

# Draft Minor Text Amendments Package –10/16/2014

## Chapter 60. Zoning Code – General Provisions and Definitions

### ARTICLE I. 60.100. GENERAL PROVISIONS AND EXCEPTIONS

#### Sec. 60.104. - Construction of language.

The following rules of construction apply to the text of this code:

...

(e) ~~—~~ The word "building" includes "structure" and any part thereof.

(e)(f) ~~The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."~~

(f)(g) ~~The word "person" includes an individual, a corporation, a partnership, an incorporated association or any other similar entity.~~

(g)(h) ~~Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or," "either...or," the conjunction shall be interpreted as follows:~~

...

(h)(i) ~~"Abut" means having a common boundary or relationship at either a common property line, street or alley.~~

(i)(j) ~~"Adjacent" means located nearby, with or without contact.~~

(j)(k) ~~"Adjoin" means having a common boundary or relationship at a common property line.~~

(k)(l) ~~"Contiguous" means abutting.~~

(l)(m) ~~A "—" shall mean "through" when used between zoning district abbreviations within a land use category, e.g., "RT1—RM2" residential districts shall mean RT1, RT2, RM1, and RM2 residential districts.~~

[The terms *building* and *structure* are defined separately and are different.]

### ARTICLE II. 60.200. GENERAL DEFINITIONS

#### Sec. 60.214. M.

...

~~*Master plan.* A plan for a specific site proposed for development or redevelopment under the provisions of the TN3 district, in order to demonstrate compliance with the intent of the district.~~

[This definition is out of date and is not needed here. § 66.344(b) *Master plan* applies to more than just the T3 district, and is clear about what a master plan without a separate definition here.]

**Sec. 60.216. O.**

...

*Open space.* Land and water areas retained for use as active or passive recreation areas or for resource protection. For the calculation of minimum open space within a TN3 traditional neighborhood district development, open space shall not include parking facilities, driveways, utility or service areas, or required yards.

[This district is no longer referred to as TN, but T.]

**Sec. 60.217. P.**

...

*Planning district.* One (1) of seventeen (17) geographic areas delineated, and from time to time amended, by the city council to facilitate citizen participation, early notification of proposed city actions, and planning for the purpose of determining concentration of community residential facilities. ~~Planning District Thirteen is divided into three (3) separate planning districts: Merriam Park, Snelling-Hamline and Lexington-Hamline.~~ An official map of the designated areas is maintained by the department of planning and economic development.

[District 13 is no longer divided into 3 separate planning districts.]

**Sec. 60.220. S.**

...

~~*Swimming pool.* A pool or tub constructed either above or below grade and having a capacity of five thousand (5,000) or more gallons.~~

[Move this definition to be with the regulations for this accessory use in Article 65.900, Accessory Uses.]

**Sec. 60.227. Z.**

...

*Zoning conditional uses and variances*

- (1) *Conditional uses:* A conditional use is a use permitted only after review and approval of an application by the planning commission, or the planning or zoning administrator where delegated to do so pursuant to section ~~61.300~~ 61.202(c).

...

ARTICLE III. 60.300. ZONING DISTRICTS AND MAPS GENERALLY

**Sec. 60.301. Zoning districts established.**

For the purposes of this code, the city is hereby divided into the following zoning districts:

...

(g) Overlay districts.

SF state fair parking and vending overlay districts

TP tree preservation overlay district

SD Shepard Davern commercial and residential redevelopment overlay districts

WB White Bear Avenue overlay district

HV Hillcrest Village overlay district

EG East Grand Avenue overlay district

SH Student housing neighborhood impact overlay district

[East Grand Avenue Overlay District was added in 2006. Student Housing Overlay District was added in 2012]

...

(i) Floodplain management overlay districts

FW floodway overlay district

FF flood fringe overlay district

[Regulations for these districts, pursuant to FEMA requirements, were adopted as a separate chapter 72 in 2010.]

## **Chapter 61. Zoning Code – Administration and Enforcement**

### **ARTICLE. I. 61.100. GENERAL PROVISIONS**

#### **Sec. 61.107. Conditions of approval.**

The planning commission, planning or zoning administrator, board of zoning appeals, or city council may impose such reasonable conditions and limitations in granting approval of a site plan, conditional use permit, similar use determination variance or other zoning approval, ~~and in making a similar use determination,~~ as are determined to be necessary to fulfill the ~~spirit intent~~ and purpose of the zoning code, to ensure compliance, and to protect adjacent properties and additionally, when approving a variance, as are directly related to and roughly proportionate to the impact of the variance

[Edited to bring the variance findings and conditions language in this code into compliance with the new state variance language in MN Stat. 462.357, Subd. 6.]

