CITY OF ELKO
Planning Department

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7219

PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, May 4, 2021 beginning at 5:30 P.M., P.D.S.T. utilizing GoToMeeting.com:
https://global.gotomeeting.com/join/458385325

Attached with this notice is the agenda for said meeting of the Commission. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at http://www.elkocitynv.gov/, the State of Nevada's Public Notice Website at https://notice.nv.gov, and in the following locations:

ELKO CITY HALL – 1751 College Avenue, Elko, NV 89801
Date/Time Posted: April 28, 2021 12:00 p.m.

Posted by: Shelby Knopp, Planning Technician
Name Title Signature

The public may contact Shelby Knopp by phone at (775) 777-7160 or by email at sknopp@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV, or on the City website at http://www.elkocity.com.

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: https://global.gotomeeting.com/join/458385325. You can also dial in using your phone at **+1 (312) 757-3121.** The **Access Code** for this meeting is **458-385-325.** Members of the public that do not wish to use GoToMeeting may call in at **(775)777-0590**. Comments can also be emailed to cityclerk@elkocitynv.gov.

Dated this 28th day of April, 2021.

NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko Planning Department, 1751 College Avenue, Elko, Nevada, 89801 or by calling (775) 777-7160.

Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.D.S.T., TUESDAY, MAY 4, 2021
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
https://global.gotomeeting.com/join/458385325

CALL TO ORDER

The Agenda for this meeting of the Elko City Planning Commission has been properly posted for this date and time in accordance with NRS requirements.

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

APPROVAL OF MINUTES

April 6, 2021 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action on Zoning Ordinance Amendment 1-21, Ordinance No. 861, an amendment to the City Zoning Ordinance, specifically Section 3-2-4; Establishment of Zoning Districts, 3-2-19; Nonconforming Uses & 3-2-21; Amendments, and matters related thereto. **FOR POSSIBLE ACTION**

   At the April 6, 2021 meeting, Planning Commission took action to initiate an amendment to the City Zoning Ordinance Title 3, Chapter 2, Section 4, Section 19 and Section 21.

2. Review, consideration, and possible action on Zoning Ordinance Amendment 2-21, Ordinance No. 860, an amendment to the City Zoning Ordinance, specifically Sections 3-2-2 (Definitions), 3-2-5 (Residential Zoning Districts), 3-2-6 (RB Residential Business District), and 3-5-4 (Uses Permitted and Minimum Standards), and matters related thereto. **FOR POSSIBLE ACTION**

At the April 6, 2021 meeting, Planning Commission took action to initiate an amendment to the City Zoning Ordinance to address accessory building regulations in the sections listed above.

II. REPORTS

A. Summary of City Council Actions.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

NOTE: The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

Respectfully submitted,

Cathy Laughlin
City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.D.S.T., TUESDAY, APRIL 6, 2021
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
https://global.gotomeeting.com/join/987251989

CALL TO ORDER

Jeff Dalling, Chairman of the City of Elko Planning Commission, called the meeting to order at 5:30 p.m.

ROLL CALL

Present: **Jeff Dalling**
Giovanni Puccinelli
Tera Hooiman
Gratton Miller
John Anderson
Mercedes Mendive

Excused: **Stefan Beck**

City Staff Present: **Scott Wilkinson, Assistant City Manager**
Cathy Laughlin, City Planner
Michele Rambo, Development Manager
Bob Thibault, Civil Engineer
Jamie Winrod, Fire Marshal
Shelby Knopp, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

March 2, 2021 – Regular Meeting **FOR POSSIBLE ACTION**

***Motion: Approve the March 2, 2021 Regular Minutes as presented.**

Made by Giovanni Puccinelli, seconded by Mercedes Mendive

Motion passed unanimously. (6-0)

I. NEW BUSINESS

A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action to initiate an amendment to the City Zoning Ordinance, specifically Sections 3-2-4 Establishment of Zoning Districts, 3-2-19 Nonconforming Uses and 3-2-21 Amendments, and matters related thereto. **FOR POSSIBLE ACTION**

