



Memorandum

Memorandum No: 21-066

Date: July 19, 2021

To: Honorable Mayor and Commissioners

From: Chris Lagerbloom, ICMA-CM, City Manager

Re: Zoning Regulations for Annexed Areas

In April 2021, the City Commission expressed concern over the process for rezoning annexed areas into the City of Fort Lauderdale. These comments were made in relation to the zoning language adopted as part of the annexation of the Riverland Road and Melrose Park areas into the City of Fort Lauderdale and uses that may be undesirable as well as, other areas, such as Rock Island, where County zoning remains in place.

Annexation in the State of Florida is governed by Chapter 171 – Local Government Boundaries, of Florida State Statutes. This chapter defines terms, establishes criteria, and outlines procedures for annexation. Areas that are annexed into an incorporated municipal boundary keep their County land use and zoning regulations until such time as the incorporated municipality adopts a comprehensive plan amendment that includes the annexed area. The comprehensive plan is a document required by Chapter 163 of the Florida Statutes that provides principles and strategies to guide development of an area. These plans are, therefore, adopted under specific statutory procedures and follow planning principles. Zoning regulations are the exercise of a municipality's oversight power to implement the comprehensive plan in a consistent matter. Any change to zoning regulation must be consistent with the adopted comprehensive plan.

Melrose Park was approved for annexation on November 6, 2001, and Riverland Road was approved for annexation on March 2, 2002. To address resident's concerns related to retaining the unique character of the neighborhoods after annexation, the City adopted Resolutions 02-27 and 02-28 on February 26, 2002, committing to preserving the existing character, integrity, and unique lifestyles of the areas, which included working with the residents of each area to develop specific zoning regulations for each. As a result, the City held several public meetings and charettes to engage the residents of these areas resulting in the incorporation of the annexed areas into its comprehensive plan through the adoption of irregular land use designations that were certified by the Broward County Planning Council on May 26, 2005, with the City adopting Article XV, Annexed Areas, Section 47-39, Development Regulations for Annexed Areas, and Section 47-39.A, Melrose Park and Riverland Road on October 20, 2009. These new sections adopted language that is specific to the Melrose Park and Riverland Road areas and is unique, based on the input received from the residents and the direction given by the City Commission, at time of adoption. The Rock Island

neighborhood was not rezoned to a City zoning district as its annexation occurred in 2005, after changes to the comprehensive plan were already adopted and recertified. Therefore, in the described area, and others that have yet to be rezoned, the County zoning existing at the time of annexation remains the effective zoning for such areas.

It is important to note that the City is not required to develop a unique zoning language for newly annexed areas. In most situations, incorporated municipalities will use existing language so that uses, requirements, and criteria are consistent between zoning districts. The intent of using existing language of the zoning district is to have uniformity and logical transition from lower density/intensity areas of the City to higher density/intensity areas, consistent with the adopted comprehensive plan. Since Riverland Road and Melrose Park were part of unincorporated Broward County, the agreement to create language specific to each of these areas resulted in hybrid language that combined some aspects of Broward County zoning with Fort Lauderdale zoning. The City is not obligated to do this for annexations. However, the City has the ability to adopt language that is more or less restrictive and is consistent with provisions it adopts for the area in its comprehensive plan.

Although an incorporated municipality may adopt language that is more restrictive for an annexed area, any uses or structures that were legally permitted at the time they were established (but may not be permitted under the revised regulations) result in what is referred to as legal nonconforming uses (commonly referred to as grandfathered). Uses or structures that are determined to be legal nonconforming, are permitted to remain subject to the limitations of Florida law. The described nonconformities can generally be terminated by one of the three methods outlined below.

Attrition – If a municipality would like to remove certain uses from an area, they may do so through attrition, which is the gradual reduction of the uses over a set period of time. However, attrition can be difficult to establish and execute because the property owner(s) must be put on notice and sufficient time must be given for the property owner to realize a return on their investment. The difficulty with attrition is determining the length of time necessary for a property owner to sufficiently realize the benefits of an investment.

Destruction/Alteration – A municipality may limit the ability of a property owner to reestablish the nonconforming use or structure if it is destroyed to a certain extent. In Fort Lauderdale, and as typically performed in other municipalities, if a building is removed, damaged, or destroyed by 50% or more of its replacement value or total area of the building or structure, the nonconformity use status is lost and cannot be reestablished. Additionally, the structure or use cannot be expanded by alterations that would also expand the nonconformity status. Repairs can be made, but only to the extent they are needed to address life/safety concerns.

Discontinuance/Abandonment – If a use or structure is abandoned for a specified period, then the nonconformity status is terminated. In Fort Lauderdale, a use or structure is considered abandoned if it is discontinued for 180 continuous days. This option does have caveats that can extend the 180 days, such as listing the property for sale and marketed with the nonconforming use status.

In the event that the City of Fort Lauderdale chooses to annex other areas, it may decide to draft specific language that recognizes the unique characteristics of the area, or it may re-use existing zoning provisions. However, neither path will necessarily result in termination of uses that may be deemed undesirable as legal nonconformities are permitted to remain, subject to limitations.

Should you have any questions or would like to discuss further, please feel free to contact Anthony Fajardo, Director of Department of Sustainable Development at AFajardo@fortlauderdale.gov.

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