



**ZONING AND PLATTING COMMISSION RECOMMENDATION 2020107-D1a:
Commercial Nonconformities Under CodeNEXTversion4**

Date: January 7, 2020

Subject: Commercial Nonconformities Under CodeNEXTversion4

Motioned By: Commissioner Denkler

Seconded By: Commissioner King

Motion to forward information regarding Commercial Nonconformities Under CodeNEXTversion4 for Council's review, attached.

Vote: 9-0

For: Chair Kiolbassa, Vice-Chair Duncan and Commissioners Aguirre, Bray, Denkler, Evans, King, Ray and Smith

Against:

Abstain:

Absent: Commissioners Barrera – Ramirez and Tatkov, off the dais.

Attest:

Andrew Rivera - Liaison

Commercial Nonconformities Under CodeNEXT version 4

Jolene Kiolbassa

1/7/2020 presentation

CN4 Creates Many Nonconformities (Commercial Structures, Uses and Lots)

- By stating new code will make some properties nonconforming **even if currently conforming.**
- With language that explains **how and why** properties will become nonconforming.
- By **eliminating uses now allowed** in some zones.
- By being very prescriptive with site development standards, such are setbacks, height, parking. etc.
- **By not retaining current “Safe Harbor” provision.**

All Legal Uses and Structures Not **CN4** Compliant are Nonconforming

23-2H-1020 Nonconforming Status

(A) Nonconforming Uses.

- (1) A use of land or buildings that does not conform with the applicable use regulations of Chapter 23-3 (Zoning Code), or a separately adopted zoning ordinance, is a nonconforming use if:
 - (a) The use existed lawfully, in conformance or legal nonconformance with applicable use regulations, on the date that a zoning restriction prohibiting or restricting the use became effective; and
 - (b) The use has continued to exist since the zoning restriction prohibiting or restricting the use became effective, without cessation or abandonment in violation of applicable regulations.
- (2) A use that is not a nonconforming use is in violation of this Title if it does not conform to the use regulations of Chapter 23-3 (Zoning Code) or a separately adopted zoning ordinance.
- (3) Nonconforming uses are declared to be incompatible with allowed uses in the zone in which they are located.

(B) Nonconforming Structures.

- (1) A building, structure, or developed area, including a parking or loading area, that does not comply with site development regulations applicable under this Title, or a separately adopted zoning ordinance, is a nonconforming structure if it existed lawfully, in conformance or legal nonconformance with applicable site development regulations, at the time it was constructed.
- (2) A building, structure, or developed area that is not a nonconforming structure is in violation of this Title if it does not comply with applicable site development regulations.

Yet buildings on “narrow interior lots” are exempted from setback requirements in MU, MS, RC, IF

Self-Storage Facilities Only Allowed In **CN4** MU5B, IF and IG

These businesses will become prohibited (NOT grandfathered)

- CubeSmart Storage on Burnet
- Life Storage on Menchaca
- Public Storage on West Gate
- Kingsize Storage on Hwy 290
- and many more



Mortuaries Only Allowed In **CN4** MU4, MU5B,IF,IG and IH

These businesses will become prohibited (NOT grandfathered)

- Weed-Corley-Fish Funeral Home on N. Lamar
- Cook Walden Funeral Home on N. Lamar
- Harrell Funeral Home on Frontier Trail
- Mission Funeral Home on E. Cesar Chavez
- Mission Funeral Home Serenity Chapel on S.
1st



Auto-Related Uses in **CN4** Only Allowed in **MU5B** & Industrial (IF, IG & IH)

These businesses will become prohibited (NOT grandfathered)

- Atlas Automotive and Repair
- Youniversal Auto are
- Rivera Welding Auto Mechanic
- Roli Truck and Auto Sales
- Auto 7 Tech
- FlamingoAutomotive



- Lamb's Tire and Automotive
- APR Engines and Automotive
- GroovyAuto
- R&DAuto Sales
- Ruben's Automotive
- And many gasstations

A Tale of Two Tire Shops

Both are now zoned CS and legal, but with **CN4** rezoning, one will be prohibited



Rezoned from CS to MU5A



Rezoned from CS to MS3

CN4 Makes Stand-Alone Car Wash Not Possible



- “Automotive washing” now permitted
- **CN4** eliminates such permitted use
- Included only as part of “gas station”

GAS STATION. A facility offering full-service or self-service gas pumps for vehicles in addition to water, oil, window washing, or washing and cleaning of passenger vehicles, recreational vehicles, or other light duty equipment. Includes incidental sale of petroleum or automobile related products. This excludes automobile repair.

Strange **CN4** Bedfellows:

“Repairs and Despairs Downstairs”

- Mixed use typically allows offices and residential over retail and restaurants.
- **CN4** MU also allows auto repair shops and funeral homes on ground floor.



