

★ Roll Call Number

Agenda Item Number

59A

Date January 26, 2009

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by adding and enacting a new Section 134-1298 to the Zoning Ordinance providing for an adjustment of the required yards and minimum lot area to compensate for a reduction in a yard or lot area resulting from the involuntary conveyance of land for a public purpose",

presented.

MOVED by \_\_\_\_\_ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

*Roger K. Brown*

Roger K. Brown  
Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by adding and enacting a new Section 134-1298 to the Zoning Ordinance providing for an adjustment of the required yards and minimum lot area to compensate for a reduction in a yard or lot area resulting from the involuntary conveyance of land for a public purpose.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, be and is hereby amended by adding and enacting a new Section 134-1298 to the Zoning Ordinance providing for an adjustment of the required yards and minimum lot area to compensate for a reduction in a yard or lot area resulting from the involuntary conveyance of land for a public purpose, as follows:

**Sec. 134-1298. Adjustment of setbacks and lot area for partial takings.**

- (a) If a portion of a lot is conveyed to the state, the city, or any other political subdivision of the state through condemnation or under threat of condemnation, and the conveyance results in a structure or use of a structure upon the remaining lot becoming nonconforming or more nonconforming with a required yard or minimum lot area, then notwithstanding the limitations set forth in section 134-1297, if such structure is thereafter damaged to any extent or is totally destroyed by any means, the structure may be repaired, restored, or rebuilt to its prior condition, if all of the following conditions are satisfied:
- 1) The nonconformity was created by the conveyance through condemnation or under threat of condemnation;
  - 2) Appropriate relief is obtained from the board of adjustment for any nonconformity with the applicable zoning requirements, to the extent that such nonconformity preexisted such condemnation or conveyance;
  - 3) The repair, restoration or rebuilding of the structure does not create any additional nonconformity of the structure beyond that originally created by such conveyance or allowed by any relief granted by the board of adjustment;
  - 4) The repair, restoration, or rebuilding is commenced within six months of such damage under authority of a building permit and is diligently pursued to completion; and,
  - 5) One of the following conditions are satisfied:
    - (i) The acquisition document for such conveyance contains language

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stating substantially as follows: "The provisions of Section 134-1298 of the City of Des Moines Zoning Ordinance shall apply to this acquisition"; or

(ii) The zoning enforcement officer determines after consultation with the real estate division of the engineering department, that the circumstances of such conveyance affirmatively support a finding that any resulting nonconformities with the required yards or minimum lot area were not considered in determining the compensation paid for such conveyance.

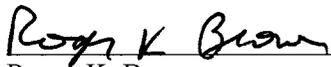
(b) If a portion of a lot is conveyed to the state, the city, or any other political subdivision of the state through condemnation or under threat of condemnation, and the conveyance results in a single-family dwelling upon the remaining lot becoming nonconforming or more nonconforming with a required yard or minimum lot area, then the remaining lot shall be treated the same as a lot of record existing as of July 16, 1965, for the purposes of applying the provisions in Section 134-1296(b) regarding the construction of a single family detached dwelling.

(c) Any adjustment to the minimum lot area made under authority of this section shall automatically lapse in the event the lot is joined with other adjoining land under common ownership that collectively satisfy the applicable minimum lot area.

(d) Any adjustment to a required yard made under authority of this section shall automatically lapse in the event the lot is joined with other adjoining land under common ownership that collectively satisfy the applicable minimum required yard.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

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