

STAFF REPORT

Case Number: 21-ZA-01

Request: Conduct a public hearing and consider a request to amend the Comprehensive Zoning Ordinance related to development standards for outdoor seating areas, including but not limited to amending: Article 2. Zoning Districts and Uses, Article 3. Zoning District Dimensional Standards, and Article 4.3. Parking and Loading; and take appropriate action. *Continued from June 14, 2021.*

Applicant: City of Farmers Branch

Planning & Zoning Commission Meeting: July 12, 2021

On June 14, 2021, the Planning & Zoning Commission considered this amendment to the Comprehensive Zoning Ordinance (CZO) and continued the public hearing and consideration of the request to the next meeting on July 12, 2021. The Commission requested staff provide additional information and modify the proposed outdoor seating areas ordinance with the following:

1. Remove all provisions that limit size and placement of outdoor seating areas;
2. Allow outdoor seating areas to be counted towards landscape area requirements;
3. Expand improvements allowed within the outdoor seating areas to include misters, lawn activities, and similar improvements;
4. Address potential non-conformities created by the proposed amendment for all existing outdoor seating areas; and
5. Address maintenance of outdoor seating area improvements.

The following information summarizes the changes made to the proposed outdoor seating areas ordinance, in response to the Planning & Zoning Commission's direction.

Proposed Amendment – Revised Draft Ordinance:

Given the direction provided by the Commission related to the proposed ordinance, the revised draft ordinance has been modified to address the Commission's feedback including: providing greater flexibility for outdoor seating area improvements; removing setback requirements and size limitations associated with the seating area and perimeter enclosure fencing; and eliminating provisions that could potentially create non-conforming situations for existing outdoor seating areas. Also, upon further review of recent changes in State law as it relates to alcoholic beverage service, the ordinance seeks to achieve better consistency with State law requirements related to restaurants with mixed beverage permits and food and beverage certificates from the Texas Alcoholic Beverage Commission (TABC).

The revised draft ordinance will retain the proposed new ordinance section, Section 2.10. Outdoor Seating Areas, in Article 2 of the CZO, which outlines the development standards for outdoor seating areas. The revised draft ordinance allows outdoor seating areas within the required front yard setback, and has retained the standardization of excluding outdoor seating areas associated with specified uses when calculating required parking. Lastly, the revised draft ordinance retains the “clean up” provisions related to existing ordinance language in the LI and HI districts for ease of application and interpretation related to outdoor seating areas. Therefore, the following information outlines the revisions that were made in this latest proposed amendment.

Changes to Proposed Article 2.10 Outdoor Seating Areas

The intention of this section will remain, which is to provide development standards for outdoor seating areas located within the required front yards for specified uses allowed in the LR-1, LR-2, C, LI, HI, and PD zoning districts with the aforementioned base zoning districts. The changes that were made were related to removing standards that limited the size and placement of outdoor seating areas. However, no changes were made to the uses that would be allowed to construct an outdoor seating area within the required front yard setback. Those uses will remain as the following:

- Restaurant, General;
- Restaurant, Qualifying;
- Brewery;
- Brewpub;
- Bar or Tavern; or
- Distillery.

Clarification has been included in this latest draft ordinance that outdoor seating areas not located within the front yard setback (i.e. outdoor seating areas located behind the front setback line) will not be subject to these proposed provisions. These development standards are specifically intended to address only outdoor seating areas in the required front yard. Therefore, any uses wanting to have outdoor seating areas (including those uses referenced above) located behind the front building setback line are allowed to do so in accordance with applicable zoning district and building code requirements.

The general requirements outlined in this article were modified as directed by the Commission. The previous version limited outdoor seating areas within the required front yard setback to be not more than 25% of the interior floor area of the associated use. Additionally, the previous version limited the perimeter fence or wall that enclosed the outdoor seating areas to 42 inches in height. The maximum areas and height of perimeter fence or wall provisions were removed in this proposed ordinance. Therefore, outdoor seating areas will be allowed with no limitation in area or to the height of the perimeter fencing or wall. This change is being done to also eliminate any potential non-conformity with existing outdoor seating areas, but also allows for design creativity and flexibility for new outdoor seating areas.

