

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 11022**, requested by the Director of Planning, to amend Section 27.61.100 of the Lincoln Municipal Code relating to Expansion of Nonstandard Single- and Two-Family Dwellings Into Required Yards.

STAFF RECOMMENDATION: Approval

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 06/29/11
Administrative Action: 06/29/11

RECOMMENDATION: Approval (7-0: Gaylor Baird, Lust, Cornelius, Larson, Partington, Francis and Sunderman voting 'yes'; Esseks and Taylor absent).

FINDINGS OF FACT:

1. This is a proposed text amendment amending Section 27.61.100 of the Lincoln Municipal Code relating to Expansion of Nonstandard Single- and Two-family Dwellings Into Required Yards to allow the enlargement, extension, or reconstruction of the main building used for a single- or two-family dwelling, and accessory buildings considered part of the main building, in the R-1 through R-8 Residential Zoning Districts.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3-4, concluding that the proposed text amendment will continue to streamline the building permit process for single- and two-family homeowners who wish to improve their property. Allowing homeowners to not only extend but also entirely reconstruct a portion of their house or attached garage within existing setbacks will not endanger the health, safety or welfare of neighbors or the community at large. The staff presentation is found on p.5-6.
3. There was no testimony in opposition.
4. On June 29, 2011, the Planning Commission agreed with the staff recommendation and voted 7-0 to recommend approval (Esseks and Taylor absent).

FACTSHEET PREPARED BY: Jean L. Preister

DATE: July 5, 2011

REVIEWED BY: _____

DATE: July 5, 2011

REFERENCE NUMBER: FS\CC\2010\CZ11022 Text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for June 29, 2011 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No.11022

PROPOSAL: To amend Chapter 27.61.00 Non-conforming and Non-standard uses to allow the enlargement, extension, or reconstruction of a single or two family residence including an attached garage that does not meet the required setbacks of the zoning district.

CONCLUSION: This text change will continue to streamline the building permit process for single and two family home owners who wish to improve their property. Allowing homeowners to not only extend but also entirely reconstruct a portion of their house or attached garage within existing setbacks will not endanger the health, safety or welfare of neighbors or the community at large.

RECOMMENDATION:

Approval

GENERAL INFORMATION:

HISTORY:

- April 7, 1980 Ordinance 12894 amended section 27.61.090 to eliminate the terms "converted" and "structurally" altered from the text.
- June 5, 1995 Ordinance 16798 amending section 27.03.460 to clarify the definition of "nonstandard use" and amending section 27.61.090 to provide that uses becoming nonstandard through a change in the zoning ordinance or district boundaries may be continued.
- May 22, 2006 Ordinance 18730 amended 27.61.090 to allow for the enlargement, extension or reconstruction of buildings and structures located upon a premises, the use of which constitutes a nonstandard use by special permit.
- October 9, 2006 Ordinance 18827 amended 27.61.090 to limit the number of dwellings units in a nonstandard multiple dwelling which is enlarged, extended or reconstructed.
- November 3, 2008 Ordinance 19172 amended 27.61.090 by eliminating reference to 27.63.540 in subparagraph (b) which was repealed by the same ordinance. 27.63.540 was a special permit for expansion of a non-standard single or two family dwelling. This special permit was not needed because this type of expansion was already addressed by 27.63.280 expansion of a non-conforming or non-standard use.

May 4, 2009

Ordinance 19245 amended Chapter 27.61 Non-conforming and Non-standard uses to allow as a conditional use single and two family home owners to put an addition onto their house that encroaches no further into the required setback than the existing dwelling.

ANALYSIS:

1. The purpose of this text change is to continue to help home owners reinvest in their properties by streamlining the building permit process to allow home owners of non-standard single and two family residences to reconstruct their homes and attached garages without having to go thru the public hearing process to get a special permit. This applies mostly to homes that do not meet current setbacks because they predate the existing zoning ordinance.
2. In 2008 a text amendment removed the special permit 27.63.540 for the expansion of a non-standard single or two family dwelling from the Lincoln Municipal Code. The reason the special permit was removed was that these expansions were already addressed under 27.63.280 Expansion of Non-conforming, Non-standard uses. It was confusing having two special permits that essentially did the same thing. If a homeowner wanted to expand their non-standard house they would have need to apply for a special permit for an expansion of a non-conforming non-standard use. In 2009 the Zoning Ordinance was amended to use the language and conditions that were in the special permit for expansions of a non-standard single or two family dwelling to allow those expansions as a conditional use instead of a special permitted use.
3. Since the last text amendment in 2009 staff noticed that the City was still getting applications for special permits for expansion of nonstandard uses for single and two family dwellings. There are two reasons for the continued use of special permit. First, the language allowing for expansion did not allow for reconstruction. This means if a home owner wanted to tear down an entire room (usually because the old footings needed to be replaced) and rebuild in the exact same foot print they could not do that because it was a reconstruction not an extension of the existing structure. The second reason for the special permit was for homeowners who wanted to reconstruct or expand their garages. The existing language only allows for the expansion of the main dwelling unit and does not include garages whether attached or detached.
4. The proposed change will enable the City to accomplish its goal of streamlining these kinds of building permits while still protecting the health, safety and welfare of surrounding neighbors and helping to maintain the character of the neighborhood. If a home owner can't meet these required setbacks they could still apply for a special permit for the expansion of a non-conforming non-standard use to have those setbacks reduced to less than is required with the conditions of this text amendment.
5. To meet the conditions proposed in this text amendment the home owner must be expanding their main dwelling, attached garage or garage that is less than 6 feet from the main dwelling and the structure must currently have a setback less then what is required by the zoning district.

