

**PLANNING AND ZONING BOARD
WORKSESSION AGENDA
Friday, April 12, 2013, noon to 5 pm
281 N. College Conference Room A**

Web users: Documents for the Consent and Discussion Items shown below can be found under the hearing date agenda (April 18, 2013).

Consent 15 minutes

- Harvest Park/Ziegler ODP

Discussion 60 minutes

- Max Flats PDP (Lorson)
- PVH Cancer Center Addition (Shepard)
- Banner Health PDP (Holland)
- Mountain Sage Community School SPAR (Holland)
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Worksession Topics:

- LUC – Spring 2013 Proposed Changes (Shepard)
- PDOD Update (Bolin)

PENDING TOPICS:

- *Debrief Last Hearing*
- *Resolution Describing Hearing Process Changes*
- *Other Potential LUC Changes:*
 - *TOD*
 - *Mixed-Use*
 - *APU*
 - *SHAP_25' from parking lot unintended consequences*
- *Annual meeting w/City Council/open to public – upcoming July CC Work Session Periodic Review (Role of P&Z, LUC, Appeal Process, new members LUC/P&Z orientation)*
- *Cable 14 Requests (see attached)*
- *New brainstormed ideas*

City Council



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MEMORANDUM

TO: Planning and Zoning Board
FROM: Ted Shepard, Chief Planner ^{TS}
DATE: April 4, 2013
RE: Land Use Code – Spring 2013 Proposed Changes

Attached please find the most current working list for the Spring 2013 Land Use Code Update. These are the proposed revisions that are not associated with the East Side / West Side Neighborhoods Character Study, Student Housing Action Plan, Urban Agriculture and the Planned Development Overlay District. Nor are these revisions associated with changes that are tracking separately related to Section 3.2.1(F) – non-native tree mitigation, and Section 3.8.7 – removal of election signs

As with previous updates, some of the items may be forwarded to a later code change cycle, deleted or modified to some degree. In addition, some items may be added between now and consideration of the Ordinance.

We would like to have brief discussion regarding a potential revision to the *Post Denial Resubmittal Delay*. Please see the attached for a description.

The team will keep the Board posted on the Spring 2013 Code changes in preparation of the Board's formal consideration at the May Planning and Zoning Board meeting. After the Board's recommendation, the proposed revisions will be forwarded to City Council for two readings beginning in June.

Land Use Code Issues

Thursday, April 04, 2013

Issue ID# Issue Name

- 903 Amend 3.2.2(D)(3)[c] - Pavement - to allow alternative parking lot surfaces other than asphalt or concrete in order to promote Low Impact Development principles.
- 914 Amend 4.9(D)(6)(b) - N-C-B Front Yard Setback - to clarify that the 60-foot minimum front setback south of University Avenue applies to Shields Street only.
- 918 Amend 4.21(B)(2) - General Commercial Permitted Uses - by moving microbrewery/distillery/winery from the Institutional/Civic/Public land use category to the Commercial/Retail category.
- 919 Amend 4.5(B)(2)(a)7. - Extra Occupancy Rental Houses with More Than 4 Tenants in L-M-N - move from B.D.R. to Type One review.
- 921 Amend 3.7.1(B) and 3.7.2(A)(3) - Compact Urban Growth Standards - to correct outdated references to Urban Growth Area and Infill Area.
- 923 Correct 4.17(D)(1)(a) - RDR Development Standards - to change the reference from 3.4.1[C] to 3.4.1(E).
- 925 Correct 4.5(E)(4) - LMN Design Standards for Multi-Family Dwellings - to delete the reference to three "or more" stories in height as three stories is already the maximum allowed.
- 926 Revise 4.27(D)(2)(m) - Employment District - Secondary Uses - to clarify that the allowable "Public Facilities" should be further defined as "Minor Public Facilities" since Major Public Facilities are not a permitted use.
- 928 Add to 5.1.2 a new definition of "Existing Limited Permitted Use" as the definitions include Non-Conforming Use but no definition for an E.L.P.U.
- 930 Amend 4.17(D)(3)[c] - RDR - Massing and Placement - to further clarify the terracing of buildings abutting river frontage by deleting the reference to "or parts of buildings."
- 933 Amend 4.5(B)(2)(c)3. - L-M-N Permitted Uses - to allow Limited Indoor Recreation Establishments as a permitted use in a Type One Neighborhood Center.
- 934 Clarify 3.2.2(L)(2) and (3) - Parking Stall Dimensions - to rectify not allowing compact parking spaces in long term areas when using the reduced stall dimensions for long term parking.
- 935 Clarify 3.2.2(L)(3) - Long Term Parking Stalls - to allow compact car parking stalls in long term parking areas.
- 936 Add 3.2.2 (L)(5) - Parking Stall Dimensions - to establish standards for electrical vehicle charging stations.
- 937 Clarify 3.2.4 (C) - Site Lighting Levels - so that the stated foot-candle levels are averages for the area or activity and not required as maximum levels for the entire area or activity.
- 938 Clarify 3.8.3(10)(g) - Home Occupations- Vehicle Repair, Servicing, Detailing or Towing - as to what is considered a vehicle with regard to the type of vehicle repair that is prohibited as a home occupation.
- 939 Delete from 3.10.4(E) - Transit Oriented Development Overlay Zone - Bicycle Parking - as the new minimum number of bicycle parking spaces has been established in 3.2.2(C)(4) adopted in 2012.
- 941 Clarify 4.9(D)(5) - N-C-B Floor Area Ratio - Rear 50% of Lot - by deleting "as it existed on October 25, 1991" and would match the standards for the N-C-L and N-C-M.
- 942 Amend 4.24(B)(2) - C-L Zone - Permitted Use List - by adding Accessory Uses and Accessory Buildings.
- 943 Revise 2.2.11(D)(9) - Post Denial Re-Submittal Delay - to include additional criteria by which the Director may shorten the delay period and to reduce the delay time from six to four months.