Cathy Laughlin, City Planner, wanted to give some history on the proposed Code Amendment. Staff started this zoning amendment back in November. It has taken this long to get it to the point where it could be brought to the Planning Commission for initiation. In the document the original text is black, and anything that is in color has been added or deleted from the zoning amendment. There have been quite a few changes. Originally, staff started with the "Amendments" section of the Code. Amendments could be a zoning district amendment, or it could be an amendment to the Zoning Regulations. Staff wanted to separate those two things. There was a lot of legal discussion. Currently, amendments to zoning district boundaries are done by Resolutions, which would go in front of the Planning Commission and then to the City Council as public hearings. Legal counsel believes that they need to be done as Ordinances, which would make it the Zoning Law. An Ordinance has to go in front of City Council an additional time, once as a first reading and again as a second reading. The change would still come to the Planning Commission first, and then it would go to City Council twice. The biggest change in Section 3-2-21 is that the process will be done by an Ordinance instead of a Resolution. There are quite a few changes in that section. The changes in that section triggered the changes to the other sections that have been included in this amendment. Ms. Laughlin then went over the proposed changes to Section 3-2-21-A and 3-2-21-B. She then went over the proposed amendments to Section 3-2-4 and 3-2-19, which were triggered by the new process proposed in Sections 3-2-21-A and 3-2-21-B. Under Section 3-2-19 ways the City of Elko could consider a non-conforming use abandoned were added.

No other staff members had any comments to add.

*****Motion: Initiate an amendment to the City Zoning Ordinance, specifically Sections 3-2-4 Establishment of Zoning Districts, 3-2-19 Nonconforming Uses, and 3-2-21 Amendments and direct staff to bring the item back as a public hearing.**

Made by Gratton Miller, seconded by Tera Hooiman

****Motion passed unanimously. (6-0)***

2. Review, consideration, and possible action to initiate an amendment to the City Zoning Ordinance, specifically Sections 3-2-2 Definitions, 3-2-5 Residential Zoning Districts, 3-2-6 RB Residential Business District, and 3-5-4 Uses Permitted and Minimum Standards in coordination with an amendment to the City Building Ordinance, specifically Sections 2-1-2 Applicability, 2-1-4 Permits, and matters related thereto. **FOR POSSIBLE ACTION**

Michele Rambo, Development Manager, pointed out that there were a lot of sections with proposed changes. She explained that the amendment had to do with accessory structures. Some

of you may, or may not, know that there have been some issues with sheds, and the placement of those sheds on residential properties. Staff went back and took a new look at the regulations for accessory structures. Ms. Rambo wanted to go through the highlights of the changes. Some definitions have been added. Staff has specified between permanent and non-permanent accessory structures. The meat of what is proposed to change starts in Section 3-2-5 Residential Zoning Districts. Each Sections has some changes, with some being more complex than others. On Page 40, under Section 3-2-5(H) Residential Zoning Districts Area, Setback, and Height Schedule for Accessory Buildings there is a table for non-permanent accessory buildings, and a separate table for permanent accessory buildings. The requirements for each are going to be different. The main change is reducing the setbacks for accessory structures to five feet from the property line. The reason staff chose five feet was because when a subdivision is created all the lots have a five foot wide utility and drainage easement around the perimeter of the lots and the Building Code does not allow buildings to be constructed over easements. There was some discussion about reducing the setback to zero, but the Building Code doesn't allow for that. There is an exception if there is an alley in the rear, then the setback is reduced to zero. In some cases, the exterior side yard setback will be seven and a half feet. Accessory structures will not be allowed in the front yard setback. Detached garages and carports are also considered accessory structures. In another section of the code they are required to be setback 20 feet from the front lot line and the exterior side lot line. Those requirements are addressed in the footnotes of the two tables. Ms. Rambo then went over the specifics of the tables and how they were different. She wanted to go over a few sections that the wording need to be changed in. On page 18, the definition for "Building, Accessory, Non-Permanent" occupying an area of less than 200 square feet would need to be taken out, and "small" in front of greenhouse. Anything related to size needs to be taken out, because size is addressed in the Building Code. The same would need to be done to the definition of "Building, Accessory, Permanent." There are a couple of other minor changes to the tables on page 41. On footnote No. 5 "or exterior side yard" should be added.

Commission Gratton Miller was curious of why, on page 32, Ramada is explicitly named in the Code. He asked if that was by design, or if it was a typo.

Ms. Rambo explained that a ramada was a specific type of accessory structure.