Other Problematic **CN4** Uses

- **Uses changed**
 - “**Medical Offices**” and “**Hospital Services Limited**” disappear and become part of “**Medical Services**” that allows outpatient surgical services
 - “**Drive-through, retail, or service facility**”
 - Currently an accessory use
 - “...not limited to banks, pharmacies, post offices, liquor stores...”
 - Proposed to be a stand-alone use allowed only in MU, UC and RD
 - Not listed as an accessory use in 23-3D-1050
- **Terminology changed**
 - “Convenience storage” to “Personal storage”
 - “Art workshop” to “Art studio”

Will make it difficult to figure out new use and if grandfathered

Steps to Determine if **CN4** Allows Use:

1. Look up property on LDCwebsite
“Comparison Map” or zoning
2. Look up allowed uses
 - City of Austinwebsite not useful
 - Use Zilker NA website
[zilkerneighborhood.org/docs/ldc/LDCR1/ LDCR1_allowed_uses_citywide.pdf](http://zilkerneighborhood.org/docs/ldc/LDCR1/LDCR1_allowed_uses_citywide.pdf)
3. If definition is new, look up in 23-3C-2030

All New **CN4** Commercial Site Development Standards

- Lot size
- Structure placement
- Building size, height and setbacks
- Frontage and wall articulation
- Uses
- Parking requirement
- Parking placement

Comparative Site Development Standards

	CS	MU1	MU2	MU3	MU4	MU5	MS2	MS3
Max. Impervious Cover	95%	70%	70%	70%	80%	90%	90%	95%
Maximum FAR	2:1	1:1	1:1	.8:1	1:1	2:1	-	-
Maximum Height	60	35	40	40	60	60	45	65
Min. 1 st Floor Height	-	-	-	-	-	-	18	18
<i>Setbacks</i>								
Minimum Front Yard	10	15	10	10	5	5	5	5
Min. Street Side Yard	10	15	10	10	5	5	5	5
Min. Interior Side Yard	-	5	5	5	5	-	-	-
Minimum Rear Yard	-	10	10	5	5	-	5	-
Maximum Front Yard	-	-	-	-	-	-	10	10
Max. Street Side Yard	-	-	Affordable housing bonus not included	-	-	-	10	10

CN4 Will Make Many Existing Structures Nonconforming

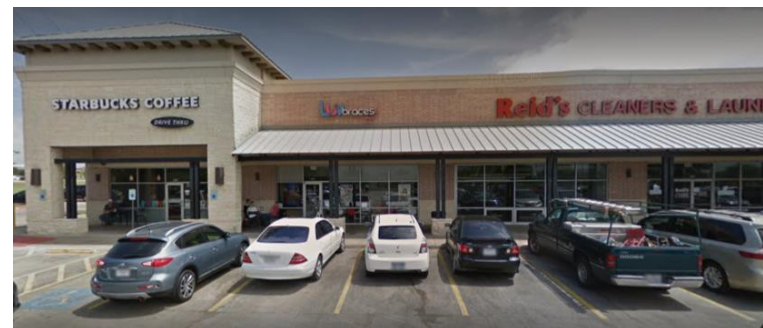
- All commercial uses on front property line
- All properties with 100% impervious cover
- MainStreet (MS) buildings need to be:
 - between 5' and 10' from front property line
 - between 5' and 10' from side property line
- Buildings in other zones also affected
- Setback grandfathering probably will not apply

