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MEMORANDUM

TO: Jeff Jack, Board of Adjustment Chair
Board of Adjustment Members

FROM: Christopher Johnson
Development Assistance Center Manager
Planning & Development Review Department

DATE: April 10, 2014

SUBJECT: Appeal of Administrative Decision/Request for Interpretation for 2300 S. Lamar

Case Summary

The subject property at 2330 S. Lamar Blvd. is the location of the former Artz Rib House Restaurant which closed in the spring of 2012. On 3/6/2013 Staff approved a site plan exemption request, DA-2013-0091, for the remodel of the existing restaurant. The exhibit included with the site plan exemption request showed remodel of the existing restaurant, demolition of the smokehouse and entry totaling 186-sf, and additions to the front and rear of the building totaling 1,152-sf.

On 3/28/2013, the appellant obtained approval of a partial demolition permit and demolished the entire structure, except for an approximately 25-ft long section of exterior wall along the northeast side of the building. The existing building foundation has been covered by a significant amount of compacted base material and the site framed up for the pouring of a new foundation. A commercial building plan submittal was filed on 6/20/13 for "Interior Remodel Renovation and Addition to Existing Restaurant" for an approximate 6,900-sf restaurant, excluding deck area. This building plan submittal was rejected due to the proposed building plans not being consistent with the approved site plan exemption, and the fact that there is no existing restaurant to remodel, since the existing restaurant was demolished. The appellant disagrees with the denial of their commercial building plan submittal and the determination that it is not a remodel of the existing restaurant.

Staff believes the appellant's primary objection is with the Director's determination that the construction is beyond what's allowed without a site plan under Section 25-5-2. That issue is beyond the Board's authority, since Chapter 25-5 is not a zoning regulation. However, portions of the appeal do imply that the appellant disagrees with staff's determination that the proposed construction is beyond what's allowed for a "remodel" of a legal non-complying structure under

Section 25-2-963 and/or related provisions of Subchapter E, and it is within the Board's purview to determine whether this is an existing noncomplying structure that could be maintained and modified within the limits of the site plan exemption criteria which allow for an interior alteration of an existing structure, and new construction of less than 1,000-sf that do not increase the degree of noncompliance.

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Since these are questions within the Board's authority, we have posted this appeal solely to allow the Board to review staff's determination on these issues. The remainder of this report is limited to these issues.

Arguments

The project located at 2330 S. Lamar is still a remodel under all applicable zoning and other city codes. Section 1.2.3 of the zoning code [Chapter 25-2, Subchapter E, APPLICABILITY] specifically qualifies Level III alterations as defined in the International Building Code as remodels. Nothing that has been performed at the site would make the project less compliant with Section 25-5-2 that the day the site plan exemption was approved.

Staff Interpretation

Chapter 25-2, Subchapter E, Section 1.2.3 establishes the applicability of partial compliance with the Design Standards and Mixed-Use Subchapter E, also known as the Commercial Design Standards, based on terms of alteration defined in the adopted Existing Building Code. It does not define the term remodel as it pertains to modification of a non-complying structure.

Although the term "remodel" is not defined under the City's zoning regulations, the restaurant structure that existed on the subject property prior to its demolition, was considered a legal noncomplying structure since the site did not comply with the sidewalk and building placement requirements for a Core Transit Corridor under Chapter 25-2, Subchapter E, Section 2.2 – *Relationship of Buildings to Streets and Walkways*. Therefore permitted modification to the noncomplying structure is limited to what is authorized under Section 25-2-963. It is staff's determination that since the noncomplying structure was substantially demolished, including the roof, all interior and exterior walls, except for approximately 25-ft segment of the northeast wall, and a new foundation proposed (the old foundation is buried under fill, and not structurally connected to the proposed construction), there is no existing non-complying structure to modify.

Additionally, Section 25-2-964 limits the restoration to damaged or destroyed, noncomplying structures to *structures that were damaged by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind*. The demolition of the noncomplying structure at 2330 S. Lamar was not accidental. It was intentional demolition performed by the appellant's contractor and thus the non-complying structure cannot be restored to its prior noncompliant configuration.

Based on the findings above, staff respectfully requests the Board to uphold the Director's determination that the demolition of the entire roof, all interior and exterior walls, except for a small segment of the northeast wall, and the covering of the existing foundation with base

material for the construction of a new foundation, is not a remodel in conformance with the allowable modifications to a noncomplying structure authorized by Section 25-2-963.

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Pertinent Code references:

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25-2-963 MODIFICATION AND MAINTENANCE OF NONCOMPLYING STRUCTURES.

(A) Except as provided in Subsections (B), (C), and (D) of this section, a person may modify or maintain a noncomplying structure.

(B) The following requirements must be met in order to modify, maintain, or alter a non-complying residential structure:

(1) Demolition or removal of walls must comply with the following requirements:

(a) No more than fifty percent of exterior walls and supporting structural elements of the existing structure may be demolished or removed, including load bearing masonry walls, and in wood construction, studs, sole plate, and top plate. For purposes of this subsection, exterior walls and supporting structural elements are measured in linear feet and do not include the roof of the structure or interior or exterior finishes.