Ms. Laughlin explained that staff put a lot of time and effort into this zoning amendment, and did some research on other Cities within the State, which was how it was decided to have the setbacks be 5 feet on all sides with the exceptions. Ms. Laughlin then went over the spreadsheet included as **Exhibit A.** Staff wanted to make sure that the City of Elko would be consistent with other jurisdictions within the State of Nevada. The Planning Department gets a lot of phone calls regarding sheds, so we tried to keep it consistent across the board.

Mr. Wilkinson wanted to call attention to the fact that this was being done in coordination with a few revisions to the Building Code and he thought it was important. A lot of the issues the City has is with people buying sheds at the retail level, putting them on their property, and maybe creating issues, maybe not. The City doesn't want to have to go through a building permit process for smaller sheds. This is dovetailing some Planning and Zoning issues with the Building Department, updating definitions, and clarifying what people need permits for. Setbacks will still need to be met, but we want to lessen the impact on home owners, so they can have more yard area with those reduced setbacks. Mr. Wilkinson thought it was a good approach. The

amendments to the Building Code will be ran through the City Council, since the Planning Commission doesn't have the authority to amend the Building Code.

*****Motion: Initiate an amendment to the City Zoning Ordinance, specifically Sections 3-2-2 Definitions, 3-2-5 Residential Zoning Districts, 3-2-6 RB Residential Business District, and 3-5-4 Uses Permitted and Minimum Standards in coordination with an amendment to the City Building Ordinance, specifically Sections 2-1-2 Applicability, 2-1-4 Permits and direct staff to bring the item back as a public hearing, including the changes discussed on pages 18 and 41.**

Made by Giovanni Puccinelli, seconded by Gratton Miller

****Motion passed unanimously. (6-0)***

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that the City Council approved the purchase of a parcel of land located behind the Elko Police Department. It will be for an expansion of City Facilities. They also approved the Final Map for Ruby Mountain Peaks and the Performance Agreement. They approved a first amendment to a Revocable Permit for Maverik on Idaho Street.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

Ms. Laughlin said she was hoping to be able to have live meetings again in May, but it doesn't look like that will be the case with the social distancing requirements. The new iPads have come in. Ms. Laughlin hoped they would be able to be handed out at a live meeting, so there could also be some training. She thought Mr. Dalling could visit with her on how he wanted to hand those out and when. Everyone will be getting a new email address.

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

NOTE: The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another

specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman	Tera Hooiman, Secretary

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action on Zoning Ordinance Amendment 1-21, Ordinance No. 861, an amendment to the City Zoning Ordinance, specifically Section 3-2-4; Establishment of Zoning Districts, 3-2-19; Nonconforming Uses & 3-2-21; Amendments, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **May 4, 2021**

3. Agenda Category: ***NEW BUSINESS, PUBLIC HEARINGS***

4. Time Required: **20 Minutes**

5. Background Information: **At the April 6, 2021 meeting, Planning Commission took action to initiate an amendment to the City Zoning Ordinance Title 3, Chapter 2, Section 4, Section 19 and Section 21.**

6. Business Impact Statement: **Not Required**

7. Supplemental Agenda Information: **Ordinance 861**

8. Recommended Motion: **Forward a recommendation to City Council to adopt an ordinance which approves Zoning Ordinance Amendment 1-21 of the Elko City Code specifically Section 3-2-4; Establishment of Zoning Districts, 3-2-19; Nonconforming Uses & 3-2-21; Amendments**

9. Findings:

10. Prepared By: **Cathy Laughlin, City Planner**

11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/4
Do not use pencil or red pen, they do not reproduce

Title: Zoning Ordinance Amendment 1-21, Ordinance No. 861
Applicant(s): City of Elko
Site Location: N/A
Current Zoning: N/A Date Received: N/A Date Public Notice: N/A
COMMENT: This is to amend Sections 3-2-4, 3-2-19, & 3-2-21 of the Elko City Code

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/24/21
Recommend forward to C.C. for adoption

SAW
Initial

City Manager: Date: 4/23/21
No comments/concerns.

