C: Dir., Department of Planning and Community Development

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

February 11, 2014

From: George M. Homewood, AICP CFM
Acting Planning Director

Subject: Zoning Text Amendments to amend Section 12-3 *Improvements to Nonconforming Structures*, Section 12-9 *Discontinuance of nonconforming uses* and to delete Section 25-10.11 *Substantial renovation of a nonconforming structure or resumption of a nonconforming use* to establish additional eligibility criteria in order to improve a nonconforming structure or restart a nonconforming use.

Reviewed: Ronald H. Williams, Jr., Assistant City Manager

Ward/Superward: Citywide

Approved: Marcus D. Jones, City Manager

Item Number: **PH-7**

I. **Recommendation:** Approval

II. **Applicant:** City Planning Commission on behalf of the Planning Department

III. **Description**

- This proposal consist of amendments to the *Zoning Ordinance* to amend provisions of Chapter 12, *Nonconformities,* to establish objective eligibility criteria in order to apply for a renovation to a nonconforming structure in excess of 50% of the structure's value, or to restart a nonconforming use that has been discontinued for more than two years.
- The proposal also removes a conflicting provision found in Chapter 25, *Special Exceptions*.

IV. Analysis

Plan Analysis

- The Enhancing Economic Vitality chapter of *plaNorfolk2030* includes an action calling for modifications to city processes, including zoning requirements, to support business investment.
  - The proposed changes to the *Zoning Ordinance* are consistent with the recommendations of that action.

Zoning Analysis

- Currently, Section 25-10.11 *Substantial renovation of a nonconforming structure or resumption of a nonconforming use* allows applications for the granting of a Special Exception authorizing:
  - Renovation of a nonconforming structure where the construction costs exceed 50% of the assessed value of the structure.
  - Resumption of a nonconforming use that has been inactive for two years or longer.
- The current language of Section 25-10.11 does not provide any eligibility criteria that limits which structures or uses are appropriate for approval; thus it is theoretically possible to request resumption of a use that has not been active for decades.
- In order to define clearly the eligibility criteria, amendments are proposed to Section 12-3 *Improvements to nonconforming structures* and Section 12-9 *Discontinuation of Nonconforming Uses* to establish additional eligibility criteria and to delete Section 25-10.11.
- The additional criteria would limit application of these provisions to historic properties and architecturally significant structures and multi-family dwellings containing 10 units or more.
  - The improvements to a historic or architecturally significant nonconforming structure would require that the structure is listed as historic or contributing in the Virginia Landmarks Register, the U.S. Department of Interior's National Register of Historic Places, or be designated as a Norfolk Historic Landmark and that a certificate of appropriateness is issued.
  - The improvements to a multi-family dwelling must result in a reduction of 25% of the existing dwelling units subject to providing required parking in accordance with Chapter 15, detailed building plans, minimizing any encroachments into required yards and obtaining a special exception.
- In order to restart a nonconforming use in a historic or architecturally significant property or a multi-family dwelling containing 10 units or more, the use may not have been discontinued for longer than 10 years.

Traffic Analysis

- No traffic impacts will occur as a result of this amendment.

V. Financial Impact

Approval of the request could expedite the approval process for new businesses in the City.

VI. Environmental

This proposed ordinance revisions should not have any environmental impact, since the structures utilizing its provisions currently exist and further will be reviewed for full compliance with ordinance standards.

VII. Community Outreach/Notification

- Notice was sent to the civic leagues by the Department of Communications on December 4, 2013.
- Legal notification was placed in *The Virginian-Pilot* on December 5 and 12, 2013.
- The Planning Commission Public Hearing was held on December 19, 2013.
- Public notification was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

By a vote of **7 to 0**, the Planning Commission recommended that the proposed Zoning Text Amendments be **approved**.

IX. Coordination/Outreach

This request has been coordinated with the Department of Planning and Community Development, and the City Attorney's Office.

Supporting Material from the Department of Planning and Community Development

- Proponents and Opponents
- Ordinance

Proponents and Opponents

Proponents

David Zellmer
718 Redgate Avenue
Norfolk, VA 23507

Opponents

None

12/06/2013 tsv

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved: LMN

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

PH-7

AN ORDINANCE TO AMEND AND REORDAIN SECTIONS 12-3 AND 12-9 AND REPEAL SECTION 25-10.11 OF THE ZONING ORDINANCE OF THE CITY OF NORFOLK, 1992, IN ORDER TO LIMIT THE AVAILABILITY OF THE SPECIAL EXCEPTION PROCESS USED TO PERMIT THE SUBSTANTIAL RENOVATION OF A NONCONFORMING STRUCTURE OR THE RESUMPTION OF A NONCONFORMING USE BY ESTABLISHING ADDITIONAL ELIGIBILITY CRITERIA.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Section 12-3 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), entitled "Expansion of nonconforming structures," is hereby amended and reordained by retitling the section "Improvements to nonconforming structures" and making other changes so as to clarify eligibility criteria for the expansion, improvement or structural alteration of an nonconforming structure. The text shall read as forth in "Exhibit A," attached hereto.

