MEMORANDUM

TO: Mayor and City Councilors

FROM: Rich Olson, City Manager

DATE: March 10, 2014

REF: PUBLIC HEARING - TA- 01-14 Request to amend the Unified Development Ordinance - Articles II, Interpretations and Definitions; Article VI Nonconforming Situations to update language governing the definition of land use and determination of nonconforming situations

BACKGROUND:

At your February 24, 2014 City Council meeting, you set a public hearing for March 10, 2014 for TA-01-14. This is a proposal to amend the Unified Development Ordinance to modify language to the Unified Development Ordinance to clarify definition of Use and to update language governing the nonconforming situations.

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ANALYSIS

The Board of Adjustment heard and decided appeal Case 01-13 in January 2014, where the applicant appealed an Administrative decision of the Zoning Administrator to operate a four -unit multi-family residential structure which was on a nonconforming lot and had been vacant for more than 180 days. Citing the ambiguity of the Ordinance language, the final decision of the Board did not uphold the original interpretation. Realizing the greater impact of the Board's decision and the need for clarification, the Council and Zoning Administrator initiated a text amendment to the applicable sections of the Ordinance.

The proposed text amend to modifies the definition of " Use" by deleting language of intended and maintained. Language has also been added that specifies specific evidence that the Zoning Administrator shall look for when determining cessation of a use.

This text amendment was reviewed at the February, 2014 Planning Commission meeting. Planning Commission voted unanimously to approve the language as drafted.

RECOMMENDATION

By motion, **adopt the attached resolution** for TA-01-14 to modify language to the Unified Development Ordinance relating to the non-conforming use.

Resolution
Text Amendment TA-01-14
Amend the Unified Development Ordinance relating to nonconforming uses.

WHEREAS, the City of Elizabeth City adopted the Unified Development Ordinance in 1999; and,

WHEREAS, the City Council of the City of Elizabeth City has amended the Unified Development Ordinance from time to time in order clarify and comply with legislative changes; and,

WHEREAS, the Planning Commission reviewed the proposed changes and recommend an amendment to the Unified Development Ordinance; and,

WHEREAS, the following text is recommended to be adopted;

Bolded– new language to be added
~~Strikethrough~~ – language to be deleted

Amend Article II Interpretations and Definitions, §2-4.214 as follows:

2-4.214 **Use.** The purpose or activity for which land or structures are designed, **designated, or** arranged ~~or intended~~, or for which land or structures are occupied ~~or maintained~~.

6-3.2 Conditions for Continuance

Such nonconforming use of land shall be subject to the following conditions:

(A) No nonconforming use shall be changed to another nonconforming use unless such use is determined to be of equal or less intensity. In determining whether a nonconforming use is of equal or less intensity, the Board of Adjustment shall consider:

(1) probable traffic of each use
(2) parking requirements of each use;
(3) probable number of persons on the premises of each use at a time of peak demand;
(4) off-site impacts of each use, such as noise, glare, dust, vibration or smoke and other impacts on surrounding properties or the public health or safety;
(5) compliance with applicable development standards and other zoning regulations in this Ordinance.

(D) If any nonconforming use of land ceases for any reason for a continuous period of more than 180 days, any subsequent use of such land shall be a permitted use in the district in which such land is located.

For the purposes of this subsection, when calculating the 180-day cessation period so as to declare a nonconforming situation ceased, the Zoning Administrator shall find evidence of one or more of the following for substantiation: inactive public utility service, specifically electricity; inactive or expired building permit(s); expired Certificate of Appropriateness; and/or expired site-specific plan with vested rights, conditional use, special use, zoning, or sign permit. Expiration of permits and site plans shall be in accordance with Section 4-10 (D) of the Ordinance.

NOW, THEREFORE, BE IT ORDAINED, that the City Council of the City of Elizabeth City does hereby amend the above text of the Unified Development Ordinance to reflect the changes to nonconforming uses.

Adopted , this 10th day of March , 2014

Joseph W Peel, Mayor

Vivian D. White , NCCMC
City Clerk

CASE NO.

TA 01-14

REQUEST

TA 01-14 is a proposal to amend the Unified Development Ordinance, specifically Article II Interpretations and Definitions; Article VI Nonconforming Situations, adding and updating language governing the definition of land use and determination of nonconforming situations.

BACKGROUND

Recently, the Elizabeth City Board of (Zoning) Adjustment heard and decided Appeal Case 01-13. The applicant appealed an administrative decision of the Zoning Administrator to operate a four-unit multifamily residential structure; specifically, an appeal of Ordinance Section 6-3.2(D), Nonconforming Use of Land, Conditions for Continuance. Citing the ambiguity of the Ordinance language, the final decision of the Board did not uphold the original interpretation. Realizing the greater impact of the Board's decision and the need for clarification, the Council and Zoning Administrator initiated a text amendment to the applicable sections of the Ordinance.

