

Item 5

**GENERAL INFORMATION**

Applicant: City of Bloomington  
Request: City Code Amendments – Update Application Processes

**REQUEST**

As part of the Zoning Ordinance Update Project, the proposed ordinance has been prepared to update various application processes and to shift related text to Chapter 21 of the City Code. The ordinance is part of the Planning Division/Planning Commission's 2009 Work Plan and has been discussed in concept at previous study meetings of both the City Council and Planning Commission. Key changes in the ordinance include shifting the level at which most final site and building plans are approved from the Planning Commission/City Council level to the staff level; adding expiration/rescission dates to new final site and building plans, preliminary development plans, and final development plans; and reclassifying licensed currency exchange businesses from conditional to permitted uses.

The Planning Commission will be requested to provide input and make a recommendation on the proposed amendments.

**BACKGROUND**

**Outline of Key Changes by Section**

*Final Site and Building Plans*

Changes include:

- Multiple sections consolidated in Chapter 21
- Approval authority shifted to staff unless a final site and building plan is accompanied by a variance, conditional use permit or interim use permit
- Findings updated
- Expiration date added
- Content requirements updated

*Preliminary Development Plans*

- Moved to Chapter 21
- Findings updated
- Rescission authority added for stale plans
- Content requirements updated

*Final Development Plans*

- Moved to Chapter 21
- Findings updated
- Expiration date added
- Content requirements updated

*Conditional Use Permits*

- Multiple sections consolidated in Chapter 21
- Removed numerous sets of repetitive conditional use permit findings
- Findings updated
- Content requirements updated

*Interim Use Permits*

- Multiple sections consolidated in Chapter 21
- Findings updated
- Content requirements updated

*Planned Development Overlay District*

- Sections dealing with process moved to Chapter 21
- Updated text

*Application Processes/Fees*

- Created a new section and table in Chapter 21 to summarize review requirements, notice requirements and fees
- Created new fee categories for:
  - Time extensions upon plan expiration
  - Final site and building plans to distinguish staff review from Council review
  - Change in conditional use permit condition
  - RV Permits – formerly listed as temporary conditional use permits for RVs
- Changed the preliminary development plan application fee from \$580 to \$600 to match the \$600 fee for revisions to preliminary development plans

*Licensed Currency Exchange Businesses*

- Reclassified from conditional use status to permitted/provisional use status in the B-2, B-3, C-2 and CX-2 zoning districts. Given licensing requirements, a conditional use permit is not necessary. Several similarly licensed uses have recently been shifted from conditional to permitted status (for example body art and therapeutic massage).

*Cross References*

- Updated, revised and deleted as necessary to track with other proposed changes.

### **Level of Review**

Currently, the City Code requires all final site and building plan, preliminary development plan, final development plan, conditional use permit and interim use permit applications to proceed through the Planning Commission/City Council review and approval process. State Statutes require conditional and interim use permits to be approved by the City Council. State Statutes do not discuss final site and building plans, preliminary development plans or final development plans. Staff believes that preliminary development and final development plans (which are related to the Planned Development Overlay District), should continue to be reviewed and approved by the City Council given the discretionary decisions to be made on whether to grant Code flexibility through these applications. Staff recommends that final site and building plan applications be reviewed and approved at the staff level provided they are not accompanied by a variance, conditional use permit or interim use permit application.

Processing final site and building plan applications (permitted, Code compliant uses) at the staff level offers the following advantages:

1. It will reduce the time required to approve final site and building plans from eight or nine weeks to one or two weeks. In the development industry, time is money. By making the development approvals process more affordable (fees are also reduced), it will be easier for projects to “pencil out” financially, which in turn makes it more likely that new development or redevelopment will occur.
2. It eliminates public hearing situations in which the Planning Commission and City Council have no actual discretion. Neighbors often complain about coming out for a meeting, testifying and then learning that the board they are appearing before really has no discretion.
3. Given the lack of discretion, it reduces the risk of a lawsuit over a Code compliant final site and building plan being denied.
4. It reduces the expense in staff time, paper costs, mailing costs and newspaper fees required to process a final site and building plan (newspaper notices, direct mail notices, agenda packets, staff reports, newspaper advertising fees, video production costs for televised coverage, overtime for meeting attendance for non-exempt staff, minute preparation, etc.). Note that application fees do not cover the costs to the City of processing these applications.
5. It provides financial and time benefit for not seeking a variance or Code flexibility through the planned development process.