Severe Impact of Setback Nonconformity

23-2H-1050 Continuation of Nonconformity

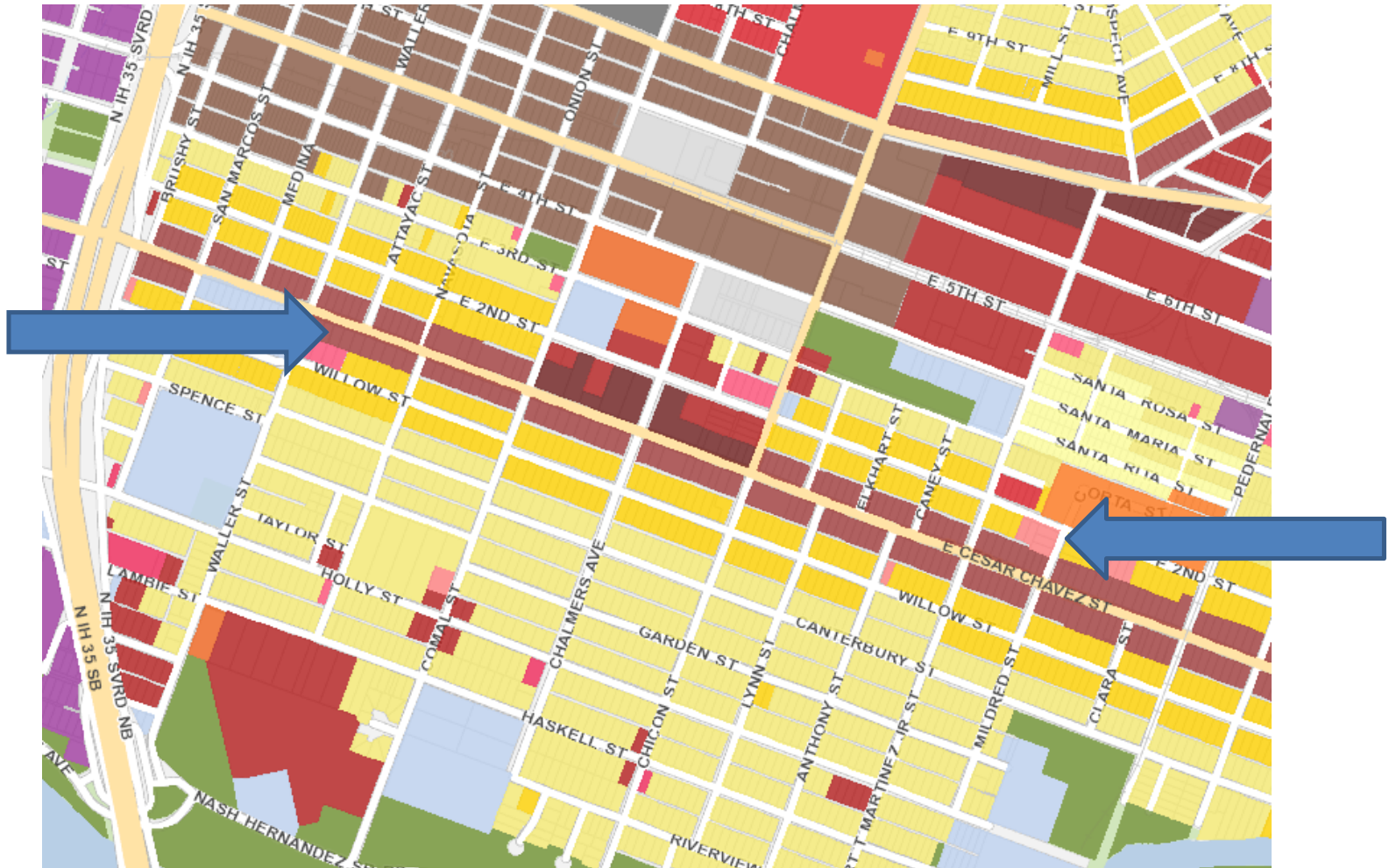
- (3) **Setback Requirements.** A structure that is nonconforming with a setback required by this Title may only be altered if:
- (a) The alteration is a vertical change in finished floor elevation allowed in compliance with Subsection 23-2H-1070(C)(2) (Alteration of Nonconforming Structures); or
 - (b) The modified portion of the structure does not exceed:
 - (i) The maximum height allowed by this Title;
 - (ii) The existing height of the tallest portion of the structure that extends or encroaches into a required setback, other than a street setback; or
 - (iii) If a structure is expanded horizontally, the lesser of 50 percent of the length of the nonconforming portion of the structure or 25 feet measured from the existing structure, parallel to the lot line.

