

## **STAFF REPORT**

**Case Number:** 19-ZA-04

**Request:** Discussion and direction regarding draft amendments to the nonconforming provisions of the Comprehensive Zoning Ordinance.

**Applicant:** City of Farmers Branch

**Planning & Zoning Commission Meeting:** August 5, 2019

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### **Background:**

A review of the nonconforming provisions of the Comprehensive Zoning Ordinance (CZO) is a FY2018-19 strategic initiative, consistent with the Planning Department's work program and City Council's critical business outcomes. Given the new vision established in the East Side Plan and the upcoming IH-35E visioning study, it is appropriate to review the nonconforming provisions within the CZO to ensure that the provisions are supportive of redevelopment that occurs within these aforementioned areas, as well as the City as a whole.

On May 6, 2019, staff received initial direction on the nonconforming provisions from the Planning and Zoning Commission. At that time the Commission concurred with recommendations presented by staff. The draft amendments being presented today are in line with the Commission's direction.

Currently, staff is seeking comments on the draft provisions from the Commission. If the Commission concurs with the direction of the draft, staff will prepare an amendment to be considered by the Commission with a public hearing and receive a formal recommendation for City Council action.

### **Current Provision:**

The current provisions allow nonconformities to continue and expand operations with limited instances in which to require nonconforming properties to be brought into conformance. Nonconforming properties are also afforded the opportunity to convert from an existing nonconforming use to a lesser nonconforming use that is otherwise not allowed under current zoning and requires a subjective determination by staff. Additionally, while current provisions are specific to uses and structures, there are no provisions to address other site elements that may be nonconforming with current requirements, particularly those properties located within a form based zoning code. Therefore, amendments to the provisions within the CZO have been drafted with the goal of limiting the growth of nonconformities on a given lot or tract of land, limiting conversion from one nonconforming use to another, bring other aspects of nonconforming properties into compliance, and establishing clear interpretation of the requirements.

## **Draft Zoning Amendments:**

The draft nonconforming provisions outlined below are a result of staff analysis of the existing nonconforming provisions in the CZO, a review of nonconforming provisions from other municipalities, and direction provided by the Planning and Zoning Commission on May 6, 2019.

Staff has been cognizant of the need to find a balanced approach between encouraging the discontinuance of uses, structures, and site elements that are not in conformance with current provisions and long range planning policies, while also taking into consideration the investment that landowners and tenants have made in Farmers Branch.

The amendments to the current provisions can be divided into seven main focus areas, and are summarized below:

- layout of proposed amendment;
- introduction to nonconforming standards;
- expansion of a use or structure;
- change of use;
- abandonment;
- site elements; and
- nonconformity resulting from acquisition of property by governmental entity.

### *Layout of Proposed Amendment*

The layout of the draft provisions has been updated to improve ease of use and interpretation. The provisions have been defined and separated into the three main categories of nonconformities, nonconforming uses; nonconforming structures; and nonconforming site elements. The revised layout allows the reader to find information with increased ease and may improve implementation by clearly delineating types of nonconformities.

### *Introduction to Nonconforming Standards*

The draft nonconforming provisions begin with an introduction that clearly lays out the intent of the section and provides context for the provisions that follow.

The intent of the nonconforming provisions is to declare that nonconformities present on a property are incompatible with the use and development regulations established by the zoning district and CZO. The purpose of this Section is to establish a process whereby nonconformities may eventually be discontinued, and the structures, uses, and site elements thereof be required to conform to the regulations.

### *Expansion of a Use or Structure or Site Element*

The current nonconforming provisions of the CZO allow a nonconforming use to expand beyond its current lot or tract. Allowing expansion of a nonconforming use can have detrimental effects on surrounding developments that are in conformance with the regulations, delay the community vision, and encourage the nonconforming use to continue in its current location.

Although the draft amendments prohibit the expansion of nonconforming uses, it proposed to allow the nonconforming use to maintain its current form. In addition, the draft provision allows the expansion of a nonconforming structure when the expansion is consistent with applicable ordinances, and the expansion of nonconforming site elements when such expansion brings site element closer to compliance with the established development standards.

By reducing (in the case of nonconforming structures, or site elements), or eliminating (in the case of nonconforming uses) expansion of nonconformities will ensure that future development/redevelopment is closer to compliance with current CZO provisions.

### Change of Use

This area of focus impacts only nonconforming uses. The current provision allows a nonconforming use to change to a conforming use, or to another nonconforming use that is less intensive in nature. Once a nonconforming use changes to a conforming use it is not permitted to change back to a nonconforming use.

The draft provisions will allow a nonconforming use to change to a conforming use, removing the ability for a nonconforming use to change to a lesser nonconforming use. This reduces the opportunity for nonconforming uses to continue, creates equity among all properties within the district, and established clear application.

### Abandonment

The current provisions require that a nonconforming use be discontinued for a period of six months to be considered abandoned. Once six months has elapsed the right to the nonconforming use is considered to be ceased. The draft amendments aim to provide clarity and definition around what constitutes abandonment of a nonconforming use, criteria to make this determination are, but are not limited to:

- i. The property or building that was used for the nonconforming use becoming vacant and remains unoccupied or out of use for a period of 180 consecutive days; or
- ii. the equipment or furnishings particular to the nonconforming use have been removed from the property and have not been replaced within a period of 180 consecutive days after their removal; or
- iii. water and/or electrical service to the building in which the non-conforming use was conducted has been disconnected for a period of 180 consecutive days; or
- iv. the intention of the owner to permanently discontinue the use is apparent based on facts known or made known to the City Manager or designee.

Increased definition around what constitutes abandonment will provide ease of implementation, and will decrease the opportunity for litigation if a determination of abandonment is contested.

### Site Elements

Nonconforming site elements include, but are not limited to, landscaping, parking and site lighting (but exclude signs as they are covered by Section 62-29 of the Code of Ordinances). Nonconforming site elements are a void in the current CZO provisions, addressing them provides increased clarity on how to administer them when they occur.

The draft provisions allow for expansion or alteration of a nonconforming site elements when it reduce the level of nonconformity and brings the site element closer to conformance. In addition, the repair and maintenance of a nonconforming site element is permitted to prevent it from becoming unsightly or hazardous. If a site element is demolished it can only be reconstructed in accordance with the current development regulations.

### Nonconformity Resulting from Acquisition of Property by Governmental Entity:

The current nonconforming provisions are silent with regard to nonconformities due to acquisition of property by a governmental entity. The addition of this section will benefit properties that have been or may be effected by the acquisition of property by governmental acquisitions, such as the right-of-way acquisition that will occur for the upcoming IH-35E widening.

The draft provisions allow a nonconforming structure or site element to be deemed lawful when made noncompliant as a result of property acquisition by a government entity. The goal of this provision is to acknowledge that the nonconformity is due to government action and not by the actions of the property owner. Under the draft provisions any new building construction or site improvements on the lot shall be required to comply with all zoning and development standards.

### **Staff Recommendation:**

Staff recommends the Planning and Zoning Commission provide direction regarding the draft amendments to the nonconforming regulations of the CZO.

### **Attachments:**

1. Existing nonconforming section (6.6) of the Farmers Branch CZO
2. Draft nonconforming provisions
3. Staff Presentation