### **ARTICLE. IV. 61.300. GENERAL APPLICATION AND REVIEW PROCEDURES**

...

#### **Sec. 61.302. Application forms and fees.**

...

(b) *Fee schedule.* Fees for the following zoning control applications shall be as follows:

...

- (8) *Rezoning*: One thousand two hundred dollars (\$1,200.00) up to one (1) acre of land, two hundred fifty dollars (\$250.00) for each additional acre of land, and an additional fee of five hundred dollars (\$500.00) for rezoning to TN3(M) Traditional Neighborhood District with a master plan and an additional fee of one thousand dollars (\$1,000.00) for rezoning to PD Planned Development District.

[This district is no longer referred to as TN, but T.]

...

#### ARTICLE. IV. 61.400. SITE PLAN REVIEW

##### **Sec. 61.402. Site plan review by the planning commission.**

- (a) *Plan to be submitted*. A site plan shall be submitted to and approved by the planning commission before a permit is issued for grading or the erection or enlargement of any building except one- and two-family dwellings, and including the following:

....

- (4) Any development in a TN district.

...

- (c) *Site plan review and approval*. In order to approve the site plan, the planning commission shall consider and find that the site plan is consistent with:

...

- (5) The arrangement of buildings, uses and facilities of the proposed development in order to ~~assure~~ ensure abutting property and/or its occupants will not be unreasonably affected.

...

- (d) *Compliance and time requirements*. The planning commission may make such requirements with respect to the above matters as to ~~assure~~ ensure compliance with them. When changes are required, the revised site plan shall be submitted within six (6) months from the date the applicant was notified of required changes. The zoning administrator may grant extensions. The property must be brought into compliance with the approved site plan within one year of the date of approval or as otherwise specified by the zoning administrator.

[Correction of a typographical error. Usage correction.]

...

#### ARTICLE. V. 61.500. CONDITIONAL USE PERMITS

##### **Sec. 61.503. Conditional use permit, change requiring new permit.**

...

- (b) The floor area of a conditional use expands by fifty (50) percent or more. For a conditional use existing on October 25, 1975, expansion is the sum of the floor area of all the expansions since then. For a conditional use established after October 25, 1975, expansion is the sum of the floor area of all

the expansions since being established. Floor area does not include floor area which is accessory to a principal use and which does not result in the expansion of a conditional use.

[Correction of a typographical error.]

### **Sec. 61.505. Conditional use permits, automatic expiration.**

Unless expressly provided by the planning commission, when a use requiring a conditional use permit is discontinued or ceases to exist for a continuous period of ~~three hundred sixty-five (365) days, one (1) year,~~ or when a conditional use changes to a permitted use not requiring a conditional use permit, the conditional use permit shall automatically expire. Except for conditional use permits for a college, university, seminary, or similar institution of higher learning if the lot area of a conditional use is subsequently reduced in size, unless the reduction results from acquisition by governmental agencies for public improvements or uses, the conditional use permit shall automatically expire. If a conditional use becomes nonconforming and subsequently is discontinued or ceases to exist for a continuous period of ~~three hundred sixty-five (365) days, one (1) year,~~ the conditional use permit shall automatically expire. When an approved conditional use is not established in accordance with section 61.105, or is established and subsequently changed to a conditional use requiring a new permit under section 61.503, the conditional use permit shall automatically expire.

(C.F. No. 07-348, § 1, 5-9-07)

[One year is consistent with other time periods in the code. When the reduction in size stems from eminent domain or other acquisition by governmental agencies for public improvements or uses, it should not cause the CUP to expire. The colleges are concerned that they might lose their CUP if they sell off a part of the campus. This provides clarifying language per the colleges' request.]

## **ARTICLE. VI. 61.600. VARIANCES**

### **Sec. 61.601. Variances.**

The board of zoning appeals and the planning commission shall have the power to grant variances from the strict enforcement of the provisions of this code upon a finding that:

- (a) The variance is in harmony with the general purposes and intent of the zoning code.
- (b) The variance is consistent with the comprehensive plan.
- (ca) The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in question cannot be put to a reasonable manner not permitted by use under the strict provisions of the code; Economic considerations alone do not constitute practical difficulties.
- (db) The plight of the landowner is due to circumstances unique to the property, and these circumstances were not created by the landowner;.
- (c) The proposed variance is in keeping with the spirit and intent of the code, and is consistent with the health, safety, comfort, morals and welfare of the inhabitants of the City of Saint Paul;
- (d) The proposed variance will not impair an adequate supply of light and air to adjacent property, nor will it alter the essential character of the surrounding area or unreasonably diminish established property values within the surrounding area;

- (e) The variance, ~~if granted, would~~ will not permit any use that is not ~~allowed~~ permitted under the provisions of the code for the property in the zoning district where the affected land is located, nor would it alter or change the zoning district classification of the property; and
- (f) The ~~request for variance~~ will not alter the essential character of the surrounding area is not based primarily on a desire to increase the value or income potential of the parcel of land.

