

AGENDA
JENKS BOARD OF ADJUSTMENT - SPECIAL MEETING
6:00 P.M., WEDNESDAY, MAY 20, 2020

I. CALL TO ORDER

II. ROLL CALL

1. MEMBERS REMOTELY MEETING

- Chair Shari Keathley - teleconference
- Erik Enyart - videoconference
- Gina Wilson - videoconference
- Larry Hengst - teleconference
- Paul Greek - videoconference

The meeting will be live streamed on the [CITY OF JENKS' YOUTUBE CHANNEL](#). If you have any comments pertinent to the agenda items for the public record, please send them to the City Clerk at bmacy@jenksok.org by noon on the day of the meeting. If you cannot email your comment, you may either call the City Clerk at 918-209-4903 or leave your comment in the utility drop box by the end of business the day before the meeting. Your name and address are required to be included in the public record.

III. OLD BUSINESS

1. JBOA 20-430: Request by Theresa Dewhurst for a Special Exception to allow for a continuation of a pre-existing nonconformity after a requested zone change. General Location: 122 N 6th St

Documents:

1. [SR.JBOA 20-430_5.20.20.PDF](#)
2. [MEMO JBOA 20-430.PDF](#)
3. [CASE MAP.PDF](#)

IV. ADJOURNMENT

To	Board of Adjustment
Hearing Date	May 20, 2020 Continued from May 14, 2020
Case Number	JBOA 20-430 Dewhurst
Request	Special Exception To allow for a continuation of a pre-existing nonconformity after a requested zone change
Location	122 North 6th Street
Applicant	Teresa Dewhurst

Staff Report

Preparer | Marcaé Hilton

Attachments

CASE MAP

Preparer

INCOG

Background Information

STAFF COMMENTARY | This item has been continued on two occasions, first it was continued from the April 16, 2020 regularly scheduled BOA meeting. The Board of Adjustment requested a legal opinion to further clarify the zoning code and the timing/adoption of certain zoning text ordinances. Currently, staff recommends the BOA approve the requested special exception to allow the residential use along with the commercial use on a lot that is zoned CS. See “Legal Opinion Memo” for details. Secondly, it was continued from the regularly scheduled meeting of May 14, 2020 the BOA members present voted to continue to a meeting with more Board members present. The Chair was contacted and scheduled a special hearing for May 20, 2020.

The applicant Teresa Dewhurst went through the rezoning process in January of 2020. The case *JZ 19-648* was heard by Planning Commission on January 09, 2020 and approved by City Council on January 21, 2020 along with Ordinance No. 1504. The action as requested and approved permitted the property (122 North 6th Street) to be rezoned from (RS-3) Residential Single-Family High Density to (CS) Commercial Shopping Center. At the time of rezoning hearing, the applicant planned to sell/lease the property for Uses allowed within a CS district such as office, medical, retail, food service, etc. development. Since approval, the applicant has decided to keep the residential use indefinitely and is seeking a Special Exception.

The property is located south of Main Street in an area of older residences which continue to transition to commercial and office uses, the requested zone change is consistent with the Comprehensive Plan. The property was originally built and functioned as a single-family home with a garage and accessory structure. The accessory structure has operated as a Barber shop for many years. The operation of a commercial use (Barber Shop) on a residential property without a special exception deemed the lot “pre-existing nonconforming”. The change in zoning brought the Use and anticipated Uses into conformance with the new (CS) zoning.

EXCERPT FROM APPROVAL LETTER | *Blue highlights per Marcae'*

Your requested Zone Change from RS-3 (Residential Single-Family High-Density District) to CS (Commercial Shopping Center District) was approved by Jenks City Council on 21 January 2020. Before this zone change, the property was operating under a pre-existing nonconformity to allow for two primary structures on one lot and to allow a commercial business on a residential lot. Normally, as long as the status quo is continued the pre-existing nonconformity is allowed to continue. This changed with the approval of the zoning change.

According to §1200. e of the Jenks Zoning Code, "Upon approval of a rezoning request, the previous use of a property if not permitted within the new zoning district shall be deemed an unlawful use and shall not be considered for rights extended to pre-existing nonconforming uses." By that reading, once the requested zone change was approved, the commercial property (*barber shop*) on the lot became the principal *structure "use"* and the only one conforming to the Zoning Code. It also means that a residential dwelling is no longer a lawful use of the property.

