

Urban Design Commission  
Meeting of June 26, 2024  
Agenda #5, Legistar #71257

Proposed section 33.24(6)(f)(5) would allow the UDC to waive or modify district requirements and guidelines (except for building placement, height, and, perhaps, stepbacks). For districts 4, 5, 6, 7 and 8, the ordinance says a development shall meet the requirements and conform as much as possible to the guidelines (the same is implicit for districts 1, 2 and 3). Thus, there already exists the possibility of waiver for guidelines(s).

All 8 districts require that development in the district "be designed, erected, and maintained in compliance with this ordinance [MGO 33.24]". Thus, the proposed language creates a conflict – this proposed general provision would allow requirements to be waived/modified while the specific design provisions for each district require compliance with the requirements.

The proposed language would allow a requirement to be waived if the "alternate design is of higher quality or aesthetic." Yet the districts already require that "the overall design of each development shall be of high quality." Since high quality is already required, it would be difficult to distinguish what counts as higher quality. The same could be said for the second exception, a "superior design solution."

More importantly, if requirements can be waived then there is no real difference between requirements and guidelines. One could argue that the proposed language would allow waiver/modification under limited circumstances, but the listed circumstances are broad and undefined.

The intent, for at least some districts, is to have a cohesive and coordinated design. This goal of coordinated design could be defeated if the requirements could be waived/modified. For example, UDD #8 provides: "The purpose of these design requirements and guidelines is to provide clear direction for how property owners can make improvements to their properties to collectively improve the visual character and safety of the District. When applied, they will ensure against fragmented or incompatible development and will help prevent the negative visual and functional effects of uncoordinated design decisions." The UDD #8 requirements that could be waived/modified under this proposed language include:

- All visible sides of the building shall be designed with details that complement the front facade. Side facades that are visible from the primary street shall receive complementary design attention. (While this is a requirement in the CC-T zoning district, most of the district is TE, a zoning category that does not have this requirement.)
- Architectural details at the ground floor shall be provided to enhance the pedestrian character of the street. Details shall include window and door trim, recessed entries, awnings, and/or other features.
- For buildings on Blocks 2b,, 2c, 3b, 4b, 10-16, and 17c, any mass above five (5) stories that exceeds a footprint of one hundred thirty (130) feet on any side parallel to East Washington Avenue and two hundred (200) feet on any side perpendicular to East Washington Avenue shall have a stepback of forty-five degrees (45°), unless the Urban Design Commission approves a maximum of ten percent (10%) increase in the footprint due to structural or other constraints.

- Bonus stories may be granted if it is determined that the provision of at least one (1) element from i. or a combination of elements from ii. provides sufficient public benefit to warrant the additional height.

The UDC has waived requirements in the past. On the 1609 S Park project, staff told UDC that they could (1) make a finding that the project is overall an enhanced design aesthetic and (2) that they did not find a strict application of the minimum window coverage was appropriate or that more windows would result in a better design. Yet a requirement of UDD #7 is 60% windows for the front façade of retail buildings and 40% for non-retail buildings.

Perhaps it would make sense to allow for waiver/modification of requirements when there is a major exterior alteration of an existing building or structure, such as 1609 S Park. However, waiver/modification should not be allowed for new structures.

Respectfully Submitted,  
Linda Lehnertz

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Chair Goodhart and Urban Design Commissioners:

I am writing to provide the comments of Smart Growth Greater Madison regarding item 5 on the agenda for your meeting on Wednesday, June 26, the "phase 1" ordinance, Legistar 71257.

Smart Growth believes it is not sufficient to enact a new ordinance that merely codifies the way the Urban Design Commission has been doing business for years. Given the inadequate supply and soaring cost of housing that is burdening more and more existing and future residents, a new UDC ordinance should streamline processes and reduce costs. It is not reasonable to expect different results by continuing to do things the way they have been done for years. That is why, on behalf of Smart Growth, I have been attempting for over a year to engage the UDC in a dialogue regarding how to improve and streamline the UDC's processes.

Because of the shortage of housing and resulting escalation of housing costs, Smart Growth supports the Attachment B version rather than the Attachment A version of the "Phase 1" ordinance. Attachment B does more to streamline processes. However, Smart Growth has additional concerns that are not addressed in Attachment B. Smart Growth urges you also to address these concerns in Attachment A or Attachment B, whichever one goes forward.

