



Non-conforming Uses & Structures

City Council Meeting

April 16, 2019

What do we mean by “non-conforming”?

- Any use or structure which fails to comply with the regulations of the zoning district in which the use or structure is located
- Use or structure was in existence and lawfully operating, and has been continuously operating (in the case of use) or in existence (in the case of structure)
- “Grandfathered”
 - *Allows certain protections from enforcement*
 - *Early framers of zoning law did this to take the “sting” out of new regulation*
 - *May come with limitations*
- Illegal uses/structures are not the same as non-conforming uses/structures
 - *Use or structure was not originally compliant to begin with*
 - *Does not benefit from the same protections as non-conforming uses/structures*

How does a use or structure become non-conforming?

- City adopted a regulation that made the use or structure no longer compliant with the newly adopted regulation
 - *If a use was originally a conforming use and allowed by right, and the City later changes the zoning to prohibit the use (or require an SUP) – the use becomes a non-conforming use*
 - *If a structure was originally a conforming structure (complied with all development standards), and the City later changes a development standard – the structure becomes a non-conforming structure*

Non-conforming Uses

- May be continued for definite periods subject to regulations the Board of Adjustment (BOA) may adopt for immediate preservation of the adjoining property prior to the ultimate removal of the non-conforming use
- Can grant change of occupancy from one non-conforming use to another non-conforming use, provided the use is within the same, or higher or more restricted classification as the original non-conforming use
 - *If changed to a more restrictive non-conforming use – cannot go back to the less restrictive classification*
 - *Prior less restrictive classification considered abandoned*
- Can change from a non-conforming use to conforming use
 - *Prior non-conforming use considered abandoned*

Non-conforming Uses

- Cannot be expanded or increased beyond the lot or tract upon which such non-conforming use was located as of the date such use became non-conforming
 - *In other words – the use can be expanded provided it stays on the lot or tract in which it is located*
 - *Exception (CZO): can expand beyond the lot or tract in order to provide off-street parking or off-street loading space upon approval by the BOA (CZO)*
 - *Planned Development (PD) districts could have other provisions that restrict non-conforming uses*

Non-conforming Uses

- When a non-conforming use is abandoned or discontinued:
 - *All rights to continue the non-conforming use shall cease*
 - *Abandonment involves intent of user/owner to discontinue a non-conforming operation and the actual act of discontinuance*
 - *If use is discontinued for 6 months – shall be deemed to have been abandoned*
 - *Use of property shall conform to the current zoning regulations*

Non-conforming Structures

- If damaged or destroyed by fire, the elements or other cause such that the cost of reconstruction of the structure to substantially its condition prior the event causing the damage or destruction:
 - *Exceeds 50% of the appraised value of the non-conforming structure (prior to the event resulting in such damage or destruction) – the structure may not be rebuilt except in compliance with the current zoning.*
 - *Does not exceed 50% of the appraised value of the non-conforming structure (prior to the event resulting in such damage or destruction) – the structure may be reconstructed:*
 - With respect to setbacks: if structure can be built to comply with building setbacks and maintains the floor area prior to the damage so as to reduce the non-conforming setbacks as much as reasonably possible; and
 - Shall not increase the prior non-conformity or create new basis for the structure being non-conforming

Board of Adjustment (BOA) and Non-conformities

- May allow for a non-conforming use to be continued for definite periods subject to regulations the Board of Adjustment (BOA) may adopt for immediate preservation of the adjoining property prior to the ultimate removal of the non-conforming use
- Allow for the reconstruction, extension or enlargement of a building occupied by a non-conforming use provided the reconstruction does not prevent the return of the property to a conforming use and permit the expansion of off-street parking/ loading for a non-conforming use
 - *Appropriate use of neighboring property not be substantially or permanently injured*
 - *Public convenience and welfare will be substantially served*
- Can require the discontinuance of a non-conforming use where the full value of the structure and facilities can be amortized within a definite period of time
 - *Actions to discontinue the use shall be taken with regard to the property rights of the persons affected when considered in the light of public welfare and character of the surrounding area, and conservation and preservation of property*

IH-35 Corridor – Post Zoning Amendments

- Non-desirable uses that have been prohibited will be allowed to continue operating as non-conforming uses
 - *West side of corridor (approved March 2019):*
 - *Three businesses identified in PD-25*
 - *Continue to be subject to the City's current non-conforming uses regulations (CZO and/or PD provisions)*
 - *East side of corridor (pending zoning action):*
 - *Eleven business identified in PD-70*
 - *Continue to be subject to PD-70 non-conforming use regulations (does not allow expansion)*
- Non-desirable uses that were originally allowed with a Specific Use Permit (SUP) are continued to be allowed due to approved SUP
 - *Operate in accordance with restrictions provided for in SUP including approved detailed site plan*
 - *Proposing to not rescind the existing SUPs at this time*

Things to consider longer term...

- Do we want to continue to accommodate expansion of non-conforming uses on the same lot or tract in which it is still located?
 - *Goal is for non-conforming uses to go away*
 - *Do we want to allow some non-conformities to exist that have less of an impact on adjacent properties?*
- Provisions will need to be considered regarding how do we bring structures and other physical site improvements into compliance
 - *Can impact adaptive reuse of structures and properties*
 - *Form based codes – build to zones and minimum building height requirements*
 - *Is property maintenance impacted by regulations that restrict non-conforming properties?*
 - *Should there be regulations that address physical site improvements (other than structures)?*
 - *Full compliance vs. closer to compliance*

Things to consider longer term...

- Owners may be reluctant to make costly conforming improvements, and banks may be hesitant to make loans on non-conforming properties
- Can the 6-month provision be shortened?
 - *Need to consider “reasonable” time frame*
- Implementation of community’s vision for an area
 - *How do non-conformities impact the long-term implementation?*
 - *Have surrounding conditions changed such that the non-conforming use or structure is no longer appropriate?*



DISCUSSION