§1220.f, though, states:

When at the effective date of this zoning code or amendment thereto, there exists a lawful use of a building, or use of a principal building and land, or use of land and accessory structures, such structures covering more than ten percent of the lot area, and such use would not be permitted by the terms of this zoning code or amendment thereto, such use shall be deemed pre-existing nonconforming and may continue subject to the following provisions

f. A pre-existing nonconforming use of a building or of a building and land in combination when located within a residential district shall not be changed unless changed to a use permitted in the district in which located. (*i.e. Residential to Commercial Shopping for office and barber*) A pre-existing nonconforming use of a building or of a building and land in combination, when located within a district other than a Residential District, may, as a Special Exception, be changed upon approval of the Board of Adjustment after finding that the proposed use will not result in any increase of incompatibility with the present and future use of proximate properties. The change of a use to another use contained within the same use unit shall not constitute a "change of use" within the meaning of this section.

PLANNING DATA

Intended Use	Non-conforming combination of Residential and Commercial Uses
Zoning	CS Commercial Shopping
Uses Allowed	See Chart Sec 610
Comprehensive Plan	High Intensity Area, no specific land uses reserved
General Location	122 North 6th Street South of A St. and north of Main St. and west of N. 6 th St.
Plat	Jenks Original Town, Lots 1,2,3, Block 13
STR	Section: 19, Township: 18, Range: 13
Zoning	Commercial and office

Nonconformance

A nonconforming use is a use of property that was allowed under the zoning regulations at the time the use was established but which, because of subsequent changes in those regulations ([rezoning](#)), is no longer a permitted use.

SUPPLEMENTAL INFORMATION | Lawful Use Zoning Information

Sec. 610. - Principal uses permitted in commercial districts.

The principal uses permitted in the Commercial Districts are designated by use units. The use units are groupings of individual uses and are fully described, including their respective off-street parking, loading, and screening requirements and other use conditions in Chapter 10. The use units permitted in Commercial Districts are set forth below in Table 1 and Table 1A.

Table 1. Use Units Permitted in Commercial Districts 1 (Chapter 10)

No.	Chapter 10 Use Units Name	Districts				
		ROC	RTC	LC	CS	RS
1.	Area wide Uses			X	X	X
2.	Area wide Specific Use	S	S	S	S	S
3.	Public Protection and Utility and Open Air Facilities					E
4.	Public Protection	X	X	X	X	
5.	Community Services and Cultural Facilities	P	P	X	X	E
6.	Single-Family Dwelling and Similar Uses X					X
7.	Duplex Dwelling					E2
8.	Multifamily Dwellings and Similar uses	P			P	
10.	Off-Street Parking Areas	X	X		X	
11.	Offices and Studios	P	P	X	X	
12.	Eating Places Other Than Drive-Ins	X	X		X	
13.	Convenience Goods and Services	X	X	X	X	
14.	Shopping Goods and Services	X	X		X	
15.	Other Trades and Services					
16.	Gasoline Service Stations				X	
17.	Automotive and Allied Activities				E	
18.	Drive-In Restaurants					
19.	Hotel, Motel, and Recreation Facilities	X	X		X	
20.	Commercial Recreation, Intensive	P	P			
21.	Business Signs and Outdoor Advertising	X	X		X	

1 X = Use by Right.

E = Special Exception-unless use is specifically identified on Specific Use List.

S = Specific Use - see Use Unit 2 and Chapter 17.

P = Requires Planned Unit Development Application due to Mixed Use Requirements.

Sec. 630. - Bulk and area requirements in the commercial districts.

Table 2. Bulk and Area Requirements in the Commercial Districts

	CS
Frontage (min. ft.)— Arterial	150
Frontage (min. ft.)—Not an Arterial	50
Floor Area Ratio (maximum)	0.50
Setback from centerline of abutting street (min. ft.) — Arterial	50
Setback from centerline of abutting street (min. ft.)—Not an Arterial	25
Setback from an abutting R District boundary line (min. ft.)	10 1
Building Height (max. ft.)	35

