

Council Bill/General Ordinance No. 3006-2023

Sponsor: _____

AN ORDINANCE

AMENDING Chapter 35, “ZONING AND LAND DEVELOPMENT,” ARTICLE 1, DIVISION 2, Section 35-1203, “DEFINITIONS,” of the Moline Code of Ordinances, by revising certain definitions related to nonconformities; amending ARTICLE 3, DIVISION 1 entitled “IN GENERAL”; dealing with the same subject matter; and ARTICLE 5, DIVISION 3 entitled “ILLUMINATION STANDARDS” for internal consistency.

WHEREAS, the City of Moline (“**City**”) is a home rule municipal corporation organized and operating in accordance with the Constitution and laws of the State of Illinois; and

WHEREAS, pursuant to its home rule power, the City may exercise any power and perform any function relating to its government and affairs;

WHEREAS, the City continuously analyzes its Zoning Code in order to ensure that it is responsive to contemporaneous development trends and affords clarity to existing and prospective property owners and occupants as well as its staff tasked with administering and enforcing its provisions;

WHEREAS, the City has determined that existing Zoning Code provisions governing the types of building and property projects triggering an obligation to remedy nonconformities and bring certain elements of structures and sites into conformance with contemporary Zoning Code standards presented ambiguities that interfered with implementing orderly and consistent development standards;

WHEREAS, amendments to the text of the Zoning Code are adopted by the City Council periodically to ensure that the zoning regulations are up-to-date and adequately responsive to community needs, land use trends and growth patterns within the City;

WHEREAS, the City hereby desires to amend the City of Moline Code of Ordinances as provided in this Ordinance in order to clarify and streamline the standards associated with renovation and redevelopment projects situated on sites with nonconforming site elements;

WHEREAS, notice of a public hearing on the City’s petition for text amendments to the the City of Moline Zoning and Land Development Code, as amended (“**Zoning Code**”), was published in the *Dispatch/Rock Island Argus* on November 22, 2022; and

WHEREAS, a public hearing was convened by the Plan Commission on December 7, 2022, on which date the Plan Commission closed the public hearing and, pursuant to the findings of fact attached as **Exhibit A** and, by this reference, made a part of this Ordinance, recommended approval of the proposed text amendment.

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NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Moline, Rock Island County, Illinois as follows:

Section 1 – The foregoing recitals are hereby incorporated into this Ordinance as though fully set forth in this Section 1.

Section 2 – That pursuant to Section 35-2203 of the Moline Code of Ordinances, Chapter 35, “ZONING AND LAND DEVELOPMENT,” Section 35-1203, “DEFINITIONS,” of the Moline Code of Ordinances, is hereby amended as follows (additions in **bold and underlined** and deletions in **~~bold and strikethrough~~**):

“SEC. 35-1203. DEFINITIONS.

[. . .]

(234) Nonconforming building or structure. Any building, or other structure, which was lawfully existing under ordinances or regulations preceding this Code **or subsequent applicable amendments thereto**, but **because of subsequent amendments to the Code, no longer conforms which would not conform to one or more of the applicable bulk standards, dimensional requirements or setback or encroachment regulations set forth in Article III (“Zoning”), including but not limited to Tables 35-3201.1, 35-3201.2 and 35-3301.1, or the design requirements established in Article V, Division 5 (“Quality Building and Site Design and Materials Standards”).** ~~this Code if the building or structure were to be erected under the provisions of this Code.~~

(235) Nonconforming lot. A lot of record in existence prior to the date of adoption of this Code **or subsequent applicable amendments to lot dimension requirements of the zoning district in which it is located, but because of subsequent amendments to the Code, that does not conform no longer conforms** with one or more of the minimum lot dimensions specified in this Code. See Sec. 35-3110.

(236) Nonconforming site. A lawful development approved under ordinances or regulations preceding the effective date of this Code **or subsequent applicant amendments thereto**, but which would not conform to **one or more of the site improvement or performance standards of Article V (“Site Improvement and Performance Standards”) or the required landscape surface ratio for the host zoning district as identified in Table 35-3301.1 of** this Code if the development were to be created under the current provisions of this Code **due to a nonconforming site development element**. See Sec. 35-3112.