First, in the vast majority of projects that go to the UDC for the UDC to make an advisory recommendation to the Plan Commission, the UDC should be able to provide its advice, including any recommended design changes, at one meeting (not counting informational presentations). This would be far more likely if (a) there were clear design standards that design teams would use to guide their designs before the meeting at which the UDC will review the project and determine its advice to the Plan Commission and (b) the UDC confines itself to those design standards. Neither the ordinance as introduced, nor Attachment A, nor Attachment B provide clear design standards for some kinds of projects that come to the UDC for an advisory recommendation, e.g., Residential Building Complexes.

Attachment B contains the following additional text, which Smart Growth supports: "An advisory recommendation shall include findings and design-related recommendations as it relates to the applicable review and approval criteria, guidelines and requirements." How can the UDC comply with this text when there are no specific design standards, criteria or guidelines for Residential Building Complexes in the zoning code? How can the UDC comply with this text if there is no applicable neighborhood plan or area plan which provides specific design standards, criteria or guidelines for a Residential Building Complex?

Second, while Smart Growth understands the desire to allow for some unusually large and complex projects to return to the UDC to review updated plans after the Plan Commission has taken action (in Attachment B, a return trip would be recommended by the UDC only with the

consent of the applicant), Smart Growth is deeply concerned that a return to the UDC will become common rather than an exception. One can anticipate UDC commissioners who want to do more work on the design of a project might hint to the applicant that they are going to make a negative recommendation to the Plan Commission unless the applicant consents to allowing the project to return to the UDC after action by the Plan Commission, making the applicant's consent not particularly voluntary. This is not far-fetched, especially since the current commissioners are accustomed to being able to obtain the return of projects to the UDC after the Plan Commission has taken action. It is likely that the UDC will frequently ask applicants to consent to a return to the UDC for Residential Building Complexes, because the lack of clear design standards for Residential Building Complexes in the zoning code makes design teams unable to anticipate what they need to do to produce acceptable designs and encourages UDC commissioners to be expansive in their identification of design issues.

Third, Smart Growth objects to the expansion of the list of design elements (please note that design elements are not design standards) that the UDC will delve into when it reviews Residential Building Complexes. Specifically, the draft ordinance invites the UDC to work on general site layout and site lighting, which are not in the current ordinance. The Plan Commission is quite capable of examining and deciding these issues and does not need advice from the UDC on these issues. Smart Growth recommends that Attachment A or Attachment B, whichever one goes forward, be modified to remove these additional design elements from the draft ordinance.

Fourth, it is imperative to include someone with knowledge of construction costs on the UDC to serve as a resource to the other commissioners and help them be aware of the magnitude of additional costs they might be imposing with the design changes they are requiring or recommending. In most cases, additional costs imposed by the UDC will be passed on to the tenants (in some cases, other amenities will need to be removed from the project to offset the additional cost). Good design should avoid substantially increasing costs and rents. Attachment B merely permits a Construction Professional to be appointed to the UDC rather than requiring a Construction Professional to be appointed. Smart Growth believes not requiring the appointment of a Construction Professional (and, if necessary, expanding the commission by one or two members to facilitate this change) is a mistake.

Fifth, please note that the additional language in Attachment B granting authority to the Secretary to decide whether an application is sufficiently complete to allow the applicant to obtain initial and final approval at the same UDC meeting explicitly applies only to projects where the UDC is an approving body and does not apply to the separate class of applications for advisory recommendations. Neither the ordinance as introduced, nor Attachment A, nor Attachment B say anything about an application for Initial Advice or Final Advice. Instead, there is an Application for Referrals and Advisory Opinions, separate from the applications for Initial Approval and Final Approval. Smart Growth is not asking for a change here, but wants everyone to have a shared understanding of this issue.

Sixth, Smart Growth continues to request that a provision be added to the ordinance (or possibly the UDC's procedures document) that the UDC's design changes or recommendations be specific and non-conflicting, representing the voice of the UDC as a body rather than a collection of comments from individual commissioners. Although there has been progress on this issue, it continues to be a concern.

Seventh, Smart Growth continues to request that a provision be added to the ordinance to the effect that for projects regarding which the UDC is an approving body, there is a time limit from when an application is submitted (provided that the Secretary determines that the application is complete based on the application checklist) by which the UDC must approve, approve with conditions, or deny approval, or else the application is deemed approved by the UDC.

Thank you for your consideration. Unfortunately, due to a calendar conflict, it is unlikely that I will be available to speak to you during Wednesday's meeting. Please contact me if you have questions about what I have written.

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