



Brainerd City Council Agenda Request

Requested Meeting Date:

Title of Item:

<input type="checkbox"/> INFORMATION ONLY <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> P&F COMMITTEE <input type="checkbox"/> SPW COMMITTEE <input type="checkbox"/> MAIN AGENDA	Action Requested: <input type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of published hearing notice</i> <input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <input type="checkbox"/> Ordinance 1 st Reading
Submitted by:	Department:
Presenter (Name & Title):	Estimated Time Needed:
Summary of Issue:	
Alternatives, Options, Effects on Others/Comments:	
Recommended Action/Motion:	
Financial Impact: Is there a cost associated with this request: <input type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping \$ _____ Is this budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> No <u>Please Explain:</u>	

February 4, 2021



www.ci.brainerd.mn.us

Breen & Person, Ltd
Attn: Mr. Brad Person
124 N. 6th St.
Brainerd, MN 56401

Re: Rental Licensure - 705 19th St. SE, Brainerd, MN 56401

Dear Mr. Person,

I am writing in regards to the licensing of 705 19th St. SE as a rental duplex. On Wednesday, February 3, 2021, it was brought to my attention that, during a building permit inspection, it was noticed by a member of my staff that it appeared the improvements being conducted at the aforementioned property were intended to reestablish the property as a rental property.

I recognize that the property is currently arranged as a duplex and has historically been licensed as such. However, the property is in an R-1 (Single Family Residential) District, which does not permit two-family or multi-family uses, and its most recent rental license expired on May 31, 2018. Prior to the expiration of the rental license in 2018, the property was considered a legal non-conforming use. Unfortunately, Section 515-15-6.B of the Code of Ordinances states, "A nonconforming residential use that had a rental license expire (more than 365 days from date of license expiration) cannot be reestablished as a nonconforming use."

Therefore, as the rental license on 705 19th St. SE has expired more than 365 days, the Community Development Department is not able to issue a new rental license for both of the structure's units. At this time, only one unit may be licensed.

If you disagree with my interpretation of the ordinance, you may appeal my decision *in writing* to the Board of Zoning Appeals, which is the City Council. Otherwise, you may submit a rezoning request to the Planning Commission to have your property rezoned in a manner that would bring it into conformity as a multi-family use.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David C. Chanski', is written over a faint horizontal line.

David C. Chanski, MPA
Community Development Director

February 4, 2021

Brainerd Board of Appeals
Via email

RE: 705 19th Street SE, Brainerd, MN rental home

To Whom It May Concern:

This is a written appeal, on behalf of the landowner, of David Chanski's February 4, 2021 staff interpretation of your code section that prohibits the owner of said rental home from continuing its historical use as a duplex. I agree that staff has interpreted your ordinance correctly. The ordinance itself, however, is contrary to state law.

The ordinance only focuses on use as it relates to nonconforming status. Minnesota Statute Section 462.357, Subdivision 1c prohibits amortization – which this ordinance provision does. In addition, Subdivision 1e(2) protects a homeowner from losing status for structure nonconformities as long as the structure is rebuilt in a certain time frame and clarifying how much damage must occur before vested rights may be lost. Your ordinance fails to consider the structure itself. The structure was built years ago as a duplex with a dividing wall and two of everything – that has not changed. Another example will show how the ordinance fails to protect statutory rights for structural nonconformities. If this same house was a rental but was nonconforming as it was built too close to a set back. No one would argue that if rental license lapsed or if vacant for a year they have to tear down the house done to meet setback. The house setback legal nonconformity survives as long as the structure does – same argument with this duplex..

Respectfully submitted,
BREEN AND PERSON, LTD.



J. Brad Person

SECTION 15
NON-CONFORMING LOTS, BUILDINGS, STRUCTURES AND USES

Section:

- 515-15-1: Purpose
- 515-15-2: General Provisions
- 515-15-3: Non-conforming Uses
- 515-15-4: Non-conforming Buildings and Structures
- 515-15-5: Non-conforming Lots

515-15-1: Purpose and Intent. It is the purpose of this Section to provide for the regulation of legal non-conforming lots, buildings, structures and uses and to specify those requirements, circumstances and conditions under which legal non-conforming lots, buildings, structures, and uses will be operated and maintained. The Zoning Ordinance establishes separate districts, each of which is an appropriate area for the location of uses which are permitted in that district. It is necessary and consistent with the establishment of these districts that non-conforming lots, buildings, structures, and uses are not allowed to continue without restriction.