Initial

CITY OF ELKO
ORDINANCE NO. 861

AN ORDINANCE AMENDING TITLE 3 (ZONING REGULATIONS), CHAPTER 2 (GENERAL ZONING ORDINANCE), SECTION 4 (ESTABLISHMENT OF ZONING DISTRICTS), SECTION 19 (NONCONFORMING USES), AND SECTION 21 (AMENDMENTS)

WHEREAS, the City of Elko has determined that various sections in Title 3, Chapter 2 (Zoning Regulations) of the City Code require amendment to clarify existing requirements and to implement more practical and efficient procedures relative to changes to zoning district boundaries and zoning regulations;

WHEREAS, the proposed amendments more clearly define the standards for determining whether uses of property are nonconforming and what factors are considered in determining whether uses have been abandoned;

WHEREAS, the proposed amendments add clarity to the process for changing zoning district boundaries, adding more detailed guidance on applications to change zoning district boundaries, and setting forth the approval process before the planning commission and city council in greater detail and more understandable terms;

WHEREAS, the amendments eliminate confusion by separating the process for amending zoning regulations from the process used to change zoning district boundaries;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKO, NEVADA

For amendment purposes, words which are in blue, bold and underlined are additions to the Ordinance, and words which ~~are lined through~~ are deleted from the Ordinance.

Section 1: Title 3, Chapter 2, Sections 4, 19, & 21 are hereby added to read as follows:

3-2-4: ESTABLISHMENT OF ZONING DISTRICTS:

The entire City is hereby divided into zoning districts, within which zoning districts all property use shall hereafter conform to the requirements specified in this chapter, and which zoning districts are hereby classified as follows: **~~(Ord. 547, 12-12-2000)~~**

A. Types ~~Of~~ **of** Districts:

1.	Residential districts:	

	RS	Residential Suburban District
	R1	Single-Family Residential District
	R2	Two-Family Residential District
	R3	Multiple-Family Residential District
	R	Single-Family and Multiple-Family Residential District
	RO	Residential Office District
	RB	Residential Business District
	RMH	Mobile Home Park and Mobile Home Subdivision District
2.	Nonresidential districts:	
	PQP	Public, Quasi-Public District
	CC	Convenience Commercial District
	CT	Commercial Transitional District
	PC	Planned Commercial District
	C	General Commercial District
	IBP	Industrial Business Park District
	IC	Industrial Commercial District
	LI	Light Industrial District
	GI	General Industrial District
	RC	Restricted Commercial District
3.	Special districts:	
	AG	General Agriculture District
	FP	Floodplain Overlay District
	SA	Special Area Overlay District
	PUD	Planned Unit Development District

~~**(Ord. 547, 12-12-2000; amd. Ord. 819, 8-22-2017)**~~

B. Required Conformity ~~**To**~~ **to** District Regulations: **Except for nonconforming uses to the extent permitted under Section 3-2-19 or as otherwise provided in this subsection,** ~~T~~the regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land~~,~~**. Unless an appropriate conditional use has**

been permitted or a variance has been approved, the following restrictions shall apply in all zoning districts. ~~**except as provided in this subsection:**~~

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered, unless in conformity with all regulations specified in this subsection**, unless excepted,** for the district in which it is located.
2. No building or other structure shall hereafter be erected or altered:
   a. To exceed the heights required by the current City Airport Master Plan;
   b. To accommodate or house a greater number of families than as permitted in this chapter; **or**
   c. To occupy a greater percentage of lot area~~;~~ or
   d. To have narrower or smaller rear yards, front yards, side yards or other open spaces, than required in this title**,**~~;~~ or in any other manner contrary to the provisions of this chapter.
3. No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
4. No yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

C. Annexation ~~O~~of Territory ~~T~~to City: Proceedings for annexation of territory to the city shall be in accordance with Nevada Revised Statutes sections 268.610 through ~~268.670~~268.671, inclusive. A petition for annexation, in writing, shall be presented to the city council. The city council shall consider said petition and may refer the matter to the planning commission for further consideration. The petitioner shall, prior to the consideration of the petition by the planning commission, pay a filing fee to the city in an amount established by resolution of the city council.

D. Classification Of Annexed Areas: All territory which is annexed to the city after the effective date hereof shall be zoned upon annexation AG general agriculture, unless the planning commission shall recommend and/or the city council shall otherwise designate the zoning district after holding duly advertised public hearings in accordance with section 3-2-21 of this chapter. As part of considering any petition for annexation of territory to the city, a review of conformance with the city master plan, including land use designation, shall be performed by the planning commission, with recommendations forwarded to the city council. If said annexation necessitates substantial amendment to the master plan, the planning commission may adopt such amendment only after holding duly advertised public hearings in accordance with Nevada Revised Statutes section 278.210.

