



ORDINANCE NO. 3598

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY OF FARMERS BRANCH CHAPTER 94 "ZONING," ARTICLE 6 "ADMINISTRATION," BY REPEALING SUBSECTION D, PARAGRAPH 1 OF SECTION 6.1 "BOARD OF ADJUSTMENT" RELATING TO THE AUTHORITY OF THE BOARD OF ADJUSTMENT OVER NON-CONFORMING USES AND STRUCTURES, AND AMENDING SECTION 6.6 "NON-CONFORMING USES AND STRUCTURES" IN ITS ENTIRETY; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2000.00) FOR EACH OFFENSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING PUBLICATION

WHEREAS, the Planning and Zoning Commission of the City of Farmers Branch and the governing body of the City of Farmers Branch, in compliance with the laws of the State of Texas and the ordinances of the City of Farmers Branch, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all interested persons, the governing body, in the exercise of the legislative discretion, has concluded that the Comprehensive Zoning Ordinance should be amended;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. Article 6 "Administration" of Chapter 94 "Zoning" of the City of Farmers Branch Code of Ordinances is amended by repealing Subsection D, Paragraph 1 of Section 6.1 "Board of Adjustment." and renumbering the remaining paragraphs as follows:

1. Permit modifications of the height, yard, lot area coverage, floor area, minimum access, parking regulations as may be necessary to secure appropriate development of a parcel of land that differs from other parcels in the district by being of such restricted area, shape or slope, that it cannot be appropriately developed without modification.
2. Require the discontinuance of nonconforming uses of land or structure under any plan where the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity of all property to conform to the regulations of this zoning ordinance. All actions to discontinue a nonconforming use of land and structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of property. The Board of Adjustment shall from time to

time, on its own motion or upon cause presented by interested property owners or upon request of the City Council, inquire into the existence, continuation or maintenance of any nonconforming use with the City.

SECTION 2. Article 6 “Administration” of Chapter 94 “Zoning” of the City of Farmers Branch Code of Ordinances is amended by recaptioning and amending Section 6.6 “Non-Conforming Uses and Structures” in its entirety to read as follows:

6.6 Nonconformities

A. Generally. Notwithstanding anything to the contrary, nonconformities are hereby declared incompatible with the use and development regulations and standards of the zoning district in which the properties on which the nonconformities occur are located. 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 prescribed in this Chapter, having due regard for the person affected, the public welfare and the character of the surrounding area.

B. Nonconforming Status.

1. Any nonconformity related to the use, structure or site elements on a given lot that legally existed on February 24, 1969, or that becomes nonconforming upon the adoption of any amendments to this Chapter, and has since been in regular and continuous use (in the case of use), or existence (in the case of structure or site element) but which does not conform to the use regulations prescribed in this Chapter hereto shall be deemed a nonconformity and may be continued in accordance with the provisions of this Section 6.6.
2. Any nonconformity that was in existence at the time of annexation into the City of the property on which the nonconformity existed and has been in regular and continuous use (in the case of the use) or existence (in the case of the structure or site element) since the date of annexation shall be deemed a nonconformity.
3. The violation of any of the provisions of this chapter or violation of any ordinance of the City of Farmers Branch with respect to a nonconforming use, structure, or site element shall cause the immediate termination of the right to maintain such nonconformity.

C. Types of Nonconformities.

1. **Nonconforming use.** A *nonconforming use* means any use of land where the use does not fully conform to the development standards and regulations set forth in this Chapter relating to the use of such land, but which use of land:
 - a. was lawful prior to the adoption of or revision or amendment to this Chapter; and
 - b. has been regular and continuous since the effective date of the adoption of or revision or amendment to this Chapter which resulted in the use becoming a nonconformity.
2. **Nonconforming structure.** A *nonconforming structure* means any building or structure which does not fully conform to the development standards and regulations set forth in this Chapter relating to the height, design, location, and/or other physical elements of such building or structure, but which physical element of such building or structure:
 - a. was lawful prior to the adoption of or revision or amendment to this Chapter; and
 - b. has continuously existed since the effective date of the adoption of or revision or amendment to this Chapter that resulted in such building or structure element becoming a nonconformity.
3. **Nonconforming site element.** A *nonconforming site element* means any permanent item located on property including, but not limited to, landscaping, site lighting, parking lot improvements, and screening walls or other screening elements; but excluding a building, structure, or sign; that does not fully conform to the standards and regulations set forth in this Chapter applicable to such site element, but which site element:
 - a. was lawful prior to the adoption of or revision or amendment to this Chapter; and
 - b. has continuously existed since the effective date of the adoption of or revision or amendment to this Chapter that resulted in such site element becoming a nonconformity.

