



Planning Commission Regular Meeting

Monday, December 22, 2025, 6:30 PM
106 Center Street

Members of the public may attend the Planning Commission meeting either in person or by joining via Zoom either online or by telephone at:

Join Zoom Meeting:

<https://us02web.zoom.us/j/89112301284?pwd=wCnWCKbUGVlotUNfZQfpII6rz4ROf5.1>

Meeting ID: 891 1230 1284

Passcode: 886643

One tap mobile

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Some items on this agenda are important enough to City Councilmembers that a quorum of the Council may be present to receive information leading to their future deliberations and eventual decision.

AGENDA

1. Call to Order
2. Roll Call
3. Minutes of the Preceding Meeting(s)
 - A. November 24, 2025 Planning Commission Meeting Minutes
4. Discussion Items
 - A. Nonconforming Uses - City Attorney Mary Tietjen and Josh Weir will attend to present and answer questions - attached
 - i. Excelsior Zoning Ordinance Language
 - ii. League of MN Cities Resources
 - B. Begin Work Plan for 2026
 - i. PUD Ordinance (Zoning, Chapter 65)
 - ii. Summary of variance decisions made
 - iii. Mass and scale review for projects proposed at Landmark Properties (Zoning, Chapter 42)
 - iv. Outdoor lighting
 - v. Standards for elevators in residential districts

5. Communications and Reports
 - A. Council Updates
 - B. Upcoming Items
6. Miscellaneous
7. Adjournment

**City of Excelsior
Hennepin County, Minnesota**

**Planning Commission Meeting
Minutes
November 24, 2025**

1. CALL TO ORDER

2. ROLL CALL

Commissioners Present: Day, Hansen, Johnson, Malsam, Muenzberg, Tyler

Commissioners Absent: Neale

Also Present: Acting City Attorney Josh Weir, Community Development Director Julia Mullin

3. MINUTES OF THE PRECEDING MEETING(S)

(a) Planning Commission Meeting, November 10, 2025

Malsam moved to approve the minutes. Tyler seconded. Approved 6-0.

4. DISCUSSION ITEMS

(a) 174 West Lake Street – Residential Review Permit and Variance Applications (PC No. 2025-09) – continued from 11/10/2025 Planning Commission meeting

Chair Muenzberg continued the public hearing. No one from the public spoke. Day moved to recommend approval of the variance application with conditions in the staff report. Malsam seconded. Approved 6-0. Chair Muenzberg requested staff include a summary of the discussion about nonconforming structures in the staff report to the City Council.

(b) 221 Bell Street – Residential Review Permit and Variance Applications (PC No. 2025-11)

Chair Muenzberg opened the public hearing. Dave Schulz, owner of 221 Bell Street described reason for variance request. Jay Pfeffer, contractor, clarified project. Anne Vogel, 200 Bell Street. Catherine Mageterri, 209 Bell Street, expressed concerns about the removal of trees that has already occurred, and is concerned remaining trees on parcel and on her adjacent parcel will be harmed. Malsam moved to approve the residential review permit application with conditions in staff report and the condition that the driveway be no wider than the garage doors and that it be tapered at the curb to reduce the overall size of the driveway. Johnson seconded. Approved 5-1. Tyler voted no. Malsam moved to continue variance application to the December 22nd Planning Commission meeting. The Commission wants more information about the existing nonconforming side yard setback and whether a variance is required for the proposed project. Hansen seconded. Approved 6-0.

(c) Amend Zoning Ordinance, Chapter 50 regarding financial institutions in the General Commercial zoning district.

Chair Muenzberg opened the public hearing. No one from the public spoke. Correction made to Ordinance – only remove “(2)” from the table and not the “P”. Day moved to recommend approval of Ordinance 689 with the correction. Johnson seconded. Approved 6-0.

