



Date February 22, 2021

RESOLUTION HOLDING HEARING ON PROPOSED AMENDMENT TO ZONING ORDINANCE

WHEREAS, on April 25, 2016, by Roll Call No. 16-0717, the City Council adopted the PlanDSM: Creating Our Tomorrow Plan as the comprehensive plan for the City of Des Moines; and

WHEREAS, on October 16, 2019, by Roll Call No. 19-1683, the City Council approved Ordinance No. 15,816 adopting the Zoning Ordinance, which repealed and replaced previous Chapter 134 of the Des Moines Municipal Code and Article 5 of which repealed and replaced the City’s Wireless Telecommunications Facility Policy adopted on April 8, 2019 by Roll Call No. 19-0580, and certain ordinances amending the City’s Zoning Ordinance have been approved by City Council thereafter; and

WHEREAS, the City Manager has directed staff to draft a further amendment to Sections 134-6.5.2, 134-6.6.2, and 134-7.2.3 of the Zoning Ordinance, which amendment is intended to allow for expansion or extension of legal non-conforming residential uses within one-household and two-household residential structures by addition thereto, and the construction of detached private garages and outbuildings on lots containing such residential structures, to address the needs of existing residential uses in Des Moines including the health, safety, morals, and general welfare of the community, and the preservation and improvement of the peace, safety, health, welfare, comfort, and convenience of Des Moines residents; and

WHEREAS, specifically, the proposed amendment to the Zoning Ordinance provides:

- Legal non-conforming residential uses within an one-household or two-household residential structure may be expanded or extended to occupy land outside such structure by addition thereto pursuant to a Type 1 zoning exception, reviewed administratively, if such expansion or extension does not exceed thirty percent (30%) of the assessed value of the structure at the time of permit application;
- Legal non-conforming residential uses within an one-household or two-household residential structure may be expanded or extended to occupy land outside such structure by addition thereto pursuant to a Type 2 zoning exception, reviewed by the City’s Zoning Board of Adjustment, if such expansion or extension is between thirty-one to fifty percent (31-50%) of the assessed value of the structure at the time of permit application;
- To determine eligibility of a Type 1 or Type 2 zoning exception, the valuation of any above-described expansion or extension shall be measured cumulatively from the effective date stated in the Zoning Ordinance, using all building permits issued by the city’s permit and development center, county assessor’s records, insurance records if no assessor’s records are available, and other documentation determined necessary by the neighborhood services director, related solely to the principal structure being expanded or extended;
- Outbuildings and detached private garages may be constructed on lots containing legal nonconforming residential uses within an one-household or two-household structure, insofar as said accessory structures comply with all applicable sections of the Municipal Code and specifically Sections 134-3.9 and 135-2.22.2.C; and
- References to “community development director” in said Sections have been updated to “neighborhood services director”; and



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WHEREAS, on February 8, 2021, by Roll Call No. 21-0197, it was duly resolved by the City Council that the proposed amendments to the Zoning Ordinance be set down for public hearing on February 22, 2021 at 5:00 p.m. in the City Council Chambers at City Hall; and

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing on said amendment to the Zoning Ordinance held on February 18, 2021, its members voted 14-0 in support of a motion to recommend **APPROVAL** of the proposed amendment to the Zoning Ordinance, and has provided its final report and recommendation to the City Council; and

WHEREAS, the proposed amendment to the Zoning Ordinance is on file in the office of the City Clerk and is available to the public for viewing electronically; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and

WHEREAS, in accordance with said notice, those interested in said proposed amendment, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The communication from the Plan and Zoning Commission of its February 18, 2021, meeting, containing the Commission's report and recommendation on the proposed amendment, is hereby received and filed.
2. Upon consideration of the facts, statements of interested persons and arguments of counsel, any and all objections to said proposed amendment to Sections 134-6.5.2, 134-6.6.2, and 134-7.2.3 of the Zoning Ordinance, be and the same are hereby overruled, and the hearing is closed.
3. The City Council hereby makes the following findings in support of the proposed amendment to Sections 134-6.5.2, 134-6.6.2, and 134-7.2.3 of the Zoning Ordinance:
 - a. Said amendment is necessary to protect and preserve the rights, privileges, and property of the City and of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents, for the reasons stated herein.
 - b. The amendment is further necessary to promote the health, safety, morals, and general welfare of the community.
 - c. Said amendment is consistent with PlanDSM: Creating Our Tomorrow Plan, the comprehensive plan for the City of Des Moines, and meets the multiple goals thereof including but not limited to the following:
 - i. Housing (H) Goal 2: Preserve, maintain, and improve the existing inventory of single-family and multi-family housing.
 - H15: Evaluate existing occupancy standards, zoning codes, and design standards to remove barriers that impact access, development, and maintenance of safe and affordable housing for all residents.
 - H16: Streamline permit and development processes to encourage development in accordance with applicable regulations.

