

060085

Administrative Appeals of Nonconforming Uses (Legistar No. 060085)

Scope of Issue: Determinations of legal non-conforming residential (not business or commercial) uses (not lots or structures) in single family zoning districts (RSF-1, 2, 3, 4 and PD – 8 units or less).

How the issue arises:

- (1) Property owner or buyer wants to sell or mortgage property and seeks a written or verbal opinion from City to confirm legal non-conforming use status.
- (2) Property owner seeks building permit, application is flagged for use inconsistent with zoning district.
- (3) Property owner is cited by Code Enforcement for non-conforming use.

Current code:

Substance: 30-346 (d)(4) “Whenever a nonconforming use of land or of a building or other structure or any portion thereof is abandoned or the use is discontinued for a continuous period of nine months or more, such abandonment or discontinuance shall be presumed to constitute an intention to abandon or discontinue such use, and such use shall no longer be permitted. Any subsequent use of such building or structure or land shall be in conformity with the provisions of this chapter.”

Process: 30-354(h), (j) and (n)

- Planning staff makes initial administrative decision (if staff approves, end of process);
- If staff denies, owner can appeal to Board of Adjustment (“BOA”) (if disputed facts, goes to hearing officer, then to BOA for review of hearing officer recommendation), surrounding landowners are provided notice of BOA hearing (but not of hearing officer hearing), BOA renders decision;
- “Aggrieved” party (presumably owner and surrounding landowners) can appeal BOA decision to City Commission, City Commission renders decision;
- “Aggrieved” party can appeal City Commission decision to Court.

Potential Solution:

- Provide notice to surrounding property owners of initial QJ hearing;
- Initial QJ hearing held by BOA (note: could be held by staff or hearing officer, but staff recommends BOA because staff lacks resources to conduct hearings and hearing officers are costly) ;
- Allow owner and surrounding landowners to appeal initial decision to Court, thereby eliminating hearing officer and CCOM appeal; and
- Establish legal standards in code to guide decision making. (note: additional legal research necessary)

Some remaining issues with respect to potential solution:

Practical effect on sale and loan transactions, discuss with local real estate attorneys?

High burden of proof on owner, could result in loss of many non-conforming uses?

Other?