(d) Amend Zoning Ordinance, Chapter 41 regarding residential review permits and landmark properties. *Chair Muenzberg opened the public hearing. No one from the public spoke. The Planning Commission began discussion of the proposed ordinance amendment and the topic of how to best consider mass and scale when renovations are proposed at Landmark properties.*

(e) Resolution 2025-06 Approving Residential Review Permit for 163 Second Street. *Malsam moved to approve Resolution 2025-06. Johnson seconded. Approved 5-0. (Day recused himself.)*

5. COMMUNICATIONS AND REPORTS
Staff provided updates.

6. MISCELLANEOUS

7. ADJOURNMENT
Malsam moved to adjourn the meeting. Day seconded. Approved 6-0. Meeting adjourned at 9:30 pm.

Respectfully submitted,

Julia Mullin
Community Development Director

2025 Planning Commission Attendance – Page 1

Meeting	Jan 27	Feb 24	Mar 24	Apr 28	Apr 30	May 13	May 20	June 4	Jun 23	Jul 7
	Canceled			Canceled	Special Mtg	Special Mtg	Canceled	Special Mtg		Special Mtg
Day	X	P	P	X	A	P	X	P	P	P
Hansen	X	X	P	X	A	A	X	P	P	P
Johnson	X	P	P	X	P	P	X	P	P	P
Malsam	X	X	P	X	P	P	X	P	P	P
Muenzberg	X	A	P	X	P	P	X	P	P	P
Neale	X	P	P	X	P	A	X	P	P	P
Tyler	X	P	P	X	P	P	X	P	P	P

2025 PC ATTENDANCE CONTINUED – Page 2

Meeting	Jul 14	Jul 28	Aug 25	Sep 22	Oct 27	Nov 10	Nov 24	Dec 22
	Special Mtg			Cancelled	Rescheduled to Nov. 10			
Day	P	P	P	X	X	P	P	
Hansen	A	P	A	X	X	P	P	
Johnson	P	P	P	X	X	A	P	
Malsam	P	P	A	X	X	P	P	
Muenzberg	P	P	P	X	X	P	P	
Neale	P	P	P	X	X	A	A	
Tyler	P	A	A	X	X	P	P	

P – Present

A – Absent but gave prior notice

U – Absent without notice

SM – Special Meeting

X – Not applicable (cancelled meeting or not on PC)

ARTICLE 15. NONCONFORMING, USES, STRUCTURES, LOTS AND SIGNS¹

Sec. 15-1. Purpose.

It is the purpose of this article to provide for the regulation of nonconforming uses, structures, lots and signs, and to specify those requirements, circumstances, and conditions under which nonconforming uses, structures, lots and signs will be operated and maintained. This Appendix E establishes separate zoning districts, each of which is an appropriate area for the location of uses which are permitted in that zoning district. It is necessary and consistent with the establishment of these zoning districts that nonconforming, structures, uses and signs not be permitted to continue without restriction. Furthermore, it is the intent of this article that all nonconformities uses shall be eventually brought into conformity.

(Ord. No. 554, § 1, 1-17-2017)

Sec. 15-2. General provisions.

- (a) *Continuation.* A nonconforming lot, use or structure may be continued if it was legally established in compliance with all applicable regulations in effect at the time it was established.
- (b) *Legally established defined.* To be considered legally established, a legal nonconforming lot, use or structure shall have been physically constructed or in existence, not merely contemplated, at the time the ordinance rendering it nonconforming was adopted. Conditional use permits, variances, building permits, or other permits not exercised within the required time do not establish the right to legal nonconformity unless the lot, use or structure was under construction (with a valid building permit) at the time of adoption of the ordinance rendering it nonforming.
- (c) *Burden of proof.* Any person asserting a right to a nonconforming use or structure has the burden of proof to demonstrate that the nonconformity was legally established.
- (d) *Subdivision.* Parcels of land or portions thereof shall not be subdivided if such action results in buildings and/or uses becoming nonconforming.
- (e) *Shoreland areas.* All legal nonconforming uses, structures, and lots within designated shoreland areas, shall be governed by applicable Minnesota State statutes.

(Ord. No. 554, § 1, 1-17-2017)

Sec. 15-3. Nonconforming uses of building or land.

