

Staff Analysis

AA26-0003/910 N Mayhill Rd

REQUEST:

Appeal of an administrative decision regarding the existence of nonconforming rights for the building addressed as 910 N Mayhill Rd.

ANALYSIS:

Pursuant to DDC Subsection 1.5.2B, the burden of establishing the existence of a nonconformity shall be solely on the owner of the property containing the nonconformity. The owner is required to utilize the Zoning Verification Letter process in DDC Subsection 2.5.4 to establish the existence of nonconforming rights. Per Subsection 2.5.4, the Director shall issue a Zoning Verification Letter after examination of the City's zoning map and records for the property, and the applicant may appeal the findings of a Zoning Verification Letter to the Zoning Board of Adjustment.

In this case, the property owner submitted a Zoning Verification Letter – Determination of Nonconforming Rights and included with the application a variety of materials that are provided as Exhibit 5. As detailed in the Agenda Information Sheet, the Zoning Verification Letter application was specific to the building addressed as 910 N. Mayhill Road, which is one of four approximately 1,200-square foot buildings located on the approximately 3.5-acre subject property commonly known as 870, 890, 910, and 936 N Mayhill Rd (see Exhibit 3). The provided records showed that the property was purchased by the current owner in 2021, that the buildings at 890 and 920 N Mayhill were leased by Esparza Custom Cabinets in 2020, and that the entire property listed for lease in 2024. Various Google Street View images from 2013 through 2024 were provided. It should be noted that the various supporting documents provided with the application do not provide evidence, outside of their Zoning Verification Request letter, regarding the occupancy of the subject building by Esparza Custom Cabinets, the company which the owner asserts used the subject building from 2023 to January 2026. Furthermore, Staff did not find within the application materials any evidence that the subject building had been utilized legally or even associated with a specific use or business at all since prior to or since annexation in 2013.

Although the DDC places the onus for proving that nonconforming rights exist solely on the property owner, in an effort to provide good customer service Staff conducted additional research as described in Exhibit 6 using all available historical imagery, Certificate of Occupancy (CO) records, utility service records, and Denton County Appraisal District records to attempt to establish further use history of the subject building before and after the property's annexation. Staff does not deny that aerial and Google street view imagery reflects activity occurring around the subject building at various times prior to and since annexation. However, no records or evidence other than the Zoning Verification Request (and later the "Affidavit of Mike Aghyarian" executed on June 22, 2026 and included in Applicant's supplement to their Appeal of Administrative Decision, See Exhibit 4) were provided or located to substantiate this activity was related to a cabinet maker or similar contractor-related business that occurred at the subject building; vehicle parking activity could be related to the other three buildings on the subject property, for example. This led the Director to conclude that due to a lack of COs being obtained and due to utilities to the subject building having been cut off and not reestablished since 2021, the subject building had not been in legal use since at least 2021 but possibly since its annexation in 2013.

DDC Subsection 1.5.2F specifies that when a nonconforming use is discontinued for one year or more all nonconforming rights cease and the property must be used in nonconformance with the applicable zoning unless an owner requests a delay in the determination of discontinuance, which

can grant up to one additional year for a legally nonconforming use to be reestablished. As described in Exhibit 1 and provided in Exhibits 4 and 5 in the owner's letters, the owner claims a cabinet maker used and occupied the subject building from 2023 to 2026. The owner claims that this was a continuation of a series of similar uses that had occurred on the broader property since before it was annexed into the City in 2013 and that nonconforming rights therefore exist and have not been discontinued for more than one year since the cabinet maker vacated the subject building in January of 2026.