Issue ID# Issue Name

- 944 Add to 2.2.10(A) - Step 10 - Minor Amendments - a new clause "to the extent reasonably feasible" for certain types of applications.
- 945 Clarify 2.8.1 - Modifications - Purpose and Applicability - so that the standards in the Sign Code in 3.8.7 are not modifiable for pending ODP's and PDP's.
- 946 Clarify 3.8.30 - Multi-Family Dwelling Development Standards - so that the standards are apply at four-plex or larger.
- 947 Clarify 3.2.1(A) - Landscaping and Tree Protection - so that the standards do not apply to existing platted lots that are not the subject of a P.D.P. or Replat.

Item 943 Revise 2.2.11(D)(9) – Post Denial Re-Submittal Delay – to include additional criteria by which the Director may shorten the delay period and to reduce the delay from six to four months.

Problem Statement

The post denial delay re-submittal period is six months. This duration may be reduced by the Director but only for limited purposes where a project is found to substantially alleviate an existing, defined and described problem of City-wide concern; or result in a substantial benefit to the City by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the City's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council.

The problem is that there is no consideration where the new proposed project is significantly different than the project that was denied. The original intent of the standard was to eliminate the potential of developer re-submitting a project soon after a denial, with only token revisions, thus causing potential burn-out and undue acrimony of those opposing the project. But the standard, as written, does not account for a re-submittal of a project that is clearly distinguished from the denied project by a change in use, substantial reduction in square footage or residential density. For such projects, they are lumped into the six month delay period perhaps unnecessarily.

As written, a project that makes only token revisions is treated equally with a project that makes major revisions. After all, the purpose behind the denial is to send the signal that the project that was denied was deemed to be unacceptable for failure to comply with either a land use standard, development standard, or a process requirement. This equal treatment is unfair for the re-submittal of a new project that is in stark contrast with the original.

Proposed Solution Overview

Staff proposes to recommend additional criteria by which the Director may shorten the delay time. Also, staff recommends reducing the time from six to four months.

Post denial re-submittal delay. Property that is the subject of an overall development plan or a project development plan that has been denied by the decision maker or denied by City Council upon appeal, or withdrawn by the applicant, shall be ineligible to serve, in whole or in part, as the subject of another overall development plan or project development plan application for a period of six (6) months from the date of the final decision of denial or the date of withdrawal (as applicable) of the plan unless the Director determines that the granting of an exception to this requirement would not be detrimental to the public good and would: (a) substantially alleviate an existing, defined

and described problem of City-wide concern; or (b) result in a substantial benefit to the City by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the City's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council; or (c) consist of a project that differs significantly in use or character in comparison with the original project that was the subject of the denial by reason of substantive changes in land use or residential density or non-residential intensity such that the differences are clearly distinguishable so as to not be considered minor.

2.2.7 Step 7: Public Hearing (C) *Order of Proceedings at Public Hearing.*

The order of the proceedings at the public hearing shall be as follows:

(1) *Staff Report Presented.* The Director shall present a narrative and/or graphic description of the development application. The Director shall present a Staff Report which includes a written recommendation. This recommendation shall address each standard required to be considered by this Land Use Code prior to approval of the development application.

(2) *Applicant Presentation.* The applicant may present information in support of its application, subject to the determination of the Chair as to relevance. Copies of all writings or other exhibits that the applicant wishes the decision maker to consider must be submitted to the Director no less than five (5) working days before the public hearing.

(3) *Staff Response to Applicant Presentation.* The Director, the City Attorney and any other City staff member may respond to any statement made or evidence presented by the applicant.

