



SPECIAL REPORT – ZONING CODE: ROUND TWO

BACKGROUND

In March of this year, the Columbia City Council approved a new zoning code (Unified Development Code) for the entire City of Columbia. The new code, more than 350-pages in length, took effect immediately and governs all land-use procedures and designations ranging from subdivision rules, enforcement policies and variance procedures to resource preservation, Neighborhood Protections and road design.

As the new code has begun to be implemented, city staff has kept track of questions that have arisen regarding interpretation of the new code. Many other people, including Planning & Zoning Commissioners and people who deal with new construction and development on a regular basis, have also suggested that more refinements or modifications need to be made to the new code.

No specific mechanism or procedure was established to deal with changes to the code. During consideration of the original code it was suggested that some sort of screening committee or “blue-ribbon commission” be created to review suggested changes before they were formally considered, but that process was never adopted by the Council. It is clear, however, that ANY change to the code must first be considered by P&Z before it is sent to the Council for final approval.

That being said, city staff and P&Z have begun to look at some specific parts of the new code and will begin to suggest changes this summer. It is likely that no formal changes will be brought to the Council for consideration before this fall – but the process is beginning NOW.

INITIAL AREAS OF REVIEW

C-2 AREAS OUTSIDE OF THE DOWNTOWN AREA

When the new zoning code was adopted, all properties previously zoned “C-2” in the downtown area were converted to a designation known as M-DT (Mixed Use – Downtown). Those properties are now subject to new use and form-based rules for development. However, there are several parcels of land that had previously been zoned C-2 that are located outside of the downtown zoning boundary. Because they are outside of the downtown area, those properties will not be subject to form-based controls so a replacement M-DT classification did not seem appropriate.

To simplify the process somewhat, the city decided to allow those properties to remain under the C-2 zoning classification on a temporary basis until P&Z and the City Council could determine what new zoning category would be most appropriate for these anomalous parcels.

The initial plan is to look at these properties on a case-by-case basis with consideration being given to the way the properties are currently being used and by other properties that surround them. This process is supposed to be conducted in consultation with the current landowners. Once some determination is made as to what zoning might be most appropriate for all anomalous C-2 properties, a rezoning action will be initiated, hearings will be held by P&Z and the City Council, and the properties will be re-zoned under the new classification system. Once all such properties are rezoned, the C-2 classification will be eliminated under the new code.

The city staff is currently conducting an inventory of all such properties in Columbia and are planning to have a list to present during the first P&Z meeting in July. After that, it is expected that the city will begin outreach efforts to all affected property owners.

If you are involved with a property that is currently a C-2 property you should begin to consider what new zoning classification might be most appropriate for you and be prepared to discuss future zoning with the city. During the process, you can ask for any reasonable rezoning classification, but the city will be looking at the situation from the point of view of current use or surrounding compatible uses. You should also know that the city does have the right to waive any city imposed fees related to such rezoning requests and may be inclined to do so since it is, in essence, city-initiated. The city DID waive fees recently for a number of properties that petitioned to downzone property in the Benton-Stephens neighborhood.

CONDITIONAL USES

When the new code was adopted, new zoning classifications were created, and every old classification did not fit neatly into the new classification system. In some instances, property uses that were considered “permitted” under the old code were changed to “conditional” under the new code. Ongoing uses of a property that were changed from permitted to conditional were grandfathered under the new code, so current uses are somewhat protected. However, going forward, new uses must comply with the underlying zoning designation. This could affect the range of uses permitted on existing properties due entirely to the adoption of the new code.

During debate on the new code, city staff indicated that they would review those instances where use designations changed from permitted to conditional and would consider amending those rules.

Many options exist for how the city may treat these use designations. They could leave the new conditional use designations in place as written under the new code. They could revert to the permitted use status allowed under the old code. They could change the designation of reclassified uses. Or, they could create special use categories that would create specific rules for specific circumstances. In other words, some uses would be considered “permitted” under the new code as long as some pre-determined conditions were met without the need to apply for a conditional use permit.

Most conditional use permits require the approval of the City Council, which adds a political element to the determination. Cell tower and wind turbine questions are determined by the Board of Adjustment, but other conditional use permitting is determined by the Council because it is considered to be a land

use decision. The process of application for conditional use permits requires hearings before both the P&Z Commission and City Council.

