



NEIGHBORHOOD DEVELOPMENT SERVICES DEPARTMENT

Planning Division

MEMO Nonconforming Uses Research

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On October 9, 2019, City Commission directed staff to bring back a draft ordinance, similar to the one presented at that meeting by Vice Mayor Yates, that would allow for the expansion of nonconforming uses in commercial areas and Activity Centers. As part of this direction, staff was to research existing nonconforming uses and potential unintended consequences of allowing expansion of nonconforming uses. A nonconforming use is defined as “a lawful use of land that does not comply with the use regulations for its zoning district but which complied with applicable regulations at the time the use was established.” In simple terms, the use was permitted at the time of establishment, but subsequent changes to the zoning regulations no longer allow the use. The nonconforming use is ‘grandfathered’ and allowed to continue.

In conducting this research, staff has learned that there are only a few nonconforming businesses within the City:

Business Name	Zoning District	Non-conforming use
Florida German Shepherds	Agricultural (AG)	Kennel - Legally existing non-conforming, possibly past expiration time frame
VLC Holdings	Agricultural (AG)	Chipper Mill – legally existing non-conforming
Martin Septic	Agricultural (AG)	Septic Company (Commercial Business) legally existing non-conforming

Of the three nonconforming uses staff was able to identify, the dog kennel is likely no longer an existing use, as the property was sold in June 2017 and the business tax receipt has not been renewed¹. All three of the identified nonconforming uses were in the Agricultural (AG) zoning district, which was not to be included in the draft language per the direction Staff received from Commission. **Since there are no remaining nonconforming businesses within commercial zoning districts or Activity Centers, it does not appear to be necessary to allow the expansion of nonconforming uses in these areas.**

Staff was also asked to look into the potential unintended consequences of allowing expansion of nonconforming uses. While the discussion surrounding the direction was focused on the impact on businesses, there are nonconforming single-family residential homes within Activity Center 1, with underlying zoning of Commercial Redevelopment Low Impact (CRL). While the residential use is not prohibited and the Unified Land Development Code (ULDC) on face value would require a special exception for the use to expand, the Comprehensive Plan sets out a land use mix for each Activity Center. In Activity Center 1, the land use mix does not permit low density residential, as this area was 'established to provide for retail, office, commercial, and limited light industrial uses to provide services for the surrounding neighborhoods and to people using US 41.' Additionally, Policy 2.24 of the Comprehensive Plan states:

Due to the fiscal importance of Activity Centers to the City's overall financial sustainability the geographic size of the Activity Centers shall not be decreased. In addition, any change of land use in the Activity Centers that does not further the financial sustainability of the City shall be prohibited. Land use changes for more residential use than is already permitted within the Activity Centers shall be prohibited, with the exception of projects that include loft apartments or similar mixed uses that provide low income housing.

Allowing for expansion of nonconforming uses in Activity Center 1 would allow for these single family homes to expand, which is inconsistent with the Comprehensive Plan. Moving forward with this action would require an amendment to the Comprehensive Plan. Staff does not recommend this amendment to the Comprehensive Plan, as it may create conversation about increasing residential densities in areas where the financial sustainability of the City depends on commercial uses.

Additionally, there are potential legal implications with an ordinance that is selective in its application of standards, especially if these have the potential to be perceived as being arbitrary. What would the rationale be for allowing expansion of these uses within one zoning district but not another? In either district, a nonconforming use by definition is not permitted by current zoning. Allowing expansion of some nonconformities but not others could present the opportunity for the ordinance to be invalidated in a legal challenge. Zoning has been upheld by the courts as a legal use of police power, or power to enact regulations that protect the health, morals, safety, or welfare of the community. The City may create zoning districts and allow for different uses to be permitted within different areas of the City. Nonconformities, however, are a class of use which have been deemed by the City through its zoning regulations to be undesirable in their respective zoning districts. The doctrine of nonconformities generally relies on the fact that nonconforming uses may not be expanded. If Commission would like to continue with this direction, staff will engage the City's legal department to provide a full review of the legal implications of selective expansion of nonconforming uses.

¹ ULDC 53-246: F. Discontinuance. If any nonconforming use of a structure, or structure and premises in combination, ceases for any reason (except where governmental action impedes access to the premises) for a period of more than three hundred sixty-five (365) consecutive days, any subsequent use shall conform to the regulations for the district in which the use is located.

When this direction was provided, there was one nonconforming use in Activity Center 1 – Port City Pawn. Since that time, the ULDC has been amended to permit pawn shops in Activity Center 1, thereby removing the nonconformity.

Given that research has shown no remaining nonconforming businesses with Commercial General zoning or in Activity Centers, staff would like Commission to provide direction as to whether or not this ordinance should continue to move forward. Additionally, if direction is provided to continue, staff needs direction to process a Comprehensive Plan amendment to modify Activity Center 1 to allow for a percentage of single-family residential and to remove the prohibition from the Comprehensive Plan on increases in residential uses in Activity Centers.