However, the International Building Code (IBC), International Plumbing Code (IPC), International Mechanical Code (IMC), and National Electric Code (NEC) have all been adopted by the City establish minimum standards for sanitation facilities, ventilation, and lighting within any building intended for human occupancy, even if the building is a storage occupancy. Therefore, with no electric, water, or sewer service to the building since 2021, even if the cabinet maker used the building only as a warehouse storage space it could not have obtained a CO to legally occupy the subject building. As noted above and described in Exhibits 1 and 6, the City's records indicate no COs have been sought or issued for the subject building since its 2013 annexation. Therefore, it is staff's determination that even if the cabinet maker's use of the subject building from 2023 to January of 2026 did occur as the owner claims, it was not legal due to the lack of CO and utility service to the building during that time and therefore the owner does not have the rights associated with a legally nonconforming use that could enable the same use or any of the other requested non-permitted uses to be established within the subject building.

It should be noted that Section 43.002 of the Texas Local Government Code obligates a city to allow uses that were legally established in a city's extraterritorial jurisdiction (ETJ) to continue following annexation. In this case, no records were provided by the applicant or located in Staff's research to determine what use(s) may have been occurring within the subject building prior to annexation in 2013. While aerial imagery shows outdoor storage activities were present at times, there is no evidence of what use may have occurred within the subject building or other buildings on site. Furthermore, the applicant has not asserted a chain of uses between annexation and when Esparza Custom Cabinets is purported to have leased the subject building in 2023. Therefore, there is no way for Staff to reasonably conclude what use (if any) the City was obligated to allow to have continued from prior to the property's annexation.

Section 211.019 of the Texas Local Government Code requires a municipality to allow a person using their property in a manner that is nonconforming following the adoption of or change in a zoning regulation to continue to use the property in the same manner. This Section further specifies that the regulations in the Section no longer apply after a nonconforming use has been *intentionally* abandoned for at least 6 months. Staff recognizes that the affidavit provided as part of the Appeal Application (Exhibit 4) alleges that the appellant has not *intended* to abandon the nonconforming use of the subject building; however, as detailed above, Staff has not been provided nor been able to locate evidence to demonstrate that there was ever a legally established nonconforming use of the building to which this provision of state law would apply.

REQUESTED RELIEF:

1. Affirm the Director's Decision: If the Board reaches the same conclusion as the Director and opts to affirm the Director's determination, then the owner may either use the subject building for a use that is permitted within the Rural Residential (RR) zoning district or apply to change the zoning of the property to a district that permits the desired mix of uses
2. Affirm the Director's Decision in Part: If the Board reaches a different conclusion and finds that there are nonconforming rights, Staff requests that the Board specify which use they determine has legal nonconforming rights to continue since the owner's original Zoning

Verification Letter application requested the right to establish a variety of non-permitted uses in the subject building. In accordance with DDC Subsection 1.5.3B, a nonconforming use may only be changed to another nonconforming use if the Director determines that the new use would create lesser impacts to surrounding properties and is no more intensive than the use it would replace, and once this change occurs the use of the building may not be changed back to the more nonconforming use.

3. Grant the Appellant's Requested Alternative Relief: If the Board finds there are nonconforming rights but that the use of the subject building has been discontinued for less than one (1) year, then, in addition to option 2 above, the appellant has requested a delay of the discontinued status be granted for one (1) year in accordance with DDC Section 1.5.2(F) since the property has been actively marketed for at least six (6) months during the previous year. Staff has no objection to this delay being granted if the Board finds there are nonconforming rights, but Staff would request that the Board specify which use has nonconforming rights to continue as detailed above in item 2.

CONSIDERATIONS:

In considering an appeal, the Denton Development Code (DDC) Section 2.8.3D states that the Board of Adjustment shall consider the approval criteria applicable to all applications in DDC Section 2.4.5 and the criteria detailed as items 2 and 3 below:

1. General approval criteria

Section 2.4.5E of the DDC outlines 13 criteria for approval that are intended to be broadly applied to all applications unless otherwise specified for a specific application type. These include whether the application complies with other application-specific criteria for approval (see items 2 and 3 below), is consistent with any prior approvals applicable to the development, is consistent with the Comprehensive Plan, is compliant with the DDC and other City regulations, is designed to minimize impacts to the environment and surrounding properties, and is adequately served by utilities, roads, and other public services.