TEXT AMENDMENT
UDO Development Standards Text Amendment

Bolded Red – new language to be added
Strikethrough – language to be deleted

Amend Article II Interpretations and Definitions, §2-4.214 as follows:

> **2-4.214 Use.** The purpose or activity for which land or structures are designed, **designated, or** arranged ~~or intended~~, or for which land or structures are occupied ~~or maintained~~.

Amend Article IV Permits and Procedures, §6-3 as follows:

6-3 NONCONFORMING USE OF LAND

6-3.1 Continuance of Nonconforming Use of Land

Any nonconforming use legally existing at the time of adoption or amendment of this Ordinance may be continued so long as it remains otherwise lawful subject to conditions provided in this Section.

6-3.2 Conditions for Continuance

Such nonconforming use of land shall be subject to the following conditions:

(A) No nonconforming use shall be changed to another nonconforming use unless such use is determined to be of equal or less intensity. In determining whether a nonconforming use is of equal or less intensity, the Board of Adjustment shall consider:

(1) probable traffic of each use;
(2) parking requirements of each use;
(3) probable number of persons on the premises of each use at a time of peak demand;
(4) off-site impacts of each use, such as noise, glare, dust, vibration or smoke and other impacts on surrounding properties or the public health or safety;
(5) compliance with applicable development standards and other zoning regulations in this Ordinance.

(B) The number of dwelling units in a nonconforming residential use shall not be increased.

(C) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.

(D) If any nonconforming use of land ceases for any reason for a continuous period of more than 180 days, any subsequent use of such land shall be a permitted use in the district in which such land is located.

For the purposes of this subsection, when calculating the 180-day cessation period so as to declare a nonconforming situation ceased, the Zoning Administrator shall find evidence of one or more of the following for substantiation: inactive public utility service, specifically electricity; inactive or expired building permit(s); expired Certificate of Appropriateness; and/or expired site-specific plan with vested rights, conditional use, special use, zoning, or sign permit. Expiration of permits and site plans shall be in accordance with Section 4-10 (D) of the Ordinance.

(E) The resumption of a nonconforming use of land shall not be permitted if such nonconforming use is superseded by a permitted use for any period of time.

(F) No additional structure(s) not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

UNIFIED DEVELOPMENT ORDINANCE EXCERPT

ARTICLE IV

PERMITS AND PROCEDURES

4-10 EXPIRATION OF PERMITS AND SITE PLANS

(D) For purposes of this Section, the permit within the jurisdiction of the Board of Adjustment or the City Council is issued when such board votes to approve the application and issue the permit. A zoning or sign permit within the jurisdiction of the Zoning Administrator is issued when the earlier of the following takes place:

(1) A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is delivered to the permit applicant; or

(2) The Zoning Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded, if required under Section 4-11(B).

STAFF RECOMMENDATION

As stated, the proposed text amendment is the result of recent Board of Adjustment action and at the behest of Council and Administration.

Staff recommends **APPROVAL** of the proposed amendment to the Unified Development Ordinance TA 01-14 as presented.

PLANNING COMMISSION RECOMMENDATION

On **unanimous vote** of the Planning Commission, the recommendation is to **APPROVE** the proposed amendment to the Unified Development Ordinance TA 01-14 as presented.

MINUTES
CITY OF ELIZABETH CITY

PLANNING COMMISSION

REGULAR MEETING

TUESDAY, February 4, 2014

4:00 PM

MEMBERS PRESENT

Ernest Sutton, Chairman

Lena Council

Sonny DiGirolamo

Carlton O'Neal

Suzanne Stallings

Also present were Angela Cole, Senior Planner; and Dawn Harris, Secretary to the Board.

Chairman Sutton called the meeting to order and stated that there was a quorum. He asked for a motion to approve the minutes from the December meeting. Mr. DiGirolamo made a motion to **APPROVE** the December 3, 2013 minutes as written. Ms. Council seconded the motion. ***ALL IN FAVOR: COUNCIL, DIGIROLAMO, O'NEAL, STALLINGS and SUTTON. MOTION CARRIED.***

Chairman Sutton asked for a motion to **APPROVE** the agenda for the meeting tonight. Mr. DiGirolamo made a motion to APPROVE the February 4, 2014 Agenda as written. Mr. O'Neal seconded the motion. ***ALL IN FAVOR: COUNCIL, DIGIROLAMO, O'NEAL, STALLINGS and SUTTON.***

First item on the agenda was TEXT AMENDMENT 01-14 presented by the City of Elizabeth City to amend the Unified Development Ordinance, specifically Article II Interpretations and Definitions; Article VI Nonconforming Situations. This amendment will update language governing the

definition of land use and determination of nonconforming situations. Ms. Cole gave the following report.

