




DATE: July 18, 2023

TO: Honorable Mayor & City Council

FROM: Planning & Zoning Commission

VIA: Eric Hill, AICP, Assistant Director of Planning acting as Secretary of the Planning & Zoning Commission 
Christina D. Day, AICP, Director of Planning 

SUBJECT: Results of Planning & Zoning Commission Meeting of July 17, 2023 

AGENDA ITEM NO. 4 - ZONING CASE 2023-010
PETITIONER: CITY OF PLANO

Request to amend the Zoning Ordinance regarding adopting a broadly applicable process for making determinations of status as a nonconforming use or structure and for appealing those determinations. Project #ZC2023-010.

APPROVED: 6-0

Speaker Card(s) Received	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>
Petition Signatures Received:	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>
Other Responses:	Support: <u>0</u>	Oppose: <u>0</u>	Neutral: <u>0</u>

RESULTS:

The Commission recommends approval as follows (additions are indicated in underlined text; deletions are indicated in strikethrough text).

Amend Subsection 5.200.1 (Appeals) of Section 5.200 (Jurisdiction) of Article 5 (Variances and Appeals of Administrative Decisions), such subsection to read in its entirety as follows:

.1 Appeals

Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by an administrative officer ~~the Building Official~~ in the enforcement of this ordinance. For purposes of this Article, "administrative officer" means the person within a city department having the final decision-making authority within the department relative to the enforcement issue. This excludes appeals specifically heard elsewhere by provisions in this ordinance.

Amend Section 5.300 (Appeals) of Article 5 (Variances and Appeals of Administrative Decisions), such section to read in its entirety as follows:

5.300 Appeals of Order, Requirement, Decision, or Determination related to the Zoning Ordinance

~~.1 The Board of Adjustment may take action in accordance with Sec. 5.200.1. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, or board of the municipality affected by any decision of the Building Official.~~

.2 Appeals to the Board of Adjustment, which are Related to a Specific Application, Address, or Project

A. Any of the following persons may appeal to the Board of Adjustment a decision made by an administrative official:

i. a person who:

a. filed the application that is the subject of the decision;

b. is the owner or representative of the owner of the property that is the subject of the decision; or

c. is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or

ii. any officer, department, board, or bureau of the municipality affected by the decision.

B. The Board of Adjustment will determine whether a person has standing to appeal, if standing is challenged by the applicant, owner, an aggrieved person as described in Subpart 5.300.2.A.i above, or the city. The Board will base its determination of standing upon the criteria above. The matter of standing will be decided at the time of the hearing on the appeal.

.3 Such appeal must be made not later than the 20th day after the order, requirement, decision or determination has been rendered by the administrative officer, by filing with the administrative officer and with the Board of Adjustment a Notice of Appeal on a form provided by the City. The administrative official must immediately forward to the Board of Adjustment all the documents constituting the record of the action that is appealed.

~~Such appeal shall be made within 15 days after the decision has been rendered by the Building Official, by filing a Notice of Appeal specifying the grounds thereof with the Building Official and with the Board of Adjustment. The Building Official shall forward to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.~~

.4 **2** An appeal shall stay all proceedings of the action appealed from unless the administrative officer Building Official certifies to the Board of Adjustment, after the Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his their opinion, cause imminent peril to life or property. In such case, proceedings shall are not be stayed, unless otherwise than by a restraining order which may be is granted by the Board of Adjustment or by a court of record on petition, upon notice to the Building Official and on due cause shown.

.5 The Board must give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The Board must hear

and decide the appeal at the next meeting for which notice can be provided and not later than the 60th day after the date the appeal is filed.

.6 Interpretations may be considered consistent with the language in Section 1.1100.

Amend Subsection 5.400.2 of Section 5.400 (Action of the Board of Adjustment) of Article 5 (Variances and Appeals of Administrative Decisions), such subsection to read in its entirety as follows:

.2 Each case must be heard by at least 75% of the members of the Board of Adjustment. The concurring vote of 75% of the members of the Board of Adjustment shall be necessary to revise any order, requirement, decision, or determination of an administrative officer ~~the Building Official~~, or to decide in favor of the petitioner on any matter upon which it is required to pass under this ordinance or to approve any variance under this ordinance.

Amend Article 7 (Nonconformities), such additional section to read in its entirety as follows:

7.600 Determination of Nonconforming Status and Administrative Official Decision

The process for determination of nonconforming status is overseen by the Director of Planning. In their absence, a designee may be appointed.

.1 Informal Determination

City staff makes initial, informal determinations of whether a nonconforming use or structure exists under the provisions of the Zoning Ordinance. The informal determination is not appealable, and is considered valid unless a formal decision is requested.