(236.5) Nonconforming site development element. An element of the site development improvements, such as landscape, lighting, or parking, or an element of the operations, such as noise, vibration, odor, heat, glare and smoke externalities that were lawful when established, but due to subsequent amendments to Article V of this Code, no longer conforms with one or more of the site improvement or performance standards set forth in Article V (“Site Improvement and Performance Standards”) of this Code. See Sec. 35-3112.

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(237) Nonconforming use. An active and actual use of land, buildings or structures, or both, which was lawfully existing prior to the effective date of this Code or subsequent applicable amendment thereto, which has continued as the same use to the present, but because of the adoption of the Code or subsequent amendments thereto, would not be allowed under the current terms of the Code. ~~and which does not comply with all the applicable regulations of this Code.~~ See Sec. 35-3111.

[. . .]

Section 3 – That pursuant to Section 35-2203 of the Moline Code of Ordinances, Chapter 35, “ZONING AND LAND DEVELOPMENT,” ARTICLE III, “ZONING,” DIVISION 1 “IN GENERAL” Section 35-3111, “NONCONFORMING USE REGULATIONS” of the Moline Code of Ordinances, is hereby amended as follows (additions in bold and underlined and deletions in ~~bold and strikethrough~~):

SEC. 35-3111. NONCONFORMING USE REGULATIONS.

(a) **DEFINITION.** ~~A nonconforming use is an active and actual use of land or structures, or both, legally established prior to the effective date of this Code or subsequent applicable amendment thereto that has continued the same use to the present and that would not be permitted under the current terms of this Code.~~ “Nonconforming use” shall have the meaning ascribed in Section 35-1203(237) of this Code.

[. . .]

Section 4 – That pursuant to Section 35-2203 of the Moline Code of Ordinances, Chapter 35, “ZONING AND LAND DEVELOPMENT,” ARTICLE III, “ZONING,” DIVISION 1 “IN GENERAL” Section 35-3112, “NONCONFORMING SITES AND STRUCTURES REGULATIONS” of the Moline Code of Ordinances, is hereby amended as follows (additions in bold and underlined and deletions in ~~bold and strikethrough~~):

SEC. 35-3112. NONCONFORMING SITES AND STRUCTURES REGULATIONS.

(a) **DEFINITIONS.** ~~Nonconforming sites and structures are those that do not meet one or more of the bulk standards contained in Article III that are applicable to the site or structure, or one or more of the site improvement and performance standards contained in Article V of this Code.~~

1. “Nonconforming building or structure” shall have the meaning ascribed in Section 35-1203(234) of this Code.
2. “Nonconforming site” shall have the meaning ascribed in Section 35-1203(236) of this Code.
3. “Nonconforming site development element” shall have the meaning ascribed in Section 35-1203(236.5) of this Code.

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(b) CONTINUATION. A ~~lawfully created structure or parcel of land existing as of the effective date of this Code that is nonconforming due solely to failure to meet the bulk standards of the zoning district or the site improvement and performance standards of Article V~~

1. A nonconforming building or structure may be used for any purposes permitted in the zoning district so long as the use is in conformance with the provisions of this section.
2. A nonconforming site may be used for any purposes permitted in the zoning district so long as the use is in conformance with the provisions of this section.

(c) STRUCTURE MAINTENANCE AND RESTORATION IMPACT ON NONCONFORMING SITE COMPLIANCE. In any continuous 12 month period, interior ~~and~~ or exterior remodeling of a ~~nonconforming~~ structure situated on a nonconforming site that requires a building permit shall require correction of existing nonconforming site development elements on-site improvements that do not conform with the nonconforming site development element standards set forth in requirements of Article V of this Code, in accordance with this section. The cost of the structure remodeling shall be as shown on the approved building permit application and the current fair market value of the existing structure, exclusive of the fair market value of the land, shall be based on a market appraisal performed by a certified appraiser or as determined by the township assessor.

(1) Remodeling projects that cost 25% or less of the current fair market value of the structure shall not require any correction of nonconforming site development elements existing conditions that fail to meet the requirements of Article V of this Code, other than as may be required by Fire and Building Codes.