During the initial discussion with the Commission, staff asked that the Commission consider conflicts with the current landscape standards in the CZO for zoning districts that would be allowed outdoor seating areas within the required front yard. Given the desire to allow the maximum

flexibility on the size of outdoor seating areas, a conflict was created with required landscaping between the building and street right-of-way. The Commission's direction was to allow the outdoor seating areas located within the required front yard setback to be counted towards the minimum site landscape requirements. Therefore, a provision was provided in the revised draft ordinance to allow for such thus eliminating the conflict with the current landscape standards in the CZO.

The Commission also raised concerns regarding the limitations on the placement of outdoor seating areas. Specifically, the original draft ordinance established a minimum separation from the front property line (i.e. setback) and maximum distance from a public access door of the associated use. The revised draft ordinance has removed the requirement of outdoor seating areas within the required front yard setback to maintain a minimum distance (i.e. setback) from the adjacent front property line (i.e. street right-of-way) and requiring outdoor seating areas to be not more than 15 feet from the associated use's public access door. The revised draft ordinance still retains the provisions ensuring site visibility conditions are preserved at intersections and for driveways connecting to adjacent streets, and that certain easements are not improved upon without the proper approvals.

Non-Conformity Considerations:

This proposed ordinance amendment is intended to allow outdoor seating areas within the required front yard setback, which is otherwise normally required to be open landscaped area. Additionally, this amendment would allow the temporary outdoor seating areas installed through the City's parklet program to become permanent. During the initial discussion with the Commission, the Commission raised concern with non-conformities created by the potential adoption of the ordinance amendment as originally presented on June 14, 2021. When properties have non-conforming site elements, the CZO does not allow for modifications to be made to the non-conforming site elements (except to bring the improvements into compliance), hence the Commission's concern should a property owner (or business owner) want to make changes to the outdoor seating area.

The revisions proposed with the revised draft ordinance, which will allow for more flexibility of size and placement of outdoor seating areas, will address non-conformities concerns for existing outdoor seating areas within the required front yard. The provisions that will allow the area of outdoor seating to be counted towards landscape requirements will eliminate the non-conformity issue for outdoor seating areas that were constructed between the adjacent public street and building.

The existing outdoor seating areas within the required front yard setback have been evaluated to determine conformity with the revised draft ordinance. Due to the changes that were recommended by the Commission related to removing size limitations and setback requirements for outdoor seating areas, it has eliminated non-conformity conflicts. For example, the outdoor seating area for Odd Muse Brewery, located between Spring Valley Road and the building, would conform with the proposed ordinance.

Maintenance of Outdoor Seating Areas:

In the Property Maintenance chapter of the City's Code of Ordinance, property owners are required to maintain the exterior property areas. This includes keeping a clean, safe and sanitary condition property and maintaining a structurally sound and free of deterioration accessory structure, which includes patio covers and other accessory structures.

While not all outdoor seating areas may be enclosed, the original draft ordinance required that materials used to partially or fully enclose outdoor seating areas within the front yard setback to be maintained in good condition free from damage. Upon further review with the city attorney and in light of HB 2439 which addresses the City's ability to regulate building materials, the revised draft ordinance has been modified to allow exterior materials in accordance with the International Building Code, as well as retained the maintenance provision.

Other Items for Consideration – Qualifying Restaurants:

The revised draft ordinance includes changes to alcohol provisions for qualifying restaurants and establishments with drive-through, drive-in and/or curbside service. Recently, the State adopted legislation that allows restaurants with a mixed beverage permit from TABC to sell up to 60% of the restaurant's total gross sales as alcoholic beverages (in other words, restaurants must have a minimum 40% of total gross sales receipts from food and non-alcoholic beverages), and allows restaurants to sell alcohol to-go with food service. This State law change has resulted in a conflict with the City's local requirements for qualifying restaurants, which are required to have a maximum 50% of the restaurant's total gross sales as alcoholic beverages. Therefore, this amendment includes revisions to the definition and provisions for qualifying restaurants to ensure that the City's regulations are consistent with the State, as well as allows for to-go sales on the premises in accordance with the State law. This change will benefit local restaurants for ease of compliance with consistent City and State requirements.

