

TEXT AMENDMENTS TO COUNCIL BILL 12-152

TITLE 18. NONCONFORMITIES

(1st Reader Copy)

Proposed by: Various

{To be offered to the Land Use and Transportation Committee}

Amendment No. 1 (T-574) {Expansions of Use}

On page 316, in line 7, after “UNLESS”, insert a colon, a paragraph return, and the item designator “(1)”; and, in line 8, after “LOCATED”, insert:

“; OR

(2) IN COMMERCIAL OR INDUSTRIAL DISTRICTS, THE BOARD OF MUNICIPAL AND ZONING APPEALS AUTHORIZES AN EXPANSION OF THE NON-CONFORMING USE BY UP TO, BUT NO MORE THAN, 25%”.

{DLR QUERY: By what process is this “authorization” to be allowed and subject to what governing standards? The absence of procedures and, especially, standards would well give rise to a legal challenge that this authorization is “void for vagueness” and, indeed, an invalid delegation of legislative powers. AS SUCH, IT IS QUESTIONABLE WHETHER THE LAW DEPARTMENT WILL BE ABLE TO APPROVE THIS AMENDMENT FOR FORM AND LEGAL SUFFICIENCY.

Planning’s response to an earlier iteration of this Query was a late-in-the-day proposal to adapt a 7-page subtitle from the current zoning code (Zg Title 13, Subtitle 7) to somehow “fit” the TransForm format. That “adaptation”, however, is so broadly worded that it would directly conflict with the limited, uncoordinated authorizations proposed by this and similar amendments to this title.

INSUFFICIENT TIME IS AVAILABLE IN THIS COUNCIL TERM TO UNDERTAKE A COHERENT RESOLUTION. ACCORDINGLY, DLR AND THE LAW DEPARTMENT RECOMMEND THAT THIS AMENDMENT AND SIMILAR AMENDMENTS BE DEFERRED FOR STUDY DURING THE POST-ENACTMENT, PRE-EFFECTIVE-DATE “CLEAN-UP” PERIOD OF THE NEXT COUNCIL TERM.

Amendment No. 2 (T-636) {Nonconforming Use - Restoration of Damaged Structure}

On page 316, in line 31, strike “1 YEAR” and substitute “2 YEARS”; and, in line 32, before the period, insert “AND THE WORK COMPLETED, AS DETERMINED BY THE ISSUANCE OF USE AND OCCUPANCY PERMITS, WITHIN 1 YEAR OF THE ISSUANCE OF THE BUILDING PERIOD”; and, in

line 33, after “APPEALS”, insert “, AFTER PUBLIC NOTICE AND HEARING,”; and, in the same line, strike “OF THIS PERIOD” and substitute “OF UP TO 1-YEAR FOR COMPLETION OF THE WORK”; and, in line 36, strike “REPAIRS” and substitute “WORK IS”; and, in the same line, strike beginning with “1 YEAR” through “PERMIT” and substitute “THE TIME REQUIRED BY THIS SECTION”.

{DLR QUERIES: (1) By what *processes* are these “extensions” to be granted and subject to what *standards*? See Query to Amendment #1. HERE, TOO, IT IS QUESTIONABLE WHETHER THE LAW DEPARTMENT WILL BE ABLE TO APPROVE THIS AMENDMENT FOR FORM AND LEGAL SUFFICIENCY.

(2) Planning’s problems in amending subsection (b) and, especially, the huge loophole created by its proposed change to the intro to subsection (c) have been corrected here. But the issues with the rest of its amendment to subsection (c) need further input and have not been included here. E.g., why replace the existing, standard language? And, especially, why use inapt and misleading phrases like “the non-conformity expires”? (The converse of a “non-conforming use” is, of course, a *conforming* use.)

(3) See also Query to Amendment #6 below.

AS WITH AMENDMENT #1, INSUFFICIENT TIME IS AVAILABLE IN THIS COUNCIL TERM TO UNDERTAKE A COHERENT RESOLUTION. ACCORDINGLY, DLR AND LAW RECOMMEND THAT THIS AMENDMENT AND SIMILAR AMENDMENTS BE DEFERRED FOR STUDY DURING THE POST-ENACTMENT, PRE-EFFECTIVE-DATE “CLEAN-UP” PERIOD OF THE NEXT COUNCIL TERM.

Amendment No. 3 (T-946) {Discontinuance}

On page 317, in line 28, before the colon, insert “, AS EVIDENCED BY DOCUMENTATION FROM A CODE ENFORCEMENT OFFICIAL, OR UPON RECEIPT OF AN AFFIDAVIT FROM AT LEAST 2 HOUSEHOLDS IN THE IMMEDIATE NEIGHBORHOOD OF THE PROPERTY, CITING SPECIFIC DETAILS VERIFYING WHEN THE USE WAS DISCONTINUED OR ABANDONED”.

{DLR QUERIES: (1) This proposal (shown here without edits) is inordinately limited (precluding many other legitimate sources of “evidence”), badly placed and worded, replete with inapposite or misused terms (highlighted), and – unless, of course, the intent is to make findings of discontinuance virtually impossible – ultimately, unnecessary. Specifics provided on request.

(2) The proposal to add, in “a new line 13”, a sentence about “declar[ing] the use terminated by operation of law” is unclear as to its applicability and status as a unit of this section. In any event, it too is an unnecessary reiteration of what the section already does.

DLR RECOMMENDATION: DEFER THIS AMENDMENT UNTIL A COHERENT REVISION CAN BE SUBMITTED AND CONSIDERED BY THE COUNCIL.