4. **Nonconforming signs.** The use, disposition, maintenance, repair, and replacement of nonconforming signs is governed by Section 62-29 of the Code of Ordinances.

D. Nonconforming Uses.

1. Change of Use.

- a. Any nonconforming use may be changed to a permitted use or to a use permitted by specific use permit (subject to approval of such specific use permit) within the zoning district where the property on which such nonconforming use is occurring is located.
- b. Once a nonconforming use changes in accordance with paragraph a, above, the property shall no longer be used for the prior nonconforming use.
- c. The use of property for a nonconforming use may not be changed to another nonconforming use.

2. **Expansion.** The use of property for a 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.

3. Damage or Destruction.

- a. If the building in which a nonconforming use is occurring is damaged or partially destroyed such that the building may continue to be used for the nonconforming use while repairs to such building are made, or such nonconforming use is discontinued for fewer than 180 days after the date such damage or destruction occurred, the property may continue to be used for the nonconforming use; provided, however, the structure may not be enlarged to allow for the expansion of a nonconforming use.
- b. If a building in which a nonconforming use operates is damaged to the extent that use of the property for the nonconforming use ceases and does not recommence within 180 days after the date such damage occurs, even if the

owner of such building determines to repair and/or reconstruct the building, the nonconforming use may not recommence except in compliance with all regulations applicable to the zoning district in which the property is located.

- 4. Abandonment.** When a nonconforming use of property ceases or is discontinued, all rights to continue the nonconforming use on such property shall cease and the reestablishment of the nonconforming use on such property is prohibited. Use of such property thereafter shall conform to the applicable zoning ordinance. The City Manager or designee will determine that a use has been discontinued based one or more of the following findings, which list shall not be all-inclusive:

- a. the property or building that was used for the nonconforming use becomes vacant and remains unoccupied or out of use for a period of 180 consecutive days; or
- b. the equipment and 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
- c. water and/or electrical service to the building in which the nonconforming use was conducted has been disconnected for a period of 180 consecutive days; or
- d. 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.

E. Nonconforming Structures.

1. Continuation of Use.

- a. Except where prohibited by this Section 6.6, a nonconforming structure may be used for any use allowed in the zoning district in which the structure is located, including a legal nonconforming use.
- b. A nonconforming structure may be changed to a conforming structure.

2. Expansion.

- a. A nonconforming structure in which only permitted uses are operated may be expanded if the expansion otherwise complies with the terms of this Chapter and applicable ordinances.
- b. Notwithstanding Sections 6.6.D.2 and 6.6.D.4, a nonconforming structure, which is nonconforming as to required setback only may be expanded subject to compliance with the following:
 - i. The new building footprint does not cumulatively increase the footprint of the building by more than 20 percent from its footprint at the time the building became nonconforming;
 - ii. The new building area extends the existing building to a location between the existing building wall and the Build-to-Zone required where a maximum building setback has been established in the applicable zoning district;
 - iii. The proposed building addition will comply with the parking requirements for the enlarged structure;
 - iv. The height of the nonconforming structure does not exceed the maximum height allowed by the applicable zoning district after the expansion; and
 - v. The expansion shall not increase the nonconforming setback or create a new basis for the structure being nonconforming.

3. Maintenance and Repair.

- a. Maintenance and repair of a nonconforming structure is expressly permitted to comply with applicable health and safety regulations or minimum building standards or to otherwise prevent injury to person or property or to improve the exterior aesthetics of the structure.

- b. Maintenance and repair of the structure shall not result in the expansion or extension of the nonconforming structure, except as authorized in Section 6.E.2.

