

**CITY OF MEDICINE LAKE
ORDINANCE NO. 104**

**AN ORDINANCE AMENDING SECTION 200 AND 900 OF THE MEDICINE LAKE CITY CODE AS IT
RELATES TO NON-CONFORMING BUILDINGS, STRUCTURES AND USES**

The City of Medicine Lake does ordain:

Section 1: City Code Section 200.2, Definitions is amended by adding the following and renumbering accordingly:

59. Expansion Permit: A permit which is granted by the City Council for the expansion or enlargement of a non-conforming structure in accordance with section 900.6.

Section 2: City Code Section 900 is amended as follows:

§900.3 Non-conformities in General

§900.4 Non-conforming uses

§900.5 Non-conforming structures

§900.6 Expansion Permit

§900.7 Non-conforming lots of record and construction of new dwellings

Section 3: City Code Section 900.2, subd. b is amended as follows:

- b) Structural Expansion: a change to a structure that increases the height or building footprint, envelope or shell.

Section 4: City Code Section 900.5, subd. a) is amended by adding the following after subpart (2) and renumbering accordingly:

- (3) Expansions to a non-conforming structure, where such expansion may violate the standards of this code, may be permitted through the granting of an expansion permit. An expansion permit would be considered so long as the expansion occurs within the existing horizontal degree of non-conformity.

Section 5: City Code Section 900.6 “Non-conforming lots of record and construction of new dwellings” is renumbered as Section 900.7:

Section 6: City Code Section 900.6 is added as follows:

§900.6 Expansion Permit

- a) Purpose. The purpose of this section is to provide for deviations from the literal provisions of this Chapter when its application would prevent reasonable expansion and to grant such expansion permits for non-conforming structures only when it is demonstrated that such actions will be in keeping with the spirit and intent of this Chapter.
- b) The City Council shall serve as the Board of Adjustment and Appeals.

c) Review Criteria. An expansion permit may be granted, but is not required, after the City Council has determined that the applicant has proven that:

- (1) The proposed expansion meets the intent and purpose Comprehensive Plan.
- (2) There are special conditions or circumstances which prevent the expansion from being constructed in a conforming manner.
- (3) The expansion requested is the minimum necessary to accomplish the intended purpose of the applicant. The expansion will not intrude farther into the required setback beyond the distance of the existing structure.
- (4) The function and aesthetics of the expansion are consistent with the existing structure and use.
- (5) The expansion would not adversely affect or alter the essential character of the neighborhood.
- (6) The resulting drainage pattern does not adversely impact adjacent properties.
- (7) The expansion does not impair an adequate supply of light and air to adjacent property.
- (8) The expansion does not increase the danger of fire or endanger the public safety.
- (9) The expansion does not increase noise levels affecting adjacent properties.

d) Procedures.

- (1) Requests for expansion permit, as provided within this chapter, shall be filed with the Planning Commission on an official application form. Such application shall be accompanied by a fee as provided for by City Council Resolution. Such application shall also be accompanied by ten (10) copies of detailed written and graphic material fully explaining the proposed change, development, or use and a list of property owners located abutting or immediately neighboring of the subject property obtained from and certified by Hennepin County or the City. The request for an expansion permit shall be placed on the agenda of the first possible Planning Commission meeting occurring fourteen (14) days after the date of submission of the application. The request shall be considered officially submitted when all the informational requirements are complied with.
- (2) The Planning Commission shall conduct the hearing, and report its findings and make recommendations to the City Council. Notice of said hearing shall be at least three (3) days prior to said hearing.
- (3) Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this chapter.
- (4) The Planning Commission and City Council shall have the authority to request additional information from the applicant concerning physical or operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Chapter. Failure of an applicant to supply all necessary supportive information may be grounds for denial of the request.
- (5) The applicant or representative thereof shall appear before the Planning Commission to answer question concerning the proposed expansion permit.

- (6) The Planning Commission shall make findings of fact and recommend approval or denial of the request. The Commission's recommendation shall be presented to the Council.
- (7) Upon receiving the report and recommendation of the Planning Commission, the City Clerk shall place the report and recommendation on the agenda for the next regular City Council meeting. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.
- (8) The Council shall review the application and may at its option conduct a public hearing on the request.
- (9) The Council shall make finding of fact and approve or deny a request for an expansion permit within sixty (60) days after receipt of the application as provided by Minnesota Statute Section 15.99.
- (10) An expansion permit shall be by a majority vote of the Council.
- (11) All decisions by the Council involving an expansion permit shall be final except that an aggrieved person or persons shall have the right to appeal within thirty (30) days of the decision to the Hennepin County District Court.
- (12) Whenever an expansion permit has been considered and denied by the City Council, a similar application and proposal for an expansion permit or other land use application affecting substantially the same property shall not be considered again by the Planning Commission or City Council for at least six (6) months from the date of its denial, unless a decision to reconsider such matter is made by a majority of the full City Council.
- (13) If a request for an expansion permit receives approval of the City Council, the City Council may request the applicant to record such with the County Registrar of Titles. The applicant, immediately upon recording such, or as soon as reasonably possible, shall furnish the City proof of recording. No building permit for the property in question will be granted until such proof of recording is furnished to the City.

e) Lapse of Expansion Permit.

For all expansion permits granted after the effective date of this ordinance, if within one (1) year after granting an expansion permit the expansion as allowed by the expansion permit shall not have been initiated or utilized, then such expansion permit shall become null and void unless a petition for an extension of time in which to complete or utilize the use has been granted by the Council. Such extension shall be requested in writing and filed with the Planning Commission at least thirty (30) days before the expiration of the original expansion permit or appeal. There shall be no charge for the filing of such petition. The request for extension shall state facts showing a good faith attempt to complete or use the permitted in the expansion permit or appeal. Such petition shall be presented to the Council for decision.

f) Performance Security.

- (1) Upon approval of an expansion permit, the City shall be provided, where deemed necessary by the Council, with an irrevocable letter of credit, surety bond, cash escrow, certificate of deposit payable to the City, or cash deposit prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said security shall guarantee conformance and compliance with the conditions of the expansion permit and City Chapter provisions.

- (2) The security shall be in the amount equal to one hundred twenty-five (125) percent of the City Engineer's or Building Inspector's estimated costs of labor and materials for the proposed improvements or development.
- (3) The City shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the expansion permit and City regulations has been issued by the Building Inspector.
- (a) Failure to comply with the conditions of the expansion permit or appeal and City regulations shall result in forfeiture of the security.
- (b) Whenever a performance guarantee is imposed by the City, the applicant shall be required to enter into a performance agreement with the City. This agreement is to provide authorization to the City to utilize the posted security and complete stipulated work should the applicant fail to meet the terms and conditions of the permit. Said agreement shall hold harmless the City for completion of the work and address other matters as may be determined by the City Attorney.

g) Certified Survey Required.

A certified survey of the subject site in question shall be required to show present topography, boundary lines, and other significant features including structures, significant landscape features (such as trees with a diameter of more than twelve (12) inches). Survey to include features from the adjacent properties within twenty (20) feet of the subject property or a further distance as required to determine the line of sight setback, where it applies.

Effective Date. This ordinance becomes effective upon passage and publication.

Adopted by the City Council of Medicine Lake this 1st day of November, 2010.

Mary Anne Young, Mayor

ATTEST: Nancy Pauly, City Clerk