



Battle Creek City Planning Commission

Staff report for the February 28, 2018 meeting

To: Planning Commissioners

From: Glenn Perian, Sr. Planner

Subject: #A-01-18 Zoning Ordinance amendment to Ch. 1288 Nonconforming Uses and Structures

Summary

Amendments to Ch. 1288 Nonconforming Uses and Structures of the City of Battle Creek to better define when a damaged nonconforming building may be rebuilt, restored or altered.

Background Information

The current City Nonconforming Uses and Structures uses a very vague and unmeasurable standard of “no more than 50% of its insurable value” for when a damaged nonconforming building can be restored. This standard is extremely difficult to determine and staff and property owners have an unreliable standard to understand when a nonconforming property may be rebuilt or repaired. At the direction of the Zoning Board and Planning Commission, the code also makes it easier for damaged residential buildings and uses to be expanded, repaired or rebuilt if damaged or destroyed if they are within a 300’ radius comprised of at least 50% of other nonconforming residential properties.

When doing preliminary background research Staff looked at ordinances from eight (8) different communities to compare how they addresses nonconforming structures and uses. We also looked at the State statute to make sure that any proposed language complies with state law relating to nonconformities. We will state again that the purpose of any zoning regulation relating to nonconforming buildings or uses is to eventually eliminate all nonconforming properties and have every property in compliance with the zoning district and ordinances relating to each particular property and zoning district.

Of the eight (8) community ordinances that we looked at, seven (7) did not permit a legal nonconforming structure to be re-built if it was substantially damaged or destroyed. They extent of damage ranged from 50% to 75% destruction using replacement cost, actual cash value, taxable value, and assessed value as the measuring tool to determine the extent of destruction. One community (Marshall) allows a building that has been damaged substantially or destroyed to be repaired or replaced within one (1) year if the building is not expanded and the repairs have commenced within six (6) months.

Similarly, seven (7) communities do not allow the expansion of a nonconforming use or building. Marshall does allow residential nonconforming uses to be expanded up to 25% of the ground floor area of the existing residence.

At the request of the Planning Commission Staff drafted nonconforming ordinance language to provide Battle Creek residents and property owners flexibility in rebuilding and repairing nonconforming buildings that were damaged or destroyed. We have proposed language to use the current year's assessed value to determine when a nonconforming building may be rebuilt and have provided language to allow nonconforming residential buildings to be expanded up to 25% of the original ground floor area of the structure. Planning Commission suggested that residential buildings that are within a 300' radius comprised of at least 50% of other nonconforming residential structures to be totally rebuilt in cases of destruction. Staff has included this provision in the draft ordinance language as well.

Also at the request of the Planning Commission, Staff contacted six (6) lenders to determine if the proposed language would be of benefit when potential property owners were searching for loans for nonconforming properties. We had no success gathering any information from the lenders we contacted. In short, no lender wanted to speak to us regarding the proposed nonconforming ordinance language.

After reporting to the Planning Commission, we were asked to research various underwriting standards. In short, what we found in the underwriting standards we looked at was that when evaluating loan applications for nonconforming properties zoning is not the controlling factor. We did actually speak with one person, Jenny Tenhumber, from Old National Bank. She wanted to make sure that the information she shared about mortgages and nonconforming properties was very general and that each case was evaluated on numerous circumstances. If a nonconforming property were income producing, a mixed-use property, a commercial property or a property not surrounded by other residential structures a loan would be extremely difficult to obtain. However, a nonconforming single-family residential property surrounded by other residential properties, generally, could obtain a mortgage from her company.

Ms. Tenhumber was the only person we spoke to relating to nonconforming properties and mortgage practices, as no one else we contacted was willing to have a conversation with us on the subject. The rest of our research was done via the internet and the information we did find was difficult to dig out from various websites.

Staff believes that proposed revisions to Chapter 1288 Nonconforming Uses and Structures is complete and ready for adoption. Extensive research has been done on the subject and the proposed ordinance has been revised numerous times incorporating suggested language from the Zoning Board, Planning Commission and previously mentioned research. Furthermore, the City Attorney's office has reviewed the proposed ordinance and is satisfied with its content.

Proposed Changes

Staff is proposing to use the current year's assessed value of a building to determine when a damaged or destroyed nonconforming building may be rebuilt. The proposed ordinance also provides opportunities for residential buildings that are within a 300' radius comprised of at least 50% of other nonconforming residential structures to be totally rebuilt in cases of destruction. Finally, the proposed

ordinance amendment will allow a legal nonconforming residential building to be expanded up to 25% of the original ground floor area.

In addition to the above items, other minor clerical corrections were made to the ordinance.