

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: March 6, 2012

RE: **Analysis of Proposed Amendments
to the Zoning Code**

ORDINANCE NO. BL2012-88 (CLAIBORNE) – This ordinance amends the Metropolitan zoning code to add non-self-imposed hardship as a factor for the historic zoning commission to consider when determining whether to allow the demolition of a historic building. The zoning code currently provides that the commission may consider the following seven economic hardship factors when reviewing a request to tear down a historic structure:

1. An estimated cost of demolition compared to the estimated cost of compliance.
2. A report from a licensed engineer or architect as to the structural soundness of the structure and its suitability for rehabilitation.
3. The estimated market value of the property in its current condition; its estimated market value after the proposed undertaking; and its estimated value after compliance.
4. An estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure.
5. The amount paid for the property.
6. The annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
7. Any other information considered necessary by the commission for a determination as to whether the property does yield or may yield a reasonable return to the owners.

The need for this ordinance stems from a court case in which the Tennessee Court of Appeals held that the historic zoning commission did not have the authority to deny a demolition permit based upon the actions of the property owner leading to the economic hardship, as it was not one of the listed criteria. This ordinance simply adds a new eighth factor to allow the historic zoning commission to deny a demolition permit if the property owner failed to maintain the property in a good state of repair.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2012-92 (DOMINY, DUVALL & OTHERS) – This ordinance amends the Metropolitan zoning code pertaining to the period of inactivity for nonconforming uses and for nonconforming structures damaged by a natural disaster. The state “grandfather law” allows certain existing nonconforming businesses and multi-family developments to remain and continue operation after a change in local zoning regulations makes the business/development no longer technically in compliance with the law. These protections allow such nonconforming properties to cease operation for up to 30 continuous months before being required to comply with new zoning laws. The 30-month timeframe is tolled while the use of the property is the subject matter of litigation or if actions have been taken within 30 months to restore the structure on the nonconforming property.

The Metro zoning code currently does not reflect this 30 month protection under state law nor does it include the provisions pertaining to litigation. Further, the zoning code does not include any protections for nonconforming residences and businesses that were damaged by flood and remain uninhabitable.

First, this ordinance would codify the 30-month period of inactivity state law provision for nonconforming uses into the Metro zoning code. Although the state nonconforming use law trumps any local law to the contrary, it is appropriate that our zoning code be consistent with the state law provisions. Second, this ordinance would toll the 30-month period of inactivity regarding the use of the property while the property is in litigation or while the property is damaged as a result of a natural disaster for which state and/or federal disaster assistance has been provided (i.e., the May 2010 flood).

Lastly, the ordinance includes provisions for nonconforming structures that are damaged or destroyed by a natural disaster for which state and/or federal disaster assistance has been provided. The 30-month state law provision applies to inactivity of the nonconforming use. Thus, a business that shut down because of flood damage in May 2010 would have to begin reconstruction work not later than November 2012 in order to maintain its protected status. Nonconforming single-family residences, which are not subject to the state 30-month tolling provision, technically only have 12 months under the zoning code to rebuild. Damaged nonconforming duplexes in a RS district have 24 months to rebuild. This ordinance would give all nonconforming structures, whether commercial or residential, 60 months in which to rebuild after such a disaster.

The planning commission approved this ordinance with several suggested provisions to be added by amendment, which will be offered on third reading. The amendment will make the ordinance applicable for all natural disasters as long as the property owner can show the weather damage was reported to and documented by the National Weather Service, the mayor’s office of emergency management, the U.S. Small Business Administration, and/or the federal or state emergency management agencies. The amendment would also specify that the tolling provision would apply from the date of damage and that the period of inactivity could not extend beyond 60 months from the date of damage.

ORDINANCE NO. BL2012-107 (JOHNSON) – This ordinance amends the Metropolitan zoning code to require replacement panels in multi-tenant signs to be consistent with the other signage on the property. The zoning code currently provides that on-premises signs on a lot with more than one business (i.e., a strip mall) must be in accordance with the overall signage plan for the development. All signs must be consistent with at least four of the following: material; location on the building; sign proportions; color scheme; lighting; and letter/graphic style. The signage plan is supposed to be approved by the zoning administrator before permits are issued. The sign plan may be amended from time to time, but all signs must be brought into compliance with the amended plan within six months.

This ordinance would specify that modifications to multi-tenant signs, including the replacement of individual sign panels for new tenants, be consistent with the other existing sign panels as to materials, lighting, lettering, and graphic style. This would prohibit the insertion of a sign panel made out of plywood or some other material that is not consistent with the rest of the panels.

Subsequent to the filing of this ordinance, the council office was made aware that the intent of the ordinance was to address the building signs in strip malls, as opposed to the multi-tenant ground signs. As noted above, the zoning code already requires building signs within a multi-tenant development to be consistent with the other signs, and requires signs that are made nonconforming by a subsequent amendment to the signage plan to be brought into compliance within six months. However, the council office has been advised by the department of codes administration that these provisions have historically not been enforced.

The planning commission recommended withdrawal of this bill.

ORDINANCE NO. BL2012-109 (JOHNSON) – This ordinance amends the Metropolitan zoning code to require applications for the conversion of a nonconforming billboard to a tri-face billboard to be submitted to the board of zoning appeals (BZA) for a determination as to whether the conversion would result in a greater negative impact to adjacent property owners. The state nonconforming use grandfather statute allows certain existing nonconforming businesses to remain when a change in local zoning regulations makes the business no longer technically in compliance with the law. The state grandfather law expressly applies to billboards, which allows the destruction and reconstruction of the sign without losing its protected nonconforming status.

Tri-face billboards consist of triangular louvers that automatically rotate to allow three different sign messages to be shown on the same sign. In January 2011, the council enacted Ordinance No. BL2010-798 to exempt tri-face billboards from the distance requirements applicable to electronic signs, which essentially resulted in tri-face billboards being treated the same as static billboards. This ordinance would simply require consideration by the BZA before converting a nonconforming static billboard to a tri-face one.

Issues have been raised by the billboard industry as to whether this bill violates the state grandfather statute. The council office is of the opinion that the bill in and of itself does not violate state law. While local governments have no authority to prevent nonconforming billboards from being reconstructed, there is nothing in the grandfather statute that would prohibit the council from requiring a recommendation from the BZA regarding the conversion of
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ORDINANCE NO. BL2012-109 (continued)

a static billboard to a tri-face building to be sent to the BZA. Although the language of the bill seems to infer that the BZA would have the authority to deny such a conversion if the billboard for some reason would result in a greater negative impact to adjacent property owners, the BZA would likely have no legal basis to deny the conversion. This bill would simply provide some transparency to the process and would allow neighbors to be notified before the conversion takes place.

This ordinance has been referred to the planning commission. Since less than 30 days have elapsed from the date of referral to the commission, this ordinance must be deferred by rule to the May public hearing.