimeter; and,

(h) Any foundation skirting material shall have the appearance of masonry or poured concrete typical of site-built homes.

If two or more such lots with continuous frontage are combined under single ownership, such combined lots shall be treated as a single lot for purposes of applying the requirements of subsections (b)(1), (2), (3) and (4) of this section. Where a portion of any such lot platted or of record as of July 16, 1965 is conveyed to a governmental body for public right-of-way purposes, the regulations of this subsection shall continue to apply to the remainder of such lot.

Date November 9, 2009

Agenda Item 49

Roll Call # 19

October 16, 2009

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 October 15, 2009, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Dann Flaherty	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 proposed amendments to the City Code to address dwellings made non-conforming by annexation and the automatic imposition of the "A-1" Agricultural District regulations. (10-2009-5.05)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the proposed amendments to the City Code.

STAFF REPORT

I. BACKGROUND INFORMATION

Attached is a proposed revision to City Code Section 134-278 as recommended by the Regulations and Ordinances (R&O) Subcommittee. **Note:** A revised draft was distributed at the meeting that also proposes amendments to Section 134-1296.

The revisions to Section 134-278 and 134-1296 address dwellings made non-conforming by annexation and the automatic imposition of the "A-1" Agricultural District regulations. The revisions will allow any legal non-conforming single-family dwelling which lawfully existed when it was annexed into the city to be rebuilt within the original building footprint without an increase in gross floor area if it becomes more than 60% destroyed. The work must be commenced under authority of a



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

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2003

building permit within 6-months of when the damage occurs. Reconstruction would have to comply with the following design guidelines:

- (1) The dwelling shall remain within the original building footprint without an increase in the gross floor area;
- (2) The dwelling shall have a minimum width facing the street of the smaller of 24 feet or the width of the dwelling prior to such destruction;
- (3) The dwelling shall have a minimum depth perpendicular to the street of the smaller of 20 feet or the depth of the dwelling prior to such destruction.
- (4) A minimum of 15 percent of the facade of the dwelling facing the street shall consist of windows, doors and other building openings;
- (5) The front door of the dwelling shall appear to face the street;
- (6) The main part of the dwelling shall have a minimum roof pitch of 3:12;
- (7) The dwelling shall have a roof overhang around the entire perimeter; and,
- (8) Any foundation skirting material shall have the appearance of masonry or poured concrete typical of site-built homes.

The design guidelines listed above are the same as the existing design guidelines that apply to any single-family residential dwelling constructed on a lot of record in the City of Des Moines on or after July 1, 1997.

II. ADDITIONAL INFORMATION

The existing provisions of Section 134-278 state that any property annexed into the City of Des Moines is automatically zoned "A-1" Agricultural District. There are numerous single-family residences on properties located within the boundaries of the City's recent involuntary annexation that are now legal non-conforming uses within the "A-1" Zoning Districts by virtue of non-compliance with "A-1" District bulk regulations such as the minimum lot area requirement of 10 acres. A single family dwelling which is more than 60% destroyed can only be repaired or rebuilt if the new dwelling can satisfy all bulk regulations of the A-1 District. If all bulk regulations cannot be met, the Zoning Board of Adjustment must grant the necessary relief before the structure can be repaired or rebuilt or the property must be rezoned to a different zoning classification.

This proposed amendment is a response to citizen concerns as banking institutions have tightened their lending requirements in recent months. Before financing can be provided, banks need assurance that a legal non-conforming single-family dwelling can be repaired or rebuilt if 60% destroyed. Staff is concerned that the number of single-family dwellings on recently annexed properties that could potentially require Board of Adjustment relief or rezoning. This would place a burden on existing single-family property owners. In addition, no conditional zoning could be applied if the City initiated an area-wide rezoning.

Note: The changes to Chapter 134-1296 address annexed properties that were not a lot of record prior to 1965.

SUMMARY OF DISCUSSION

Mike Ludwig presented a revised ordinance that included revisions to Section 134-278 and Section 134-1296.

Brian Millard asked about page 2 item 5f of Sec. 134-1296 if this is the City's current code. Would the overhang requirement prohibit certain types of architecture?

Mike Ludwig stated that it follows the current code. If an applicant cannot meet the standard, they can seek relief from the Zoning Board of Adjustment.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak in opposition.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION

Greg Jones moved staff recommendation to approve the proposed amendments to the City Code to address dwellings made non-conforming by annexation and the automatic imposition of the "A-1" Agricultural District regulations.

Motion passed 8-1 (Brian Millard was in opposition)

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

cc: File

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