E. Detachment ~~O~~of Territory ~~F~~from City: Proceedings for detachment of territory from the city shall be in accordance with Nevada Revised Statutes section 268.664. A petition for detachment, in writing, shall be presented to the city council. The city council shall consider said petition and may refer the matter to the planning commission for further consideration. The petitioner shall, prior

to the consideration of the petition by the planning commission, pay a filing fee to the city in an amount established by resolution of the city council and included in the appendix to this code.

F. Classification ~~O~~of Vacated Streets: Whenever a public street or alley is vacated by official action of the city council, the zoning districts adjoining each side of such street or alley shall automatically be extended to the centerline thereof, and all land area thus vacated shall then and henceforth be subject to all regulations of the extended districts.

G. Official Zoning District Map:
   1. Establishment: The areas and boundaries of zoning districts are hereby established as shown on the official city zoning map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter.
   2. Identification: The official city zoning map shall be entitled "Elko zoning map" and identified by the signature of the mayor, attested by the city clerk, bear the notations that it was adopted on the date this zoning ordinance was passed, and bear the seal of the city. Regardless of the existence of purported copies of the official city zoning map which may, from time to time, be made or published, the official city zoning map, which shall be located in **a secure location designated by the city clerk,** ~~**the office of the city planner,**~~ shall be the final authority as to the current zoning status of land areas, buildings, and other structures in the city.
   3. Changes: If, in accordance with the provisions of this chapter, changes are made in district boundaries or in other matters portrayed on the city zoning map, such changes shall be made on said map promptly after the amendment has been approved and adopted by **ordinance** ~~**resolution of the city council**~~. No changes of any nature shall be made in the city zoning map or matter shown thereon, except in conformity with the provisions of this chapter. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this chapter and punishable as hereinafter provided.
   4. Replacement: In the event that the city zoning map becomes damaged, destroyed, lost, or difficult to interpret due to the nature or number of changes and additions, the city council may, by ~~**resolution**~~**ordinance**, adopt a new city zoning map which shall supersede the former map. The new city zoning map may correct drafting or other errors or omissions in the former map, but no such correction shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof. The new city zoning map shall be identified by the signature of the mayor attested by the city clerk, and bear the seal of the city under the words:
   "This is to certify that this Elko zoning map adopted the (date) supersedes and replaces the Elko zoning map adopted (date of adoption of map being replaced) as part of the zoning ordinance of the city of Elko, Nevada".
   5. Interpretation: Where, due to scale, lack of detail or illegibility of the city zoning map, there is an uncertainty, contradiction, or conflict as to the intended location of any district boundary shown thereon, the exact location of such boundary shall be determined by the city planner, who, in reaching a determination, shall apply the following standards:

a. Zoning district boundary lines are intended to follow lot lines, or be parallel or perpendicular thereto, and centerlines of streets, alleys and rights of way, unless otherwise fixed by dimensions shown on the city zoning map.
b. In subdivided property, or where a zoning district boundary divides a lot, the exact location of such boundary shall be indicated by dimensions shown on the city zoning map.
c. If, after application of the foregoing rules, uncertainty still exists as to the exact location of a zoning district boundary, the city council shall determine and fix the location of such boundary in accordance with the purpose and intent of this chapter. (Ord. 547, 12-12-2000)

3-2-19: NONCONFORMING USES:

A. Permitted: ~~**Uses**~~ **A use lawfully** existing ~~**at the time of adoption of**~~**on the effective date of enactment of** this chapter **or any amendment to this chapter**, but **which is** not in accordance with the provisions and requirements **currently** contained ~~**herein**~~**in this chapter**, shall be known as **a** nonconforming use~~**s**~~ and**, if not abandoned,** may be allowed to continue; provided, however, that such nonconforming uses may not be extended, enlarged or changed to other nonconforming uses, except by **variance or** conditional use permit.