- (a) *Extension.* A non-conforming use of a building may be extended throughout said building provided no structural alterations are made therein except as required by other codes or ordinances.

¹Ord. No. 554, § 1, adopted Jan. 17, 2017, repealed former Art. 15, §§ 15-1—15-5, in its entirety and enacted new provisions as herein set out. Former Art. 15 pertained to similar subject matter and derived from Ord. No. 381, 9-7-2004; Ord. No. 403, 10-2-2016; Ord. No. 491, § 1, 10-1-2012.

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- (b) *Relocation.* A non-conforming use shall not be moved to any other part of the parcel of land upon which the same was conducted at the time of passage the ordinance rendering it nonconforming.
 - (c) *Abandonment.* A non-conforming use of building or parcel of land which has been discontinued for a period of one year shall not be re-established and any future use shall be in conformity with the regulations of this appendix.
 - (d) *Change.* A non-conforming use of a building or parcel of land may be changed to a similar non-conforming use.

When any non-conforming use of a building or parcel of land has been changed to a conforming use, it shall not, thereafter, be changed to a non-conforming use.

(Ord. No. 554, § 1, 1-17-2017)

Sec. 15-4. Nonconforming structures.

- (a) *Expansions.* No nonconforming structure may be expanded, enlarged, or extended in a manner that increases an existing nonconformity.

(Ord. No. 619, § 4, 12-21-2020)

- (b) *Restoration.* In the event of damage or destruction of a nonconforming structure by fire or other peril to the extent of greater than 50 percent of its market value, the damaged or destroyed nonconforming structure shall not be restored unless a building permit is applied for within 180 days of when the property is damaged or destroyed.
- (c) *Moving.* A nonconforming structure that is moved to a new location shall conform to all standards that apply in its new location.
- (d) *Maintenance.* Normal maintenance of a non-conforming building or structure shall be permitted, including necessary nonstructural repairs and incidental alterations.

(Ord. No. 554, § 1, 1-17-2017)

Sec. 15-5. Nonconforming lots.

- (a) *Development permitted.* In any district in which single family dwellings are permitted, a single family dwelling and customary accessory buildings may be erected on any single lot of record that does not comply with current applicable lot area or lot width regulations.
- (b) *Conformance with standards* Development on legal nonconforming lots shall comply with all setback, building coverage, parking, and other standards of the applicable zoning district.
- (c) *Common ownership limitation.* Where two or more adjacent lots of record are under common ownership as of the effective date of the ordinance from which this article derives, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purpose of this article, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this appendix, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this appendix.

(Ord. No. 554, § 1, 1-17-2017)

Sec. 15-6. Nonconforming signs.

Any sign that existed lawfully on the effective date of the sign regulations of this article that remains or becomes nonconforming by reason of adoption of these sign regulations or because of subsequent amendments to these sign regulations are considered nonconforming signs and their continuance is allowed in accordance with the following regulations:

- (a) Ordinary repairs and maintenance, including the removing and replacing of the outer panels is permitted, provided that the panels are replaced with identical panels and that no structural alterations or other work that extends the normal life of the nonconforming sign is permitted.
- (b) Single panels on nonconforming multi-panel signs for multi-tenant buildings may be changed to reflect tenant changes.
- (c) Besides (a) and (b) of this section, nonconforming signs may not be changed unless they are brought into conforming with the sign ordinance.
- (d) No repair or alteration that increases the size of the nonconforming sign is permitted.
- (e) No nonconforming sign may be moved in whole or in part to any other location on the same or any other premises unless every portion of such sign is made to conform to all of the regulations of these sign regulations.
- (f) If a nonconforming sign is abandoned or the described business discontinued for a continuous period of 30 days or more, it must be discontinued and any subsequent sign must conform to all of the sign regulations of this article.

(Ord. No. 554, § 1, 1-17-2017)

Land Use Nonconformities (League of MN Cities)

<https://www.lmc.org/resources/land-use-nonconformities/>

Published: May 21, 2021

This content conveys general information. Do not use it as a substitute for legal advice. Any attorney general opinions cited are available from the League's Research staff.