(2) Remodeling projects that cost more than 25%, but less than 75% of the current fair market value of the structure shall require a corresponding percentage increase in compliance of the nonconforming site development elements with the nonconforming site development element standards set forth in requirements of Article V of this Code, until the site achieves 100% compliance. (For example, if a site has only 2000 of the 3000 required landscape points and the cost of the remodeling is 30% of the value of the building, then 30% of the required landscape points shall be provided, or 900 points.)

(3) Remodeling projects that cost 75% or greater of the current fair market value of the structure shall require nonconforming site development elements to achieve 100% compliance with the nonconforming site development element standards set forth in requirements of Article V of this Code.

(4) Notwithstanding the foregoing, structure remodeling projects of any size that do not expand the footprint of the subject building shall not require changes in the number of parking spaces required by Division 1 of Article V, as provided in Sec. 35-5100**(b)**.

(5) Notwithstanding the foregoing, structure remodeling projects that cost less than 75% of the current fair market value of the structure shall not require changes to nonconforming site development elements that deviate from the performance standards and requirements set forth in Division 4 of Article V pertaining to operational nuisances, such as noise, vibration, odors, heat, glare and smoke. Remodeling projects that cost 75% or greater of the

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current fair market value of the structure shall require nonconforming site development elements that deviate from the performance standards and requirements set forth in Division 4 of Article V to achieve 100% compliance with said standards.

(56) Properties that are physically constrained from complying with these provisions shall comply to the maximum extent practicable as determined by the zoning administrator.

(7) **Structure remodeling projects of any size that only renovate the interior of a structure and do not impact the exterior of the building, other than identifying signage affixed to such building, shall not require changes to nonconforming site development elements that deviate from the standards and requirements set forth in Division 5 of Article V pertaining to façade appearance, building materials, screening of mechanical elements, and undergrounding or screening of utility facilities.**

(d) ALTERATIONS TO NONCONFORMING STRUCTURES.

- 1. Routine maintenance and repair may be performed on any nonconforming structure without eliminating nonconformities therein, provided that no such maintenance or repairs are permissible that would create any new nonconformities, increase the degree of any previously existing nonconformity, or otherwise increase the bulk of the building or structure. Any maintenance or repairs involving structural alterations shall not be deemed “routine maintenance and repair” for purposes of this subsection (d).**
- 2. Structural alterations to nonconforming structures are permitted only in the following situations:**
 - i. When the alteration is required by law or is necessary to restore the structure to a safe condition upon the order of any official charged with protecting public safety; or**
 - ii. When the alteration will eliminate the nonconformity; or**
 - iii. When the alteration will not create any new nonconformity or increase the degree of any existing nonconformity.**
- 3. DESTRUCTION. A nonconforming structure which is damaged to 50% or less of its fair market value, based on a valuation of the township assessor or a market appraisal performed by a certified appraiser, may be restored within the existing footprint provided that: all portions of the structure being restored are not and were not on or over a property line; all construction is in compliance with current construction codes, such as the Fire and Building Codes; a building permit is obtained within six months from the date of the damage; and the Certificate of Occupancy (or other final inspection) is issued within one year of the issuance of the building permit. If damage exceeds 50%, restoration or improvement shall not be permitted unless the restoration results in a structure and site conforming to all applicable requirements of this Code, except for the following:.**

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(1) Nonconforming single family homes which are damaged by more than 50% may be restored within the existing footprint provided that; all portions of the structure being restored are not and were not on or over a property line; all construction is in compliance with current construction codes, such as the Fire and Building Codes, a building permit is obtained within six months from the date of the damage; and the Certificate of Occupancy (or other final inspection) is issued within one year of the issuance of the building permit.

(de) EXPANSION. In any continuous five year period, additions to structures on nonconforming sites shall require correction of **nonconforming site development elements in accordance with the following:**

(1) Expansions that would result in less than a 35% increase of the total gross square footage of the existing structure(s) shall require a corresponding percentage increase in compliance with the **substantive nonconforming site development elements set forth in requirements of** Article V of this Code until the site achieves 100% compliance. The same requirements also shall apply to the addition of new or increased areas for outdoor operations/storage. (For example, if the addition is 20% of the size of the existing building and the site contains only 50% of the required landscaping, 20% of the required landscaping for the entire site must be provided thereby bringing the site to 70% of the total required.