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- ii. Housing (H) Goal 4: Support development of and access to quality housing affordable to all income level households.
 - H23: Support and promote a regional approach to provision of affordable housing.
 - iii. Community Character and Neighborhoods (CCN) Goal 2: Further Des Moines' revitalization efforts to improve the strength, stability, and vitality of all neighborhoods.
4. The proposed amendment to Sections 134-6.5.2, 134-6.6.2, and 134-7.2.3 of the Zoning Ordinance, in form on file in the office of the City Clerk, is hereby approved, subject to final passage of the enacting ordinance.

(Council Communications 21-077)

MOVED by _____ to adopt.

FORM APPROVED:

/s/ Glenna K. Frank
 Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	

CERTIFICATE

I, P. KAY CMELIK, 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.

 Mayor

 City Clerk



February 19, 2021

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their February 18, 2021 meeting, the following action was taken regarding a City initiated request for amendment to the text of Chapter 134 of the City Code, to make revisions allowing for minor expansion of legal non-conforming one and two household residential uses and to allow new detached accessory structures associated with those uses.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 14-0 as follows:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
Francis Boggus	X			
Dory Briles	X			
Abby Chungath	X			
Kayla Berkson	X			
Jann Freed	X			
Johnny Alcivar	X			
Lisa Howard	X			
Carolyn Jenison	X			
Greg Jones	X			
William Page	X			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			
Emily Webb	X			

APPROVAL of Part A) the proposed amendments to the Zoning Ordinance are in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan and Part B) **APPROVAL** of the proposed amendments to the Zoning Ordinance.

(10-2021-5.01)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the proposed amendments to the Zoning Ordinance are in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan.

Part B) Staff recommends approval of the proposed amendments to the Zoning Ordinance.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

The proposed ordinance to amend the Zoning Ordinance in Chapter 134 is attached.

The following is a summary of the proposed amendments:

- New Section 134-7.2.3.B allows a nonconforming residential use within a one-household or two-household residential structure to be expanded subject to a Type 1 zoning exception (administrative) or Type 2 zoning exception (Zoning Board of Adjustment).
- Per revised Section 134-6.5.2, Staff can grant a Type 1 zoning exception to allow a nonconforming residential use within a one-household or two-household residential structure to expand, provided that the expansion has an estimated cost for building permit purposes that does not exceed thirty percent (30%) of the assessed value of the existing residential structure. The valuation of expansions would be measured cumulatively from the effective date of the proposed code amendment.
- Per revised Section 134-6.6.2, the Zoning Board of Adjustment can grant a Type 2 zoning exception to allow a nonconforming residential use within a one-household or two-household residential structure to expand, provided that the expansion has an estimated cost for building permit purposes that is between thirty-one and fifty percent (31-50%) of the assessed value of the existing residential structure. The valuation of expansions would be measured cumulatively from the effective date of the proposed code amendment.
- New Section 134-7.2.3.C allows an outbuilding or detached private garage to be constructed on a lot containing a nonconforming residential use within a one-household or two-household structure. The outbuilding or detached garage would need to comply Section 134-3.9 of this chapter and Section 135-2.22.2.C of the code. The outbuilding or detached private garage would be treated as if it were located on a lot zoned Neighborhood (N) or Neighborhood Mix (NX) for purposes of determining lot coverage limits. Construction of an outbuilding or garage would not require a Type 1 or Type 2 Design Alternative and would not count towards the cumulative permit total for the principal structure under Sections 134-6.5.2 or 134-6.6.2.

II. ADDITIONAL APPLICABLE INFORMATION

The proposed revisions provide a pathway for limited expansions of legal nonconforming One- and Two-Household Living dwelling uses that is more reasonable than requiring the property owner to seek a rezoning or a use variance for the property.

SUMMARY OF DISCUSSION

Dory Briles asked if any member of the public or the commission desired to speak on the item. No one requested to speak.

COMMISSION ACTION:

Emily Webb made a motion for approval of Part A) the proposed amendments to the Zoning Ordinance are in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan and Part B) **APPROVAL** of the proposed amendments to the Zoning Ordinance.

Motion passed: 14-0

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Ludwig". The signature is stylized and cursive.

Michael Ludwig, AICP
Deputy Director of Development Services

MGL:tjh