515-15-2: General Provisions.

- A. Conditional Uses/Interim Uses/Uses By Administrative Permit. Any established use or building legally existing prior to the effective date of this Ordinance, and which is herein classified as a conditional use, interim use, or use by administrative permit may be continued in like fashion and activity and shall automatically be considered as having received the applicable approval. Any change to such a use, including, but not limited to, building and/or site alteration, shall require a new permit be processed as provided in this Ordinance.
- B. Moving Nonconforming Buildings. No nonconforming building or structure shall be moved to another lot or to any other part of the parcel of land upon which the same was constructed prior to the effective date of this Ordinance unless such movement shall bring the nonconformance into compliance with the requirements of this Ordinance.
- C. Subdivision. No parcel of land or portion thereof shall be subdivided if such action results in parcels, buildings and structures becoming nonconforming.
- D. Any nonconformity, including the lawful use or occupation of land or premises existing at the time of adoption of an additional control under this Ordinance, may be continued in the same size and manner, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, except as specifically provided in this Section, unless:

1. The nonconforming use or occupancy is discontinued for a period of more than one (1) year. Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.
2. Any nonconforming use is destroyed by fire or other peril to the extent greater than fifty (50) percent of its market value, and no building permit has been applied for within one hundred eighty (180) days of when the property is damaged. In this case, the City of Brainerd may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property.

515-15-3: Non-Conforming Uses.

A. Changes to Non-Conforming Uses:

1. When a lawful, nonconforming use of any structure, building or parcel of land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.
2. A lawful, nonconforming use of a structure, building or parcel of land may be changed to lessen the nonconformity of the use. Once a nonconforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the nonconformity.

515-15-4: Non-Conforming Buildings and Structures.

- A. Proposed Building or Structure. Any proposed building or structure which will, under this title, become nonconforming but for which a Building Permit has been lawfully granted prior to the effective date of this Ordinance, may be completed in accordance with the approved plans, provided construction is started within sixty (60) days of the issuance of a building permit, is not abandoned for a period of more than one hundred twenty (120) days, and continues to completion within two (2) years. Such building or structure shall thereafter be a legally nonconforming building or structure.

515-15-5: Non-Conforming Lots.

- A. Vacant or Redeveloped Lots. Except in Floodplain and Flood Fringe districts, legal, nonconforming lots of record may be developed, provided that:
1. Legally Established Lot. The lot in question was legally established in accordance with City Code requirements existing at the time of its creation and is a separate, distinct tax parcel.

2. Unsewered Lots or Parcels. A lot or parcel of twenty thousand (20,000) square feet or larger, not having access to municipal sewer, shall be considered buildable provided public health concerns (potable water and sanitary sewer) can be adequately addressed.
 3. Access. The lot in question has frontage on and will directly access an improved public street.
 4. Setback and Yard Requirements. The setback and yard requirements of the base zoning district can be achieved while simultaneously resulting in development which complies with the character and general design of the immediate area and the objectives of the City's Comprehensive Plan and the provisions of this Ordinance.
- B. Developed Lots. An existing conforming use on a lot of substandard size and/or width may be expanded or enlarged if such expansion or enlargement meets all other provisions of this Ordinance.

515-15-6: Reestablishment of Nonconforming Buildings and Structures

- A. Any building or structure which at one time had a nonresidential use may be reestablished with a nonconforming use provided it is found that:
1. The building or structure and land in combination, cannot reasonably be used for a conforming purpose;
 2. The proposed use is compatible with adjacent properties and the area in which it is located;
 3. The proposed use will not be detrimental to the existing character and/or endanger the public health, safety or general welfare of the area;
 4. The proposed use is consistent with the comprehensive plan;
 5. Off street parking is provided in accord with Section 22 – Off Street Parking.
 6. A public hearing is held in accord with the process described in Section 5 – Conditional Use Permits.
- B. A nonconforming residential use that had a rental license expire (more than 365 days from date of license expiration) cannot be reestablished as a nonconforming use.