.2 Formal Decision

The property owner may request a formal decision as to whether a nonconforming use or structure exists on their property from the Director of Planning.

A. The Director of Planning will meet with the requesting property owner, tenant, or designated representative within twenty (20) business days of the date on which the request for a formal decision was filed with the Director of Planning, unless otherwise agreed by the parties.

B. Based upon the evidence presented at such meeting, the Director of Planning will provide a formal, written decision within twenty (20) business days. The formal decision and related evidence are public records.

.3 Appeal

The formal decision of the Director of Planning may be appealed to the Board of Adjustment under Article 5 of this Ordinance.

To view the hearing, please click on the provided link:

<https://planotx.new.swagit.com/videos/267094?ts=7392>

MK/kob

cc: Eric Hill, Assistant Director of Planning
Christina Sebastian, Land Records Planning Manager
Melissa Kleineck, Lead Planner
Justin Cozart, GIS Technician
Jeanna Scott, Building Inspections Manager
Dorothy Alatorre, Sr. Administrative Assistant - Neighborhood Services

AGENDA ITEM NO. 4

PUBLIC HEARING: Zoning Case 2023-010

PETITIONER: City of Plano

DESCRIPTION: Request to amend the Zoning Ordinance related to adopting a broadly applicable process for making determinations of status as a nonconforming use or structure and for appealing those determinations. Project #ZC2023-010.

SUMMARY:

The purpose of this request is to amend the Zoning Ordinance to establish a process for making determinations of nonconforming status and for appealing those determinations. These amendments are in conformance with the Comprehensive Plan and will create a clear, standardized process for both staff and applicants to follow. For these reasons, staff recommends approval.

STAFF PRELIMINARY REPORT - INTRODUCTORY REMARKS

The Commission [called a public hearing](#) on May 15, 2023, to consider amending the Zoning Ordinance regarding adopting a broadly applicable process for making determinations of status as a nonconforming use or structure and for appealing those determinations. This request results from changes to state law which define formal processes for determining nonconformities and allowing for appeals to such determinations. Staff is requesting to add language to the Zoning Ordinance clarifying processes for determining nonconforming uses or structures to prepare for this impending law.

Current Practices

Plano's current regulations for nonconformities specify three instances in which a nonconformity shall exist. However, there is no defined process for staff to review and determine that one of these instances applies to a use or structure, nor for an applicant to provide evidence supporting a claim of nonconforming status. Typical current practice is for staff to research the history of a site, including site plans and certificates of occupancy. An applicant may also be requested to provide records of operation on site. However, this is done on a case-by-case basis and is informal in nature. Under the proposed changes, the city now provides a formal determination of nonconforming status. If an applicant disagrees with the determination, the applicant may appeal the decision to the Board of Adjustment. While state law always allowed for appeal of an administrative official's decision, currently under Plano's Zoning Ordinance, the Board of Adjustment only has jurisdiction to appeal decisions of the Building Official. This change brings the Ordinance in conformance with state statute.

The proposed changes establish the current practice for determining a nonconforming use or structure stated above into a formal process for an applicant to request a determination of nonconforming status, as well as allow this determination to be appealed to the Board of Adjustment. Additionally, staff recommends adding new language to the Zoning Ordinance's Board of Adjustment appeals section to be consistent with the language and time frames established in [Chapter 211](#) of the Texas Local Government Code.

STAFF PRELIMINARY REPORT - CONFORMANCE TO THE COMPREHENSIVE PLAN

The proposed request has been reviewed for conformance with the Comprehensive Plan.

Guiding Principles – The set of [Guiding Principles to the Comprehensive Plan](#) establishes overarching themes that apply to all policies and actions and express values for Plano Today, Plano 2050, and Plano Together. Since the principles do not stand alone but are used in concert with one another and carry across the Plan as a whole, each principle must be judged through a lens that incorporates all other principles to be fully and accurately understood. As such, the Commission is encouraged to review the full list of Guiding Principles and judge zoning requests through the lens of all principles.

Land Use Action 1 (LU1) – *Review and evaluate the Zoning Ordinance and make appropriate amendments based on guidance from the Comprehensive Plan.*

This proposed amendment will formalize current practices while ensuring compliance with state law regarding determining nonconforming status. This request is in conformance with this action statement.

Property Standards Action 9 (PRS9) – *Establish best practices to advance voluntary compliance and progressive code enforcement alternatives.*

This proposed amendment establishes a process defined by state law that will guide applicants through the proper channels to ensure their property conforms to zoning regulations. This request is in conformance with this action statement.

STAFF PRELIMINARY REPORT - ANALYSIS & RECOMMENDATION

SUMMARY:

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RECOMMENDATION:

Recommended for approval as follows (additions are indicated in underlined text; deletions are indicated in strikethrough text).

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