These Buildings Do NOT Meet New **CN4** MS Placement Rules

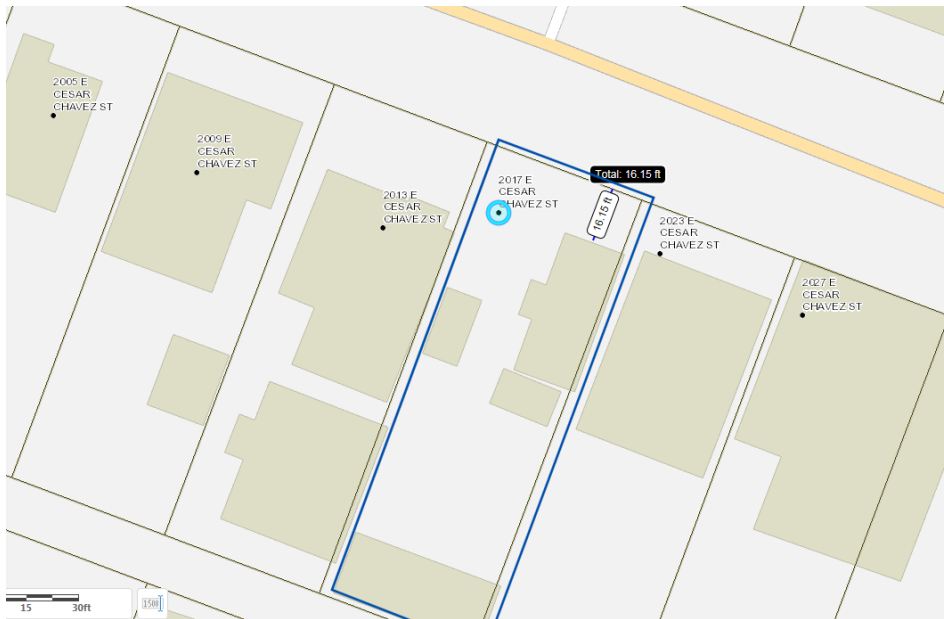


*will require survey to determine distances and property lines

One Street's Story: MS2B and MS3 on E. Cesar Chavez



Violations of Minimum and Maximum Setbacks



Violation of Maximum 10' Front Setback
2017 E. Cesar Chavez

Even Though **CN4** Reduces Parking New Rules Will Create Nonconformities

- Parking maximums in MU and MS zones
- No off-street parking between building facade and corridor for new construction, or
 - Enclosed addition of 25%+ gross floor area
 - Use change increases required spaces

To Figure Out if Commercial Property is Nonconforming:

- Look up mapped zoning designation
- Goto Chapter 23-3 for specifications
- Measure property from ROW, etc.
- Measure height of first floor if MS
- Count parking spaces, if large building

CN4 States Nonconforming Properties Cease to Exist

- By limiting investment and restricting expansion
- If discontinued for more than 90 days
 - Have 18 months to rebuild
 - Insurance settlements can take longer
 - Enough time to mitigate asbestos?
 - Repairs must cost less than 50% total value
 - Director can deny application to alter or repair

- (2) Discourage the long-term continuation of nonconformities by limiting investments in them and restricting expansions or alterations that increase their degree of noncompliance or otherwise affect adjoining properties or neighborhoods; and
- (3) Seek to phase-out or amortize, where appropriate, those nonconformities that are considered to be especially incompatible with the Comprehensive Plan or applicable regulations of this Title or which pose a threat to public health, safety, and welfare.

Discretion Given Staff to Declare Nonconformities

- “or otherwise affect adjoining properties or neighborhoods”
- “those nonconformities that are considered to be especially incompatible with the Comprehensive Plan or applicable regulations”
- “are declared to be incompatible with allowed uses in the zone”

23-2H-1030 Determination of Nonconforming Status

(A) **Purpose and Applicability.** This section establishes a process for obtaining a formal determination on whether an existing use or structure is nonconforming under Section 23-2H-1020 (Nonconforming Status). The responsible director may recognize a use, structure, or lot as nonconforming during review of a development application, without issuing an administrative determination under this section.

“Safe Harbor” Provision in Current Code

- Grandfathers **structures** and **uses**
- If conforming under current rules, conformity continues regardless of new rules
- Recognizes previous buildings constructed under requirements for setbacks, cover, etc.
- Makes confusing/contradictory language about nonconforming properties less worrisome

§ 25-2-942 - USES CONFORMING ON MARCH 1, 1984.

The use of a building, structure, or property that conformed with the zoning regulations in effect on March 1, 1984 is a conforming use notwithstanding the requirements of this chapter.

Source: Section 13-2-340; Ord. 990225-70; Ord. 031211-11.

§ 25-2-962 - STRUCTURES COMPLYING ON MARCH 1, 1984.

(A) A structure that complied with the site development regulations in effect on March 1, 1984, is a complying structure notwithstanding the requirements of this chapter.

(B) A structure that complies with the site development regulations does not become a noncomplying structure as the result of a change in the use, zoning, or development of adjacent property.

Source: Section 13-2-820; Ord. 990225-70; Ord. 031211-11.

Staff Reasoning for Removing “Safe Harbor” Provision

- 1984 grandfather provision was a bad idea.
- Provision difficult to interpret and apply.
- City will not include “Safe Harbor” again.
- **CN4** does not create many nonconformities

Many More Properties Will Become Nonconforming

- No idea how many total
- Auto-related, mortuary and self-storage
- Other undefined affected uses
- Many more based on structure or parking
- Will require:
 - Surveys of properties
 - Interpretations of new terms

How Nonconformity Hurts Commercial Properties

- Lenders want confirmation that City will allow what applicant wants to do
- Will need letter from City confirming conformity for loans and refinancing
- Difficult to refinance property
- Difficult to secure loans to buy equipment
- Near impossible to sell business
- Cannot expand business in current location

Other Nonconformity Issues Merit Further Study

- Loading areas since specified as being potentially nonconforming
- Industrial zones not included here
- Problems may also occur with other current zones such as GR, LR
- Some VMU may be nonconforming
- Examine uses more closely

Proposed Solutions

- Key: Include “Safe Harbor” provision
- Direct translation of current zoning categories to proposed categories

Thank you!