STAFF REPORT

Text Amendment 01-14 comes before the Board as an application from the City. Staff was instructed by City Council and the City Manager to draft the language as the result of a Board of Adjustment case that was recently heard. The case's results were not favorable to the City. The decision by the Board of Adjustment was as a result of loosely defined language in the UDO and the lack of standards in determining a nonconforming situation. Council after reviewing that decision thought it best to "tighten up" the language so the City does not find itself in a similar situation again. Specifically, Staff wants to amend UDO Article Section 2-4.214 – the definition of Use. It will read as; "The purpose or activity for which land or structures is designed, designated, or arranged or for which land or structures are occupied.

Chairman Sutton requested that Ms. Cole give the Board a thumbnail of what the situation was with the Board of Adjustment that has brought this amendment about. He stated that she does not need to go into detail, but it would be helpful to the Board if they knew a little background on the problem. Ms. Cole stated that property owner had property that was initially constructed for a single-family residence. In the '60s the property was sold and converted to a multi-family residence [a quadruplex]. Time progressed where the structure was vacated; three of the four units were vacated. After the building was converted to an apartment house the City adopted the UDO. The way the structure was situated on the lot it did not conform to the new Ordinance standard. When the three of the four units were vacated Staff interpreted the Ordinance as grandfathered nonconforming situations ceased. When the property owner wanted to turn power back on to those three units Staff denied the request based on the fact that the use had ceased and it was no longer a conforming situation. The property owner challenged that interpretation of the Zoning Administrator. As stated, the Board of Adjustment decided that case contrary to the Zoning Administrator decision citing the loosely defined use and the lack of standard or text when determining a nonconforming situation. The purposed definition has been constructed in consultation with a Council member, City Manager and the Planning Director.

In Section 6-3 Nonconforming Use of Land section Staff is amending subsection (A) 5 within that section where the Board of Adjustment is being given standard by which to measure. Basically what this text says is that you cannot resume that nonconforming situation unless the site and the structure comply with the Ordinance.

Subsection (D) states; "If any nonconforming use of land ceases for any reason for a continuous period of more than 189 days, any subsequent use of such land shall be a permitted use in the district in which such land is located." The new language is giving the Zoning Administrator a specific list by which to measure the 180 days. It states; "For the purposes of this subsection, when calculating the 180-day cessation period so as to declare a nonconforming situation ceased, the Zoning Administrator shall find evidence of one or more of the following for substantiation: inactive public utility service, specifically electricity; inactive or expired building permit(s); expired Certificate of Appropriateness; and/or expired site-specific plan with vested rights, conditional use, special use, zoning, or sign permit. Expiration of permits and site plans shall be in accordance with Section 4-10 (d) of the Ordinance.

Mr. DiGirolamo asked if the wording "is designed" should be "are designed." It was determined that the wording was correct and that the word "structures" should be singular. [Article 2-4-214] He also recommended removing the word "or" following "designated."

Mr. DiGirolamo asked for the meaning of the "intensity" used in 6-3-2 (A). Ms. Brooks stated that an example would be if you had a nonconforming use that may have a lot of traffic or a lot of people coming in and out of a residential neighborhood and they want to change it to another use where you reduce the traffic or you may have or one or two coming into the business. That is the type of intensity that is being referenced.

Mr. DiGirolamo asked that Ms. Cole could speak on the addition of number five in section (A) in reference to the development standards. Ms. Cole stated that it is when Staff is looking at parking, landscaping, proper screening and other zoning regulations in the Ordinance that may refer to setbacks, density, stormwater subsection or any overlay standards.

There being no further comments, Chairman Sutton asked for a motion. Mr. DiGirolamo made a motion to ***APPROVE*** Text Amendment 01-14 as presented. Ms. Stallings seconded the motion. ***ALL IN FAVOR: SUTTON, STALLINGS, DIGIROLAMO, O'NEAL and COUNCIL. MOTION PASSED.***

Ms. Cole provided the Commission with their 2014 calendar that included filing date as well as meeting dates. She also provided UDO updates for Article III, IV and VII.

Chairman Report: Chairman Sutton stated that there are some projects that happen in the community that he thinks would be worthwhile for the Commission to be updated on such as businesses coming in. He requested that Staff make a note to give the Commission a list and make them aware of what is coming. He stated that at the last meeting he had asked what the Commission could do to become more effective and to help Staff become more effective. Through discussion it was determined that better communication with other agencies that the City works with. It was agreed that a subcommittee be set up to put some of those ideas on paper. Chairman Sutton stated that Mr. DiGirolamo and Ms. Council, along with himself will be part of the subcommittee. He stated that any other Commission member that would like to be a part can be. He requested a meeting date.

Following discussion regarding a meeting date for the subcommittee, Ms. Cole stated that she will send out an email regarding the meeting date and time.

Chairman Sutton asked for any member concerns. There were none stated.

With no further business, Ms. Stallings made a motion to adjourn the meeting. Mr. DiGirolamo seconded the motion. ***ALL IN FAVOR: SUTTON, STALLINGS, DIGIROLAMO, O'NEAL and COUNCIL. MOTION PASSED***.

Respectfully Submitted,
Dawn Harris, Secretary of the Board