

**CITY OF LA CROSSE, WISCONSIN  
CITY PLAN COMMISSION  
REPORT  
November 2, 2015**

➤ **AGENDA ITEM – 15-1008 (Jason Gilman)**

AN ORDINANCE to repeal Section 115-142(a)(3)c of the Code of Ordinances of the City of La Crosse regarding non-conforming uses in conformance with state law.

➤ **ROUTING:** J&A Committee

➤ **BACKGROUND INFORMATION:**

- This ordinance is to repeal Section 115-142 (a)(3) of the Code of Ordinances which states: *A two-family dwelling that was originally constructed as a two-family dwelling and in existence on September 13, 1984, shall not lose its legal nonconforming status until such time the entire structure is demolished by natural or manmade causes. A replacement single-family structure shall be permitted meeting all other requirements of this Code. Once a building is converted to a single-family dwelling, it shall not be converted back to a two-family dwelling.*

This proposed repeal was brought about by concerns raised by the legal department with regard to this provision's consistency with State Statute 62.23 (7)(h), which states that if a non-conforming use is discontinued for a period of 12 months, any future use of the building or premises, structure or fixture shall conform to the ordinance:

**(7) ZONING.**

62.23(7)(ab)(ab)Definition. In this subsection "nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

**(h)Nonconforming uses.** The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

➤ **GENERAL LOCATION:**

City Wide

➤ **RECOMMENDATION OF OTHER BOARDS AND COMMISSIONS:**

N/A

➤ **CONSISTENCY WITH ADOPTED COMPREHENSIVE PLAN:**

N/A

➤ **PLANNING RECOMMENDATION:**



While the Planning Department respects the decisions and interpretations of the City's Legal Department, we have raised concern about this interpretation of the statute. The intent of City Ordinance 115-142 (a) (3) was to recognize the inherent structural qualities of a two family residence and the economic difficulty of conversion back to a single family dwelling should the use be vacated for a period of 12 months or more.

We can envision likely scenarios involving structures either built as duplexes with clearly separated living areas, perhaps by central garages, or larger residential structures where significant remodeling costs were historically incurred to separate living areas with two kitchens, separate baths, etc. This interpretation would require costly remodeling when the original structure has been vacated perhaps for probate or for the purpose of sale or transfer for 12 months or more. In these cases, the owner would have to convert these structures back to a single family home, requiring a significant economic burden and potentially rendering the structure cost prohibitive for conversion due to the total value of the real property.

While wholesale ordinance amendments to allow duplexes in all residential districts would correct this issue, we have found general public resistance to wholesale allowance for duplex dwellings, as many single family owners invested in neighborhoods with the expectation that like single family densities would prevail.

Owners would have the option of rezoning these properties to duplex zoning, but these procedures may be met with resistance by neighbors and could be discounted as spot zoning if neighboring uses are entirely single family.

A clarification on whether or not a home placed on the market or going through a probate process, whereby the sale or transfer and re-occupancy takes more than 12 months triggers the discontinuance requirement, may also alleviate this concern.