Staff Recommendation (July 12, 2021):

Staff recommends approval of the proposed Zoning request, as presented in the revised draft ordinance.

The following information within this report reflects the information provided to the Planning and Zoning Commission on June 14, 2021.

Background:

This is a city-initiated zoning amendment to the City of Farmers Branch Comprehensive Zoning Ordinance (CZO) to establish development standards for outdoor seating areas within the front yard setback for specified uses allowed in the Local Retail-1 (LR-1), Local Retail-2 (LR-2), Commercial (C), Light Industrial (LI), Heavy Industrial (HI), and Planned Development (PD) zoning districts with the aforementioned base zoning.

The current development standards require that front yard setbacks be kept free and clear of any improvements and structures. However, due to the recent public health pandemic, there has been an increasing demand for outdoor seating areas for certain uses. In response to this demand, the City has allowed temporary outdoor seating areas through the City's parklet program funded by federal grants through Dallas County (CARES funding).

This ordinance is intended to allow for flexibility that would allow sites to improve the required front yard, which are typically reserved for open space and/or landscaped areas, with outdoor seating areas and establishes development standards for said outdoor seating areas. The proposed associated uses that would be permitted to have outdoor seating areas within the required front yard setback include restaurant, brewery, brewpub, bar or tavern, and distillery uses.

Existing Zoning:

There are currently no development standards for outdoor seating areas within the CZO. However, there are existing provisions that conflict with the goal of this amendment to allow outdoor seating areas within the required front yard setback of LR-1, LR-2, C, LI, and HI zoning districts.

Currently, each zoning district has an established minimum front yard setback (i.e. the required front yard). The CZO defines the front yard setback as the open, unoccupied space on a lot facing a street extending across the front of a lot between the side lot lines and from the main building to the front lot or street line with the minimum horizontal distance between the street line and the main building line as specified for the zoning district in which it is located. The front yard is required to be free and clear of most improvements and uses, which includes outdoor seating areas. It should be noted that lots that have frontage along more than one street are required to maintain the minimum front yard setback established by the zoning district along all street frontages.

The minimum required front yard setback for LR-1, LR-2, and C zoning districts is 25 feet. In LI and HI, there is no minimum required front yard setback; except when lots have a frontage to a street with a right-of-way width of 100 feet or greater the front yard setback is 30 feet. These front yard setbacks are required to be free and clear of structures, parking areas, accessory buildings, fences, and other uses. There is an exception in the LI and HI zoning districts that allows parking to be a minimum of six feet from the front property line when adjacent to a street that has a right-of-way width of less than 100 feet.

Although there are no current provisions which regulate outdoor seating areas other than the front yard use prohibition, outdoor seating areas are addressed in relation to the minimum required off-street parking when provided with associated uses. Specifically, the off-street parking requirements in the CZO currently only exclude the floor area of outdoor seating areas of restaurants from providing off-street parking. This provision was part of the parking amendment that was adopted by Ordinance No. 3661 on October 13, 2020. Excluding the floor area of outdoor seating areas that may be constructed in association with other uses were not adopted with this latest parking amendment.

In reviewing all existing standards in the CZO, in preparation for this amendment, a conflict was identified. In Section 2.6.F. Food Services, there is a provision that requires attached patios or

gardens that occupy 50% or more of the total floor area of the associated qualifying restaurant must be included in the calculation of minimum required parking. As mentioned in the paragraph above, the recent parking amendment excluded all outdoor seating areas which includes attached patios or garden areas, regardless of size.