Nonconformities

Nonconformities are any land uses, structures, or lots that do not comply with the city's current zoning ordinance.

Legal nonconformities

Legal nonconformities are those that were legal when the zoning ordinance or amendment was adopted. That is, they complied with then-existing ordinance and law. Legal nonconformities generally have a statutory right to continue. They are also often called grandfather rights.

Illegal nonconformities

Illegal nonconformities are those that were not permitted when established. Illegal nonconformities do not have the rights associated with legal nonconformities. They may exist because a prior zoning ordinance was not enforced as written. A city's failure to enforce a prior zoning ordinance does not give a landowner the legal right to continue an illegal nonconformity. Before assuming a particular nonconformity is entitled to the statutory right to continue, cities should consider whether the nonconformity ever complied with existing ordinance or law.

Floodplain nonconformities

Legal nonconformities in floodplain areas have more limited rights. Cities may regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain community eligibility for the National Flood Insurance Program (NFIP) ([Minn. Stat. § 462.357 subd. 1e\(c\)](#)).

[Learn about the National Flood Insurance Program from the Minnesota Department of Natural Resources website](#)

Statutory rights of legal nonconformities

Minnesota law says any legal nonconformity has a right to continue ([Minn. Stat. § 462.357, subd. 1e](#)). It may be continued through repair, replacement, restoration, maintenance, or improvement. These rights were limited to repair and maintenance until 2004 when the Legislature added replacement, restoration, and improvement but not expansion. Cities may choose to allow expansion in certain circumstances by ordinance.

Who benefits from nonconforming rights

The rights of legal nonconformities attach to and benefit the land. They are not limited to a particular landowner. If the benefited property is sold, the new owner will have continuance rights.

Loss of nonconforming rights

The right to continue a legal nonconformity can be lost if the use is discontinued or destroyed.

Discontinuance

State law makes an exception to continuance rights when a nonconforming use is discontinued for more than one year ([Minn. Stat. § 462.357 subd. 1e\(a\)\(1\)](#)).

Destruction

State law has another exception to continuance rights when a nonconforming structure is destroyed by more than 50% of its assessed market value, and no building permit is applied for within 180 days ([Minn. Stat. § 462.357 subd. 1e\(a\)\(2\)](#)). This exception is known as the 50% rule and used to have greater impact before the 2004 Legislature provided that applying for a building permit within 180 days of destruction defeats the exception.

Phasing out

Historically, the theory behind legal nonconformities was that property would eventually comply with the zoning ordinance. The statutory right to continue was more limited, and cities could phase out nonconformities over time through a process called amortization.

Current law prohibits amortization, except for adult uses ([Minn. Stat. § 462.357 subd. 1c](#)).

City role in administering nonconformities

The rights of legal nonconformities to continue does not depend on local ordinance, and so a city often has little role administering nonconformities. Landowners may assert their continuance rights in response to city enforcement of a zoning ordinance. The burden is on the landowner to establish that their property qualifies for nonconforming rights.

Zoning ordinances

Some cities choose to address nonconformities in their zoning ordinance by:

- Codifying the statutory rights, or
- Setting up systems to register legal nonconformities.

If a zoning ordinance covers nonconformities, cities should carefully review its provisions and make sure they are consistent with the current state statute.

Expansion of nonconforming uses

State law says the right of legal nonconformities to continue does not include expansion. Because the law does not define expansion, some cities define expansion in the city zoning ordinance. The definition could refer to:

- Any physical expansion of the nonconformity, or
- Intensifying the use.

Cities can allow expansion of nonconformities. State statute specifically says: “A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety.” Some cities have long had ordinance provisions allowing the expansion of nonconformities in certain limited circumstances.

Compliance with other city ordinances

While legal nonconformities have a right to continue without complying with the current zoning ordinance, they must still comply with all other city ordinances, such as a nuisance or licensing ordinance ([Minn. Stat. § 462.357 subd. 1d](#)).