Final site and building plans were previously approved at the staff level in Bloomington. In 1981, the Code was amended to require Planning Commission/City Council review and approval. The reason for the change related to concerns that the public and the City Council was not sufficiently aware of coming development before construction began. Technology improvements such as e-mail and the internet should alleviate these concerns. Today, the City Council and Planning Commission can be kept informed of administratively approved final site and building plans through the weekly “CMI”

newsletter and the public can be kept informed through the website (development map) and through E-Subscribe e-mail updates.

The level at which final site and building plans are reviewed and approved varies from city to city (see Attachment A). Some cities completely skip the process, allowing permitted uses to proceed directly to the building permit stage at which time a zoning compliance review is performed. Staff recommends against this approach given that preparing a full building permit application can be quite expensive. If the applicant missed a zoning Code compliance issue, it may result in a shift in building footprint and unnecessarily trigger the redesign of numerous expensive plan sheets. Some cities process such plans at the staff level, some send them to the Planning Commission but not the City Council and some send them to both.

To help provide a better idea of the type of applications that would shift from Planning Commission/City Council review and approval to staff level review and approval, staff prepared Attachment B. Attachment B lists all site plan reviews of permitted uses without variances or PD flexibility from 2006 to today. The number of applications is lower than one might imagine given that most developers seek flexibility from one or more Code requirements through the planned development process.

Staff recommends that final site and building plans should continue to be reviewed and approved through the Planning Commission/City Council process if there is an associated variance, conditional use permit or interim use permit for the following reasons:

1. State statutes require variances, conditional use permits and interim use permits to be approved by the City Council. Given that the associated applications are going through the Planning Commission/City Council review process, there will be no time lost by sending the final site and building plan review through the same process;
2. Having the final site and building plans to review will help inform the Planning Commission/City Council's review of the associated variance, conditional use permit or interim use permit application. These plans contain information that may be relevant to decision making on the associated applications; and
3. A recommended change to the variance, conditional use permit or interim use permit application (where the level of discretion is higher) may require a corresponding change in the final site and building plan.

### **Expiration/Rescission**

The City Code currently includes expiration provisions for variances, conditional use permits and interim use permits. If not acted upon (through issuance of a building permit for example), variances and conditional use permits expire after one year and interim use permits expire after six months. There are currently no expiration provisions for final site and building plans, preliminary development plans or final development plans.

Staff proposes adding a two year expiration period for final site and building plans and for final development plans approved after October 1, 2009. The proposal allows for up

to a one year extension approved by the Community Development Director provided a good faith effort at progress has been made. If a building permit has not been issued prior to the expiration period, the plans would expire and the landowner would need to reapply and meet any new Code requirements. For preliminary development plans, staff proposes language that would give the City Council authority to rescind plans approved after October 1, 2009 if no associated final development plan were issued within three years of preliminary development plan approval.

The proposed expiration and rescission provisions strike a balance between establishing property rights and ensuring that development meets ever changing Code requirements. Staff surveyed the ten largest suburban cities in the region (see Attachment A) and found that expiration dates for site plans of one to two years are common.

### **Public Outreach**

Efforts to raise public awareness of this ordinance included:

- Legal notice in the Bloomington Sun Current
- Posting on the Bloomington website (Zoning Ordinance Update Project Page)
- E-mail notice sent to all parties on the E-Subscribe mailing list for Zoning Ordinance Updates (215 subscribers as of 8/18/09)
- E-mail with background information sent to potentially interested organizations:
  - Bloomington Chamber of Commerce
  - Building Owners and Managers Association (BOMA)
  - National Association for Industrial and Office Properties (NAIOP)
  - Minnesota Shopping Center Association (MSCA)
  - Minnesota Retailers Association (MRA)

### **RECOMMENDATION**

In Case 10000J-09, staff recommends approval of an ordinance to amend City Code application process requirements.

