



INFORMATION MEMORANDUM

TO: Mayor and City Council

FROM: Charles S. Cox
City Manager

DATE: September 17, 2019

SUBJECT: Conduct a public hearing and consider adopting Ordinance No. 3598 amending the Comprehensive Zoning Ordinance including amending: Article 6. Administration as it relates to nonconforming regulations for uses, structures and other property improvements, and jurisdiction of the Board of Adjustment; and take appropriate action.

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.

The proposed amendments are to Article 6. Administration as it relates to nonconforming regulations for uses, structures and other property improvements (Article 6.6), and jurisdiction of the Board of Adjustment (Article 6.1.D.1). The amendments have the aim of tightening regulation of nonconforming uses and property improvements to encourage development in conformance with current zoning regulations and to address matters not currently covered under the current nonconforming provisions such as site elements and property impacts due to property acquisition by a governmental entity.

Existing Zoning/Zoning History:

The 1969 version of the CZO established nonconforming regulations. Over time few changes have been made to the provisions. In 1999, a provision was added to provide an exclusionary clause related to parking requirements of single family or two family dwellings built prior to 1999. The

2017 amendments to the CZO consolidated nonconforming uses and structures with other administrative provisions under Article 6. Administration of the CZO, and updated the language and organization of the article.

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.

Adjacent Zoning Districts and Land Uses:

This zoning amendment will apply to any lands that are governed by the CZO. In addition, any Planned Development Districts (PD) that refer to Article 6 of the CZO, or if the PDs are silent to nonconforming regulations, will be subject to these provisions in the CZO. Where Planned Development Districts contain their own nonconforming provisions (e.g. PD-70) the proposed provisions would not apply.

Proposed Zoning Amendments:

The proposed 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, and August 5, 2019.

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, bringing other aspects of nonconforming properties into compliance, and establishing clear interpretation of the requirements.

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 listed and 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.

One additional amendment is proposed in relation to Article 6.1.D.1 of the CZO. Staff is proposing to remove this provision as the proposed amendments to the Article 6.6 (Nonconformities) render this provision redundant.

Layout of Proposed Amendment

The layout of the proposed 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 aims to improve implementation by clearly delineating types of nonconformities.

Introduction to Nonconforming Standards

The proposed 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 implementation of the community's desired long-range vision, and encourage the nonconforming use to continue in its current location.

Although the proposed amendments prohibit the expansion of nonconforming uses, it allows the nonconforming use to maintain its current form. In addition, the proposed provisions allow 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 the 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, this will ensure that future development/redevelopment is closer to compliance with current CZO provisions.

Change of Use

The current provisions allow 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 proposed 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 establishes 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 have ceased. The proposed 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 which are addressed by Section 62-29 of the Code of Ordinances). Nonconforming site elements are a void in the current CZO provisions; therefore, addressing the site elements provides increased clarity on how to regulate these improvements.

The proposed provisions allow for expansion or alteration of nonconforming site elements when it reduces 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 properties impacted by the IH-635 widening or the right-of-way acquisition that will occur for the upcoming IH-35E widening.

The proposed 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 proposed provisions any new building construction or site improvements on the lot shall be required to comply with all zoning and development standards.

Comprehensive Plan Recommendation:

The implementation of the East Side Plan and the upcoming IH-35 Corridor Vision Study will be enhanced by a strong set of nonconforming provisions. The revised provisions will help to encourage the redevelopment of nonconforming properties and will prevent the expansion of potential offsite impacts of nonconformities.

The East Side Plan sets out a series of goals and policies; the proposed nonconforming provisions will help to meet Goal 3 and polices 3a) and 3c) of the East Side Plan. The subject goal and policies read as follows:

***Goal 3:** To establish a visually appealing, functional, and compatible district for people-oriented spaces and synergistic development.*

a) Policy: Ensure new development or redevelopment is compatible with surrounding existing uses and form.

ii) Action: Create and adopt revised zoning regulations to encourage complementary uses in East Side subareas that provide the desired synergistic land use mix in each subarea.

c) Policy: Encourage the transition of buildings and properties to uses and designs that complement the East Side Vision.

Public Response:

The required public hearing notice was published in the Dallas Morning News on August 30, 2019. No zoning notification signs nor mailed notices are required for amendments to the CZO. Staff has received no correspondence related to this CZO amendment request.

Recommendation:

On August 26, 2019, the Planning and Zoning Commission considered this request and unanimously recommended approval of the Zoning request as presented in Ordinance No. 3598.

Possible Council Action:

1. Motion to adopt Ordinance No. 3598.
2. Motion to adopt Ordinance No. 3598 with the following modifications ...
3. Motion to deny Ordinance No. 3598.
4. Motion to continue discussion at the next meeting.

Applicable Zoning and Development Case History:

Date Approved	Case Number	Description
08/26/2019	19-ZA-04	The Planning and Zoning Commission considered this request and unanimously recommended approval of the Zoning request.
08/05/2019	19-ZA-04	Staff presented draft amendments to the Planning and Zoning Commission for comment and direction. The Commission concurred with the proposed amendments and supported moving forward with initiating the public hearing process.
05/06/2019	19-ZA-04	Staff received initial direction from the Planning and Zoning Commission related to issues associated with the current nonconforming provisions of the CZO.
04/16/2019	N/A	Staff made a general presentation to City Council related to current nonconforming provisions within the CZO.
01/28/2019	N/A	Staff made a general presentation to the Planning and Zoning Commission related to current nonconforming provisions within the CZO.