(b) Replacement or repair of structural elements, including framing, is permitted if required by the building official to meet minimum health and safety requirements.

(2) Replacement or alteration of an original foundation may not change the finished floor elevation by more than one foot vertically, in either direction.

(3) For any residential use other than a single-family use in an SF-3 or more restrictive zoning district, the following requirements must be met in order to add square footage or convert accessory space into conditioned or habitable space:

(a) If the lot is non-complying with current lot size or lot width requirements, the cost of improvements may not exceed 20 percent of the value of the structure before the improvements.

(b) Compliance with current parking and occupancy regulations is required.

(4) If a noncomplying portion of a structure is demolished, it loses its noncomplying status and may only be rebuilt in compliance with current code.

(C) Except as provided in Subsections (E) and (F), a person may not modify or maintain a noncomplying structure in a manner that increases the degree to which the structure violates a requirement that caused the structure to be noncomplying.

(D) The following requirements must be met in order to repair, reinforce, or maintain a non-complying dock, bulkhead, or shoreline access as defined in Section 25-2-1172 (*Definitions*), or to modify a noncomplying dock:

(1) Modification of a dock must comply with the following requirements:

(a) the dock must be an accessory to a single-family residence;

(b) the alteration must be confined within the existing footprint;

(c) the total footprint of the dock must be reduced by 50%;

(d) the number of boat slips on the dock is reduced by 50%; and

(e) the alternation may not increase the degree to which the structure violates a requirement that caused the structure to be noncomplying.

(2) Repair, reinforcing, or maintaining a noncomplying dock, bulkhead, or shoreline access must comply with the following requirements:

(a) no more than 50 percent of existing piles, pilings, or sheet pile or no more than 50 percent of the length of the dock, bulkhead, or shoreline access may be removed or replaced; and

(b) the location, footprint, and degree of noncompliance of the structure is not altered;

(3) Demolition is subject to the limitation in Subsection (B)(4) of this Section.

(E) A person may increase the height of a building that is a noncomplying structure based on a height requirement of this title if:

(1) the increase is made to a portion of the building that:

(a) does not exceed the existing maximum height of the building; and

(b) complies with the yard setback requirements of this title;

(2) the increase does not exceed 15 percent of the existing maximum height of the building; and

(3) after modification, the height of the modified portion of the building does not exceed the existing maximum height of the building.

(F) A person may modify a building that is a noncomplying structure based on a yard setback requirement of this title if:

(1) the modified portion of the building:

(a) does not extend further into the required yard setback than the existing noncomplying portion of the building, except for a vertical change in finished floor elevation allowed under Subsection (B)(2) of this section;

(b) unless located in a street side yard, is not greater in height than the existing noncomplying portion of the building, except for a vertical change in finished floor elevation allowed under Subsection (B)(2) of this section; and

(c) complies with the height requirements of this title; and

(2) the additional length of a modified portion of the building does not exceed the lesser of 50 percent of the length of the noncomplying portion of the building or 25 feet measured from the existing building and parallel to the lot line.

(G) Subsection (F) applies to each yard setback requirement with which the existing building does not comply.

(H) A person may modify a noncomplying building once under Subsection (E) and once under Subsection (F). This section does not prohibit a person from modifying a building along more than one yard setback as part of a single project.

25-2-964 RESTORATION AND USE OF DAMAGED OR DESTROYED NONCOMPLYING STRUCTURES.

(A) A person may restore a noncomplying structure that is damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind if the restoration begins not later than 12 months after the date the damage or destruction occurs.

(B) Except as provided in Section 25-2-963 (*Modification And Maintenance Of Noncomplying Structures*):

(1) a structure restored under this section is limited to the same building footprint, gross floor area, and interior volume as the damaged or destroyed structure; and

(2) a noncomplying portion of the structure may be restored only in the same location and to the same degree of noncompliance as the damaged or destroyed structure.

Chapter 25-2, Subchapter E – DESIGN STANDARDS AND MIXED-USE

1.2.3. Partial Compliance. For a project that is not subject to Sections 1.2.2 (Full Compliance) or 1.2.4 (Exemptions), the Director shall determine which standards of this Subchapter apply to the project or a portion of the project in accordance with the following requirements:

A. A new building, or building addition as defined by the adopted Existing Building Code must comply with:

1. Article 2 unless compliance cannot be achieved due to:

- a. The location of existing buildings or other improvements retained on the site;
- b. The size or nature of the proposed building limits placement on the site;
- c. Topography, protected trees, or critical environmental features; or
- d. The location of water quality or detention facilities.
- e. A waiver from the requirements of Article 2

shall be to the minimum extent required based on the criteria of this subsection; and

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2. Article 3.
 - B. A remodeled building or facade must comply with:
 1. Section 2.5 (Exterior Lighting); and
 2. Article 3 where the remodeled building is considered a "Level 3" Alteration or Addition as defined by the adopted Existing Building Code such that the work area exceeds 50% of the aggregate area of the building and the principal street facade.