6. This text amendment will allow homeowners In the R-1 thru R-8 districts, to enlarge, extend, or reconstruct a nonstandard single-family or two-family dwelling including the attached garage or garage within 6 feet of the main structure into a required yard under the following conditions without having to get a special permit:
 - (1) The proposed building expansion shall not extend further into any required yard than the furthest extension of the existing single- or two-family dwelling and shall maintain a minimum required setback of 3 feet for a side yard and 10 feet for a front or rear yard.
 - (2) The proposed building expansion shall comply with all other height and area regulations of the zoning district in which the building is located.
 - (3) The use of the building shall remain a single- or two-family dwelling.
 - (4) This does not allow for the enclosure of front porches that encroach into the front yard setback.

7. No City department or agency expressed any opposition to this text change.

Prepared by:

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DATE: June 16, 2011

APPLICANT: Planning Director

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CHANGE OF ZONE NO. 11002

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 29, 2011

Members present: Partington, Cornelius, Gaylor Baird, Larson, Francis, Lust and Sunderman (Esseks and Taylor absent).

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Christy Eichorn of Planning staff** gave a history of the expansion of nonstandard and nonconforming uses. Over two years ago, a text amendment was done to clarify some confusion with these special permits. At that time, there was a provision for a special permit for expansion of a nonstandard single- or two-family dwelling. There was also provision for a special permit for expansion of nonstandard or nonconforming use – nonstandard means it does not meet setback requirements; nonconforming means the use is not allowed in the district. These special permits had been in existence since the 1979 update of the zoning ordinance.

In reviewing these regulations, staff found that it was getting confusing, both to staff and to the public, in trying to decide when and which special permit should be used because essentially they did the same thing. In 2008, the special permit for the expansion of nonstandard dwellings was eliminated and rolled into the regulations for the special permit for expansion of nonconforming use. Since that time, the staff has again taken a look at the regulations and has found that the special permits for expansion of nonstandard uses were almost always getting approved and almost always on the consent agenda. The public was having difficulty understanding why they had to go through this process just to improve their property on its existing site. So, in 2009, the special permit for nonstandard use was made a conditional use as opposed to a special permitted use. The staff thought that would encompass pretty much everything on a residential lot in terms of reconstruction of an existing house, enlarging or somehow improving the property within 3' from the side lot line and within 10 feet of the rear or front lot lines with no further encroachment into the yard than what already existed.

Eichorn then stated that after the text was amended in 2009, applications were still being submitted specifically for the expansion of single- and two-family dwellings – dwellings where the owners were tearing down all or a portion of their building and rebuilding in the same footprint. Eichorn explained that it was not the intent that the applicant would have to get a special permit to rebuild in the same footprint. As long as you are not making anything any worse, you should be able to rebuild and better your property.

Eichorn explained that this proposed amendment clarifies the language so that when someone wants to improve their property, they can use this provision to tear down an entire room and rebuild back into the same footprint, or at least along the same setbacks that are in place.

The second part of this proposed amendment has to do with garages. It was unclear in 2009 that a garage is actually considered an accessory structure to the main building. By definition, even if the garage is attached, it is still considered an accessory structure. The previous language talked about the main structure. We want to clarify that the expansion and reconstruction of the main

structure does include an attached garage – either one physically attached or one 6' or closer to the house.

Lust inquired about the limit of the garage having to be within 6' of the main building. Eichorn explained that the 6' comes from the fact that there is already a provision in the zoning ordinance that any structure located 6' or less from the house is considered part of the main structure. A structure that is more than 6' from the main house is required to meet different setbacks. If you have a garage, it can sit 2' from your lot line, which is actually closer than it could be under the provisions of the nonstandard and nonconforming use section.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 29, 2011

Larson moved approval, seconded by Partington.

Lust commented that being one of the newest members on the Planning Commission, she is continually impressed by how often staff brings these issues forward and continues to try to improve the process for everyone. She appreciates the effort to streamline and this is a great step toward that.

Larson appreciated the excellent job Eichorn did in presenting this amendment in an understandable fashion.

Motion for approval carried 7-0: Partington, Cornelius, Gaylor Baird, Larson, Francis, Lust and Sunderman voting 'yes'; Esseks and Taylor absent. This is a recommendation to the City Council.