



CITY OF JENKS

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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.