

Nonconformities

August 5, 2019

Overview

- Background
- Draft provisions
 - Focus Areas - major areas of change
- Outcomes
- Direction
- Discussion

Background

- Review of these provisions was identified as 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, staff believes it is appropriate to review the nonconforming provisions because:
 - existing nonconforming uses are allowed to expand;
 - the Comprehensive Zoning Ordinance (CZO) is silent with respect to other site improvements (i.e. site elements); and
 - allows conversion of properties from a nonconforming use to a lesser nonconforming use.

Background Cont.....

- In conducting a review and analysis of the existing nonconforming provisions a number of gaps were identified:
 - Nonconforming site elements
 - Nonconformity resulting from acquisition of property by governmental entity
- On May 6 2019, the Commission concurred with recommendations from staff regarding amendments to the nonconforming provisions.
- Draft nonconforming provisions 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 Commission.

Background Cont.....

- To find a balanced approach between encouraging the discontinuance of uses and structures that are not in conformance with current regulations and long range planning policies, while also understanding the investment that landowners and tenants have made in Farmers Branch
- Draft nonconforming provisions being presented today are consistent with direction from the Commission.
- Staff is seeking feedback on the draft amendments.
- 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.

Draft Provisions

Focus Areas:

- Seven major areas of change in the draft provisions:
 - layout of the provisions;
 - 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

- Layout has been revised to improve clarity
- Major types of nonconformities are addressed separately to improve clarity and interpretation:
 - nonconforming uses;
 - nonconforming structures; and
 - nonconforming site elements.
- Each nonconformity has a similar set of sub-sections (depending on applicability):
 - Change in the nonconformity
 - Expansion
 - Maintenance and repair
 - Damage or destruction
 - Abandonment

Layout Cont....

- Address additional matters for consideration:
 - Nonconformity resulting from acquisition of property by governmental entity
 - Intentional destruction of nonconformity
 - Certain residential dwellings

Introduction

- Clearly lays out the intent of the nonconforming provisions.
- Defines how/when a nonconformity comes into being.
- Defines nonconforming use, nonconforming structure and nonconforming site elements separately.
- ❖ Nonconforming Signs are not considered a nonconforming site element as they are covered under the Code of Ordinances.

Expansion

Nonconforming Use

- Shall not exceed or expand beyond the area of the property on which such use was occurring on the date the use of the property became a nonconforming use.

Nonconforming Structure

- A nonconforming structure in which only permitted uses are operated may be expanded if the expansion otherwise complies with the terms of CZO.
- A nonconforming structure, which is nonconforming as to required setback only may be expanded subject to a set of criteria.

Nonconforming Site Element

- A nonconforming site element shall not be expanded, except where it will reduce or eliminate the nonconformity of the site element.

Change of Use

- Any nonconforming use may be changed to a use permitted by right within the zoning district where the property on which such nonconforming use is occurring is located.
- Once a nonconforming use changes to a use permitted by right, the property shall no longer be used for the prior nonconforming use.
- The use of property for a nonconforming use may not be changed to another nonconforming use.

Abandonment

- When a nonconforming use of property ceases or is discontinued for a period of 180 days, all rights to continue the nonconforming use on such property shall cease.
- The City Manager or designee will determine that a use has been discontinued based on one or more of the following findings:
 - The property or building that was used for the nonconforming use becomes vacant for a period of 180 consecutive days; or
 - the equipment or furnishings particular to the nonconforming use have been removed from the property for 180-days; or
 - water and/or electrical service to the building has been disconnected for a period of 180 consecutive days; or
 - the intention of the owner to permanently discontinue the use is apparent.

Site Elements

- Covers the following areas:
 - Expansion (covered earlier)
 - Maintenance and Repair
 - Allows for repair and upkeep of nonconforming site elements
 - Modifications may be made as long as they reduce or eliminated the nonconformity
 - The nonconforming site element shall be demolished if it has been allowed to deteriorated in excess of 50% of the replacement value.
 - Damage or Destruction
 - If damage is less than 50% of the cost to replace the nonconforming site element it may be reconstructed.
 - If damage is more than 50% of replacement value it can not be replaced except in compliance with all regulations.

Nonconformity Resulting from Acquisition of Property by Governmental Entity

- Existing structures deemed a lawful structure (in regards to the noncompliance that results directly from the acquisition of right of way).
- Any new building construction and/or site improvements on the lot shall comply with all zoning standards applicable to the property. Building setbacks of any expansion or new construction shall be measured relative to the new property lines after the conveyance to the governmental entity.

Outcomes

- Tightening regulation on nonconforming uses, structures, and site elements will limit the growth of nonconformities on a given lot or tract of land. The goal over time is for all properties to be in conformance with all provisions.
- Landowners/tenants with nonconforming uses/structures/site element may feel they are being “pushed out” or that their business is not valued in Farmers Branch. However, by providing better defined nonconforming provisions, it is to their benefit so that they know:
 - what the performance expectations are;
 - that the implementation of provisions is (ideally) less subjective; and
 - that the city is committed to successful implementation of its long range planning policies and goals.

Direction

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Discussion