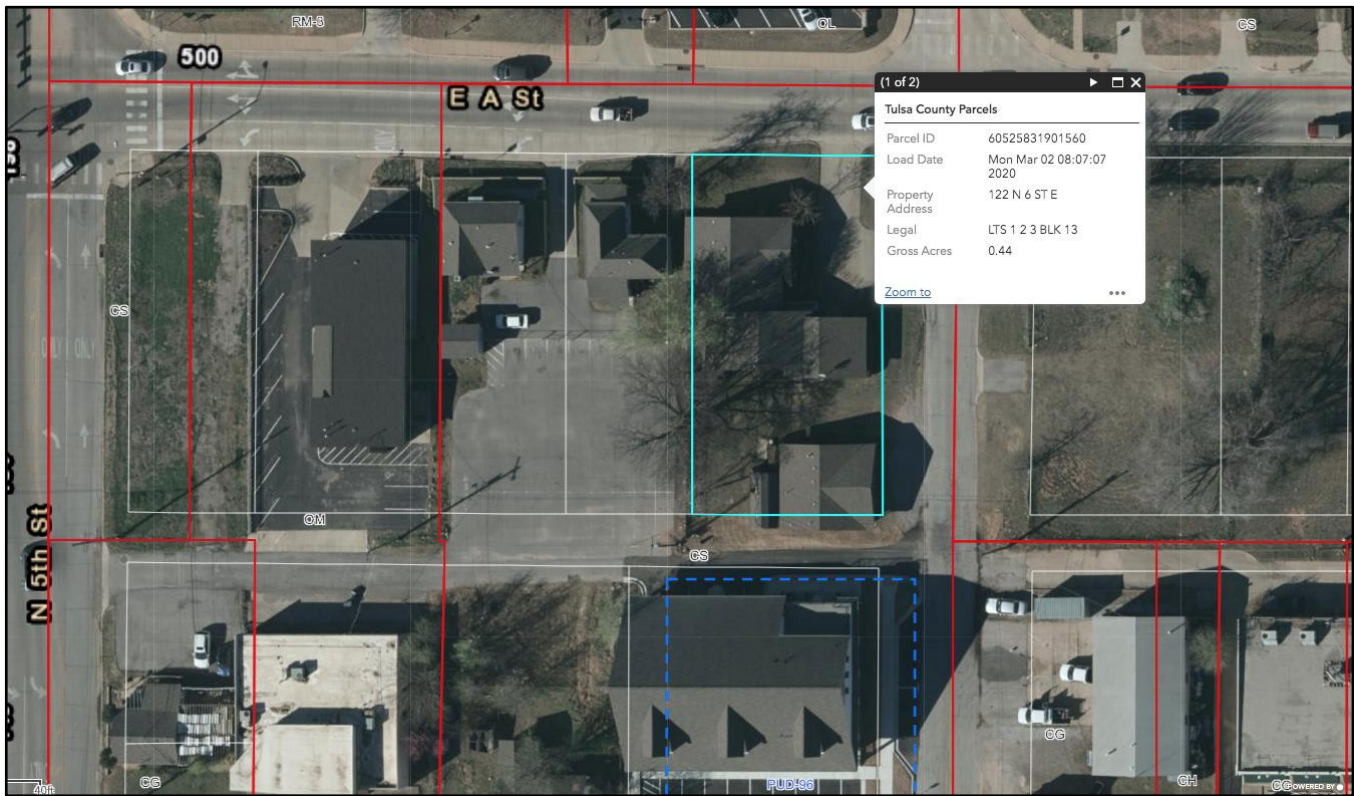


Figure 1: Aerial View of 122 N. 6th



Figure 2: View of House and Barber Shop

Staff Evaluation & Recommendation

Evaluation | Please see BOA action below

1380.3. Board of Adjustment Action.

1. May grant the Special Exception after finding that the Special Exception will be:
 - a. In harmony with the spirit and intent of the code.
 - b. Will not be injurious to the neighborhood.
 - c. Is not otherwise detrimental to the public welfare.
2. The Board in granting a Special Exception shall prescribe:
 - a. Appropriate conditions and safeguards.
 - b. May require such evidence and guarantee or bonds as it may deem necessary to enforce compliance with the conditions attached.

1380.4. Time Limitation on Special Exceptions.

A Special Exception which has not been utilized within two years from the date of the order granting same shall thereafter be void. For the purpose of this provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion.