In granting a variance, the board ~~or commission~~ shall make written findings stating the grounds upon which the variance is justified. ~~Hardship as described in the finding set out in subsection (a) above shall include the need for Inadequate~~ access to direct sunlight for solar energy systems constitutes a practical difficulty in finding (c) above.

[Edited to bring the variance findings and conditions language in this code into compliance with the new state variance language in MN Stat. 462.357, Subd. 6.]

## Chapter 62. Zoning Code – Nonconforming Lots, Uses and Structures

### Sec. 62.109. Nonconforming use permits

...

- (d) *Expansion or relocation of nonconforming use.* The planning commission may permit the expansion or relocation of a legal nonconforming use if the commission makes the following findings:
  - (1) In residential districts, the expansion, or relocation will not result in an increase in the number of dwelling units;
  - (2) For expansion of a structure, the expansion will meet the yard, height and percentage of lot coverage requirements of the district;
  - (3) The appearance of the ~~enlargement~~ expansion or relocation will be compatible with the adjacent property and neighborhood;
  - (4) Off-street parking is provided for the ~~enlargement~~ expansion or relocation that meets the requirements of article 63.200 for new uses;
  - (5) Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use;
  - (6) After the ~~enlargement~~ expansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare;

...

[The word "enlargement" was struck in Ordinance 12-71, but was not edited properly in the final version.]

## Chapter 63. Zoning Code – Regulations of General Applicability

### ARTICLE.I. 63.100. GENERAL PROVISIONS AND PERFORMANCE STANDARDS

**Sec. 63.119 – Sec. 63.121. Reserved.**

**Sec. 63.120. Private residential pools and hot tubs.**

Private outdoor residential pools, both above and below ground, and hot tubs are permitted as an accessory use within the rear yard or nonrequired side yard; except that, for multiple family developments, the planning commission may determine the location of the pool or tub. Private outdoor pools and hot tubs shall meet the following requirements as applicable:

- (a) — There shall be a distance of not less than ten (10) feet between the adjoining property line and the outside of the pool wall for aboveground pools. For in-ground pools, there shall be a distance of not less than five (5) feet between the adjoining property line and the outside of the pool wall.
- (b) — There shall be a distance of not less than four (4) feet between the outside pool wall and any building located on the same lot.
- (c) — No swimming pool shall be located less than ten (10) feet from any side street or alley right-of-way, or the distance required for side yard by the zoning code, whichever is greater.
- (d) — No swimming pool shall be located in a public easement.
- (e) — All yards of one and two family structures containing swimming pools shall be enclosed by an obscuring fence not less than four (4) feet in height. All yards of residential structures of three (3) or more units and commercial structures containing swimming pools shall be enclosed by an obscuring fence not less than five (5) feet in height. The gates shall be of a self-closing and self-latching type, with the latch on the inside of the gate, not readily available for children to open. Gates shall be capable of being securely locked when the pool is not in use.
- (f) — All yards containing hot tubs shall be secured as in subsection (5) above or shall have a cover which shall be locked when the hot tub is not in use.

[Move this section, along with the definition of *swimming pool* in Sec. 60.220, to Article 65.900, Accessory Uses, where these requirements for specific accessory uses belong.]

**Sec. 63.121. Radio and television antennas.**

Antennas, including single satellite dish TVRO's three (3) meters or less in diameter, short-wave radio dispatching antennas, or those necessary for the operation of household electronic equipment including radio receivers, ham radio transmitters and television receivers, are permitted as accessory uses in all zoning districts and shall meet the following requirements:

- (a) — Accessory antennas shall not be erected in any required yard, except a rear yard, and shall be set back a minimum of three (3) feet from all lot lines.
- (b) — Guy wires or guy wire anchors shall be set back a minimum of one (1) foot from all lot lines.
- (c) — Accessory antennas and necessary support structures, monopoles or towers may extend a maximum of fifteen (15) feet above the normal height restriction for the affected zoning district.

[The definition and standards for accessory uses such as this belong in Article 65.900 Accessory Uses.]

## Chapter 65. Zoning Code - Land Use Definitions and Development Standards

### ARTICLE VII. 65.900. ACCESSORY USES

#### Sec. 65.910. Accessory use or accessory.

A building, structure or use which is clearly incidental to, customarily found in connection with, and (except as provided in section 63.300) located on the same zoning lot as, the principal use to which it is related.

