



City of Sunnyvale

Memorandum

To: Planning Commission
From: Diana O'Dell and Rosemarie Zulueta through Trudi Ryan
Date: October 8, 2012
Re: Retooling the Zoning Code: Proposed Permits and Procedures

At our last study session, we described the new permit scheme with permit purpose – essentially separating use permits from design review. We also discussed eliminating Zoning Administrator hearings due to the cost of the process and general lack of public participation. We identified uses with visual or noise impacts as being of neighborhood interest that should be reviewed by the Planning Commission at a night meeting that will facilitate participation and better transparency. Lastly, we suggested eliminating the requirement that sites be zoned Planned Development (PD) to use a Special Development Permit. Instead, create a Planned Development Permit, which can only be used in conjunction with new construction over a certain size. This Planned Development Permit would allow for certain specified deviations.

Attachment A shows the proposed permitting scheme with revisions based on your feedback from the last study session and changes described below.

PERMIT FINDINGS

We are currently in the process of drafting up proposed permit findings. Attachment B shows a working draft with ideas for findings reflecting the purpose of the permit and key project characteristics to evaluate the permit against City goals and policies. We surveyed surrounding cities and modified some of their ideas to create these findings. These findings are still in the process of being reviewed and are not staff's final recommendation; however we would like any feedback on the general direction.

KEY QUESTION: Do you have any comments or questions about the general direction of the draft permit findings?

EXCEPTIONS

At the last study session, we were considering having an Exception Permit to review projects that deviated from certain specified standards. The original notion was that Exception Permits would be processed in conjunction with any related use or plan review permit and would have their own findings.

The concern with having a separate Exception Permit for exceptions was that they may be redundant with the purpose of the use or plan review permits. For example, fences higher than 6 feet in the front yard require a higher level of review because of their potential visual impact on the neighborhood. Because of this determination, we would classify a 7-foot fence in the front yard as a Plan Review with Notice under the proposed permitting scheme. However, it could also be classified as a “minor exception” with the same decision-maker and the same noticing procedure for the exact same reason.

It renders the Exception Permit unnecessary. Projects with the potential for major visual or noise impacts would still be reviewed by the Planning Commission.

Findings for an Exception permit are also difficult. We are proposing specific criteria for each exception to give guidance to decision-makers about appropriate circumstances to grant these exceptions. Permit findings however, would by design, have to be very general to apply to a wide range of projects and situations. These findings would then have to point to a second set of criteria specific to each exception. The goal of streamlining the code is undermined. If we were to be able to grant exceptions as part of the main use or design permit, similar to what staff is proposing for the non-residential parking study issue, the review could be condensed into one permit process.

Exceptions could be broadened to allow limited adjustments from setback, lot coverage, and other development standards. The following is a prescriptive example from Stockton’s Municipal Code that we could use as a model for Sunnyvale with more specific standards appropriate to Sunnyvale.

**SAMPLE STOCKTON DEVELOPMENT CODE
 ALLOWABLE ADMINISTRATIVE EXCEPTIONS**

Types of Administrative Exceptions Allowed	Maximum Adjustment
Distances Between Structures. A decrease in the allowed distances between detached accessory structures and main structures.	20 percent
Fence or Wall Height/Setbacks. An increase in the maximum allowed height or the minimum required setback of a fence or wall, subject to City-approved structural design standards.	20 percent
Garages. A decrease in the required size of a garage.	10 percent
Setback Area. A decrease in the required setback area for structures, landscaping, swimming pools/spas, and equipment.	20 percent
Site Coverage. An increase in the maximum site coverage.	10 percent
Other Standards. The Director shall also be allowed to vary other standards including minor operational/performance standards relating to dust, hours of operation, landscaping/parking, light, noise, etc.	20 percent

A second approach is more minimal where a general statement may be placed in the code that “the Director of Community Development may administratively approve an exception to a numeric standard when it can be determined with certainty that there is no impact to adjacent properties and the integrity of the zoning code is preserved.” Examples include a 2-inch encroachment into a sideyard for a short distance, rounding down for FAR such as 35.4% to 35%. No exceptions to use or residential density would be permitted.

KEY QUESTIONS: (1) What do you think of the concept of thresholds of review vs. exceptions? (2) Do you think there should be the ability to grant an exception without a public hearing? (3) If yes, do you prefer the prescriptive approach (Stockton) or the more general approach?

DETAILS ABOUT PLANNED DEVELOPMENT PERMITS (PDP)

The purpose of the PDP is to evaluate new construction of 2 units or 10,000 square feet where the applicant is requesting certain specified deviations from zoning requirements. PDPs could also be used for conversion of structures to condominium or residential uses. This permit would NOT require a rezoning action, and would therefore be decided by the Planning Commission. As with all Planning Commission projects, a minimum 300 foot noticing radius would be given.

Staff is proposing similar to the current Special Development Permit deviations allowed. Deviations from residential densities or allowable uses cannot be considered.