It is possible for the city to adopt rules that will allow generally accepted uses within different zoning designations without requiring the time, expense and uncertainty related to conditional use applications. It is also possible to create rules that protect public safety and property rights without excluding broad classes of uses that seem reasonable. The Planning & Zoning Commission intends to look at the changes that have occurred with the adoption of the new code and begin to make determinations about allowable uses beginning at the June 8th P&Z meeting.

Examples of the kinds of issues that may be discussed include whether or not swimming pools in subdivisions and apartment complexes should be considered to be conditional uses; whether facilities that use or store chemicals on-site should have different levels of regulation; how certain properties may affect surrounding properties in terms of noise, traffic or odor; and how previously allowed uses should be restricted in the future.

City staff intends to bring forward a conditional use “rationale” that will guide decision making and will provide a list of items that have changed between the old code and the new zoning ordinance. It is expected that this discussion will begin at the June 8th Planning & Zoning worksession. Some text changes could be ready for presentation by August or September of this year.

AFFORDABLE HOUSING

Many commissioners and members of the public have expressed a desire to incorporate incentives for future affordable housing into the Columbia zoning code. This is separate and distinct from the recent establishment of the Affordable Housing initiative that established a land trust and plans to construct and sell homes to eligible home buyers at discounted rates with long-term land leases and resale stipulations.

Right now, the broad initial concept is to provide some sort of density bonus to builders who incorporate affordable housing units in new residential developments. But, there are a lot of questions that must be answered before any concrete proposals can be floated. The following are some of the challenging issues.

There is no universal definition of “affordable housing”. There are many formulas that establish income thresholds for poverty and ratios that indicate when someone is paying too much of his or her annual income for housing – but not all people who meet those criteria would be eligible for financing and may not be in the market to purchase a home. Some cities focus on a medium low-income subset of potential homeowners to determine what would be considered an “affordable” home, but those issues have not yet been resolved in Columbia in terms of making a builder eligible for a density bonus in a development. It is also unclear whether or not apartments would be included in new residential construction density bonuses, since they are typically designed as rental units and not for individual ownership.

Rules for long-term compliance. Columbia’s Affordable Housing initiative has created a scenario that requires “affordable” homes to remain affordable over time by selling the actual home to a qualified buyer but leasing the underlying property to the home owner through a land lease contract. Further restrictions are placed on the future resale price of these homes. That sort of structure is not possible through the zoning code itself, so even if initially built and sold or

rented as “affordable” units, that situation may change in the future. Some people refer to this type of housing as “inclusionary” housing rather than “affordable” since there is no long-term guarantee of affordability. This issue must be more clearly defined for both builders and buyers before rules regarding density bonus incentives can be administered fairly.

Incentive vs. mandate. Right now, there has not been discussion of any sort of mandate that would require builders to include affordable housing units in new developments, and some groups who support the concept of affordable housing oppose *requirements* to include some percentage of new construction as affordable units. They would prefer that any such programs be voluntary and be accompanied by some sort of incentive. The exact nature of any incentives has not yet been defined and it is unclear whether density bonuses – if created – would be available for rental unit projects or rental properties constructed prior to the adoption of the new code.

Scale and breadth. Most successful affordable housing programs have been instituted in cities with a significantly larger population base than Columbia according to comments from city staff. To determine the scale and breadth of any such zoning-based affordability incentive programs, there should be additional study into the depth of need for such a program before specific rules are adopted and whether or not both individual homes and multi-family residential structures should be included in such a plan.

Due to the complexity of this issue, P&Z Commissioners have indicated that they will do some independent investigation into this topic over the summer; share those findings and ideas with staff and other commissioners; incorporate data received from city staff into any recommendations; and begin discussion of the topic during worksessions in August.

THE TRANSITION FROM C-1 TO M-N OR M-C

When the new code was adopted, new zoning code designations named M-N (Mixed Use – Neighborhood) and M-C (Mixed Use – Corridor) were created. Old C-3 properties were migrated to the M-C category. C-2 properties downtown became M-DT (Mixed Use – Downtown). C-2 properties outside of downtown are being dealt with on a case-by-case basis (see previous section of this report). And, C-1 properties were generally migrated to the M-N designation. But, not all.

