

Nonconforming Uses, Structures and Site Elements

Nonconforming Uses, Structures and Site Elements:

- *Nonconforming*: Any use, structure or site element which does not conform with the regulations of the zoning district in which it is located shall be deemed nonconforming.
- 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 IH35 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.

Overview:

Goal

- To obtain feedback and direction from the Commission regarding proposed changes to the nonconforming provisions in the CZO.
- 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.

Objective

- Discuss issues and recommended amendments to the existing provisions
- Identify additional modifications to the existing provisions
- Identify additional potential outcomes

Issues and Recommendations

Expansion of Use or Structure

Issue:

- CZO allows expansion of a nonconforming use or structure on it's current lot.
- Permits the expansion of off-street parking and off-street loading for a nonconforming use subject to BoA approval.

Recommendation:

- No increase in the floor area or land devoted to a nonconforming use.
- Prohibit the expansion of a nonconforming structure except where to comply with current build-to requirements.

Change of Use

Issue:

- The director may grant a change of occupancy from one nonconforming use to another nonconforming use provided the use is within the same or higher or more restricted classification as the original nonconforming use. It may not change back to the less restricted nonconforming use.
- Current provision provides options to landowners to continue to have a nonconforming use that is not in conformance with the current zoning.

Recommendation:

- Use may continue but may only change to a conforming use. Shall not be changed to another lesser nonconforming use.
- When a change of use occurs it will end the nonconformity and the new use will be in conformance with current regulation.

Abandonment

Issue:

- CZO needs to better define what constitutes abandonment.
- An actual act of abandonment should be recognized in addition to the passage of time.
- Leaves room for a challenge from the landowner, and different interpretations by staff.

Recommendation:

- Establish more clear definition on what constitutes abandonment and that the City the authority (City Manager) to determine when a use has been abandoned.

Site Elements

Issue:

- Nonconforming site elements (including but not limited to landscaping, site lighting and parking lot improvements) are not addressed in the CZO.
- This is a void in the current provisions.

Recommendation:

- Allow repair and maintenance of nonconforming site elements.
- Once demolished nonconforming site elements can not be reconstructed except for in accordance with current regulations.
- Adding provisions related to site elements will more clearly address what a property owner can or cannot do as it relates to these types of site improvements.

Nonconformity due to ROW Acquisition

Issue:

- Nonconformities occurring due to right-of-way (ROW) acquisition not currently addressed in the CZO.
- With the previous and future widening of IH35, as well as other highways and roadway widening that have occurred it is important that the provisions address this issue.

Recommendation:

- 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, and shall be measured relative to the new right-of-way line, unless otherwise potentially granted relief by the BOA.
- Addressing ROW acquisition will provide clarity for landowners affected by roadway widenings.

Other Modifications

- Intent – clearly define the intent of the nonconforming provisions.
 - Example from the City of Carrollton:
 - *It is the declared purpose of this ordinance that nonconforming uses be eventually discontinued and the use of the premises be required to conform to the regulations prescribed herein having due regard for the investment in such nonconforming uses. However, any single-family or duplex use lawfully existing on the effective date of this ordinance shall be hereafter deemed a lawful use.*
- Layout
 - Proposing to clearly layout the provisions so that nonconforming uses, structures and site elements are addressed separately. This will improve the ease with which the provisions can be interpreted and implemented.

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.

Discussion