(2) Complete replacement of existing structures or expansions that result in a 35% or greater increase of the total gross square footage of the existing structure(s) require the **nonconforming site development elements entire property** to meet all of the **substantive nonconforming site development elements** of Article V of this Code. The same requirements **applicable to structure expansion** also shall apply to the addition of new or increased areas for outdoor operations/storage.

(3) Expansions that necessitate an increase in the number of parking spaces shall be required to provide 100% of the required parking spaces for the use **as applied only to the area of addition or expansion** in accordance with ~~Article V~~ **Section 35-5100(b)(2) of** this Code. The additional parking area shall comply with all associated landscaping and drainage requirements of this Code, **although the previously-existing parking area only needs to be brought into compliance with the applicable standards of Article V to an extent proportionate to the scope of expansion as set forth in Subsections (d)(1) and (d)(2) above.**

(4) Structures with wall lines that fail to meet the setbacks established in this Code may be expanded horizontally or vertically at the existing setback dimension provided that the setback dimension is 75% or greater of the required setback and all other applicable bulk standards are met.

(5) Notwithstanding the foregoing, expansions shall require Article V-compliant lighting for such addition as set forth in Section 35-5303(5).

(ef) CHANGE OF USE. Changes of use **within an existing structure shall be exempt from complying with the standards of Article V, Division 1, provided that the change in use within an existing structure does not include any new structures or additions to existing structures. Where a change in use occurs** that necessitates an increase in the number of parking spaces **in conjunction with new construction or the expansion of an existing building, additional parking spaces** shall be required **in accordance with to provide additional parking spaces, as per Sec. 35-5100, where space on the lot is available.**

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(g) CHANGES TO NONCONFORMING SITE DEVELOPMENT ELEMENTS. Remodeling projects involving alterations to nonconforming site development elements, either exclusively or in conjunction with the renovation of a structure, shall be conducted in accordance with the following:

- (1) Nonconforming Site Development Elements Maintenance. Normal maintenance and incidental repair to a nonconforming site development element may be performed without bringing such elements into compliance with nonconforming site development element standards set forth in Article V of this Code, provided that no such maintenance or repairs are permissible that would create any new site development element nonconformity or increase the degree of the previously existing site development nonconformity. For purposes of this subsection, resealing or re-striping of an existing parking lot, which does not entail paving, resurfacing, or replacement of the asphalt, concrete, or other paving material, shall be considered normal maintenance and incidental repair not triggering compliance of the nonconforming site development element with Article V of this Code.**
- (2) Nonconforming Site Development Elements Wholesale Replacement. Any nonconforming Site Development Element that is removed, demolished, or destroyed shall not be re-established, but instead must be replaced or restored only in conformance with nonconforming site development element standards set forth in Article V of this Code.**
- (3) Nonconforming Site Development Elements Partial Replacement.**
 - i. Nonconforming Parking Lot Landscaping: When a parking lot of ten (10) or more spaces does not conform to the landscape requirements pertaining to such parking lots, it must be brought into conformance pursuant to the following requirements when such parking lot is reconstructed or expanded by:**
 - (a) 25% of its total off-street parking surface area or less this shall not require any correction of nonconforming landscaping requirements;**
 - (b) More than 25%, but less than 75% of its total off-street parking surface area, this shall require a corresponding percentage increase in compliance of the nonconforming landscaping requirements; or**
 - (c) 75% or greater of its total off-street parking surface area, this shall require 100% compliance with the nonconforming landscaping requirements.**

For purposes of this subsection, resealing or re-striping of an existing parking lot, which does not entail paving, resurfacing, or replacement of the asphalt, concrete, or other paving material, is not considered reconstruction.
 - ii. Nonconforming Exterior Lighting: For exterior lighting, when twenty five percent (25%) or more of exterior lighting fixtures are replaced, all exterior lighting on the site must be brought into conformance with Division 3 of Article V. This is calculated as installation of new lighting posts and/or non-post**

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mounted lighting fixtures based on the total lighting installed by the type of mounting. For example, if over twenty five percent (25%) of the wall-mounted fixtures are to be replaced, all wall-mounted fixtures must be brought into conformance while nonconforming freestanding fixtures may remain.

[. . .]