As landowners and city staff began to look at the unique nature of some C-1 properties, it became clear that the new M-N category rules did not accommodate some of the actual uses or potential re-uses of those properties. An amendment that moved approximately nine C-1 properties into the M-C category was passed by the City Council providing common-sense relief for those properties. However, there are additional C-1 properties in the City of Columbia that were migrated to the M-N category and might deserve a more appropriate M-C zoning classification.

City staff is going to begin an inventory of former C-1 properties and is willing to consider reclassification of SOME of these properties as M-C under the new code. No exact process for reclassification has been announced, but actual current use, compatibility with surrounding uses, and potential hardships for re-use of buildings under the new rules could be considered if a property owner desired the more permissive zoning.

A timeframe for reconsideration of these properties has not been announced, but it would be prudent for owners of property formerly zoned C-1 to evaluate how those properties would be treated under the

new code and inform city staff of any unique characteristics that could make it eligible for reconsideration. There could be some cost to property owners to explore the possibility of reclassification, but the long-term value of such an investigation could be significant. It should be reiterated that not all properties will be considered eligible for reclassification and that it will require additional approval by the City Council.

OTHER ISSUES

The new zoning code was adopted on March 20, 2017 and became effective immediately. However, several amendments were proposed but not accepted prior to that date, and some situations have arisen since that time that could warrant other amendments, additions or refinements to the code. Some notable topics that have been identified include: *a review of Neighborhood Protection Standards and impacts; review of steep slopes regulations; review of wildlife corridor protection regulations; sub-area land use planning in the West Columbia Area similar to the ECAP and NECAP plans already produced; neighborhood transition zone rules; bicycle and other parking issues; and other issues related to definitions.*

The consensus was that some of these issues could take a substantial amount of time, and because public hearings would be required, a framework and process for dealing with these issues should be developed. It is anticipated that work will occur on many of these issues simultaneously rather in consecutive order and that many of the issues that will be considered will carry over into next year. Staff did indicate to the Planning & Zoning Commission, however, that they would assemble and provide a list of major amendments proposed for the zoning code that were NOT passed by the City Council, since some of those issues were never brought before the Commission during their set of public hearings. Commissioners would then be free to resurrect any topics that they believe deserve further consideration.

It should also be noted that this list of items is not all-inclusive and that other revisions to the code could be suggested by the City Council or city staff at any time during the coming years. In fact, the city staff is currently maintaining a “hit list” of topics that have come up as the new code has been implemented and have indicated that if a question or problem becomes persistent in relation to the operation of the new code, they will bring that forward to the Council and Commission.

RESOURCES

The new code is divided into six separate articles (or sections) with one major Appendix and is accompanied by an Administrative Manual outlining new procedures and forms as well as a Regulating Plan map that defines uses and building form regulations in the downtown Columbia area.

UNIFIED DEVELOPMENT ORDINANCE AS ADOPTED MARCH 20, 2017

[Article 1 – General Provisions](#)

[Article 2 – Zoning Districts](#)

[Article 3 – Permitted Uses](#)

[Article 4 – Form and Development Controls](#)

[Article 5 - Subdivisions](#)

[Article 6 – Procedures and Enforcement](#)

[Appendix A – Street Standards](#)

[PROPOSED REGULATING PLAN MAP AS AMENDED DATED 3/20/17](#)

COMPARATIVE ZONING MAP – BEFORE NEW CODE AND AFTER NEW CODE

ADMINISTRATIVE MANUAL – (some sections are incomplete or require further revision)

ENABLING ORDINANCE B43-17 A

Prior to the enactment of this new code, an Administrative Delay (often referred to as a moratorium) was put in place regarding the issuance of demolition permits and building permits within one mile of the downtown Columbia area. That Administrative Delay expired on March 31, 2017 and was not renewed or extended by the City Council during its consideration of the new zoning code. However, any new construction in this area will be subject to the new rules contained in the newly enacted Unified Development Code.

SECTION HIGHLIGHTS OF THE NEW CODE

The new Unified Development Code is a complex document and features a completely new format and citation system as well as a completely new zoning designation and classification system. There were literally hundreds of amendments or changes to the existing code. The following is a list of SOME of the most important changes that were already incorporated into the new code:

FORM BASED ZONING REGULATIONS IN THE DOWNTOWN AREA – Under the new code, the downtown area is subject to a different type of zoning rules than the rest of the community. This hybrid “form-based” approach puts extra restrictions on downtown properties including, in some cases, height minimum and maximums; fenestration requirements; strict required building line requirements; minimum parking requirements for residential property; required commercial on first floor; alley setbacks; neighborhood protection standards in transition zones; and the expiration of non-conforming legal uses within 12 months of discontinuance.