(4) *Public Testimony.* Members of the public may comment on the application and present evidence, subject to the determination of the Chair as to relevance.

(5) *Applicant Response.* The applicant may respond to any testimony or evidence presented by the public.

(6) *Staff Response to Public Testimony or Applicant Response.* The Director, the City Attorney and any other City staff member may respond to any statement made or evidence presented by the public testimony or by the applicant's response to any such public testimony.

The Land Use Code section 3.10 details the standards applicable to the TOD. The bulk of the code in this section deals with Site Planning (3.10.3), Streetscape and Pedestrian Connections (3.10.4), and Character and Image (3.10.5). It is important to note that the applicability of the standards outlined in Section 3.10 is for development within the TOD, **south** of Prospect Road. North of Prospect Road the development standards of the underlying zoning districts apply.

Additionally the TOD is referenced in Section 3.2.2 (Access, Circulation and Parking), which deals specifically with required parking spaces for multi-family and mixed use dwellings as follows:

“1. Multi-family dwellings and mixed-use dwellings within the Transit-Oriented Development (TOD) Overlay Zone shall have no minimum parking requirements.”

The parking requirements are applicable in the entire TOD zone.

The intent of the parking provision was to remove minimum parking requirements as a barrier to proposed projects in the TOD, and to reflect that fact that enhanced travel options were available or planned for those areas. The removal of minimum parking requirements was not meant to remove the entire obligation for development-related parking. Instead, the provision was intended to recognize that the need for parking should be a market-based decision based on specific project needs, the surrounding context, and available travel options and facilities.

The alternate situation is one where the City mandates parking minimums. The purpose of parking minimums is to reduce the likelihood of spillover parking into residential areas. However, because minimums are a “one-size-fits-all” approach, they may or may not address the specific needs of the project, and thus could add unnecessary project costs. This may result in excessive parking and possibly prevent some projects from moving forward. While there is no firm evidence that the TOD parking requirements are resulting in spillover parking issues, the City Council recently gave the authorization to move forward on a Neighborhood Permit Program that could address residential spillover parking issues. In addition, Council approved the Parking Plan that contains a policy requiring parking impact studies which would identify any parking impacts generated by new development.

Impact

Since adoption of the TOD overlay zone in 2007 there have been five multi-use residential projects developed (or under construction) with the TOD overlay zone. Each of these projects included auto parking, although no minimum parking was required. On average for these five examples, they provided about 24% less parking than would have been required without the TOD exemption. One of the developments actually provided slightly above what would have been required (by about 5 spaces), while the

other four were able to reduce their parking by 16%, 46%, 32% and 29% below the typical parking standards, as shown in Table 1.

Table 1. Parking Analysis of TOD Multi-Family Development

Project Name	Actual Parking Provided	Required if outside TOD	Difference	Percent Difference
Penny Flats	260	255.25	4.75	2%
Willow Street Lofts	35	41.50	-6.50	-16%
Pura Vida	49	90.00	-41.00	-46%
Flats at the Oval	57	83.25	-26.25	-32%
Choice Center	336	470.50	-134.50	-29%
The District at CW	461	431	30.00	7%
Average			-28.92	-19%

**Public Comments Regarding Addition of a Permitted Use
Compiled for the Planning and Zoning Board
April 12, 2013 Work Session**

Paul Patterson – Neighbor of Regency Lakeview

Statement read during Public Comment at City Council on December 18, 2012

My wife, Kathryn Dubiel, and I were involved in the appeal of the Regency Development request for an Addition of Permitted Use (APU). Based on our experience, we think the APU is vaguely defined and reasonable people can come to very different conclusions on its application. We request the City Council review the APU section of the Land Use Code. Let me be specific on a couple items.

A Purpose section should be added to the APU that details the intended uses of the APU. Since the APU section of the code has been amended several times since 1998, this will entail a review of both the City Staff discussion notes and City Council agenda notes. Currently we have been unable to do this for many of the amendments to the APU section.

The prohibited uses for most zoning district are given as those not listed as approved,...with the exception that those approved under the APU process are OK. Given the vagueness within the APU we think explicit prohibited uses should be added for zoning districts. It seems reasonable that these prohibited uses would be based on characteristics such as density, building attributes, and other such clearly defined attributes.

We also request that the City Council suspend the APU process until the suggested review is conducted.

Andy Lewis - Neighbor of Regency Lakeview

Notes from meeting with Sarah Burnett on November 29, 2012 (Andy has reviewed these notes and said they capture his concerns.)