Site Plan Exemption criteria (provided for information only)

25-5-2 SITE PLAN EXEMPTIONS.

(A) The director shall determine whether a project is exempt under this section from the site plan requirement of Section 25-5-1 (*Site Plan Required*). The director may require that the applicant submit information necessary to make a determination under this subsection. The director may require an applicant to revise a previously approved site plan under Section 25-5-61 (*Revisions To Released Site Plans*).

(B) A site plan is not required for the following development:

(1) construction or alteration of a single-family residential, single-family attached residential, duplex residential, two-family residential, or secondary apartment special use structure, or an accessory structure, if:

(a) not more than one principal residential structure is constructed on a legal lot or tract; and

(b) a proposed improvement is not located in the 100 year flood plain, or the director determines that the proposed improvement will have an insignificant effect on the waterway;

(2) removal of a tree not protected by this title;

(3) interior alteration of an existing building that does not increase the square footage, area, or height of the building;

(4) construction of a fence that does not obstruct the flow of water;

(5) clearing an area up to 15 feet wide for surveying and testing, unless a tree more than eight inches in diameter is to be removed;

(6) restoration of a damaged building that begins within 12 months of the date of the damage;

(7) relocation or demolition of a structure or foundation covering not more than 10,000 square feet of site area under a City demolition permit, if trees larger than eight inches in diameter are not disturbed and the site is not cleared;

(8) development in the extraterritorial jurisdiction that is exempt from all water quality requirements of this title; or

(9) placement of a commercial portable building on existing impervious cover if the building does not impede or divert drainage and the site complies with the landscaping requirements of this title; and

(10) construction or alteration of a townhouse in the Mueller Planned Unit Development or the area identified in Section 1.2.5.B (*Conflicting Provisions*) of the Regulating Plan for the Lamar Blvd./Justin Lane Transit Oriented Development.

(C) Except for a change of use to an adult oriented business, a site plan is not required for a change of use if the new use complies with the off-street parking requirements of this title.

(D) Except for an adult oriented business, a site plan is not required for construction that complies with the requirements of this subsection.

(1) The construction may not exceed 1,000 square feet, and the limits of construction may not exceed 3,000 square feet, except for the following:

(a) enclosure of an existing staircase or porch;

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- (b) a carport for fewer than ten cars placed over existing parking spaces;
 - (c) a wooden ground level deck up to 5,000 square feet in size that is for open space use;
 - (d) replacement of a roof that does not increase the building height by more than six feet;
 - (e) remodeling of an exterior facade if construction is limited to the addition of columns or awnings for windows or entrance ways;
 - (f) a canopy over an existing gas pump or paved driveway;
 - (g) a sidewalk constructed on existing impervious cover;
 - (h) replacement of up to 3,000 square feet of building or parking area lost through condemnation, if the director determines that there is an insignificant effect on drainage or a waterway; or
 - (i) modification of up to 3,000 square feet of a building or impervious cover on a developed site if the modification provides accessible facilities for persons with disabilities.

(2) The construction may not increase the extent to which the development is noncomplying.

(3) The construction may not be for a new drive-in service or additional lanes for an existing drive-in service, unless the director determines that it will have an insignificant effect on traffic circulation and surrounding land uses.

(4) A tree larger than eight inches in diameter may not be removed.

(5) The construction may not be located in the 100 year flood plain, unless the director determines that it would have an insignificant effect on the waterway.

(E) A site plan is not required for minor site development, minor construction, or a change of use that the director determines is similar to that described in Subsections (B), (C), and (D) of this section.

(F) A site plan is not required for construction of additional facilities at an existing public primary educational facility or public secondary educational facility in the zoning jurisdiction or in a municipal utility district in which City building permits are required.

(G) A site plan is not required for construction of a new public primary educational facility or public secondary educational facility in the zoning jurisdiction.

(H) A site plan is not required for the construction of subdivision infrastructure in accordance with approved subdivision construction plans.

(I) The exemptions provided by Subsections (C) and (D) do not apply to a bed and breakfast residential use established after October 1, 1994.

(J) The exemptions provided by this section do not apply to a telecommunications tower described in Subsection 25-2-839(F) or (G) (*Telecommunication Towers*).

(K) A site plan is not required for development of a site solely for a community garden use if the director determines that the overall plan does not exceed the exceptions described in subsections (B), (C) or (D).

(L) The exemptions provided by this section do not apply to the construction of a dock, bulkhead, or shoreline access as described in Chapter 25-2, Article 13.

(M) A site plan is not required to repair, reinforce, or maintain a dock, bulkhead, or shoreline access, or to modify a dock under the following conditions:

- (1) the existing dock, bulkhead, or shoreline access was legally constructed; provided that simple re-decking will be allowed for all docks;
- (2) no variance from City Code is required;
- (3) no city board or commission approval is required;
- (4) there will be no increase in the existing footprint of the dock, bulkhead, or shoreline access; and

(5) the work is authorized under Section 25-2-963 (*Modification and Maintenance of Noncomplying Structures*) or Section 25-2-964 (*Restoration and Use of Damaged or Destroyed Noncomplying Structures*).