

RESPONSES TO URB QUESTIONS REGARDING USES: PAZ RESPONSES

August 24, 2020

At the August 17, 2020 URB meeting, several questions were asked regarding permitted uses and the specific “save and except uses” and nonconforming uses. Below are staff’s responses:

PERMITTED AND SAVE AND EXCEPT USES

- The save and except uses were carved out of the subdistrict where they are located (due to the use being an existing use) when the subdistrict otherwise made them prohibited. The save and except uses for specific properties are permitted uses and must adhere to the regulations governing the use. The uses will be permitted to operate until action is taken to make them prohibited.
- A save and except use may be expanded and would be a permitted use regulated by the applicable regulations. As long as the proposed expansions (parking, impervious cover, building height, building coverage, etc.) meet the code adhere to the code, they can expand just like the same use on another site.

NONCONFORMING USES – Land Development Code, Article 7

- Below are specific Land Development Code (LDC) sections pertaining to nonconforming uses that address some of the URB’s discussions:
 - Austin’s LDC (§ 25-2-941) defines a nonconforming use as:

...a land use that does not conform to current use regulations but did conform to the use regulations in effect at the time the use was established.
 - **§ 25-2-944 - Damaged Structure Used for a Nonconforming Use**

(A) A damaged structure used for a nonconforming use may be repaired and the nonconforming use continued if the building official determines that the cost of repair does not exceed 90 percent of the value of the structure immediately before the damage.
 - **§ 25-2-945 - ABANDONMENT OF NONCONFORMING USE.**

(A) A person abandons a nonconforming use if:
 - (1) the person changes the use of property from a nonconforming use to a conforming use; or
 - (2) the person discontinues the nonconforming use for 90 consecutive days.

(B) A seasonal discontinuance of a use, or a temporary discontinuance of a use for maintenance or repair, is excluded from a calculation of the 90-day period described in Subsection (A)(2).

(C) A person may not resume an abandoned nonconforming use.
 - **§ 25-2-946 Nonconformance Use Groups**

This is a section of the code that determines what nonconforming use group a nonconforming use will fall into as prescribed by Section 25-2-947(*Nonconforming Use Regulation Groups*) Generally, the greater the nonconformance, the greater the restrictions. For example, nonconforming uses that falls into the “A” group which are uses allowed in the LO, GO, LR, GR, CS, CS-1, and LI (the most common office/commercial and industrial districts) and is located on single-family zoned lots have a 10-year “lifespan” from the point of becoming nonconforming before they become illegal if the structure is worth less than \$10,000.

The other use groups-B, C, and D-place varying restrictions on what can be done on a property such as limiting expansion to 20% (Groups A and B), cannot expand the use if the expansion increases the parking 120% as required in 1984 (Groups C and D), and get Planning Commission approval if it is a conditional nonconforming use (Group D).