Proposed Amendment:

The proposed amendment establishes a new section, Section 2.10. Outdoor Seating Areas, in Article 2 of the CZO providing for development standards for outdoor seating areas to ensure quality design, placement, and maintenance. The proposed ordinance amendment also allows outdoor seating areas within the required front yard setback, and standardizes the exclusion of outdoor seating areas associated with specified uses when calculating required parking. Lastly, additional amendments are proposed to “clean up” existing ordinance language in the LI and HI districts for ease of application and interpretation.

Proposed Article 2.10 Outdoor Seating Areas

The purpose of this section is to provide development standards for outdoor seating areas located within the required front yards for specified uses allowed in the LR-1, LR-2, C, LI, HI, and PD zoning districts with the aforementioned base zoning districts. This section would apply to all outdoor seating areas constructed within the required front yard setback associated with the following uses:

- Restaurant, General;
- Restaurant, Qualifying;
- Brewery;
- Brewpub;
- Bar or Tavern; or
- Distillery.

The general requirements outlined in this article allow outdoor seating areas within the required front yard setback to be not more than 25% of the enclosed floor area of the associated use. Outdoor seating areas could be covered, and partially or fully enclosed with a fence or wall constructed of quality materials not exceeding 42 inches in height. Enclosing the outdoor seating areas would be permitted; however, the material used to enclose the areas would be required to be of material intended for outdoor use and be maintained in good condition free of damage, decay, or disrepair. Additionally, the development standards would allow improvements that are typically associated with outdoor seating areas (i.e. tables, chairs, umbrellas, lighting, etc.).

While this proposed amendment intends to encourage outdoor seating areas in front of or on the side of a building fronting along public streets, the provisions also seek to ensure that no obstructions are created to public safety. Therefore, this section outlines provisions on the placement of outdoor seating areas. In order to maintain separation from the public street, outdoor seating areas would be required to maintain a minimum distance (i.e. setback) from the adjacent street right-of-way depending on the width of the street. In the LR-1, LR-2, and C zoning districts, outdoor seating areas located on sites adjacent to streets with a right-of-way width of 100 feet or

greater shall have a minimum 10-foot setback, and when adjacent to streets with a right-of-way width of less than 100 feet a minimum 5-foot setback.

In the LI and HI zoning districts, the required front yard setback can vary from no required front yard to a minimum of 30 feet. Only properties in these districts that are fronting a street that has a right-of-way width of 100 feet or greater are required to have a 30-foot front yard setback. Therefore, outdoor patio areas in the LI and HI zoning districts would not be required to have a minimum distance from the street. The proposed placement (or siting standards) are somewhat more restrictive in the LR-1 and LR-2 districts compared to the LI and HI districts given the existing development conditions within these areas of the city, as well as the city's long-term policy goals for the respective areas. For all zoning districts, site visibility conditions must be preserved at intersections and for driveways connecting to adjacent streets. Lastly, all outdoor seating areas within the required front yard setback must be within 15 feet of a public access door of the associated use.

Proposed Exceptions to the Required Front Yard Setback

As mentioned previously in this report, this amendment would allow outdoor seating areas with specified associated uses in the LR-1, LR-2, C, LI, HI, and PD zoning districts with the mentioned base zoning districts. Given that the required front yard setback is currently required to be free and clear of improvements, an exception to allowing outdoor seating areas within the required front yard setback is proposed with dimensional standards for each applicable zoning district.

Proposed Parking Amendments Associated with Outdoor Seating Areas

The proposed amendment allows outdoor seating areas within the required front yard setback for restaurants, breweries, brewpubs, bars or taverns, and distilleries. These uses are all currently allowed in the CZO, and staff believes that these uses could benefit from and desire having outdoor seating areas. In order to create consistency throughout the CZO related to outdoor seating areas, this amendment proposes to modify the minimum parking ratio requirements for the specified uses that may have outdoor seating areas.