Amendment No. 4 (T-706) {Landfills}

On page 318, at the end of line 14, insert “**;LANDFILLS.**”; and, in line 16, after “YARD”, strike “OR” and substitute a comma; and, in the same line, after “FACILITY”, insert “, OR A LANDFILL”; and, in line 19, after “*MODIFICATIONS*”, insert “- JUNK ... YARDS; VEHICLE DISMANTLING”; and, after line 19, insert “FOR A LAWFUL NONCONFORMING JUNK OR SCRAP STORAGE AND YARD OR A LAWFUL NONCONFORMING VEHICLE DISMANTLING FACILITY:”; and, in line 20, strike “STRUCTURAL” and substitute “STRUCTURAL”; and, in the same line, strike the period and substitute “; AND”; and, in line 21, strike “AN” and substitute “AN”; and, after line 27, insert:

“(C) MODIFICATIONS – LANDFILLS.

FOR A LAWFUL NONCONFORMING LANDFILL:

(1) STRUCTURAL ALTERATIONS ARE PERMITTED; AND

(2) AN EXPANSION OF NO MORE THAN 35% IN LAND AREA IS ALLOWED IF, IN ADDITION TO ANY CONDITIONS AND RESTRICTIONS PREVIOUSLY IMPOSED:

(I) THE EXPANSION IS ONTO A PROPERTY THAT IS NO MORE THAN 750 FEET FROM THE PROPERTY LINE OF THE LANDFILL; AND

(II) THE EXPANSION IS ONTO THE PORTION OF THAT PROPERTY THAT IS CLOSEST TO THE EXISTING USE.”;

and, in line 28, strike “(C)” and substitute “(D)”; and, strike beginning with “OF THE” in line 29, through “FACILITY” in line 30; and, in line 31, after “YARD”, strike “OR” and substitute a comma; and, in line 32, after “FACILITY”, insert “, OR LANDFILL”.

{DLR QUERY: In current subsection (c) {“Lot subdivision or consolidation”}, we do not understand the last clause: “to avoid having a use allowed on a portion of a lot but not on the whole lot”. Is that intended to modify/explain *both* of the preceding options (subdivision or consolidation) or only the *last* one (consolidation)? And, since an existing landfill might itself be limited to less than the whole lot, how would a consolidation or subdivision prevent the expansion from doing so?}

Amendment No. 5 (T-577) {Residential-Care Facilities}

{TBA???

{DLR QUERY: The amendment proposed here by Planning (but, we’re told, drafted by a private attorney representing a constituent) is gibberish to the point of incomprehensibility, drafted without regard for the technical terms, general language,

definitions, and drafting conventions otherwise used in this Bill. Specifics provided on request. (For some guidance, see, e.g., § 18-311 and § 18-413.)

IN THE MEANTIME, DLR RECOMMENDS THAT THIS AMENDMENT ALSO BE DEFERRED UNTIL A COHERENT REVISION CAN BE SUBMITTED AND CONSIDERED BY THE COUNCIL.

Amendment No. 6 (T-578) {Nonconforming Structure - Restoration of Damaged Structure}

On page 320, in line 9, strike “1 YEAR” and substitute “2 YEARS”.

{DLR QUERY: Oddly, the changes proposed by Amendment #2 above for § 18-305 were not proposed here for the almost identical provisions of § 18-405. Ordinarily, DLR would recommend correcting this inconsistent treatment. But given the substantive issues raised by Amendment #2 (see Queries there), DLR will defer that recommendation pending resolution of those underlying issues.}

Amendment No. 7 (DLR) {Existing Structures in Hospital & Educational Campus Districts}

On page 323, in line 4, after “CONFORMING” strike “USES” and substitute “STRUCTURES”.

{DLR NOTE: Current § 18-413 states that all “lawfully [pre-]existing structures” in a Hospital Campus District or Educational Campus District become, under the new Code, “conforming uses”. No one has been able to explain how a “structure” can, even under a TransForm Code, transmogrify into a “use”; and all suggest that the phrase intended was “conforming structures”. Hence, this corrective amendment. (As to the amendment proposed by T-579 for this section, see “Omitted Proposals” below.)}

Amendment No. 8 (T-580, T-582 to T-585) {Typos}

On page 324, in line 27, after “SUBSECTION”, strike “(C)” and substitute “(B)”; and, on page 325, in line 19, before “APRIL”, strike “THE”; and, in line 22, after “2007,” insert a space; and, in line 23 and in line 36, in each instance, before “APRIL”, insert “BEFORE”.

OMITTED PROPOSALS

{T-579 (*PRE-EXISTING STRUCTURES IN R DISTRICTS*): Current § 18-413 would provide that all “lawfully [pre-]existing *structures*” in a Hospital Campus District or Educational Campus District become, under the new Code, “conforming *uses*”. That non sequitur has been corrected in Amendment #7 to provide that these pre-existing structures will become “conforming *structures*”. T-579 proposed to amend the current language to apply to all Residential Districts as well. Whatever the rationale for § 18-413’s exception in the limited context of a specialized Hotel Campus or Educational Campus, one is at a loss to understand applying the same exception in a Residential District. Can the amendment’s proponent – and the Land Use Committee – really have wanted to elevate *all* commercial and other establishments lawfully existing in residential districts (most currently doing so as previously grand fathered, nonconforming uses) – including all of the now *nonconforming* corner groceries, liquor stores, and the like – to the status of “conforming uses” (or, even, “conforming structures”) – free henceforth and forever from any of the Code’s protective rules governing non-conforming “expansions” (§§ 18-303 and 18-403), undue “repairs and alterations” (§§ 18-304 and 18-404), “relocations” (§§ 18-306 and 18-406), and the like? We think not.}

