



Department of Planning & Community & Economic Development
Planning Division

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MEMORANDUM

TO: Plan Commission
FROM: Planning Division Staff
DATE: July 7, 2010
SUBJECT: Summary of Staff Recommendations Related to Design-Related Conditional Uses and Waivers

The City Attorney's Memorandum, dated March 31, 2010 provides comments related to design-related conditional uses and waivers found in the draft ordinance. Occurrences of these conditional uses and waivers are listed below (page numbers reference the redlined draft ordinance.)

At the request of the Plan Commission, Planning Division staff have compiled the recommendations related to design-related conditional uses and waivers in the proposed zoning ordinance. These have been copied directly from Memorandums 1 and 2, previously provided to the Commission. No new recommendations have been added. To the extent feasible, staff has organized these recommendations sequentially by ordinance section, integrating the recommendations from both memos.

Design-Related Conditional Uses

- Location of parking for nonresidential uses (p. 10)
- Dispersion of building types other than as required in the district (pp. 16, 18, and 26)
- Height greater than the maximum allowed in the district (pp. 36, 50, 54, 59, 61, and 63)
- Building size greater than the maximum allowed in the district (pp. 48, 53, 57, 60, and 62)
- Lot area less than 15,000 square ft. in the Urban Agriculture District (p. 90)
- Size of accessory buildings greater than maximum allowed and area of accessory buildings greater than maximum allowed (p. 135, 194)
- Public utilities on unplatted land (p. 140); development adjacent to public parks (p. 144)
- Buildings over 40,000 square feet in planned sites (p. 142)
- Parking reduction of more than 20 spaces or 25% (p. 152)
- Parking reduction near transit corridor (p. 153)
- Driveways serving commercial or industrial uses that cross residentially zoned properties (p. 158).

Design-Related Waivers

- All design standards (p. 39)
- Rear yard height transition to residential districts (pp.50, 54, 59, 61, and 63)
- Frontage requirements (pp. 52, 54, 59, and 61)
- Building standards (pp. 72, 75, 79, 81, and 83)
- Bicycle parking reduction (p.153)

1. Section 28.031(4) Nonresidential Buildings in Residential Districts: Parking Location

Memorandum 2 (#1, p.2)

Page 10, Redlined Ordinance (Page 10 Original Introduced Draft)

Staff recommend that the Plan Commission discuss this requirement further. Staff notes that it would make many existing non-residential sites (schools, churches, etc.) non-conforming. As staff is recommending the removal of the opportunity to waive or modify this type of requirement through the conditional use process, staff suggests that it might be best to apply this requirement only to new construction, rather than to additions. Depending on the Plan Commission discussion of this item, staff suggests that it could be reworded as follows:

~~“For new nonresidential buildings in residential districts or additions that exceed the original building’s gross floor area by more than fifty percent (50%) constructed after the effective date of this zoning code, surface parking shall not be permitted between the front façade of the building and the abutting street. This standard may be waived or modified through a conditional use process. In the case of a building addition, this standard applies to the addition, not to the original building.”~~

2. Sections 28.037(2)(a), 28.038(2)(a), 28.046(2)(a) Add Conditional Use Provision to Dispersion Requirements

Memorandum 2 (#10, p.6)

Pages 16, 18, & 26 Redlined Ordinance (Pages 14, 17, 24 Original Introduced Draft)

The “Dispersion Requirement” requires that certain multi-unit building types are not concentrated in one area in select mixed-density residential districts.

Staff recommend the following changes to clarify the language and add a conditional use option:

For the SR-C3 district, staff recommend this provision be revised to state that no new two-unit shall be constructed or converted within 300 feet of a zoning lot containing any other two-unit building, as measured from the perimeter of each zoning lot, except by conditional use.

For the SR-V1 and TR-V1 districts, staff recommend that this provision be revised to state that no new two-unit, three-unit or multi-unit building shall be constructed or converted within 300 feet of a zoning lot containing any other two-unit, three-unit, attached or multi-unit building, as measured from the perimeter of each zoning lot, except by conditional use.

3. Section 28.060 (2) Mixed-Use/Commercial Design Standards and Waiver

Memorandum 2 (#19, p.8)

Page 39 Redlined Ordinance (Page 37 Original Introduced Draft)

Please see the memorandum from the Assistant City Attorney’s office regarding legal concerns with the number of waivers proposed in the draft code, including the mixed-use/commercial design standards waiver proposed in this chapter.