Addition of a Permitted Use (APU)

- Believes purpose/intent of APU is not being followed, and that P&Z/Council should ask: what use did we intend for it to have?
- Believes it was intended for minor changes; has reviewed examples given when APU LUC changes were being discussed, and they were more for different uses of existing buildings, rather than large new projects.
- Felt staff used the most extreme examples (rather than typical patterns) of what uses were permitted in an RL district and traffic in an RL district to justify the additional traffic
- Asks: how do you define compatibility/character of a zone?
- Believes that Regency/Lakeview would have been precedent-setting, and that a church could close doors and seek another use entirely for their property through APU.

Mark Kenning - Neighbor of Regency Lakeview

Statement read during Public Comment at Planning and Zoning Board Meeting on August 15, 2012

At that work session... City staff went through their reasoning for recommending both the APU and PDP. They suggested what we thought were irrelevant things, (like you visit other places where medium density abuts single-family homes which had nothing to do with the validity of the APU process); they downplayed or ignored things we thought were important (that under APU rules, alternate development **MUST** not create ANY greater negative impacts than the amount normally resulting from the other permitted used listed in the zone district). The here's the thing: there was no format for anyone outside city staff to point these things out to you, nor to offer reasons why you maybe should not approve the APU or PDP. And that's the crux of our frustration: we think you only heard one side. And it only got worse at the public meeting July 19.

... while you the board freely dialogued with city staff and the applicant, none of you ever asked a question of any of the citizens opposing the APU. Yet I know you were listening, because we made a point about

**Public Comments Regarding Addition of a Permitted Use
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the LUC forbidding use of an APU to approve a prohibited use in a zoning district, and you later asked the Assistant City Attorney to explain how you should interpret that.

Michelle Haefele - Resident of Manz neighborhood
Email to City Leaders, October 2, 2012

I am writing to ask the City Council to enact an ordinance which would discontinue the use of the "Addition of a Permitted Use" (APU) in single family residential zones. The APU is itself inappropriate, process is unfairly rigged to favor developers, citizen input is essentially ignored, and access to information on the process and specific projects is difficult, if not impossible to obtain.

While I understand that there might be some circumstances where an APU is a useful tool (allowing additional industrial uses in industrial or commercial zones for example), it is not appropriate in residential zones. The permanent conversion from single family residential to commercial or multi-family property destroys the protection for single family residential zoning (which is the most important function of zoning).

Allowing individual property owners to essentially "rezone" their property without going through the rezoning process has two effects – it gives these property owners an unearned windfall (all such requests are for conversions to higher valued uses) and it reduces the property values for the remaining homeowners. I have heard repeated assertions that an APU is not spot rezoning, but the permanence of these changes has the identical effect on the remaining residential property owners.

It is patently unfair for someone who owns single family residential property to ever expect to simply convert it to a more lucrative use. This is essentially an end-run around the zoning, making zoning irrelevant. As a homeowner we expect the city to protect our residential property values and quality of life. This process destroys that trust.

In the last three years, we have had two houses converted to offices in our neighborhood (both within two blocks of our home). Throughout the city there have been other such conversions, as well as APUs converting single family residential to multi-family residential. These conversions destroy the protection that zoning is supposed to give single family homes.

It is unfortunate that planners refer to conversions from single family residential to multi-family, commercial, industrial, etc. as "up zoning." It would be more appropriate to view single family neighborhoods as the pinnacle of zoning, the most sacrosanct zone, rather than the least valuable. Our homes are, for most of us, the biggest investment we will ever make. It is an outrage that our city planning department colludes with would-be developers to enrich these developers at the expense of the rest of us.

Furthermore, the process whereby city planners cooperate with developers to make a presentation to the Planning and Zoning Board is unfair. Citizens speaking against these conversions are given only limited time to speak (often only three minutes). Following citizen input, the city staff (whose salaries are paid for by these very citizens) confer with the developer to make a rebuttal presentation to the P&Z Board. Citizens are never given any additional opportunity to speak. In one case it is clear from the email messages included in the public record that city planners had apparently actually solicited supportive comments from the developer. This is unacceptable, the city planners should be working for all residents of Fort Collins and not working to force through such objectionable projects...

I am asking that this department make this radical change in the transparency of their actions because they have the potential to radically alter our property values and quality of life with decisions that are often made solely by city planning staff in very generous cooperation with developers. Even in cases where the final decision rests with the Planning and Zoning Board, there are almost no examples where the Board has rejected a proposal that city planning staff have recommended – in many cases despite overwhelming opposition from residents of the affected neighborhoods.

- Cable 14 Requests
 - Please ask staff and applicant/team introduce themselves prior to presentation/answer questions (standard at City Council)
 - Do not use laser pointers—mouse is preferred so it's visible to viewing public
 - Applicants given guidelines (*medium might be a guide book for applicants*)for:
 - PowerPoint presentations – sometimes don't work well for TV (too much info per screen, margins)
 - Time for presentations (many times on appeal they expect unlimited time vs. the recommended highlights)