

CITY COUNCIL REPORT
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TO: Mayor and Council

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SUBJECT: Conditional Use Permit vs. Variance

INTRODUCTION

There has been discussion in the public, in the Arizona Daily Sun, and among Council regarding the “variances” that were approved by the Planning Commission for the development known as Mill Town. These “variances” were in fact Conditional Use Permits that included requests to exceed the maximum allowed building height and establish a *Rooming & Boarding* use. The differences between variances and conditional use permits are discussed below.

CONDITIONAL USE PERMIT

In accordance with Section 10-20.40.050.A of the Zoning Code, the purpose of a Conditional Use Permit (CUP) is to provide a process for reviewing uses and activities that are otherwise permitted in an applicable zone but that require more discretionary review and the possible imposition of conditions to mitigate the effect of the proposed use. Put another way, the purpose of a CUP is to analyze proposed uses that, based on their general nature, are compatible with underlying zoning but may have aspects (e.g., noise, light, odor, traffic, etc.) that require additional mitigation through the imposition of conditions. CUPs are currently reviewed and acted upon by the Planning and Zoning Commission. Decisions regarding CUPs are appealed to the City Council. At the direction of Council, staff is currently processing an amendment to City Code to change the approval authority from the Planning and Zoning Commission to the City Council.

The findings for the approval of a Conditional Use Permit, as outlined in Section 10-20.40.050.E of the Zoning Code, are as follows:

1. That the conditional use is consistent with the objectives of the Zoning Code and the purpose of the zone in which the site is located.

2. That granting the conditional use will not be detrimental to the public health, safety or welfare. The factors to be considered in making this finding shall include, but not be limited to:
 - a. Property damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination;
 - b. Hazard to persons or property from possible explosion, contamination, fire or flood; and,
 - c. Impact on surrounding areas arising from unusual volume or character of traffic.
3. That the characteristics of the conditional use as proposed and as it may be conditioned are reasonably compatible with the types of uses permitted in the surrounding area. The Conditional Use Permit shall be issued only when the Planning Commission finds that the applicant has considered and adequately addressed the following to ensure that the proposed use will be compatible with the surrounding area:
 - a. Access, traffic, and pedestrian, bicycle and vehicular circulation;
 - b. Adequacy of site and open space provisions, including resource protection standards, where applicable;
 - c. Noise, light, visual and other pollutants;
 - d. Proposed style and siting of structure(s), and relationship to the surrounding neighborhood;
 - e. Landscaping and screening provisions, including additional landscaping in excess of otherwise applicable minimum requirements;
 - f. Impact on public utilities;
 - g. Signage and outdoor lighting;
 - h. Dedication and development of streets adjoining the property; and,
 - i. Impacts on historical, prehistoric or natural resources.

Conditional uses are identified in the use tables found in Division 10-40.30 and 10-40.40 of the Zoning Code. Any project wishing to establish a use identified as requiring a CUP must obtain approval of the CUP prior to the use beginning operation. Some examples within the Highway Commercial (HC) zone include Flammable Liquid, Gas, and Bulk Fuel Storage and Sales, Meeting Facilities with on-site liquor sales and/or those that exceed 250 seats, Trade Schools, Planned Residential Development, Rooming and Boarding Facilities, Cemeteries, Hospital, and Wireless Support Structures.

VARIANCE

In accordance with Section 10-20.70.010 of the Zoning Code, the purpose of a variance is to provide a means whereby the literal terms of the regulations of the Zoning Code need not be applied (ZC 10-20.70.010 *Purpose*). More specifically, the purpose of a variance is to review an identified hardship, which must be specific to the property as described below, and determine if relief from an applicable development standard should be granted. Variances are reviewed and acted upon by the Board of Adjustment (BOA). The BOA is a quasi-judicial body. Decisions of the BOA are appealed to Superior Court.

The standards, or findings, for granting a variance are established in ARS 9-462.06 and Section 10-20.70.050 of the Zoning Code. Those standards are:

1. That, because of special circumstances applicable to the property, including its size, shape, topography, location or surroundings, that strict application of the regulations of the Zoning Code will deprive such property of privileges enjoyed by other property of the same classification in the same zone;
2. That a grant of a variance will be subject to conditions to ensure that the adjustment authorized is the minimum variation needed and that it will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;

3. The special circumstances applicable to the property are not self-imposed by any person having an interest in the property; and,
4. The variance will not allow the establishment of a use which; (1) is not otherwise permitted in the zone, (2) would result in the extension of a non-conforming use or structure, or (3) would change the terms of the zone of any or all of the subject property.

CUP vs. VARIANCE

A Conditional Use Permit generally relates to the use of the property whereas a variance relates to the physical development of the property. Unfortunately, the Zoning Code creates some confusion between the two by permitting the increase in allowed building heights (physical development of the property) within the High Density Residential (HR), Community Commercial (CC), Highway Commercial (HC), Commercial Service (CS), Central Business (CB), Research and Development (RD), Light Industrial (LI), Light Industrial – Open (LI-O), Heavy Industrial (HI), and Heavy Industrial – Open (HI-O) zones through the issuance of a Conditional Use Permit. The expansion of the issuance of Conditional Use Permits to include relief from development standards is included within municipal ordinances throughout the state and the nation. Professionally speaking, the Conditional Use Permit should be limited to the establishment of a use. Should a property owner wish to alter the applicable development standards (i.e. building height, setback, lot coverage, etc.), a variance is the most appropriate application type. Staff intends to propose amendments to the Zoning Code that will clear up this confusion.

CONCLUSION

This report is for information only.