# Comparison of Approval Processes for Development Plans Ten Largest Twin Cities Suburban Communities

City	Contact	Process Name	Time Limit	Level of Review					Public Notice	Submittal Requirements	Planned Developments		Sketch Plan
				Permitted Uses	Two-Family Dwellings	Multi-Family Garages	Parking Lot Additions	Plan Revisions			Type	Limits on Flexibility	
Bloomington	Glen Markegard 952-563-8923	1. Final Site and Building Plans; and 2. Preliminary/Final Development Plans	No	PC/CC	PC/CC	PC/CC	Admin Approval	PC/CC	500 feet	In Code	Overlay District	Yes	No
Brooklyn Park	Todd Larson 763-493-8069	Site Plan	End of following year	Building Permit Sign-Off <sup>1</sup>	Building Permit Sign-Off	Building Permit Sign-Off	Building Permit Sign-Off <sup>2</sup>	Building Permit Sign-Off <sup>3</sup>	500 feet	In Code	Base District and Overlay District	Very Few <sup>4</sup>	Yes <sup>5</sup>
Plymouth	Marie Darling 763-509-5457	Site Plan	1 Year <sup>6</sup>	Admin. Approval <sup>7</sup>	Building Permit Sign-Off	Admin. Approval <sup>8</sup>	Admin. Approval <sup>9</sup>	Admin. Approval <sup>10</sup>	200 feet	In Code	Base District	Very Few <sup>11</sup>	Yes <sup>12</sup>
Eagan	Sarah Thomas 651-675-5696	Site Plan <sup>13</sup>	No	Building Permit Sign-Off	Building Permit Sign-Off	Building Permit Sign-Off	No approval	Building Permit Sign-Off	None	In Code	Base District	No	Yes <sup>14</sup>
Coon Rapids	Matt Brown 763-767-6460	Site Plan	1 Year <sup>15</sup>	PC <sup>16</sup>	PC	PC (if minor, building permit)	Building Permit Sign-Off	Building Permit Sign-Off	350 feet	In Code	Overlay District	Very Few	No <sup>17</sup>
Burnsville	Jane Hovind 952-895-4430	Site Plan	180 days	Building Permit Sign-Off	Building Permit Sign-Off	Building Permit Sign-Off	Admin Approval	Building Permit Sign-Off	None	In Building Code	Overlay	No	No <sup>18</sup>
Eden Prairie	Scott Kipp 952-949-8489	Site Plan and Architectural Review	2 Years	PC/CC	Building Permit Sign-Off	PC/CC (if minor building permit)	Building Permit Sign-Off	PC/CC (if minor building permit)	500 feet	In Code	Overlay District	No	Yes <sup>19</sup>
Minnetonka	Jeff Thomson 952-939-8293	Site and Building Plan	End of following year	PC	Building Permit Sign-Off	PC	PC	PC <sup>20</sup>	400 feet	In Code	Base District	No	Yes <sup>21</sup>
Maple Grove	Peter Vickerman 763-494-6046	Site Plan	1 Year	Admin Approval	Building Permit Sign-Off	Building Permit Sign-Off	Admin Approval	Admin Approval	None	In Code	Base District and Overlay District	No	No
Edina	Cary Teague 952-826-0460	Final Development Plan	2 Years	PC/CC <sup>22</sup>	Building Permit Sign-Off	Admin Approval <sup>23</sup>	Admin Approval <sup>24</sup>	Admin Approval <sup>25</sup>	500 feet	In Code	None <sup>26</sup>	NA	No <sup>27</sup>

Survey Conducted February 2009 by Bloomington Planning Division

<sup>1</sup> Unless adjacent to residential use or involving a religious institution. In those cases, it goes to PC/CC.