- Lot area and width
- Setbacks
- Lot coverage
- Bulk (such as Floor Area Ratio)
- Height
- Open space area and dimensions
- Landscaping area and dimensions
- Parking – number of spaces and bicycle parking
- Community rooms and storage areas for multiple-family residential uses

What does this mean for existing properties with a Planned Development combining district designation? Approximately 6% of the city’s land area, or 850 acres are zoned PD. This does not include the Downtown Specific Plan, El Camino Real Precise Plan or Moffett Park Specific Plan areas which allow for deviations from the development standards listed above as part of the permit process (no rezoning needed). Staff would suggest moving forward with a cleanup action to eliminate the PD combining district. This tool has become an outdated and cumbersome way to address flexible standards for new construction.

Minor modifications requiring deviations to existing developments with previous Special Development Permits would be reviewed under Plan Review with Notice permit. Major modifications would be reviewed by the Planning Commission. A review of permits in the last 5 years indicates that this is a very rare type of request. The great majority of Special Development Permits are for use changes or new construction. Any modification to existing developments with previous Special Development Permits would be reviewed under the appropriate permit. Staff will develop criteria to evaluate when exceptions from development standards may be granted.

KEY QUESTION: Do you concur with the standards for deviations and the plan of action for existing PD properties?

NEXT STUDY SESSION

We will have a draft of the proposed zoning code amendments for the first phase of the retooling. These amendments will reflect the new structure and format changes, and will include new and clarified definitions, and proposed changes in general procedures.

ATTACHMENTS

- A. Revised Permit Types and Procedures
- B. Proposed Permit Findings

USE PERMITS AND PLAN REVIEWS

	PERMIT NAME	PURPOSE	NOTICING	DECISION MAKER	PROCESS TIME	EXAMPLES
	Zoning Clearance (CLR)	Tracking items that don't have substantive use or design impacts for enforcement of timing or placement, or keeping required paperwork such as legal agreements, interpretations or current operator information.	None	Staff	Same day or 2 weeks	Large Family Child Care, Solar Energy Incentives, Temporary Signs, Director Interpretations/ Determinations Outdoor Display, 2-Yr Telecom, Business-Sponsored Child Care
USE PERMITS	Use Permit (UP)	Evaluate uses that are likely to be compatible but require review of the operations to ensure that there are no conflicts with adjoining uses or other uses on site.	None	Staff	Same day or 2 weeks	Restaurants with beer and wine, security uses, extensions of time, autobroker, recreation-education and enrichment, child care in C-1 less than 30.
	Use Permit with Notice (UPN)	Uses that have the potential for minor noise or visual impacts in commercial or residential zoning districts.	300 feet	Staff	3 weeks	Donation Centers, recycling centers, minor modifications to existing Commission Use Permit or previously approved use under a Special Development Permit.
	Commission Use Permit (CUP)	Evaluate uses that may not be compatible with the uses permitted by right or meet the purpose of the zoning district. These uses may have more substantive visual, traffic, circulation, parking or noise impacts for the character of the district.	300 feet	Planning Commission	2-3 months	Live entertainment, Places of assembly, Residential developments over 50 units, High FAR Industrial Projects
PLAN REVIEWS	Preliminary Review (PLR)	Review by Building, Fire, Public Works and Planning of the proposed design or a use of substantially-sized projects. Information only - no decision is made.	None	None	2 weeks	Projects that will require Commission Use Permits or Plan Reviews at formal application.
	Tree Removal Permit (TRP)	Processing requests to review proposed removal of 5 or fewer trees of on a property. Removal requests of more than 5 trees require Plan Review.	None	Staff	2 weeks	Remove trees of more than 38 inches in circumference, as measured 4 ft. from the ground.
	Plan Review (PR)	Review proposed architectural and / or site design of permitted uses or uses that have the potential for minor visual impacts.	None	Staff	2 weeks	Outdoor dining, Fences, sheds, single-story additions, accessory units, signs, minor telecomm , landscaping, parking
	Plan Review with Notice (PRN)	Review proposed design of permitted uses or structures that have been identified by the City as requiring notification of nearby owners and an opportunity for comment. Minor visual impacts are expected.	300 feet	Staff	3 weeks	Second story additions, fences and sheds over a certain threshold, certain kinds of telecomm, industrial buildings.
	Commission Plan Review (CPR)	Review proposed design of permitted uses which have the potential for major visual impacts due to the scope of the project. Projects are also reviewed for potential traffic, parking or noise impacts.	300 feet	Planning or Heritage Preservation Commissions	2-3 months	New monopoles in non-industrial areas, residential developments over 3 units, major Moffett Park Design Reviews, alterations to Heritage Resources
	Planned Development Permit (PDP)	Evaluate new construction or residential conversions over a certain size (2 units and 10,000 square feet) that is requesting certain specified deviations from zoning requirements.	300 feet	Planning Commission	2-3 months	Projects with requests for deviations from development standards. Modification of use allowances or density standards is prohibited.
	Variance (VAR)	Variance from quantitative development standard (not use) in the Code that have not been identified for an exception. Findings require hardships and exceptional or extraordinary conditions on the property.	300 feet	Planning Commission	2-3 months	Deviations from zoning district development standards.