Staff recommend revising some of the most prescriptive standards within this section and removing the two-step Plan Commission and UDC waiver process. Specific changes are noted in subsequent recommendations. As noted in the City Attorney's memo, "waivers" here would likely be variances, considered by the Zoning Board of Appeals.

Staff have also considered changing the standards to reduce the number of proposals that may be subject to the provisions. At this time, staff are not recommending either of the below options, but wish to note them for Commission consideration. One alternative approach would be to only require design compliance for new buildings and not for additions. Another approach would be to increase the compliance "trigger" from buildings increasing in floor area by 50% expansions to 100% expansions. The Zoning Administrator indicates that there are actually very few additions or expansions that are 50% or greater, so the increased trigger is not anticipated to have a significant impact on reducing the number of projects subject to these standards.

4. Chapter 28D Mixed-Use and Commercial District

Memorandum 1 (#13, p. 38)

Pages 39-63 Redlined Ordinance (Pages 37-60 Original Introduced Draft)

Plan Commission Question: How does the design standards waiver process work?

Staff response: Staff has recommended a significant change to the draft with regard to the potential to request design waivers. Instead, staff recommends that the variance process (requiring review and approval by the Zoning Board of Appeals) be utilized to request relief from any design standard. (See Attorney Memorandum 3, preceding red-lined draft)

5. Section 28.060(2)(b) UDC Recommendation #2, Memo 1, p. 14

Memorandum 1 (#2, p.14)

Page 39 Redlined Ordinance (Pages 37 Original Introduced Draft)

UDC Recommendation: The design standards as previously noted need flexibility. (Matt Tucker referenced the waiver system within the ordinance on Page 37, which was commented on as needing more work).

Staff recommend: Staff has carefully reviewed the "waiver" process in the draft, and is recommending replacement of the waiver process for design standards with a zoning variance process, which is currently typical for other requests to depart from zoning code requirements.

6. Section 28.060(2) UDC Recommendation #5, Memo 1, p. 15

Memorandum 1 (#5, p.15)

Page 39 Redlined Ordinance (Pages 37 Original Introduced Draft)

UDC Recommendation The "compliance and feasible" references need to be reworded to be more clear.

Staff recommend: OK

7. **Section 28.060 PC Question on Infeasibility #14, p.39**

Memorandum 1 (#14, p.39)

Page 39 Redlined Ordinance (Page 37 Original Introduced Draft)

PC Question: What does infeasible mean?

Staff response: The lack of ability to tie the term “infeasible” to objective standards is one reason staff is recommending a significant change to this process. [NOTE: Further information is provided under item #4 of this memo.]

8. **Section 28.065(6) PC Question #26, Memo 1, p. 40**

Memorandum 1 (# 26, p.40)

Page 61 Redlined Ordinance (Page 58 Original Introduced Draft)

PC Question: Waiver should be used as infrequently as possible. What does “infeasible” mean?

Staff response: [Note: Further information provided under items #4 and 7 of this memo.]

9. **Section 28.060(3) Convert Design Guidelines into Standards**

Memorandum 2 (#22, p.9)

Page 41 Redlined Ordinance (Page 39 Original Introduced Draft)

A policy decision for the Plan Commission is whether the existing design guidelines should be applied as standards. While guidelines could be considered when there is a discretionary review (e.g. for a conditional use), they could not be applied for other “by-right” uses. Please see the supplemental memo provided by the City Attorney’s Office for further information. The red-lined draft shows the guidelines, with technical corrections. That draft has moved the guidelines into the standards section.

10. **Section 28.062(5)] NMX Maximum Building Height**

Memorandum 2 (#37, p.13)

Page 50 Redlined Ordinance (Page 47 Original Introduced Draft)

Staff believe the maximum building height in the NMX district should be reduced. As staff “tested” these heights, a four-story height limit did not appear compatible in some of the areas that are otherwise believed to be appropriate for NMX zoning.

Staff recommend that the height limit in this district be reduced to 3 Stories/ 40 feet. Greater height could be allowed as a conditional use. Staff further recommend that a new conditional standard be added referencing consideration of the adopted Comprehensive, neighborhood, neighborhood development, corridor, or special area plan.

