



MINUTES
PLANNING & ZONING COMMISSION
Regular Meeting/Public Hearing
Thursday, December 13, 2007 - 9:00 AM
City Council Chambers, Prescott, Arizona

I. CALL TO ORDER

Chairman Michelman called the hearing to order at 9:00 AM.

II. ATTENDANCE

MEMBERS PRESENT:

Don Michelman, Chairman
Joe Gardner, Vice Chairman
Tom Menser
Richard Rosa
Seymour Petrovsky
Len Scamardo
George Wiant

OTHERS PRESENT:

Tom Guice, Community Development Director
George Worley, Assistant Community Development Director
Gary Kidd, City Attorney
Dick Mastin, Development Services Manager
Mike Bacon, Community Planner
Jim Lamerson, Council Liaison
Lora Lopas, Councilwoman
Bob Luzius, Councilman
Kathy Dudek, Boards and Commissions Recording Secretary

III. REGULAR ACTION ITEMS

(May be voted on contingent upon any related public hearing item below also being acted on unless otherwise noted).

1. **Approve the minutes** of the 11-29-07 meeting.

Mr. Rosa, **MOTION: to approve the minutes** of the November 29, 2007 meeting. Mr. Petrovsky, 2nd. **Vote: 7-0.**

IV. PUBLIC HEARING ITEMS

(May be voted on December 13, 2007 unless otherwise noted).

2. **In Lieu of Parking Fee, *Land Development Code*, Section 4.9.** Presentation and discussion of proposed amendment to the *Land Development Code*. George Worley, Assistant Community Development Director. (*May be voted on today*).

Mr. Worley reviewed the proposed amendment and noted:

- discussion at the last meeting [November 29, 2007] centered around what uses would be required to provide parking and what uses would be exempt from parking requirements;
- the consensus draft [between the Chamber of Commerce (COC), the Prescott Downtown Partnership (PDP) and the Unified Development Code (UDC) Committee] provided an exemption from parking requirements for any structure that was constructed prior to 1968 in the Downtown Business District (DTB);

- focus was placed on residential uses and the fact that they have a different impact than other types of uses;
- staff was asked to provide modification of language that would allow an exclusion of residential from that exemption;
- this option allows the amendment to exclude residential uses from parking exemptions; and,
- an in-lieu parking fee would be applicable for all residential and other uses if the pre-1968 residential component is not exempt.

Commissioners queried and commented on:

- the set fee and actual cost of recovery [Mr. Worley: that is a policy debate that will happen at City Council. The fee could be a direct cost recovery approach with the fee set at that cost. It could also be seed money, set at a lower level, which would not discourage the in-lieu fee, for a surface lot or parking garage]; and,
- since the majority of City Council is here, perhaps they could speak to this.

Mayor Wilson, 1514 Eagle Ridge Road, stated that “growth pays for growth.” The current thinking is about \$15,000 per parking space. If the seed money approach is taken, the citizens of Prescott will subsidize the next parking project. Mayor Wilson noted that he doesn’t want to see the citizens subsidizing the parking project.

Mr. Worley proffered that the \$15,000 was the round number used at the UDC meetings. The UDC suggested a study to determine what the cost would be; consequently, the cost could change from year to year as determined by City Council.

Mr. Menser encouraged Council to set the fee lower rather than higher to encourage development downtown. If too high a dollar number is set, the fee would not achieve the job it is supposed to be doing.

Councilwoman Lora Lopas, 1716 Broken Arrow Drive, wanted to know if affordable housing has been discussed. Depending on the amount of the fee, it could rule out workforce housing downtown. At the Governor’s Housing Forum, parking and the number of spaces needed for an affordable housing project was discussed. Parking per bedroom space is considered now [in the *LDC*]; however, parking per unit is preferable. By state estimation, the parking is set at $\frac{3}{4}$ space for each unit.

Mr. Scamardo reviewed the input from the UDC in conjunction with input from the PDP and the COC. Considerations included trying to get vacant, unoccupied spaces in the DTB to be converted to affordable housing for individuals who do not need a car to get to work. Also, a developer would have an incentive to convert the vacant space to apartments and pay an in-lieu fee to try to attract people who live and work in the DTB. The UDC felt the fees should be decided by City Council; consequently, Council should look at each request on a project-by-project basis. Council could waive fees if the project is a benefit to the DTB, i.e., affordable housing.

