ZONING INTERPRETATION RECORD

Subject of Interpretation:
Expansion of a Legally Non-Conforming Social Service Facility

Zoning Ordinance Section Number:
11-8-3; 11-36-3; 11-36-7; 11-58-3(A)

Title of Section:
Land Use Regulations; Expansion of Nonconforming Uses; Alterations and Enlargements to Nonconforming Structures; Overview of Transect Zones and Allowed Uses

Cause for Interpretation:
You have written to me asking that the existing structures for the facilities of a treatment center would be allowed to expand under Section 11-36-7 of the Mesa Zoning Ordinance as legal, but non-conforming structures. In a letter sent by the applicant to the Zoning Administrator (ZA), they indicate that they would like to expand a portion of the facility by 1500-square feet to permit some changes in the distribution of patient rooms among the facility buildings. This proposal is intended as a means to facilitate compliance with changes scheduled to take effect in State of Arizona regulations applicable to the operation of this facility. The letter did not specify this, but the ZA’s understanding is that the location is presently operating as a drug and alcohol rehabilitation and treatment facility and has been for a long time.

Interpretation:

Applicable Zoning District and Zoning District Requirements
The first step is to confirm that the present site is located in the DR-2 (Downtown Residence 2) zoning district. The applicant’s letter also confirms that the property is being used in a manner that is defined as a social service facility. Based on Table 11-8-3 of the Mesa Zoning Ordinance, a social service facility is prohibited in the DR-2 zoning district. To be considered a conforming use in a Downtown Zoning District, the site would need to be rezoned to DB-1 (Downtown Business – 1) and possess an approved Council Use Permit for a Social Service Facility.

The ZA also mentions that the location has been approved for an “opt-in” rezone to T3N (T3-Neighborhood). This transect district is based on Article 5 of the Mesa Zoning Ordinance, which governs form-based code standards. The acceptance of the T3N transect by the property owner is not mandatory. However, the property owner may choose to “opt-in” to its use by signing an approval form. Signing the approval form would permanently change the zoning map, and the site would be designated as T3N from that point forward. By the owner not signing the transect approval form, the zoning district for this site remains the present DR-2. With regard to the present non-conforming use of this site, Table 11-58-3(A), which lists permitted uses in form-based code transects (the term “transect” is synonymous with zoning district for purposes of the Mesa Zoning Ordinance), neither Social Service Facilities, nor Alcohol and Drug
Rehabilitation Facilities are listed as permitted uses in any transect, and are therefore considered prohibited uses in the T3N transect.

**Confirmation of Non-conforming Use Status**

As the letter states, the present social service facility use of the property predates the adoption of the City’s Social Service Facility guidelines, and concurrent text amendment to the zoning ordinance, both of which were adopted by City Council in 1992. The facility operates in the DR-2 zoning district, when the DB-1 district and a Council Use Permit are required; therefore, it is a non-conforming site. Because the present non-conforming use was established before the adoption of the present zoning district requirements, the treatment center does have a valid status as a legal, but non-conforming use of its current site.

**Applicable Non-conforming Section of the Zoning Ordinance**

In the letter, the applicant advocated that the applicable section of the zoning ordinance should be Section 11-36-7, which permits minor expansions of non-conforming structures. However, the more direct section applicable to this circumstance is Section 11-36-3. While it is true that the present facility includes structures that may be described as non-conforming, the more restrictive Section 11-36-3 applies because the facility is a non-conforming use. As such, Section 11-36-3 specifies that a non-conforming use may not be “expanded to any other structure.” It also specifies that a non-conforming use may not expand in a non-conforming structure. In addition, this same section states that the non-conforming use may expand within a conforming structure, subject to “a SUP (Special Use Permit) or CUP (Council Use Permit) where required for the specific use provided the subject structure complied with the requirements of this (zoning) ordinance and the requirements of the Building Code in effect on the date of the expansion.” Compliance with the requirements of the zoning ordinance in this case translates into City Council approval of rezoning the site to DB-1 and approval of a social service facility Council Use Permit.

**Options**

Given this reading of Title 11, Chapter 36 requirements regarding a non-conforming uses and a non-conforming structures, the applicant’s options to go forward with their project are outlined as follows:

1. **Apply for rezoning to DB-1 and a Council Use Permit for the site to specifically bring the currently non-conforming land use into compliance with zoning requirements for this site.**

   The first step in requesting rezoning of a site is to file for a pre-submittal meeting. The ZA also mentions that they have discussed the issue of a potential rezoning/Council Use Permit request for the social service use on this site with the City’s Planning Director. Without getting into specifics, or committing to a possible staff recommendation, it should be noted that there are some difficult questions to resolve in the event such a rezoning application is received. These questions include issues related to:
   a. Conformance with the present Mesa General Plan;
   b. Conformance to the Street Plan;
   c. Issues related to the change from a residential zoning district to a non-residential zoning district, and specifically to support an institutional land use; and
   d. Long term confirmation of an institutional use that is located in an area that is planned at this time for continued or expanded downtown urban-oriented residential uses.

2. **Appeal this Zoning Administrator interpretation of the zoning ordinance to the Mesa Board of...**
Adjustment. Should be submitted before the next filing deadline for Board of Adjustment requests.
Applications received on or before the indicated date. Should the applicant decide on this option, they should let the ZA know and they will make application available for them. Requests for interpretation by the Board of Adjustment have an application fee of $600.00, plus a 4% technology fee.

3. **Retain the existing non-conforming use at its current location within the present set of buildings without increasing the floor area.**
This assumes all building floor area on this site presently functions in a manner that is a part of the activities used to operate this facility. Provided that the changes the applicant is looking to make remain within the existing walls of the building do not require a “change of occupancy” as that term is defined by the Mesa Building Code, and do not require significant changes to the existing structural components of the buildings, then basic “maintenance” may be done to the property. Maintenance may include minor non-structural reconfiguration of how the existing buildings are demised. It may also include work requiring minor, building-code-related permits. For example, electrical permits or plumbing-related permits may be issued as required, provided the limitations to changes of the facility described above are maintained.