



Document 2010 1287

Book 2010 Page 1287 Type 06 022 Pages 4
Date 6/07/2010 Time 10:41 AM
Rec Amt \$24.00

INDX ✓
ANNO
SCAN
CHEK

LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

Prepared by: Chris Shires, Development Services Dept, PO Box 65320, West Des Moines, IA 50265, 515-222-3630
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

ORDINANCE NO. 1869

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2009, BY AMENDING TITLE 9, ZONING; CHAPTER 3, GENERAL ZONING PROVISIONS; SECTION 4, NONCONFORMING BUILDINGS, STRUCTURES, USES, USES OF LAND, OR USES OF BUILDINGS OR STRUCTURES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

Section 1. Amendment. Title 9, Zoning; Chapter 3, General Zoning Provisions; Section 4, Nonconforming Buildings, Structures, Uses, Uses of Land, or Uses of Buildings or Structures; Subsection C, Provisions; Subsubsection 3, Nonconforming Use of a Building or Structure, is hereby amended by adding the highlighted language herein below to Paragraph "c." and adding a new subparagraph "e. (3)" as highlighted herein below:

- c. When a building or structure contains a nonconforming use, structural alterations and additions only are permitted when the use of the entire building or structure is changed to a use which conforms to all of the regulations of the district in which it is located. Exception will be made for single-family residential structures located in nonresidential zones. For those cases, alterations or additions may be made so long as the bulk and setback regulations are met for the zone in which the residential structure is located and no additional dwelling units are constructed. Exception will also be made for existing legal, non-conforming agricultural buildings and structures not located in the Open Space/Agricultural (OS) zoning district. For those cases, the building or structure may be expanded by up to twenty percent (20%) of its current size so long as expansion complies with all standards for the Open Space/Agricultural (OS) zoning district and with all other pertinent codes and regulations existing at the time of expansion.
- d. The nonconforming use of a building or structure may be changed to a use of the same classification, a less intense use of the same classification, or to a conforming use for the district in which the building or structure is located. Where a nonconforming use of a building or structure is changed thusly, it shall not thereafter be changed to a more intensive use in that classification or to any other nonconforming use for the district in which the building or structure is located. For those requests to change a nonconforming use to a less intense use of the same classification, the director of community development will determine the appropriateness of the change.
- e. A building or structure containing a nonconforming use shall not, in any manner, be extended, expanded, or relocated in whole or in part to any location unless the use of the entire building or structure is changed to a use which conforms to all of the regulations of the district in which it is located. The nonconforming use of a part of a building or structure shall not be expanded within that building or structure.
 - (1) Except for the provisions in subsection C8 of this section, an exception will be made for single-family residential structures located in nonresidential zones. For those cases, alterations or additions may be made so long as the bulk and setback regulations are met for the zone in which the residential structure is located and no additional dwelling units are constructed.

CITY OF WEST DES MOINES, IOWA
CERTIFIED COPY
 June 4 2010
 Jan E Stewart
 Deputy CITY CLERK

- (2) If a single-family residential structure located in a nonresidential zone is altered or enlarged as provided in subsection C3e(1) of this section, such alteration or enlargement shall exempt adjacent landowners from further buffering requirements for the benefit of the altered or enlarged property.
- (3) Except for the provisions in subsection C8 of this section, an exception will be made for existing legal, non-conforming agricultural buildings and structures not located in the Open Space/Agricultural (OS) zoning district. For those cases, the building or structure may be expanded by up to twenty percent (20%) of its current size so long as expansion complies with all standards for the Open Space/Agricultural (OS) zoning district and with all other pertinent codes and regulations existing at the time of expansion.

Section 2. Amendment. Title 9, Zoning; Chapter 3, General Zoning Provisions; Section 4, Nonconforming Buildings, Structures, Uses, Uses of Land, or Uses of Buildings or Structures; Subsection C, Provisions; Sub-subsection 6, Reconstruction, is hereby amended by adding the highlighted language and deleting the strikethrough language herein below to Paragraph "c." and adding a new paragraph "d." as highlighted herein below:

- c. Except for the provisions in subsection C8 of this section, an exception will be given to single-family detached residential uses in nonresidential districts, where the residential building or detached accessory structure is damaged by catastrophe or act of God. Reconstruction of the structure or building shall be permitted provided that there is no increase in the number of dwelling units. The reconstruction of the building or structure will comply with all residential standards for the comparable district in which the structure or building was first constructed or a comparable residential district, as determined by the director of Development Services, and with all other pertinent codes and regulations existing at the time of reconstruction. Reconstruction must begin within one hundred eighty (180) days or the use will be deemed discontinued, abandoned, or vacated.

This exception will not be granted when nonaccidental causes, intentional acts by the owner, lessee, or other person such as arson, or by circumstances of neglect where the building runs down or becomes dilapidated are in evidence. The only exception for non-accidental causes shall be for intentional demolition associated with a building permit to replace the structure with a new structure as provided in subsection 7(f) of this section.