Commissioners further queried and remarked on:

- the DTB encompassing more area by expanding boundaries in the future;
- having input from the public, PDP and COC before making a decision; and,
- clarification of the conversion of an existing property in the DTB to residential, i.e., if the number of residential units is increased in a building, what would occur [Mr.

Worley: the proposed modification would exclude those buildings from the exemption. The owner would be required to have parking where they may not have been required to provide parking previously. The owner might not have to provide parking if converting from one type of commercial use to another type of commercial use. If an existing bank building (even if constructed pre-1968) is converted to condominiums, the latest proposal would require on-site parking].

Ms. Dava Hoffman, Hoffman & Associates, 310 E. Union Street, emphasized:

- that the UDC, PDP and COC have been working for months on this proposal;
- there is a need to restore the 1968 standards that were inadvertently changed and that took away property rights of the owners;
- at the UDC meeting, there was a unanimous vote to go back to those standards;
- the proposal included the idea that residential uses are extremely important to the viability of a successful downtown;
- Ms. Lopas' idea of having workforce housing in the DTB is a good idea; and,
- every time something is thrown into the code that makes it more expensive, the goal of having a successful downtown where people can work and live is defeated.

Mr. Scamardo reiterated that the UDC came out with a unanimous decision of seven members; however, when the proposal was brought before Planning & Zoning Commission at the last meeting with six members present, three of the committee members were not comfortable with the consensus version, and they were not comfortable at all with the in-lieu fees. At that time, Mr. Worley was asked to come up with a different option. At the last meeting, Mr. Scamardo was ready to go with the option that the PDP, COC and UDC agreed upon.

Ms. Hoffman stressed that it is difficult for the public to be able to really cover every single meeting that was held. When given an assurance by the group [UDC] who is studying the amendments, the new option is difficult and gets away from the goal of having a successful downtown. It is important to go back to the rights that the people had until a few years ago when that portion of the code was eliminated.

Mr. Worley indicated that this not a recommendation, but it is another option that was requested based on the last meeting of the Commission.

Councilman Jim Lamerson, 955 Angelita, responded to both Ms. Hoffman and Mr. Scamardo and indicated that they are absolutely right. Councilman Lamerson supports the UDC proposal to allow Council the flexibility on this issue. Also, the General Plan is supported because the redevelopment of downtown includes workforce housing. The UDC came up with a unanimously approved proposal; and, due consideration should be given to the proposal that took months to develop in conjunction with the PDP and COC.

Mr. Adam Rowling, 325 E. Gurley, stated that he is concerned with the overflow parking spilling out into the areas not covered by this plan. Mr. Rowling prefers to be included in the in-lieu parking fee, and feels more properties should be included into the parking plan. He also wants to have the benefits associated with the parking plan. Mr. Rowling also feels that a parking overlay district should be created to eliminate the requirements that apply only to the DTB.

Mr. Steve Stazenski, 439 Robinson Drive, representative of the PDP, stated:

- this feels like starting over after nine months of committee work;
- due consideration should be given to the affect this code will have on existing historic buildings in downtown;
- if a developer is encouraged to tear down an historic building so that required parking can be provided, it is asking for destruction of the historic integrity of the downtown;
- to discourage redevelopment of vacant space in the upstairs floors of downtown would be a huge mistake;
- when the code was changed from the 1968 code, there was a taking from the property owners and the code became restrictive by putting one more impediment in the way [of redevelopment]; and,
- a compromise was made by the COC and PDP and consideration, as well as common sense, should prevail in regard to the fine points of the code.

Mr. Scamardo asked Mr. Stazenski if he still supports the compromise plan, which is the second [consensus] plan between the PDP and COC that was unanimously approved [Mr. Stazenski: yes, I am in favor of that proposal].

Mayor Wilson stated he is in favor of the option that requires a change of use to pay the full fee. Affordable housing could be waived. The \$500,000 condos that might be built in the downtown area should pay that fee. This is a policy issue, not a property rights issue. City Council should make decisions on a case-by-case basis.