11. General Plan Commission & Urban Design Commission Waiver Process Comments and Questions

Memorandum 1 (#4, p.50)

PC/UDC Questions and Comments:

- a) There are some things the Plan Commission will want to review. Will the big box standards be melded into this section?
- b) Expression of some concern with cumbersome process and burden on developers.
- c) Why would we want to waive the design guidelines?
- d) Can standards be added that allow waivers for a higher level of design?
- e) Criteria are needed for granting waivers.
- f) Design standards could go to the UDC.
- g) There is a difference between standards and building forms. UDC may be more appropriate for one than the other.
- h) When in the process would someone ask for a waiver?
- i) Sequence of design process could be a consideration, if the Plan Commission may have a concern with design.
- j) A flow chart of the design process may be useful.
- k) Waivers would go the UDC for review (one meeting) and then their recommendation would go to the Plan Commission for their action (one meeting).
- l) Maybe all waivers would not need to go to the Urban Design Commission ~Maybe only if several waivers are requested.
- m) Would UDC be advisory with regard to waivers?
- n) UDC could review a waiver fairly quickly.
- o) Complete submittal should be provided to the UDC or the UDC won't grant a waiver.
- p) Will there be a fee for waivers?
- q) Look for ways to streamline the review process. The process may discourage infill development due to onerous UDC/design review requirements

Staff response: Staff has recommended a significant change to the draft with regard to the potential to request design waivers. Instead, staff recommends that the variance process (requiring review and approval by the Zoning Board of Appeals) be utilized to request relief from any design standard. **See Memorandum 3)**

12. Sections 28.062(6), 28.063(6), & 28.064(9), 28.065(6), 28.066(5) Frontage Requirements

Memorandum 2 (#38, p.13)

Pages 52, 54, 59, 61, & 63 Redlined Ordinance (Pages 49, 51, 56, 58 & 60 Original Introduced Draft)

Staff recommend the following regarding the general frontage requirements:

- a) Add a new category “Prescribed Frontage” to allow mapping of a specific frontage (e.g. 0’, 5’, 20’) to all districts. This would provide an opportunity to map a specific frontage in areas where the City has detailed plans or otherwise desires such specificity.
- b) Increase the “Fixed Frontage” requirement to state that buildings shall be placed within 10 feet of the sidewalk (the current draft states 5 feet) in the NMX & TSS districts.
- c) Increase the “Fixed Frontage” requirement to state that buildings shall be placed within 15 feet of the sidewalk (the current draft states 10 feet) in the CC-T district.
- d) Consider an alternative “Flexible Frontage” requirement in the CC-T District. Staff have identified two alternatives:
 1. OPTION 1: Language as written
 2. OPTION 2: Use the existing Large Format Frontage Standards (MGO- Chapter 33)
- e) Revise the CC frontage requirement to be consistent with the large format retail standards in Chapter 33 (MGO). The frontage requirements in subsection (5) would be reworded to state that new buildings shall be placed in accordance to the requirements of 33.24(4)(f). That frontage standard is somewhat more flexible than the proposed language.
- f) Remove the “Frontage Not Defined” category in all districts. Staff believe that this is redundant and this standard can be incorporated directly into the “Flexible Frontage” requirement. The Flexible Frontage standard would begin, “Where not mapped as fixed frontage, buildings shall be placed between...”

Staff further recommend that the “parking standards” contained in the Building Form sub-chapter be moved into the various frontage requirement sections. As those standards relate to frontage, staff believe it is confusing to have the frontage requirements in two places in the ordinance.

13. Section 28.063(5) Maximum Height in TSS District

Memorandum 2 (#39, p.14)

Page 54 (Page 51 Original Introduced Draft)

Staff recommend the maximum permitted building height be reduced to 3 stories/40 feet, similar to the recommendation for the NMX district, with additional height allowed if approved as a Conditional Use.

14. Section 28.065(5) & 28.066(5) Building Height Clarifications (CC-T and CC Districts)

Memorandum 2 (#43, p.15)

Pages 59-60 (Pages 58-60 Original Introduced Draft)

There is a discrepancy in the processes described in (5)(a and b) for both sections. **Staff recommend** the process be the same. Both sections should indicate that additional height could be added as a conditional use.