



MEMORANDUM

Re: Cherry Street Station PDP, Type I, #9-05

Date: September 8, 2005

From: Anne Aspen, Planner *AAA*

Purpose

This memo is a supplement to the Cherry Street Station PDP Staff Report prepared for the Administrative Hearing to be held on Thursday, September 8, 2005. It should be considered as a part of the staff report. This supplement reflects staff discoveries and changes proposed to the project by the applicant as of September 7, 2005.

Background

Staff discovered on September 6, 2005 that the third floor mezzanines of the proposed PDP project do not meet the standards of the Land Use Code. Independent consultations with Cameron Gloss of Advance Planning, Peter Barnes of the Zoning Department, and Mike Gebo of the Building Inspection Department produced consensus within staff that the mezzanines do not meet the standards of The Land Use Code.

The Land Use Code contains standards pertaining to maximum square footage of mezzanines in Section 3.8.17 (A)(2)(a). There is not a definition of mezzanine in Division 5, *Terms and Definitions* but Section 5.1.1 allows that for words that are not defined, the Director has the authority and power to refer to a number of other listed sources for a definition that will be binding. In this case, two of the listed alternate sources were consulted. Webster's 3rd New Intl Dictionary defines 'mezzanine' as "a low-ceilinged story between two main stories of a building, for example an intermediate or fractional story that projects in the form of a balcony over the ground story." The New Illustrated Book of Development Definitions defines mezzanine as "an intermediate level between the floor and ceiling of any story and covering not more than 33% of the floor area of the room in which it is located. This source also refers the reader to a Figure, which is attached.

The mezzanines as proposed clearly do not match these definitions.

Staff contacted the applicant to discuss this discovery and after a couple of meetings between staff and the applicant, the applicant has submitted two letters of request, attached.

Staff Analysis of the Two Requests:

Request #1:

The first request, addressed to Cameron Gloss, states that the proposed project meets the special review criteria set forth in Section 3.5.1 (G)(1). The applicant goes on to request a modification of height limits as described in Section 3.5.1 (G)(1)(c). A modification of the height limits can be granted by the decision maker in the development review process either to increase or decrease limits for any of seven reasons, listed in the code. The applicant describes in his letter how his project meets all of the possible reasons. Therefore, the applicant requests an increase of the allowable height limits from 3 to 4 stories.

Analysis of Request #1:

Neither maximum allowable height nor maximum number of stories allowed in a zone district confer the right to build to that height. Project Development Plans must also meet the other standards of the Land Use Code including the compatibility standards of Section 3.5.1.

Request #2:

The second request, addressed to the Hearing Officer, is a request for modification in accordance with Section 2.8.2 (H) of the Land Use Code. The applicant uses the "equal to or better than" rationale, spelled out in Section 2.8.2 (H)(1).

Analysis of Request #2:

As stated above in Analysis of Request #1, neither maximum allowable height nor maximum number of stories allowed in a zone district confer the right to build to that height. Project Development Plans must also meet the other standards of the Land Use Code including the compatibility standards of Section 3.5.1.

Also, depending upon which definition of 'mezzanine' the Hearing Officer chooses to use, the mezzanine, even as shown in the attachments modified to meet the code, may not, in fact, meet code. The Webster's 3rd International Dictionary defines a mezzanine as "a low-ceilinged story *between two main stories of a building*, for example, an intermediate or fractional story that projects in the form of a balcony over the ground story" (emphasis mine). With this definition, the level on top of the 3rd floor can not be considered a mezzanine.

Staff certainly agrees that the proposed project is more aesthetically pleasing than the other option presented.

Recommendation:

While the modification requests and the applicable code language would appear to lead one to the conclusion that this is an equal to or better than situation, staff does not have the benefit at this late time of testimony from the public on the compatibility issues. There is also some leeway in the definitions of the

term 'mezzanine'. Because the applicant appears to be technically meeting the standards of the Code, staff will err on the side of caution and recommend **approval** of either the modification of height limits or the modification of standards presented herewith. The Hearing officer must ultimately decide, based on the aggregate of the information from the various other perspectives that staff does not have access to if, in her wisdom, this meets the intent of the zoning and compatibility standards that apply to this project, namely Section 3.5.1 (G)(1)(a)(4), Sections 3.5.1 (A)(B) and (C) and Section 4.16 (A) and/or the definition of 'mezzanine'.

Attachments:

Letter from Mikal Torgerson of Mikal Torgerson Architects, P.C. dated September 7th, 2005 addressed to Cameron Gloss

Letter from Mikal Torgerson of Mikal Torgerson Architects, P.C. dated September 7th, 2005 addressed to Hearing officer

Figure illustrating "mezzanine" from [The New Illustrated Book of Development Definitions](#)