NO BUILDING OVER LOT LINES – No structures may be built across existing lot lines. Existing lots may be replatted into a single lot through the appropriate procedure.

NEW PARKING STANDARDS – In the downtown area, no minimum parking is required for commercial uses, but .5 parking spaces are now required for residential properties of more than 20 bedrooms. In other areas of town, required parking remains similar to the previous code, although parking maximums have been adopted in some commercial areas.

RENAMING AND REDEFINITION OF ZONING CODE CATEGORIES – Zoning classifications have changed. For instance, R-3 and R-4 properties will now be classified as R-MF; C-2 becomes M-DT in most instances; M-1 becomes IG; etc. See Table 29-2.1 on Page 1 of Article 2 in the new code for all changes.

NEIGHBORHOOD PROTECTION STANDARDS – This is a broad category of regulations designed to protect single and two-family homes from the impacts of surrounding multi-family and commercial structures and uses. The regulations include additional height restrictions; increased setbacks; limited parking configurations; limits on building across lot lines; orientation of front doors to primary street; additional buffer and screening requirements; and a change in buildable areas on lots.

TREE PRESERVATION REGULATION CHANGES – These regulations make changes in how tree preservation is quantified; what areas are subject to additional protections; and how those preserved areas are platted in new subdivisions.

EXPIRATION OF PRELIMINARY PLAT TIMELINE – The time for expiration of a preliminary plat changes from 7 years to five years under the new code, with exceptions for extensions of that time by the Director or when at least one-fourth of a preliminary plat is final platted.

CUL DE SAC LENGTH/STANDARD BLOCK LENGTH – Total cul de sac length is now restricted to just 300 feet in length unless a waiver or variance is sought.

UNITS SERVED PER SINGLE POINT OF ACCESS – No more than 30 units may be served by a single point of vehicular access unless a waiver or variance is obtained. The old rule allowed for up to 100 units. This matches new guidelines in the city's building code.

ORIENTATION OF BUILDINGS TO STREETS – This new rule requires new structures to have front doors that are oriented toward the street on which they are addressed. This rule would not allow for apartments with front doors to individual units facing courtyards or interior private driveways and parking.

SETBACKS AND BUFFERING – New regulations regarding setbacks for both multi-family and commercial structures are included in the Neighborhood Protections section of the new code as well as in the dimensional standards definitions contained in Article 2 of the new code. In many instances, the buffering, screening and setback requirements are more restrictive than the previous code.

NON-CONFORMING USES, BUILDINGS AND LOTS – The adoption of a new zoning code changes the rules for new construction, however, it also makes some previous buildings, lots and uses non-conforming, but legal. In most cases if the existing legal non-conforming use, building or lot dimensions are changed, the property will be required to conform to the new code. There are some exceptions for time of discontinuance of use; damage due to acts of God, and exceptions for modifications that do not exceed a certain percentage of the property in question.

PERMITTED, SPECIAL PERMITTED AND CONDITIONAL USES – In most cases, permitted and conditional uses allowed in a previous zoning code designation migrate to the new zoning designation without change. However, in some instances, uses that used to be permitted have now become conditional. A few others will be considered to be permitted but with special use requirements. Not all of the special use definitions and restrictions have been rewritten. It is best to check on a case-by-case basis on any individual property. Refer to the Permitted Use Table 29-3.1 for allowed uses under the new code.

MIXED NEIGHBORHOOD COMMERCIAL RESTRICTIONS – The new code migrates C-1 and C-3 commercial properties to new categories known as M-N (Mixed Use – Neighborhood) and M-C (Mixed Use – Corridor). The M-N designation has size and dimension restrictions for buildings and lots that did not previously exist. Some properties that might have been subject to the new restrictions were given exemptions and placed in a different zoning designation. Article 2 deals with these new restrictions and exemptions for some commercial properties.

These are just some of the major changes that have occurred in the new code, and even this overview does not cover every specific rule or exemption that may exist for an individual property. It is advisable that property owners consult the new code to find what specific provisions may be applicable to any specific property or circumstance.

(This report is prepared for informational purposes and should not be relied upon as a legal basis for any challenge or dispute that may arise concerning the new zoning code.)

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