- d. Except for the provisions in subsection C8 of this section, an exception will be given to existing legal, non-conforming agricultural buildings and structures not located in the Open Space/Agricultural (OS) zoning district, where said building or structure is damaged by catastrophe or act of God. Reconstruction of the structure or building shall be permitted provided that the square footage of the structure or building is not enlarged or increased beyond twenty percent (20%) of its pre-damaged size. The reconstruction of the building or structure will comply with all standards for the Open Space/Agricultural (OS) zoning district and with all other pertinent codes and regulations existing at the time of reconstruction. Reconstruction must begin within one hundred eighty (180) days or the use will be deemed discontinued, abandoned, or vacated.

This exception will not be granted when nonaccidental causes, intentional acts by the owner, lessee, or other person such as arson, or by circumstances of neglect where the building runs down or becomes dilapidated are in evidence. The only exception for non-accidental causes shall be for intentional demolition associated with a building permit to replace the structure with a new structure as provided in subsection 7(e) of this section.

Section 3. Amendment. Title 9, Zoning; Chapter 3, General Zoning Provisions; Section 4, Nonconforming Buildings, Structures, Uses, Uses of Land, or Uses of Buildings or Structures; Subsection C, Provisions; Sub-subsection 7, Other Exceptions, is hereby amended by adding the highlighted language herein below to Paragraph "b." and adding new paragraphs "e." and "f." as highlighted herein below:

- b. For existing legal, nonconforming residential garages which do not conform to current standards regarding side yard setback and/or size only, the nonconforming garage may be rebuilt in a rear yard with the same nonconforming size and/or side yard setback or at a minimum side yard setback of three feet (3'), whichever is greater, within one hundred eighty (180) days of its destruction, provided that the area of nonconformity is not increased and that in all other regards the garage meets accessory structure standards and regulations.

- c. For existing nonconforming detached single-family uses, up to two (2) detached accessory structures not to exceed one thousand (1,000) combined square feet may be permitted.
- d. The acquisition of a portion of an otherwise conforming lot by the city or by the city for the benefit of a governmental agency under eminent domain proceedings or by agreement under threat of eminent domain proceedings shall not cause such an otherwise conforming lot to become nonconforming under this title.
- e. Except for the provisions in subsection C8 of this section, an exception will be given to existing legal, non-conforming agricultural buildings and structures not located in the Open Space/Agricultural (OS) zoning district. Reconstruction or replacement of the structure or building shall be permitted provided that no other nonconformity is increased, and the building square footage is not enlarged or increased by more than twenty percent (20%) of its current size. The reconstruction of the building or structure shall comply with all other standards for the Open Space/Agricultural (OS) zoning district and with all other pertinent codes and regulations existing at the time of reconstruction. Reconstruction must begin within one hundred eighty (180) days or the use will be deemed discontinued, abandoned, or vacated.
- f. Except for the provisions in subsection C8 of this section, an exception will be given to existing legal, non-conforming single-family detached residential buildings and detached accessory structures located in nonresidential zoning districts. Reconstruction or replacement of the structure or building shall be permitted provided that there is no increase in the number of dwelling units. The reconstruction of the building or structure shall comply with all residential standards for the comparable district in which the structure or building was first constructed or a comparable residential district, as determined by the director of Development Services, and with all other pertinent codes and regulations existing at the time of reconstruction. Reconstruction must begin within one hundred eighty (180) days or the use will be deemed discontinued, abandoned, or vacated.

Section 4. Repealer. All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

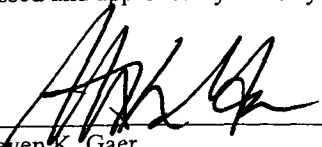
Section 5. Savings Clause. If any section, provision, sentences, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any provision, section, subsection, sentences, clause, phrase or part hereof not adjudged invalid or unconstitutional.

Section 6. Violations and Penalties. Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Section 1-4-1 of the City Code of the City of West Des Moines, Iowa.

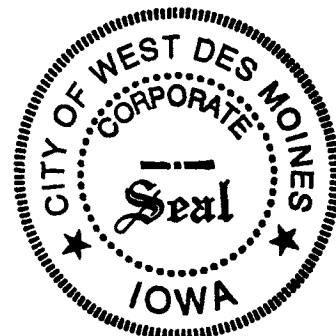
Section 7. Other Remedies. In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

Section 8. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.


Passed and approved by the City Council on the 1st day of June, 2010.



 Steven K. Gaer
 Mayor



ATTEST:



Jody E. Smith, CMFA, MMC
City Clerk

The foregoing Ordinance No. 1869 was adopted by the City Council for the City of West Des Moines, Iowa, on June 1, 2010, and was published in the Des Moines Register on June 11, 2010.