4. Damage or Destruction.

- a. If a nonconforming structure is partially destroyed, where the cost to repair the damage is less than or equal to 50 percent of its appraised value of the structure prior to the damage occurring as determined by the Dallas Central Appraisal District for the tax year in which the damage occurred, the nonconforming structure may be reconstructed subject to the following:
 - i. If the nature of the nonconformity relates to the location of the structure to one or more of the required setbacks on the property, and the structure can be rebuilt in a manner that (a) maintains the floor area of the structure prior to the damage; and (b) eliminates the nonconformity, then the structure shall be rebuilt in such a manner as much as reasonably possible; and
 - ii. The reconstruction of the building shall not increase the prior nonconformity or create a new basis for the structure being nonconforming.
- b. If a nonconforming structure is damaged or destroyed, where the cost to repair the damage is greater than 50 percent of the appraised value of the structure prior to the damage occurring as determined by the Dallas Central Appraisal District for the tax year in which the damage occurred, it may not be reconstructed except in compliance with all regulations applicable to the structure.
- c. A nonconforming structure or portion thereof may be demolished and, once demolished shall not thereafter be reconstructed, except in compliance with the development standards applicable to the property on which the new structure will be located.

F. Nonconforming Site Elements

1. Expansion. A nonconforming site element shall not be expanded, except in compliance with Section 6.6.F.2.

2. Maintenance and Repair.

- a. Maintenance and repair of nonconforming site elements, including, but not limited to, landscaping, site lighting, parking lot improvements, and screening walls, fences, and other screening elements, shall be permitted in accordance with this Section 6.6.F.
- b. Amendments to an approved site plan or an approved landscape plan for a property with a nonconforming site element may be approved by the City Manager or designee to allow a change to a site element so long as the proposed change conforms to this Chapter and reduces or eliminates the nonconformity of the site element.
- c. A nonconforming site element shall be demolished if the site element has been allowed to deteriorate to the extent that the cost of repair or maintenance exceeds 50 percent of cost to replace the nonconforming site element with a conforming site element as determined by the City Manager or designee.

3. Damage or Destruction.

- a. If a nonconforming site element is partially destroyed, where the cost to repair the damage is less than or equal to 50 percent of the cost to replace the nonconforming site element with a new site element that is substantially the same as the damaged nonconforming site element, the nonconforming site element may be reconstructed subject to the following:
 - i. If the nature of the nonconformity relates solely to the location of the site element to one or more of the required setbacks on the property, and the site element can be rebuilt in a manner that eliminates or reduces the nonconformity, the site element shall be rebuilt in such a manner; and
 - ii. The reconstruction of the site element shall not increase the prior nonconformity or create a new basis for the site element being nonconforming; and

- iii. The nonconforming site element shall not increase in size or function prior to the date of damage or destruction.
- b. If a nonconforming site element is damaged or destroyed, regardless of whether such damage or destruction is intentional or through causes beyond the control of the property owner, where the cost to repair the damage is more than 50 percent the cost to replace the nonconforming site element with a conforming site element that is substantially the same as the nonconforming site element that was damaged or destroyed, the nonconforming site element may not be re-established except in compliance with all regulations applicable to the site element.

G. Nonconformity Resulting from Acquisition of Property by Governmental Entity.

- 1. If a use, structure, or site element would otherwise become a nonconformity solely as the result of conveyance to a governmental entity of a portion of the property on which the use, structure, or site element is located, to be used as a public street or highway right-of-way or other public purpose, such use, structure, or site element shall be deemed lawful and not merely a nonconformity.
- 2. If a structure or site element described in Section 6.6.G.1 is partially or totally destroyed by fire or other causes, the structure or site element may be rebuilt in accordance with provisions in Sections 6.6.E.4 or 6.6.F.3 as applicable.
- 3. Any new construction on the property affected in the manner described in Section 6.6.G.1. that occurs after the conveyance of a portion of the property to the governmental entity, including expansion of any existing structure, and or modifications to site elements, shall comply with all zoning standards applicable to the property. Building setbacks of the expansion or new construction shall be measured relative to the new property lines after the conveyance to the governmental entity.

H. Intentional Destruction of Nonconformity. Notwithstanding Sections 6.6.D.3, 6.6.E.4, and 6.6.F.3 restoration or reconstruction of a nonconformity after damage or destruction, regardless of the extent, that is caused by the intentional acts or omissions of the owner or owner's agent

may not be rebuilt, restored, replaced or repaired except in conformance with this Chapter.

- I. Certain Residential Dwellings.** Notwithstanding anything in this Section 6.6 to the contrary, a one family or two-family dwelling constructed prior to August 24, 1970, which does not provide the number of off-street parking spaces required by Section 4.3, the one-family or two-family dwelling structures shall be considered a conforming structure for all purposes under this Chapter.

SECTION 3. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 4. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Farmers Branch, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THIS THE ____ DAY OF _____ 2019.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Robert C. Dye, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:8/18/19:109746)