

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of December 3, 2024

**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 administrative approval by the Planning Manager to approve an alteration that does not extend closer to a lot line, does not create any new nonconformities, and complies with all other zoning district dimensional standards.

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.

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 provide a list of standards for Planning Manager approval of alterations for any nonconforming residential structure which equals, but does not exceed, existing nonconforming setbacks. The proposed changes extend administrative approvals to two-family and multiple-family dwellings and no longer require the alteration to comply with setback standards. 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

Zoning District	Total parcels in District	# parcels in district non-conforming for area	% of parcels non-conforming by area
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 presented below, and the complete ordinance is attached in a track changes as well as accept changes version. Note that the black text is unaltered language, proposed changes presented at the October 8, 2024 Working Session are in red, and subsequently revised language is in blue.

Revisions reflect requested changes and clarifications to part B and items 1 through 4. Specifically, language was added to clarify that the proposed text amendment would only apply to residential structures and not to commercial structures. While staff were requested to consider bringing commercial structures into the proposed amendment, it was determined that the complexity involved would merit a new effort. Commercial structures bring into the conversation district buffers, possible site plan procedures and numerous other issues such as stormwater impacts.

Part B was also revised to clarify that the Planning Manager has administrative ability to approve alterations to nonconforming structures. Lastly, the format of the presented information was improved for readability and clarity.

5.32.2 Nonconforming Structure

A *nonconforming structure* may be maintained or restored, but no *alteration* shall be made to a *nonconforming structure* unless one of the following conditions is met:

- A. **Alterations to nonresidential *nonconforming structures*.** The *alteration* is approved by the Zoning Board of Appeals upon a finding that it complies as nearly as practicable with the requirements of this chapter and that it will not have a detrimental effect on neighboring property.
- B. **Alterations to residential *nonconforming structures*.** ~~The~~ An *alteration* meeting the following standards shall be ~~is~~ approved by the Planning Manager: ~~upon a finding that it conforms to all the requirements of this chapter and is made to a building which will be a single-family dwelling on completion of the alteration and is located in an R1, R2, R3 or R4 district.~~
 - 1. The *alteration* does not extend closer to the *lot line* than any part of the existing *nonconforming structure*.
 - 2. The *alteration* does not create a new nonconformity on the *lot* or an adjacent *lot*.
 - 3. The *alteration* maintains compliance with all other dimensional standards of the zoning district for the *lot* on which it is located.
 - 4. The *alteration* will meet all other code and ordinance requirements.

Otherwise, the *alteration* shall require *variance* approval ~~be approved by the Zoning Board of Appeals. upon finding that it complies as nearly as practical with the requirements of this chapter and it will not have a detrimental effect on neighboring property.~~

Figure 1 - Revised proposed amendment to Section 5.32.2 showing track changes

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- A. **Alterations to nonresidential *nonconforming structures*.** The *alteration* is approved by the Zoning Board of Appeals upon a finding that it complies as nearly as practicable with the requirements of this chapter and that it will not have a detrimental effect on neighboring property.
- B. **Alterations to residential *nonconforming structures*.** An *alteration* meeting the following standards shall be approved by the Planning Manager:
 - 1. The *alteration* does not extend closer to the *lot line* than any part of the existing *nonconforming structure*.
 - 2. The *alteration* does not create a new nonconformity on the *lot* or an adjacent *lot*.
 - 3. The *alteration* maintains compliance with all other dimensional standards of the zoning district for the *lot* on which it is located.
 - 4. The *alteration* will meet all other code and ordinance requirements.Otherwise, the *alteration* shall require *variance* approval by the Zoning Board of Appeals.
- C. For purposes of this Section, *alteration* shall mean 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*.
- D. A *nonconforming structure* shall not be replaced after damage or destruction of the *nonconforming structure* if the estimated expense of reconstruction exceeds 75% of the appraised value, as determined by the Building Official, of the entire *building* or *structure*, exclusive of foundations.

Figure 2 - Revised proposed amendment to Section 5.32.2 with changes accepted

Prepared by Jon Barrett, Zoning Coordinator
Reviewed by Hank Kelley, Deputy Planning Manager
11-27-2024

ATTACHMENTS AND RELATED FILES:

- 2024-12-03_CPC_Ordinance (Nonconforming Structure) track changes.pdf
- 2024-12-03_CPC_Ordinance (Nonconforming Structure) clean.pdf
- [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)