The determination that nonconforming rights do not exist for the subject building is consistent with the goals and intent of the DDC for the regulation and limited continuance of nonconforming uses and for the RR zoning district. The determination is also consistent with the Comprehensive Plan, which designates the area around the subject property as a primarily Moderate Density future land use (FLU) designation while also acknowledging a transition to a Business Center FLU designation that primarily applies to properties on the west side of N Mayhill Road. The existing RR zoning district is a remnant from the property's annexation; while it is not consistent with the FLU designation in the area the placeholder zoning is a tool that ensures the public hearing process is able to proceed to establish appropriate zoning following annexation. Through the zoning process, the Planning and Zoning Commission and City Council have discretion to weigh potentially competing factors such as the FLU designation, existing development and use patterns, and neighborhood concerns to determine an appropriate zoning designation for a property. A variety of zoning districts could permit some or all of the uses the owner noted in their Zoning Verification Letter application (Exhibit 5). While some of the owner's desired land uses, such as Administrative, Professional, and Government Office may be permitted in a variety of districts that clearly align with the adopted FLU Map, others such as Low Impact Manufacturing may not; thereby requiring additional research and analysis as part of the zoning change application process. It is important to adhere to the City's adopted nonconforming use regulations in order to facilitate the property's eventual alignment with the City's Comprehensive Plan through the adopted zoning regulations and processes.

There are no prior approvals related to the subject building, and the other general criteria for approval contained in Section 2.4.5E are not germane to the subject nonconforming use determination appeal as they are specific to site layout and design. These criteria would become applicable in the future if features on the site are expanded, the property is subdivided, or the property is redeveloped.

The appellant's request to permit the establishment and/or continuance of a variety of commercial and industrial land use categories is not consistent with the City's adopted limitations for nonconforming uses described above and in Section 1.5 of the DDC. In order to establish the desired mix of uses and have the ability to freely change between those uses and/or allow them in various combinations, the proper procedure would be to apply to rezone the property to a district that permits those uses.

2. *The facts stated in the application, as presented by the appellant and/or the Director*

The appellant provided a complete appeal application on June 16, 2026, within the allowed 20-day time frame from the date the determination was issued. The details of the appeal application are provided in Exhibit 4, and the original documentation provided with the Zoning Verification Letter application is provided in Exhibit 5 for the Board's review and consideration. The administrative determination being appealed is provided in Exhibit 6 and outlined in this report's Agenda Information Sheet (Exhibit 1) along with an explanation of the analysis that led to the use determination.

It is Staff's position that the information and documents provided with the initial Zoning Verification Letter application and with the appeal do not prove that any of the proposed land uses have ever been legally established within the subject building. Further, the additional research conducted by staff did not yield evidence of those uses ever having been legally established through the acquisition of a CO for any use of the building. Therefore, nonconforming rights cannot exist.

3. *The requirements and intent of the applicable standards from this DDC compared to the written decision that is being appealed.*

The DDC standards related to nonconformities are consistent with state law and exist with the purpose and intent of regulating and limiting the continued existence of uses, structures, and site features that were legally established at one time, but which no longer conform to the City's adopted zoning and development regulations. The DDC intends to curtail substantial investment in nonconformities in order to eventually eliminate them and thereby preserve the integrity of the City's adopted ordinances and plans. DDC Subsection 1.5.2B places the burden of establishing the existence of a legal nonconformity on the property owner. In this case the Director determined that the owner did not substantiate their assertion that they had nonconforming use rights for the subject building, and Staff was not able to locate such evidence in their own research as explained in the analysis above and in Exhibits 1 and 6. Therefore, the use determination is consistent with the intent of the DDC to not allow for the establishment of new nonconforming uses in order to bring the subject building and the overall property into compliance with the DDC.

As noted above, this determination does not eliminate the owner's rights to either use the property in compliance with the current RR zoning district or to request a zoning change to a district that would permit the desired mix of uses.