
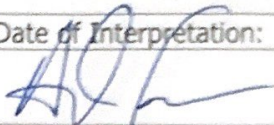


UDC Interpretation	#20-004	
	Replacement of Nonconforming Structures	
	UDC Sections: 50-38.3	Date of Interpretation: 5/22/20
Approved by:	Adam Fulton, Land Use Supervisor	

BACKGROUND:

The Unified Development Chapter of the City of Duluth Legislative Code (UDC) is the official body of rules and regulations to guide land use and development in the City of Duluth, Minnesota. UDC Sec. 50-10 *Interpretation* authorizes the Land Use Supervisor to interpret the provisions of this Chapter.

The question was asked: Can a nonconforming structure be removed and replaced if the structure has not been damaged as described in UDC Section 50-38.3.B?

CODE INFORMATION:

Section 50-38.3 of the UDC states that nonconforming structures can continue to be used, and can be expanded as long as the expansion does not increase the nonconformity. It also states that nonconforming structures that have been damaged or have deteriorated to more than 60% of their value may not be restored, unless a variance is granted.

State statute 462.357 states:

(a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

- (1) the nonconformity or occupancy is discontinued for a period of more than one year.

UDC INTERPRETATION:

Section 50-38.3 addresses expansions, and nonconforming structures that have been damaged. It does not address direct replacement of nonconforming structures.

As the state statute for nonconformities does address replacement, it is logical to follow this language in 462.357. However, the City finds the language "improvement" to be ambiguous and conflicting with other nonconformity guidance in the code.

Therefore, nonconforming structures may be continued, including through repair, replacement, restoration, or maintenance, unless the nonconformity or occupancy is discontinued for a period of more than one year.

Per Section 50-38.3 of the UDC, nonconforming structures can be expanded as long as the expansion does not increase the nonconformity.

Section 50-38.2.B of the UDC governs Flood Hazard areas; since this section is more restrictive, note that this UDC interpretation does not apply to structures that are nonconforming due to floodplain regulations.

The City anticipates a technical correction to these provisions will be part of the annual UDC amendment package in the future.

DISCLAIMER: While it is the intent of the administration to submit a technical correction to the City Council consistent with this interpretation, the code can only be amended by City Council action. This interpretation is not intended to be a promise or guarantee that the proposed amendment will be enacted.