When "accessory" is used in the text, it shall have the same meaning as "accessory use."

An accessory use includes, but is not limited to, the following:

...

- (p) ~~Radio and television receiving antennas including satellite receiving dishes, or short-wave transmit/receive antennas designed for dispatching or use with household electronic equipment including "ham" radio equipment, subject to the regulations in section 62.117.~~

#### Sec. 65.911. Antenna, radio and television receiving.

A wire, set of wires, metal or carbon fiber element(s), including no more other than one (1) satellite dish antennas three (3) meters or less in diameter, used to receive radio, television or electromagnetic waves, and including the supporting structure thereof, permitted as accessory uses in all zoning districts.

##### Standards and conditions:

- (a) Accessory antennas shall not be erected in any required yard, except a rear yard, and shall be set back a minimum of three (3) feet from all lot lines.
- (b) Guy wires or guy wire anchors shall be set back a minimum of one (1) foot from all lot lines.
- (c) Accessory antennas and necessary support structures, monopoles or towers may extend a maximum of fifteen (15) feet above the normal height restriction for the affected zoning district.

#### Sec. 65.912. Antenna, short-wave radio transmitting and receiving.

A wire, set of wires or a device, consisting of a metal, carbon fiber or other electromagnetically conductive element used for the transmission and reception of radio waves used for short-wave radio communications, and including the supporting structure thereof, permitted as an accessory use in all zoning districts.

##### Standards and conditions:

See section 65.911. Antenna, radio and television receiving.

[The amendments to §§ 65.910-65.912 above clarify the code as it is being administered under the provisions of § 63.121. the standards and conditions for these accessory uses are moved here from § 63.121 in Chapter 63 Regulations of General Applicability so that the definitions and standards for these uses are together.]

#### Secs. 65.913 – 65.9149. Reserved.



### **Sec. 65.915. Hot tub, outdoor.**

#### *Standards and conditions:*

All yards containing hot tubs shall be secured as required in section 65.923(e) or shall have a cover which shall be locked when the hot tub is not in use. A hot tub shall be located at least three (3) feet away from any lot line.

[The use of a hot tub is not likely to produce the noise and splashing associated with a swimming pool; therefore, the setback requirements for a hot tub could be lessened. The proposed language codifies DSI's interpretation that the word "pool" only applies to a swimming pool, and that a hot tub must meet the setback requirement of an accessory use.]

### **Secs. 65.916 – 65.919. Reserved.**

### **Sec. 65.922. Support services in housing for the elderly.**

Support services within elderly housing as defined in section 65.123~~1~~ including limited food service, beauty salon and retail goods and sales areas.

#### *Development standard:*

Support service areas shall not~~x~~ exceed five (5) percent of designated community room area.

[Corrects typos.]

### **Sec. 65.923. Swimming pool, outdoor.**

A pool or tub constructed either above or below grade and having a capacity of five thousand (5,000) or more gallons.

[Definition moved here from § 60.220.]

#### *Standards and conditions:*

- (a) There shall be a distance of not less than ten (10) feet between the adjoining property line and the outside of the swimming pool wall for aboveground pools. For in-ground swimming pools, there shall be a distance of not less than five (5) feet between the adjoining property line and the outside of the pool wall.
- (b) There shall be a distance of not less than four (4) feet between the outside swimming pool wall and any building located on the same lot.
- (c) A swimming pool shall not be located in a required front or side yard, less than ten (10) feet from any street or alley right-of-way, or in a public easement.
- (d) A hot tub shall not be located in a required front or side yard, less than three (3) feet from any lot line, or in a public easement.
- (e) All yards of one- and two-family structures containing swimming pools shall be enclosed by an obscuring fence not less than four (4) feet in height. All yards of residential structures of three (3) or more units and commercial structures containing swimming pools shall be enclosed by an obscuring fence not less than five (5) feet in height. The gates shall be of a self-closing and self-latching type, with the latch on the inside of the gate, not readily available for children to open. Gates shall be capable of being securely locked when the pool is not in use.

[There is confusion over whether the regulations for swimming pools and hot tubs in § 63.120 apply to swimming pools only or to both swimming pools and hot tubs. The definition of swimming pool as having a capacity of 5,000 or more gallons and thus not including hot tubs gets lost in Sec. 60.220. List *swimming pool* and *hot tub* as separate uses in Article 65.900, Accessory Uses, which along with the definition of *swimming pool* will avoid confusion about what regulations apply to swimming pools and what applies to hot tubs.]