LEGISLATIVE ACTIONS, MAPS AND HERITAGE REVIEWS

	PERMIT NAME	PURPOSE	NOTICING	DECISION MAKER	PROCESS TIME
LEGISLATIVE ACTIONS	General Plan Amendment (GPA)	Evaluate a proposed amendment to the text or land use map of the General Plan. Any GPA requires previous authorization through a General Plan Initiation Request. Findings must be made that the proposed amendment is: <ol style="list-style-type: none"> Internally consistent with the general land uses, objectives, policies, programs, and actions of all elements of the General Plan on balance; Consistent with the Zoning Code; and Not a hazard to public convenience, health, interest, safety, or general welfare. 	300 feet if location-specific. If general text amendment, standard noticing process applies.	City Council	3 months
	Rezone (RZ)	Evaluate a proposed amendment to the text or zoning map of the Zoning Code. Findings must be made that the proposed amendment is: <ol style="list-style-type: none"> Consistent with the General Plan; Internally consistent with other applicable provisions of this Zoning Code; Not a hazard to public convenience, health, interest, safety, or general welfare. For map amendments, the following finding must also be made: <ol style="list-style-type: none"> The site is physically suitable for the requested zoning designation(s) and anticipated land use development, including access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints. 	300 feet if location-specific. If general text amendment, standard noticing process applies.	City Council	3 months
	Specific Plan (SP)	Evaluate a proposed specific plan or an amendment to an existing specific plan. Findings must be made that the proposed amendment is: <ol style="list-style-type: none"> Consistent with the General Plan and Zoning Code. 	Affected properties	City Council	3 months
	Conversion Impact Report (CIR)	Evaluate changes in use from a mobile home park to another use. Findings must be made that: <ol style="list-style-type: none"> The CIR meets the requirements of the Zoning Code. 	Mobile home park residents and mobile home owners	City Council	3 months
	MAPS	Parcel Map (PM)	Review the proposed subdivision of 4 or fewer lots for compliance with the Municipal Code. Findings must be made that the proposed map is: <ol style="list-style-type: none"> Consistent with the General Plan (Map Act Section 66473.5), and any applicable specific plan, or master development plan; and None of the following findings for disapproval in subsection B of this section, can be made. 	300 feet	Zoning Administrator
Tentative Map (TM)		Review the proposed subdivision of 5 or more lots, including a common lot, for compliance with the Municipal Code. The findings are the same for a Parcel Map.	300 feet	Planning Commission	2-3 months
HERITAGE PRESERVATION	Landmark Alteration Permit (LAP)	<ol style="list-style-type: none"> The action is consistent with the purposes of the Heritage Preservation chapter and will not be detrimental to a structure or feature of significance; or The action is necessary to correct an unsafe or dangerous condition on the property as declared by the building official or public safety director; or The action is necessary to prevent hardship as failure to receive such approval will cause an immediate undue and substantial hardship. 	300 feet	Heritage Preservation Commission	2-3 months
	Mills Act	Contract for reduced property tax in exchange for maintaining the property's historic character.	300 feet	City Council	

SUGGESTED FINDINGS

	PERMIT	FINDINGS
	Zoning Clearance	1. The project meets the development standards in the Zoning Ordinance.
USE PERMITS	Use Permit	1. The use is consistent with the General Plan, purpose of the Zoning District and any applicable specialized plan; AND
	Use Permit with Notice	2. The location, size, design and operating characteristics of the proposed use are compatible with the site and building character and environmental conditions of existing and future land uses in the vicinity;
	Commission Use Permit	1. The use is consistent with the General Plan and any applicable specialized plan; AND 2. That the use will not impair the integrity and character of the Zoning District; AND 3. The use and recommended conditions will adequately mitigate any noise, traffic, parking, visual or other impacts that would interfere with adjacent properties; AND 4. Any special structure or building modifications necessary to contain the proposed use would not impair the architectural integrity and character of the zoning district in which it is to be located.
PLAN REVIEWS	Plan Review	1. The project design is consistent with the General Plan; AND 2. The project design meets all the development standards in the Zoning Ordinance; AND 3. The project design is consistent with applicable City-adopted design guidelines.
	Plan Review with Notice	
	Commission Plan Review	
	Planned Development Permit	1. The use is consistent with the General Plan, purpose of the Zoning District and any applicable specialized plan; 2. The project design is consistent with applicable City-adopted design guidelines; 3. The requested deviations are necessary to achieve a desirable development that is compatible with the neighborhood or is located at significant intersections; AND 4. The proposed project achieves superior community design, environmental preservation or a public benefit.
	Variance	1. Granting the variance mitigates exceptional circumstances of the property (such as size, shape, or topography), or use, that deprives the property owner of substantial property right enjoyed by other identically-zoned properties in the immediate vicinity; AND 2. Granting the variance does not grant special privileges that are not enjoyed by other identically-zoned properties in the immediate vicinity or similar properties; AND 3. Granting the Variance would not be detrimental to the public welfare or injurious to the property, improvements or uses in the immediate vicinity; AND 4. The intent and purpose of the zoning ordinance will still be served.

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