

TO: James L. App
FROM: Ron Whisenand, Community Development Director
SUBJECT: Zoning Regulations for Nonconforming Uses
DATE: March 15, 2011

Needs: For the City Council to consider options for revising zoning regulations for nonconforming uses to provide economic relief to property owners.

Facts:

1. At its meeting of March 1, 2011, the City Council conducted a public hearing on the Draft Uptown/Town Centre Specific Plan. Several members of the public expressed concerns that the nonconforming use regulations in the draft plan were too onerous, particularly in difficult economic times.
2. The nonconforming use regulations in the Draft Uptown/Town Centre Specific Plan were copied verbatim from the City's Zoning Code. Attachment #1 contains the definition and regulations for nonconforming uses from the existing Zoning Code.
3. At its meeting of January 25, 2011, the Planning Commission recommended that the nonconforming use regulations in the draft specific plan be revised to provide that a nonconforming use would be considered to be "discontinued" or "abandoned" if it ceased to operate for twelve months, rather than the six months provided in the Zoning Code.
4. On March 1, the City Council indicated a desire to increase the period of nonuse that established discontinuance/abandonment from twelve months to three years. The Council also indicated that it would like to discuss this matter in more detail and consider other options for providing economic relief.

Analysis and

Conclusion:

Regulations as Recommended by the Council on March 2

The version of the nonconforming use regulations presently appearing in the Draft Uptown/Town Centre Specific Plan, including a three year period of discontinuance, are as shown below. Underlined text shows proposed additions to the existing regulations in Attachment #1; ~~double strike through text~~ shows proposed deletions.

Nonconforming land uses may continue to be operated and maintained subject to the following limitations:

a. The site or building areas in which they are located shall not be enlarged or increased. Exception: Subject to approval of a conditional use permit, additions may be made to residential dwelling units in commercial and industrial districts, provided that said addition shall not increase the number of dwelling units on a property;

- b. *The intensity or level of use or activity shall not be increased;*
- c. *If discontinued or abandoned for a period of three years ~~six months~~ or more, they shall neither be reestablished nor resume operation; subsequent land uses shall conform to the general and district regulations of this title; provided however that, prior to the expiration of a three year period, the owner of a property with a discontinued nonconforming use may file a letter requesting an additional three year extension with the Zoning Administrator, who may grant such a time extension. Said letter shall provide documented evidence that the owner has made a good faith effort to restore the discontinued use; acceptable documented evidence may include sales receipts, tax records, signed affidavits, photographs, business licenses, etc.;*
- d. *If the building or structures in which they are located are damaged by fire, earthquake, explosion or other act to an extent of more than fifty percent of the fair market value, they shall neither be continued nor be reestablished. Exception: If the nonconforming use consists of residential dwellings in a commercial or industrial district, subject to approval of a conditional use permit, said dwellings may be rebuilt if damaged to an extent of more than fifty percent of the fair market value;*
- e. *If they have not been abandoned for a period of three years ~~six months~~ or more, they may be replaced by another nonconforming use of the same or less-intensive nature, as determined by the planning commission, subject to approval of a conditional use permit.*

Options for Adding Relief

The Council may wish to explore the following additional means of providing relief. The City Attorney has reviewed these options and found them to be legally sound.

- a. Establishing the date of discontinuance of a nonconforming use. Presently, the nonconforming use regulations are enforced on a complaint basis; staff does not conduct field surveys to discover and enforce discontinued uses. The last time staff remembers any enforcement regarding a nonconforming use was in the late 1980s in connection with the former meat plant on South River Road.

If a member of the public informs staff that a use has been discontinued, staff would make a field inspection to confirm the report. If it appears that a use has been discontinued, staff could then send a letter to the property owner(s) informing him/her/them (i) a nonconforming use appears to have been discontinued or abandoned; (ii) of the applicable regulations for resuming the nonconforming use; and (iii) as of the date of the letter, the City considers the nonconforming use to have been discontinued or abandoned.

The zoning regulations do not presently specify a procedure for giving notice and establishing a date from which to measure the period of abandonment or discontinuance. Amending the code to establish a date from which all future enforcement actions would be measured would provide some certainty.

- b. Allow discontinued or abandoned nonconforming uses to be re-established, subject to a conditional use permit that could impose conditions to limit operations if necessary to make the findings required by Section 21.23.250. (See Attachment #1 for a copy of this section. The specific plan refers to the Zoning Code for development application process.) This option could be used if, for some reason, a property owner failed to apply for a time extension and, perhaps 4 years later (one year after the expiration of the 3 year window) found a new tenant or financing to resume the use.

Perhaps the strongest argument for such an option is that some properties are developed with improvements that favor only one or a narrow range of land uses (e.g., gas stations). Requiring the dismantling or adaptive reuse of the buildings/structures could be costly.