Ms. Hoffman noted that the reason the City had an active original ordinance in 1968 was to preserve the historic structures in the downtown. It applied not only to one district as proposed here, it applied to any building in town in any area that was built prior to 1968. There are many historic structures beyond the bounds of the DTB that could be impacted by cutting back to only one zoning district. The Commission should consider applying the parking requirements to all historic districts, not just one area. Historic buildings are the whole reason Prescott is the successful economic engine for the county. You don't want to encourage having those buildings ripped down. The proposal agreed upon by PDP and COC does not exempt parking requirements for new construction.

Mr. Scamardo proffered that the consensus came after many meetings and many iterations of the proposal. The items that were presented were agreed upon by the UDC, PDP and COC. In the future, the out-of-district property owners that are directly involved could get the neighbors to petition the City to be brought into the DTB.

Mr. Worley cited the provisions in the present *LDC* that allow for the creation of parking districts. Within those districts, the in-lieu fee is an option that remains in the *LDC*. The intent was to try and concentrate on the DTB because the boundaries incorporate the majority of historic downtown. Circumstances in the development of downtown are different than those of outlying commercial development.

Mr. Menser asked at what point a renovation of an existing building becomes new construction. [Mr. Worley: it would be a fairly considerable renovation, and it would have to be more than 50% of evaluation by the building department and staff's planning review]. Mr. Menser asked about being "locked in" when going back to 1968 standards in light of Prop. 207. [Mr. Worley: this potentially could involve a Prop. 207 issue].

Mr. Gardner is in favor of going back to the option that was approved by most of the entities studying this issue. The amendment should be as inclusive as possible as it is a relatively small area. The whole intent is to keep people from tearing down buildings to make parking lots.

Mr. Wiant asked if there is a delineation between destruction and tearing down a property. [Mr. Worley: there are clear provisions in the *LDC* that address non-conforming uses and destruction by casualty or act of God, other than intentionally removing a building. A property is able to be reconstructed to its previous dimensions, with its previous uses, when a casualty or act of God occurs. Reconstruction would be required to comply with current building codes].

Chairman Michelman asked if anyone from the public wished to speak. No one came forward. The public hearing was closed.

Mr. Scamardo, **MOTION: to approve the In Lieu Parking Fee** (Section 4.9.4, *Land Development Code*) as described in the original staff report dated December 13, 2007 (*not the update*). Mr. Petrovsky, 2nd. **Vote: 7-0.** {*N. B.*: the approved amendment is the consensus version between the UDC, COC and PDP.}

3. Guest Quarters, *Land Development Code*, Section 2.3 Use Table and Section 2.5.6 Guest Quarters. Presentation and discussion of proposed amendment to the *Land Development Code*. George Worley, Assistant Community Development Director. (*May be voted on today*).

Mr. Worley reviewed the staff report and noted:

- there was considerable discussion at the last meeting regarding the inclusion of other types of accessory buildings into this discussion;
- staff has considered a general revision of the section of the *LDC* that would apply to all the other accessory uses and will address them as a separate matter because the impacts are different, i.e., garage uses;
- this proposal addresses guest quarters only;
- another issue surfaced in regard to the number of conditional uses that might be generated by the modification proposed;
- the proposal was to change the current table where attached guest quarters are now an administrative process and detached guest quarters are a conditional use process;
- under the new proposal, a guest quarters under 600 square feet (SF) or less, would be an administrative process; and, if requesting more than 600 SF, the request would require a CUP;
- the change would be triggered by the size of the guest quarters;
- 600 SF may be too small and result in too many requests being sent to the Board of Adjustment (BOA);
- perhaps another option would be to change the amendment to 800 SF maximum as a better option in calculating the guest quarter's square footage with not more than 50% of the main house footprint calculation being used to eliminate too many requests from going to the BOA.

Mr. Menser indicated that the change would be good, but it is not the issue. It is impossible to

define and police any guest quarter that is attached to an existing building or residence. This [the *LDC*] should continue to be written as it is now; and, only detached guest quarters should require a CUP.