<sup>2</sup> Unless adjacent to residential use or involving a religious institution. In those cases, it goes to PC/CC.

<sup>3</sup> Unless adjacent to residential use or involving a religious institution. In those cases, it goes to PC/CC.

<sup>4</sup> Residential density may not exceed density allowed under the Comprehensive Plan.

<sup>5</sup> Applicant may submit a sketch plan and request a discussion with PC and CC for non-binding advisory comments. No fee. Notice of sketch plan discussion is sent only if deemed necessary by staff.

<sup>6</sup> Council can extend up front by condition for phased projects or extend annually for other projects.

<sup>7</sup> Unless within 200 feet of residential, not consistent with Comp Plan, or includes variances. In those cases, it goes to PC/CC.

<sup>8</sup> Unless within 200 feet of residential, not consistent with Comp Plan, or includes variances. In those cases, it goes to PC/CC.

<sup>9</sup> Unless within 200 feet of residential, not consistent with Comp Plan, or includes variances. In those cases, it goes to PC/CC.

<sup>10</sup> Unless 1) over 10% floor area increase and 2) within 200 feet of residential or includes variances

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<sup>11</sup> Except for shoreland standards

<sup>12</sup> Applicant may submit a sketch plan and request a discussion with PC and CC for non-binding advisory comments. No fee. Notice is sent to same distance as future application would require.

<sup>13</sup> Although Eagan has a site plan review process available it is rarely used. Most permitted, Code compliant buildings proceed straight to building permit. The site plan process is available in unique circumstances where either the applicant or the City feel it would be of value.

<sup>14</sup> Applicant may submit a sketch plan and request a discussion with PC and CC for non-binding advisory comments. No fee. No notice unless bundled with other reviews requiring notice.

<sup>15</sup> PC can extend for no more than one additional year.

<sup>16</sup> CC reviews only in certain designated redevelopment areas.

<sup>17</sup> Coon Rapids used to have a sketch plan process but eliminated it. Decision makers wanted a more complete application package before weighing in.

<sup>18</sup> Burnsville has a staff level sketch plan review process for informal feedback (\$280 fee), but, to get to the PC or CC, a complete application must be filed.

<sup>19</sup> Applicant may submit a sketch plan and request a discussion with the PC for non-binding advisory comments. Applicant is charged for staff time out of the mandatory escrow fund. Notice is sent 500 feet.

<sup>20</sup> PC review required only for additions greater than 10% of the floor area, otherwise they can be approved administratively

<sup>21</sup> For PUDs only. Process set out in Code. Non-binding advisory comments. No fee. Notice is sent 400 feet.

<sup>22</sup> Edina will be discussing at what level to review site plans.

<sup>23</sup> Unless over 10% floor area increase, in which case it would be reviewed by PC and CC

<sup>24</sup> Unless for a conditional use, in which case it would be reviewed by PC and CC

<sup>25</sup> Unless over 10% floor area increase, in which case it would be reviewed by PC and CC

<sup>26</sup> Edina will be discussing whether to create a planned development process

<sup>27</sup> Edina will be discussing whether to add a sketch plan process

## **Council Site Plan Reviews for Permitted Uses without Variances or PD Flexibility, 2006 - 2009**

- Office/Switching Station – Verizon, 10801 Bush Lake Road
- Office/Warehouse – 1701 W. 94<sup>th</sup> St. (94<sup>th</sup> and James)
- Martin Luther Manor
- Normandale Community College – two separate additions
- Northwestern Health Sciences University – addition
- 98<sup>th</sup> Street Park and Ride
- Hyland Ski Area – 748 sq. ft. pumphouse
- Dalsin Industries – addition to industrial building
- Old Town Hall – site improvements
- Blooming Glen Townhomes – building renovations and community center
- Bell Towers (with antennas)
  - Cross Point
  - St. Mark's
  - Oak Hill
  - Mt. Hope