

## **PLANNING AND DEVELOPMENT SERVICES STAFF REPORT**

**For Planning Commission Meeting of January 23, 2025**

**SUBJECT: Amendments to Chapter 55 (Unified Development Code)  
Section 5.32.2 Nonconforming Structures**

### **PROPOSED CITY PLANNING COMMISSION MOTION**

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve amendments to Chapter 55, Unified Development Code, Section 5.32.2 Nonconforming Structure to allow administrative approval for additions to nonconforming buildings in residential zoning districts as proposed.

### **STAFF RECOMMENDATION:**

Staff recommends that the proposed amendments to the Unified Development Code, Section 5.32.2 Nonconforming Structures be **approved** because they would align with community goals to make increasing density easier in the city and streamline the development review and approval process by expanding administrative approval for certain residential building alterations.

### **SUMMARY:**

Staff presents ordinance revisions to Section 5.32.2 related to nonconforming structures in residential districts. These are presented in response to a request by the Zoning Board of Appeals (ZBA) to eliminate the requirement for ZBA approval for certain improvements to nonconforming structures. The proposed amendment will allow for an alteration that does not expand a nonconformity, does not create any new nonconformities, complies with all other zoning district dimensional standards, and other applicable codes and ordinances.

### **HISTORY:**

The Zoning Board of Appeals discussed the proposed amendments at the July 24, 2024 meeting and recommended approval. The Planning Commission discussed the proposed amendments at the October 8, 2024 Working Session.

On December 3, 2024, the City Planning Commission considered proposed revisions, and postponed consideration until the January 23<sup>rd</sup>. During the discussion in December, the following questions/concerns were raised:

- Clarity on the definition of non-conforming structure's use of the term "area." Staff's perspective is that area is used as a generalized term that could be applicable to FAR, open space/lot coverage requirements or other, it is not a specific reference to lot area.
- With the goal of making this standard easier, less burdensome, questions were raised regarding the introduction of standards. Staff contends that this is appropriate as the language introduced is a standard for ordinance compliance vs. replicating discretionary language of the preceding section.
  - Staff notes that the term "expand" an existing non-conformity may be interpreted differently. The Planning Manager intends to interpret this to distinguish expansion from continuation.
- As this is statement of standards in which an alteration is permissible, the language of approval by the Planning Manager and superfluous reference to the Zoning Board of Appeals ability to consider a variance are removed.
- The language is reorganized into three sections, consolidating language that governs alterations in a separate bullet than the definition and destruction/removal standards.

## **ANALYSIS:**

Background – Section 5.32 of the Unified Development Code provides the general standards for the three types of nonconformities: nonconforming uses, nonconforming structures, and nonconforming lots. Section 5.32.2 Nonconforming Structures states nonconforming structures may be maintained and provides regulations on how they may be altered. An alteration is defined as "any change in a building that results in additional floor area being fit for occupancy, a greater number of dwelling units or rooming units or an increase in the exterior dimensions of the building." Currently, the Planning Manager is permitted to approve alterations to nonconforming structures in an R1, R2, R3 or R4 district if the alteration complies with the zoning district dimensional standard. All other alterations must be approved by the ZBA upon finding the alteration complies as nearly as practical with the requirements of the Unified Development Code, notably the zoning district dimensional standards.

Over the past 10 years, the ZBA has approved nearly all petitions to alter a nonconforming structure. Since January 2023, all these petition types have been approved by the Board with the following additional features:

- 22 of 22 petitions were approved by the ZBA,
- 21 were residential properties,
- One was a non-residential property.

The ZBA rarely receives neighbor correspondence in opposition to an alteration to a nonconforming structure. These approvals and lack of opposition indicate the regulations no longer align with the community's goals. Updating this section will allow Ann Arbor to increase density in existing developments, provide more housing options

and affordable choices, and enable more sustainable forms of development. The application process, public resources and fees involved under the present rules are also substantial and are perhaps an inefficient use of time and resources for ZBA members, staff and applicants.

Description of Amendment – The proposed changes (attached) will allow an alteration to a nonconforming structure if the following are true of the alteration:

- It does not extend closer to a lot line,
- It does not create any new nonconformities,
- It complies with the district height, setback, and all other dimensional standards,
- It complies with all building code requirements.

Currently, Paragraph B of Section 5.32.2 limits administrative authority to alterations for single-family nonconforming structures in R1 (Single-Family), R2 (Two-Family), R3 (Townhouse), and R4 (Multiple-Family) districts that meet the setback requirements of the zoning district. Any other types of nonconforming structures, such as two-family dwellings, multiple-family dwellings, or nonresidential buildings, require approval by the Zoning Board of Appeals upon finding the alteration “complies as nearly as practicable with the requirements of this chapter and will not have a detrimental effect on neighboring property.”

This proposal would amend Paragraph B to create a list of standards which would enable alterations for any nonconforming residential. The proposed changes would result in more administrative approvals. The amendment will allow for new habitable space (mainly basements and attics) to be utilized and no longer require ZBA approval.

Headings are also proposed to Section 5.32.2 to help clearly separate the procedures for nonresidential and residential nonconforming structures.

Affected Parcels – At the October 8, 2024 Planning Commission Working Session, staff were requested to provide information regarding the number of nonconforming residential parcels in the city. A geospatial review found approximately 5,535 parcels zoned R1, R2, R3, and R4. Of these, approximately 79% are nonconforming. This means that there is a high likelihood of residential projects which would require ZBA approval for alterations under the current zoning rules, and which would conversely receive relief if the present proposal were to be adopted. The text amendment would potentially reduce petitions coming before the ZBA, and the timeline necessary for residential project approval for property owners.

The table below provides the number of nonconforming lots by residential zoning district in the city.

**Table 1 – Geospatial Review of Nonconforming Residential Parcels**

<b>Zoning District</b>	<b>Total parcels in District</b>	<b># parcels in district non-conforming for area<sup>1</sup></b>	<b>% of parcels non-conforming by area</b>
R1A	170	105	62%
R1B	423	221	52%
R1C	1,467	851	58%
R1D	556	484	87%
R1E	41	23	56%
R2A	872	796	91%
R2B	24	18	75%
R4C	1,982	1,875	95%

While the proposed amendment addresses some issues, the Comprehensive Plan process is tackling others. The Plan will propose new and consolidated zoning districts along with new lot size recommendations, which will likely address other issues with nonconformities indicated by the above data.

**PROPOSED AMENDMENT:**

The proposed amendment to Section 5.32.2 is attached.

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Reviewed by: Hank Kelley, Deputy Planning Manager  
1-23-2025

**ATTACHMENTS AND RELATED FILES:**

- Proposed Ordinance
- [24-1757](#) – City Planning Commission Working Session October 8, 2024 – Proposed Amendment to Nonconforming Structures (Section 5.32.2)
- [24-1154](#) - Zoning Board of Appeals Meeting July 24, 2024 – Proposed Amendment to Nonconforming Structures (Section 5.32.2)

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<sup>1</sup> This table summarizes non-conforming lots. The City's geospatial mapping doesn't enable an inquiry of non-conforming structures, rather these are determined on a permitting basis.