If the Council favored adopting "a" and "b", the resulting code section would read as follows:

Nonconforming land uses may continue to be operated and maintained subject to the following limitations:

- a. *The site or building areas in which they are located shall not be enlarged or increased. Exception: Subject to approval of a conditional use permit, additions may be made to residential dwelling units in commercial and industrial districts, provided that said addition shall not increase the number of dwelling units on a property.*
- b. *The intensity or level of use or activity shall not be increased.*
- c. *If discontinued or abandoned for a period of three years ~~six months~~ or less more, they shall neither be reestablished nor resume operation; subsequent land uses shall conform to the general and district regulations of this title they may be reestablished or resume operation at the same intensity of use that existed prior to the discontinuance.*
- d. *If discontinued or abandoned for a period of more than three years, they shall only be reestablished or resume operation subject to approval of a conditional use permit that may impose conditions to limit operations, if necessary, to make the findings required by Section 21.23.250 of the Municipal Code.*
- e. *The three-year period referenced in subsections "c" and "d", above shall start on the date of mailing of a letter, to be sent via certified mail, to the owner of the property, according to the latest assessment roll, informing the owner that the City has determined a nonconforming use on the property to have been discontinued or abandoned.*
- f. *Prior to the expiration of the three-year period, the owner of a property with a discontinued nonconforming use may submit a letter to the City requesting an additional twelve-month extension to resume operations. Said letter shall provide documented evidence that the owner has made a good faith effort to restore the discontinued use. Acceptable documented evidence may include sales receipts, tax records, signed affidavits, photographs, business licenses, etc. The Zoning Administrator may grant such a time extension if the*

submitted evidence substantiates that reasonable measures have been taken to restore the nonconforming use.

eg. If the building or structures in which they are located are damaged by fire, earthquake, explosion or other act to an extent of more than fifty percent of the fair market value, they shall neither be continued nor be reestablished. Exception: If the nonconforming use consists of residential dwellings in a commercial or industrial district, subject to approval of a conditional use permit, said dwellings may be rebuilt if damaged to an extent of more than fifty percent of the fair market value.

eh. If they have not been discontinued or abandoned for a period of three years ~~six months~~ or more, they may be replaced by another nonconforming use of the same or less-intensive nature, as determined by the planning commission, subject to approval of a conditional use permit.

Implementation

Any changes directed by the City Council would be made to the Final Draft Uptown/Town Centre Specific Plan. The Council may also wish to direct staff to prepare a code amendment to have the same changes apply to the rest of the City.

Reference: Sections 21.08.310 and 21.20.340 of the Zoning Code; Section 5.3.E.4 of the Draft Uptown/Town Centre Plan

Fiscal

Impact: The proposed code amendment is not anticipated to add any significant cost the General Fund.

Options: That the City Council approve one of the following sets of options:

- a. Direct that the proposed amendments outlined above be incorporated into the Uptown/Town Centre Specific Plan (Chapter 5).
- b. Direct that the proposed amendments outlined above be incorporated into the Uptown/Town Centre Specific Plan (Chapter 5) and that a code amendment to incorporate them into the Zoning Code be initiated.
- c. Amend, modify, or reject the above options.

Prepared by: Ed Gallagher, City Planner

ATTACHMENT:

1. Existing Zoning Code Sections Defining and Regulating Nonconforming Uses

Existing Zoning Code Sections Defining and Regulating Nonconforming Uses

Definition

21.08.310 Nonconforming Use. A land use or activity which was lawfully established prior to the adoption or amendment of this title, but which now fails to conform to either the present general requirements of this title or the district requirements for land use type and/or intensity (density). This includes existing land uses which are subject to approval of a conditional use permit but were lawfully established without a conditional use permit.

Regulation

21.20.340 Nonconforming Use. Nonconforming land uses may continue to be operated and maintained subject to the following limitations:

- a. The site or building areas in which they are located shall not be enlarged or increased. Exception: Subject to approval of a conditional use permit, additions may be made to residential dwelling units in commercial and industrial districts, provided that said addition shall not increase the number of dwelling units on a property;
- b. The intensity or level of use or activity shall not be increased;
- c. If abandoned for a period of six months or more, they shall neither be reestablished nor resume operation; subsequent land uses shall conform to the general and district regulations of this title;
- d. If the building or structures in which they are located are damaged by fire, earthquake, explosion or other act to an extent of more than fifty percent of the fair market value, they shall neither be continued nor be reestablished. Exception: If the nonconforming use consists of residential dwellings in a commercial or industrial district, subject to approval of a conditional use permit, said dwellings may be rebuilt if damaged to an extent of more than fifty percent;
- e. If they have not been abandoned for a period of six months or more, they may be replaced by another nonconforming use of the same or less-intensive nature, as determined by the planning commission, subject to approval of a conditional use permit.

Required Findings for Approval of Conditional Use Permits

21.23.250 Findings for Granting Any Request. In order to grant any request the findings of the planning commission or the zoning administrator shall be that the establishment, maintenance or operation of the requested use of building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience, and general welfare of the persons residing or working in the neighborhood of such proposed use, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the city.