Section 5 – That pursuant to Section 35-2203 of the Moline Code of Ordinances, Chapter 35, “ZONING AND LAND DEVELOPMENT,” ARTICLE V, “SITE IMPROVEMENT AND PERFORMANCE STANDARDS,” DIVISION 3 “ILLUMINATION STANDARDS” Section 35-5303, “COMPLIANCE” of the Moline Code of Ordinances, is hereby amended as follows (additions in **bold and underlined** and deletions in **~~bold and strikethrough~~**):

SEC. 35-5303. COMPLIANCE.

Any new lighting installed after the effective date of this ordinance shall be in compliance with the requirements of this ordinance. Any lighting in existence before the effective date of this ordinance that does not comply with these requirements shall be considered legally nonconforming and may remain, subject to the following provisions:

(1) ALTERATIONS TO EXISTING LIGHTING.

a. When poles and support structures are removed and replaced for reasons other than acts of God or accidents, they must be replaced with luminaries, poles and supports that comply with this Division; and

b. When luminaries are replaced, they must be replaced with luminaries that comply with all provisions of this Division.

c. When twenty five percent (25%) or more of exterior lighting fixtures are replaced, all exterior lighting on the site must be replaced with exterior lighting fixtures that comply with all provisions of this Division. This is calculated as installation of new lighting posts and/or non-post mounted lighting fixtures based on the total lighting installed by the type of mounting. For example, if over twenty five percent (25%) of the wall-mounted fixtures are to be replaced, all wall-mounted fixtures must be brought into conformance while nonconforming freestanding fixtures may remain.

(2) REMOVAL AND REPLACEMENT OF PARKING LOT SURFACE. A parking lot or portion thereof shall be considered “removed and replaced” when any portion of the existing parking surface material is removed and a new surface is installed. When less than 50% of the gross area of the parking lot surface on a particular site is removed and replaced, only the parking area replaced must be provided with lighting in compliance with this Division. If greater than 50% of the parking area on a particular site is removed and replaced at one time, the entire parking lot on the site where the construction activity occurs must be in full compliance with this Division. Nothing in this Subsection 35-5303(2) will trigger the requirements set forth in Subsection 35-5303(1)(c) of this Ordinance concerning percentage thresholds for the replacement of lighting posts and luminaires.

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(3) NEW PARKING LOTS OR PARKING LOT ADDITIONS. When a new parking lot or addition to an existing parking lot is constructed, the new lot or lot addition must be provided with lighting in compliance with this Division.

(4) RENOVATIONS. When the cost of renovation of the principal structure reaches the thresholds detailed in Sec. 35-3112(c)(3), all existing lighting shall be brought into compliance to the extent required in said section.

(5) NEW STRUCTURES, ADDITIONS, OR REPLACEMENTS. When a site is improved with new structures, additions to, or replacements of existing structures, the lighting for the new structure, addition or replacement on the site must be upgraded with complying lighting. **The Existing noncompliant** parking lot lighting must be upgraded with complying lighting over a portion of the parking area that is equivalent to the amount of parking that would be required for the new structure, addition or replacement. In the event that the new structure, addition or replacement is accompanied by a new or replaced parking area, the amount of upgraded lighting area shall be that required under this Division. **Where a conflict with Section 35-3112(d) of this Code exists, the stricter provision requiring the installation of more compliant lighting shall govern.**

(6) DEVELOPMENT APPLICATION. When a development application is made for a site for a non-administrative permit, the plan commission or city council, may as a condition of approval, require compliance with any or all of the standards of this Division and the extent of compliance required in such cases may be greater than that otherwise required in this Division, if deemed reasonably necessary to protect the public health, safety, or welfare and to achieve the proposes of this Division.

Section 6 - That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 7 – That all prior ordinances and resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

Section 8 – That this ordinance shall be in full force and effect from and after passage, approval, and if required by law, publication in the manner provided for by law.

CITY OF MOLINE, ILLINOIS

DocuSigned by:
Shaypata
Mayor 1A0D331B0E631...

March 7, 2023
Date

Passed: March 7, 2023

Approved: March 21, 2023

Attest: *Jessie L. N. Parr*
City Clerk 1A0D331B0E631...

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EXHIBIT A

Plan Commission Findings of Fact

appended on following pages