

**Murphy, Brad**

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**From:** Noonan, Katherine  
**Sent:** Thursday, January 04, 2007 12:42 PM  
**To:** Konkell, Brenda; Verveer, Mike; Cnare, Lauren; Olson, Judy; Webber, Robbie  
**Cc:** Murphy, Brad; Olinger, Mark; Parks, Timothy; Fruhling, William  
**Subject:** neighborhood conservation district ordinance

attached is a draft of the ordinance reflecting the proposed changes of sponsors and the plan commission as discussed by staff. please look over the draft and let me know if it is ok or if you want changes. there are several issues that were raised by the sponsors and plan commission that require comment. please look over the draft to see if there are omissions or other changes, taking into consideration the comments below. thank you.

1. there is no language in the ordinance that requires any formal approval related to meeting the neighborhood conservation district guidelines. there may, however, be approvals that are necessary due to a property being located in the district. for example, a proposal may meet the bulk requirements of the underlying zoning designation but need a variance to meet the ncd requirements. this example is why language stating that no additional approvals are necessary is problematic. all other zoning related requirements remain language confusing that fact is not a good idea. i added a phrase in the drafter's analysis that i hope will suffice for 'comfort'.
2. all zoning ordinances, including this ordinance, are subject to the americans with disabilities act and the fair housing act. including language in this ordinance regarding the applicability of the laws would be confusing because someone reading the ordinances might think that it does not apply to all the other ordinances where it is not mentioned. all our ordinances are presumed to be lawful, which means that they do not violate ada or fha and as with other ordinances, reasonable accomodations can be requested.
3. the zoning board of appeals is the most appropriate body to use for property owners to request relief from specific zoning requiremens relating to bulk, etc. i have added a provision to the list of variances that allows requests for relief from the requirements of a neighbordood conservation ordinance. area exceptions are limited to specific requirements in r2 zoned properties, so a variance is the best option for this ordinance as it can be general for all ncd requirements. area exceptions do not take the place of variances, but provide an interim requirement, e.g. yard size, that is eligible for relief. variances still are necessary if the requested deviation from the requirement is greater. consequently, a variance provision is necessary for more than minor deviations. if desired, establishing area exceptions in districts other than r2 would have to be done once a specific district is created and the details of the requirements are known. the decision of whether area exceptions should be expanded to ncd's likely would be informed by the characteristics of the individual districts, could be provided at that time and would not be limited by the lack of any language in this ordinance relating to them.
4. language was requested to be added to the (4)(a) that 'affords the opportunity to owners and residents to participate in drafting the conservations plans'. as is, this language likely would cause every district created to be voided upon challenge by an individual who did not get to participate in drafting. participating in drafting is far different from having meetings, discussions, etc. i strongly suggest no using that language and i did not include it. there already is language relating to working with residents, property owens and business representatives and i am wondering just what activity you want to add. also, there is a request for language requiring staff to created a registry of 'interested parties for conservation areas for future notifications'. what do you mean by 'interested parties'? are they different from owners and occupants? what future notifications do you have in mind? are you adding notice requirements other than those already part of this ordinance and the related procedure ordinances?
5. i did not include reference to sec. 62.23 because our ordinance has requirements that do not match exactly the statute. for example, our ordinances require a public hearing before both the plan commission and the common council. only one is required by the statute.

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