Staff Comments

1. The request is complicated, staff has no specific conditions for approval, but believes the request meets the spirit and intent of a "Special Exception."
2. The proposed use will not result in any increase of incompatibility with the present and future use of proximate properties

Recommendation | *Grant the Special Exception to allow for the continuation of a pre-existing nonconformity after a requested zone change*



CITY OF JENKS

211 NORTH ELM STREET • P.O. BOX 2007

JENKS, OKLAHOMA 74037-2007

PHONE (918) 299-5883 • FAX (918) 299-4489

To: Board of Adjustment

Cc: Chris Shrout, City Manager
Robert Carr, Assistant City Manager

From: Teresa Nowlin, City Attorney
Marcae Hilton, City Planner
Brandon Macy, City Clerk

Date: May 8, 2020

Re: Staff memo addressing zoning code issues with respect to BOA 20-430: Request by Theresa Dewhurst for a Special Exception to allow for a continuation of a pre-existing nonconformity after a requested zone change. General Location: 122 N 6th St

At your April 16, 2020 meeting, you request that staff research the legislative history for, and possible conflict in terms in, section 1510(b) and sections 1200(e) of the Jenks Zoning Code.¹

Theresa Dewhurst, the Applicant, is requesting a Special Exception to allow for the continuance of a residential use on the property which was rezoned at Applicant's request on January 21, 2020 changing the zoning from RS-3 (Residential Single-Family High Density) District to CS (Commercial Shopping Center) District. The property has **two primary structures** who happen to be different land uses: a residential

¹ Section 1220 was also called to staff's attention. It is not applicable in the current situation. It provides:

When at the effective date of this zoning code or amendment thereto, there exists a lawful use of a building, or use of a principal building and land, or use of land and accessory structures, such structures covering more than ten percent of the lot area, and such use would not be permitted by the terms of this zoning code or amendment thereto, such use shall be deemed pre-existing nonconforming and may continue subject to the following provisions:

Section 1220 discusses uses existing at the effective date of the "zoning code" or at the time of "amendments thereto." Ms. Dewhurst's request was not for an amendment to the zoning code (a "text amendment") which are initiated by the City not individual applicants. It was a request for rezoning which results in a "zoning map amendment." This section is not applicable to the current case.

house and a commercial beauty shop. The dual uses on the property likely would have been considered a pre-existing nonconformity prior to the rezoning because our Zoning Code does not allow for 2 uses in an RS zone without a special exception.

There are two Zoning Code provisions that may be applicable to this situation which may appear to be contradictory upon a cursory reading. Staff is of the opinion, however, that upon careful analysis, these provisions are not contradictory, as explained below. This is primarily due to the unique nature of this property due to the fact that there are the two uses on the property.

Section 1200(e) of the Zoning Code reads as follows:

Upon approval of a rezoning request, the previous use of a property if not permitted within the new zoning district shall be deemed an unlawful use and shall not be considered for rights extended to pre-existing nonconforming uses.

This subsection applies to “rezoning requests” like that of Ms. Dewhurst here to change the zoning of her property from RS-3 to CS. Pursuant to this provision, the residential house on that lot could have been considered in conformance is now deemed an “unlawful use” in the CS zone according to 1200(e). The beauty shop which previously was considered a “pre-existing nonconforming use” is now in conformance with the new zoning district. In addition, our Zoning Code does not allow for a residential use on a commercial lot even a Special Exception.

Sections 1200 was approved with Ordinance No. 1287 on December 06, 2010.

Section 1510(b) of the Zoning Code reads as follows:

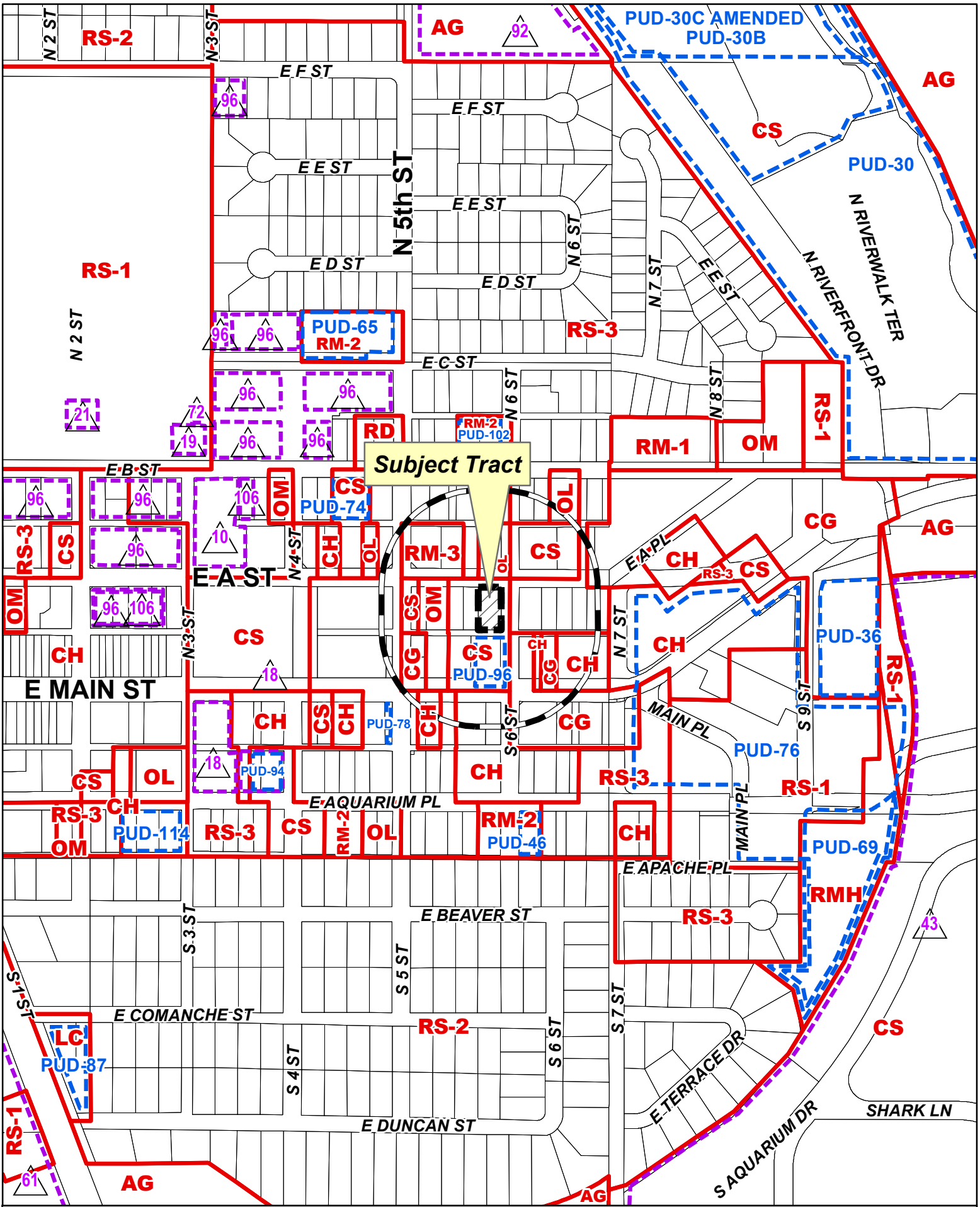
Zoning Map Amendments shall become effective from the effective date of the approved Ordinance initiating the amendment. However, the current use of the property may remain in place, subject to the criteria that it was in compliance with the prior zoning and the requirements for that zone as specified within the Jenks Zoning Code and that no development permit or use may be approved or conducted upon the property unless said use and development action brings the property into compliance with the new zoning category that was approved by the amendment and that the property is in compliance with Section 260 of this zoning code

1510(b) was approved with Ordinance No. 1355 on May 5, 2014. Section 1510(b) is not applicable to the current situation because the property at issue and its uses were never in compliance with the prior zoning and the requirements for the RS-3 zone both because of the commercial use on the residential lot and because of the dual uses without a special exception.

The fact that there was previously a “pre-existing nonconformance” supports the inapplicability of section 1510. Section 1800 of the Zoning Code defines “nonconformance” as “[a] lawful condition of a structure or land which does not conform to the regulations of the district in which it is situated. This may include but is not limited to failure to conform use, height, area, coverage or off-street parking requirements.” A

legal pre-existing nonconformity, by definition, is not a structure that complies with the Jenks Zoning Code; it is lawful, but not conforming. Section 1510(b) requires that a piece of property be “in compliance with the prior zoning and the requirements for that zone as specified within the Jenks Zoning Code” to take effect. This property was not in compliance since it had two primary structures that were also differing uses.

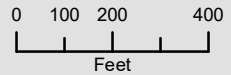
Conclusion: Here, section 1200(e) is directly applicable while section 1510 is not. The applicant applied for a zone change, which ended her pre-existing nonconformity once passed. As of now, the only lawful and compliant use of the property is the beauty shop. The Special Exception, if passed, would allow for the house to continue to be used as a residence and for two primary structures on the lot until changes are made to the existing house or its use.



Subject Tract



JBOA 20-430



19 18-13