The off-street parking requirements currently only exclude outdoor seating areas associated with restaurants from providing parking. Therefore, this amendment proposes to also exclude the outdoor seating areas from the parking requirements for brewery, brewpub, bar or tavern, and distillery uses.

Additionally, this amendment would remove a regulatory conflict that exists for qualifying restaurants by allowing this use to be treated the same as other restaurants as it relates to calculating required parking for associated outdoor patio areas. Therefore, this amendment proposes to eliminate required parking for outdoor seating areas for all restaurants, including qualifying restaurants.

Comprehensive Plan Recommendation:

This CZO amendment proposes to allow outdoor seating areas for specific uses within the required front yard setback of the LR-1, LR-2, C, LI and HI zoning districts and PD districts with the aforementioned base zoning districts. These zoning districts are located throughout the city but can be primarily found within the east and central areas of the city.

The East Side Plan supports entertainment-related uses specifically restaurants with outdoor seating and patios, and the adoption of land use and development regulations that allows the adaptive reuse of existing buildings. The east side of the city is actively attracting new uses with restaurants and breweries/brewpubs occupying existing buildings, such as ODD Muse Brewing Company, Cattleack Barbeque, Native Coffee, and a future business that was recently announced, Crossbuck Barbeque. The existing establishments mentioned have all constructed outdoor seating areas within the last year through the Open FB program, which used CARES (Coronavirus Aid, Relief, and Economic Security) Act funding to assist local businesses with providing outside dining options.

The Central Area Plan recommends the continuous support and retention of existing business through the creation of vibrant and active neighborhood centers. Through the Open FB program, many existing restaurants have outdoor seating areas that are between the building and adjacent streets. Although the program intended these improvements to be temporary, it has become apparent that these outdoor seating areas were paramount in allowing existing businesses to continue their operations and has now led to a desire to have outdoor seating areas permanently.

Given the recommendations of these comprehensive plans, it is appropriate to consider amendments to the CZO that would allow for these outdoor seating area opportunities that would otherwise not be possible.

Specific Issues for Consideration:

While drafting the proposed amendment to accommodate outdoor seating areas, several questions have arisen in which staff is seeking the Planning and Zoning Commission's feedback. The questions are summarized below, as well as included in Attachment 4 along with pictures which help illustrate the scenarios and questions in which staff is seeking feedback. When the outdoor seating areas were initially installed in accordance with the Open FB program, it was under the guise that these outdoor seating areas would be temporary and potentially removed. Now that the outdoor seating areas have been installed and are operational, businesses are interested in retaining the outdoor seating areas permanently. It is possible that some of the existing outdoor seating areas would become non-conforming if the proposed amendment is adopted as currently drafted due to lessons learned post installation.

As it relates to placement (or siting) of outdoor seating areas:

1. Does a 0-foot setback continue to be acceptable?
2. Does the Commission desire a minimum setback (measured from the front property line) to provide additional separation from the adjacent roadway?

3. Should certain zoning districts (such as LI) be treated differently compared to others (such as LR-1 and LR-2)?
4. Should require front yard areas be preserved for landscaping?
5. Should outdoor seating areas be required to be placed within a certain distance from the business's public entrance, or is no minimum distance acceptable?

As it relates to the size of outdoor seating areas in relation to the business's interior size:

1. Should outdoor seating areas be limited to a maximum percentage correlating with the business's interior square footage?
2. Does it matter how large the outdoor seating area is compared to the restaurant interior? (Note that outdoor seating areas are currently exempt from minimum parking ratio requirements for restaurants.)

Public Response:

The required public hearing notice was published in the Dallas Morning News on June 4, 2021. Zoning notification signs and property owner notification letters were not required for this amendment to the CZO. To date, staff has not received correspondence related to this proposed CZO amendment.

Staff Recommendation:

Staff recommends the continuation of the public hearing to the July 12, 2021 meeting to allow the Planning & Zoning Commission to fully evaluate and consider the proposed amendment and allow staff to bring back requested changes, if necessary.