Section 2:- That Section 12-9 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), entitled "Discontinuation of nonconforming uses," is hereby amended and reordained so as to establish additional eligibility criteria for the resumption of a nonconforming use that has been discontinued for a period of two years. The text shall read as forth in "Exhibit B," attached hereto.

Section 3:- That Section 25-10.11 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), entitled "Substantial renovation of a nonconforming structure or resumption of a nonconforming use," is hereby repealed because the applicable regulations governing the substantial renovation of a nonconforming structure and the resumption of a nonconforming use are incorporated, as modified, into sections 12-3 and 12-9, as set forth above.

Section 4:- That this ordinance shall be in effect from the

date of its adoption.

ATTACHMENTS:
Exhibit A (2 pages)
Exhibit B (2 pages)

Exhibit A

12-3 Improvements to nonconforming structures.

A nonconforming structure shall not be expanded, improved, or structurally altered except as may be permitted through one of the approvals or determinations set forth below.

(a) *General provision*. The work shall be permitted if all of the following criteria are met:

(1) No additional nonconformity shall be created, nor shall the severity or extent of any existing nonconforming condition be increased.

(2) The use of the property shall be permissible in the applicable district.

(3) The value of all expansions, improvements and enlargements made within the past twelve (12) months do not exceed fifty (50) percent of the value of the entire structure. For purposes of this section, "value of the entire structure" shall be determined

(i) For principal structures, by the structure's current assessed value, and

(ii) For accessory structures, by the structure's replacement cost.

(4) Expansions, improvements, or structural alterations of structures located in a historical and cultural conservation district shall comply with all applicable requirements of both this section and Chapter 9.

(b) *Historic properties and architecturally significant structures*. The work shall be permitted if a certificate of appropriateness authorizing such work has been granted in accordance with the procedure set forth in Chapter 9 and the structure has been designated in one of the following ways:

(1) Individually listed in the Virginia Landmarks Register;

(2) Individually listed in the U.S. Department of the Interior's National Register of Historic Places;

(3) Certified by the United States Department of the Interior as contributing to a historic district; or

(4) Designated as a Norfolk Historic Landmark in accordance with the process set forth in Chapter 9.

(c) *Multi-family dwellings*. The work shall be permitted if a special exception authorizing such work has been granted in accordance with the provisions of Chapter 25, provided that all of the following criteria are met:

(1) The existing use of the property is multiple-family residential with at least ten (10) dwelling units;

(2) The expansion, improvement, or alteration of the structure will result in a minimum reduction in density of not less than twenty-five (25) percent of the number of dwelling units which had existed previously;

(3) Off-street parking that meets the requirements set forth in Chapter 15 and which need not meet the requirements of any applicable overlay district is provided;

(4) That portion of any structure on the property, including parking, which may encroach into any required yard is not expanded or enlarged and no new encroachment into any required yard is created; and

(5) The application for the required special exception includes an analysis of any building that is part of the proposed project showing its existing condition (including but not limited to structural, electrical, mechanical, plumbing, and heating/ventilation systems) as well as proposed changes to be implemented as part of the project. The analysis shall be performed by a certified design professional, as defined under the current building code.

Exhibit B

12-9 Discontinuation of nonconforming uses.

(a) *General provision.* If a nonconforming use is discontinued for a period of two (2) years or if any building or structure involved in the nonconforming use is structurally altered, reconstructed, or moved, then the use shall not be resumed except as may be permitted in accordance with this section.

(1) *Historic or architecturally significant properties.* The nonconforming use may resume if all of the following criteria are met

(i) Either the use that is proposed to be resumed is the same use for which the building was originally designed or the most recent use has not been discontinued for longer than ten (10) years;

(ii) A special exception authorizing the resumption has been granted in accordance with the provisions of Chapter 25; and

(iii) The buildings or structures involved in the use have been designated in one of the following ways:

(A) Individually listed in the Virginia Landmarks Register;

(B) Individually listed in the U.S. Department of the Interior's National Register of Historic Places;

(C) Certified by the United States Department of the Interior as contributing to a historic district; or

(D) Designated as a Norfolk Historic Landmark in accordance with the process set forth in Chapter 9.

(2) *Multi-family dwellings.* The nonconforming use may resume if all of the following criteria are met:

(i) The property is currently developed by a building or buildings which were last used within the previous 10

years for multiple-family residences having at least ten (10) dwelling units;

(ii) The property is not located in any historic district regulated under Chapter 9;

(iii) As a result of either the expansion, improvement, or structural alteration of an existing building or the construction of a new building, the number of dwelling units available on the property is reduced by not less than twenty-five (25) percent of the number of dwelling units which had existed previously;

(iv) Off-street parking that meets the requirements set forth in Chapter 15 and which need not meet the requirements of any applicable overlay district is provided; and

(v) A special exception has been granted in accordance with the provisions of Chapter 25.

(b) *Compliance with other regulations required.* No resumption of use shall be recognized as effective for purposes of applying the permissions and limitations set forth in this section unless it is done in accordance with the requirements of section 19-1 of this ordinance and any and all permits or licenses issued by any local, state, or federal agency that may be required as a necessary prerequisite to commencing or continuing operation of the use have been properly obtained.