Mr. Scamardo agrees with Mr. Menser; however, he feels that the kitchen component/cooking facilities should be removed from it [the *LDC*]. If detached, there should be some size limitation to the guest quarters. If the unit is being used as a rental unit, it will be complaint driven and it then becomes a code enforcement issue.

Mr. Wiant noted that the proposed amendment was brought about by someone circumventing the rules.

Mr. Worley clarified that attaching guest quarters is not viewed by staff as technically circumventing the rules if the *LDC* requirements are met. The appearance of circumventing the rules comes when a CUP is required for a detached guest quarters and the CUP is not granted; subsequently, when the structure is attached to the house, it has the appearance of circumventing the rules. This further results in the appearance of circumventing the BOA and their authority, not the regulations. The *LDC* allows structures to be attached administratively or detached conditionally.

Commissioners queried and remarked on:

- a 1,200 SF house with a 1,200 SF request for guest quarters;
- attachment via a breezeway;
- site coverage and setback issues;
- the building department must have a way of defining attached vs. detached;
- the code and fire issues;
- kitchens and/or cooking facilities being permitted under the new *LDC*;
- disallowing kitchen facilities was removed intentionally from the *LDC* when it was written;
- if the structure is detached, it should go before the BOA regardless of having a kitchen or not having a kitchen; and,
- the intent of the CUP process is to allow the BOA to determine if the structure might possibly be used as a rental unit.

Mr. William Kiley, 886 Vallejo Vista Road, in the vicinity of the request that triggered the review explained:

- a 1,500 SF detached building closet would be permitted without a CUP;
- the building addition must be compatible with the neighborhood;
- the owner of the property in question wanted to add a 1,500 SF guest quarters on property that was already being used as a rental;
- the neighbors viewed this as a deceptive way to get another rental on the property that is in a single-family zoning district;
- the 1,500 SF structure requested was not compatible with the neighborhood;
- the codes help to decide what fits and what does not fit in a neighborhood;
- all that the neighbors are requesting is notification of any proposed guest quarters, whether detached or attached; and,
- the neighbors have the right to review the proposal to determine how it will fit into the neighborhood *before* it happens.

Mr. Scamardo stated the detached structures should go to the BOA for a decision. The neighbors are then notified and have the right to voice objections. Mr. Scamardo wants to

leave the *LDC* the way it is written and not modify the present language.

Mr. Worley clarified that guest quarters are accessory uses within buildings; however, they are treated with a separate set of regulations under the *LDC*. A detached garage would not require a CUP from the BOA. A detached guest house does require a CUP. It is part of staff's job to tell the applicant the requirements of both detached and attached guest quarters; consequently, it is up to the property owner to make the decision of the form they want, attached or detached.

Ms. Dava Hoffman, Dava & Associates, 310 E. Union Street, wants Commission to be aware of the regional movement that is going to start trying to get all the cities, towns and counties to talk about the need for accessory housing. It is a way to provide more by allowing accessory housing in all districts. There are no compatibility standards in the *LDC*; however, compatibility standards could be written into the *LDC*. Incentives should be provided through the code to solve some of the goals and issues of the community, i.e., the need for a lot of infill housing. Historically, the first zoning codes specified "single- and two-family home districts." The state statutes indicate that the BOA shouldn't be concerned with this matter, and the BOA should only look at the matter at the appeal level.

Mr. Scamardo does not support this change.

Mr. Kiley reiterated that he and his neighbors would like to be notified when these requests are made. If the project to build the 1,500 SF guest house was attached, the neighbors would never have been notified. He is just asking for the change which would include a "heads up" and the ability to comment on the project.

Mr. Worley added that if a project meets all code requirements, there is no way for the staff to say no; subsequently, there would be no need to notify the neighbors. He noted that CC&Rs and homeowners associations can have more restrictive rules where they are allowed to review building plans in advance.

Chairman Michelman asked if any other members of the public wished to speak. No one came forward, and the public hearing was closed.

Mr. Petrovsky, **MOTION: to deny proposal to amend Guest Quarters** (Section 2.3, Use Table and Section 2.5.6, Guest Quarters, *Land Development Code*). Mr. Scamardo, 2nd. **Vote: 7-0.**

(A break was taken from 10:47 to 10:52 AM).

4. **Sign Lighting, *Land Development Code*, Section 6.11.4.B.2, and Section 6.11.4.B.5**
Discussion of proposed amendment to the *Land Development Code* to consider deleting watts as the measure of lighting illumination. George Worley, Assistant Community Development Director.

Staff requests this item be continued due to on-going research.

Mr. Petrovsky, **MOTION: to defer this item** to the Planning & Zoning Commission Meeting on January 10, 2008 at 9:00 AM in City Council Chambers. Mr. Scamardo, 2nd. **Vote: 7-0.**

5. Transitional Housing, *Land Development Code*, Table 2.3, Section 2.4.45, Section 11.1.3, and Table 11.2.5, Definition of Family. Discussion of proposed amendment to the *Land Development Code*. George Worley, Assistant Community Development Director.

Mr. Worley reviewed the staff report and noted:

- after thorough study, transitional housing is presently not clearly defined in the *LDC*;
- the City of Prescott is not enforcing the language in the *LDC* because it is not legal as written at this time;
- the City of Sedona has studied transitional housing and has developed a code that addresses federal guidelines and laws;
- we are now able to modify our *LDC* to bring the City into compliance with federal and legal guidelines;
- Mr. Bacon has been asked to investigate the Sedona code because Sedona is one of the more recent cities to make code changes; and,
- Sedona has become the guidepost everyone else is following in how they have addressed the federal guidelines and, at the same time, protect the “single-family character” of single-family zoning districts.

Mr. Bacon provided the following:

- the definition of family in the *LDC* will change from 8 to 4 unrelated adults as in the Sedona model;
- City Attorney Kidd has looked at the language; and,
- the definition of “group home” will be eliminated as it designates the group as a separate, family-type entity.

Mr. Wiant questioned the federal guidelines.

City Attorney Kidd responded by stating there is a memo in the packet that addresses comments and what is needed to be in compliance. The Federal Fair Housing Act (FFHA) of 1988, amended in 1989, prevents discrimination on the basis of familial status in group homes. The American Disability Act (ADA) deals with disability laws. When the FFHA was amended, a definition of “disability” was added. Over time, the term “disability” evolved and included people that had drug and alcohol addictions; thus, the FFHA came into play.

Mr. Kidd added that the City of Prescott is looking at the Sedona model and will do what Sedona did, i.e., take a look at the group home definitions so that exclusion of a group of people based on disabilities does not occur in residential areas. The definition of families will be modified, and the group home definition will be eliminated [from the *LDC*] to treat individuals fairly when they are living as a family unit in residential areas. Fire codes and maximum occupancy issues still apply. Legally existing homes will be grandfathered. Sedona, after receiving a complaint, worked closely with the Tucson group, Arizona Center for Disabilities Law, that works with cities and towns to ensure compliance. Sedona’s codes and ordinances are in conformance; therefore, we are recommending those changes to the City of Prescott *LDC*.

Commissioners queried and remarked on:

- reducing the number of unrelated persons living together from 8 to 4;
- whether the existing legal homes will be grandfathered [City Attorney Kidd: yes];
- when grandfathering uses, Prop. 207 should not come into play [City Attorney Kidd:

- they should not];
- if 8 persons are presently in a home and one person leaves, can that person be replaced [City Attorney Kidd: that would be a replacement to an existing use that has been established];
- once a change of use takes place, the grandfathered rights cease to exist;
- the staff recommendation will occur at the January 10, 2008 meeting; and,
- the plan meets the guidelines of the FFHA.

(May be voted on January 10, 2008).

No action taken.

V. CITY UPDATES

Reminder: the December 27, 2007 Planning & Zoning Commission meeting is cancelled. The next Planning & Zoning Commission meeting will be on January 10, 2008.

VI. SUMMARY OF CURRENT OR RECENT EVENTS

Mr. Worley noted that City Council has extended the final plat north of Tamarack Lane for a period of 5 years.

VII. ADJOURNMENT

Chairman Michelman adjourned the hearing at 11:18 AM.

Don Michelman, Chairman