B. Uses Included: A nonconforming use is a property use which existed lawfully ~~**at**~~**on** the effective date of the enactment of ~~**the City zoning ordinance**~~**this chapter or any amendment to this chapter, but which is no longer in accordance with the provisions and requirements contained in this chapter,** and has been continued **and not abandoned** since ~~**that time**~~**becoming inconsistent with the requirements of this chapter**. Nonconforming uses are not limited to, but may include and consist of the following:

A nonconforming use of property, such as any commercial, industrial or residential use not listed as a principal, permitted use within the existing underlying zoning district; nonconforming structures or buildings such as any building or structure that is noncompliant with area, height or setback requirements of the existing underlying zoning district; and nonconforming development standards, such as noncompliant off street parking, including:

1. Quantity of spaces;
2. Paving;
3. Security lighting; and
4. Landscaping.

C. Nuisance Declared: It shall be unlawful for any person to continue a nonconforming use of any kind in any zoning district established by this chapter more than one (1) year after its passage when such nonconforming use has been declared to constitute a nuisance or to be detrimental to public health, safety or welfare by a majority vote of the City Council. The City Council shall have written notice served on the person last known to be the owner of the property on which such nonconforming use exists or which constitutes a nonconforming use. The written notice shall order the nonconforming use to be discontinued within one (1) year thereafter. If the owner does

not reside in the City at the time, the notice may be mailed to the person by registered mail at the last known address. This subsection shall not be construed as limiting the right of the City of any person to abate a nuisance under any existing laws or ordinances.

D. Abandonment ~~O~~or Discontinuance: A nonconforming use of a building or land which is operationally abandoned or discontinued for a period of twelve (12) consecutive months or more shall be considered abandoned and shall not be resumed. Nonconforming buildings which have been damaged or destroyed by natural calamity may be repaired or reconstructed within one (1) year from the date of damage, ~~provided~~so long as the repaired building is appropriate ~~to~~for the previous use. In considering whether a use is abandoned, the City may consider one or any combination of the following factors: ~~(Ord. 623, 10-12-2004)~~

   a. Failure to maintain regular business hours that are typical or normal for the use;
   b. Failure to maintain equipment, supplies or stock-in-trade that would typically be present in the building or on the land for the active operation of the use;
   c. Failure to maintain utilities that would typically be required for the active operation of the use;
   d. Failure to pay taxes, including but not limited to sales tax, workers' compensation taxes or business taxes that would be required for the active operation of the use;
   e. Failure to maintain required local, state or federal licenses or other approvals, to include business licenses, that would be required for the active operation of the use; and/or
   f. Other indicia of abandonment, such as the presence of a nuisance.

3-2-21-A: AMENDMENTS TO ZONING DISTRICT BOUNDARIES:

The city council may~~, from time to time as the public necessity, convenience, general welfare, or good zoning practice requires,~~ change the ~~district~~ boundaries ~~or amend, change, repeal or supplement the regulations herein established~~of any zoning district by ordinance. ~~Such~~The change ~~or amendment~~ may be initiated by the city council or the planning commission on ~~its~~the ~~own~~ motion of either body, or by application ~~of~~by one or more owners of real property within the area proposed to be changed.

A. Application for Change of District Boundaries~~To Be Filed~~:

   1. An ~~A~~application~~s~~ for a change of district boundaries ~~or amendment of regulations shall be filed with the planning department~~ submitted by an owner of real property within the area proposed to be changed~~. Such application~~ shall be filed with the planning department on a form provided for ~~the~~that purpose. Any such form shall be rejected if not ~~and shall be~~ complete. The application shall contain the following information: a map of the area depicting the area to be changed with a statement of the proposed zone change, as follows: area to be change from "x" to "y"; (LI to R, for example); a plot plan depicting existing conditions that have been surveyed by a properly licensed surveyor, to include: property lines, existing buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other existing construction or improvements on the subject property; a complete legal description of the boundary, including area to the center line of the

street(s), of the proposed zone change and a statement of the existing and proposed zoning of the property, including a brief summary of the intent of the proposed zone change.

2. If the property to be rezoned is adjacent to a public right-of-way, the proposed zone change must go to the center of the corresponding right-of-way.

3.~~1.~~ Except as provided below, at the time the application is filed, the applicant shall pay ~~Payment of~~ a filing fee in an amount established ~~by a schedule adopted~~ by resolution of the city council ~~and filed in the office of the city clerk.~~

4.~~2.~~ No part of the filing fee shall be ~~returnable~~refunded once paid. ~~Payment of filing fee shall be waived when the change or amendment is initiated by the city council or the planning commission or when the petitioner is the city, county, state or federal government. (Ord. 477, 12-17-1996)~~

5. Notwithstanding the above, no filing fee shall be required if the applicant is a governmental entity.

B. Planning Commission Stage:~~Planning Commission Public Hearing:~~

1. Notice ~~O~~of Hearing:

a. The ~~planning commission~~City Council or, if authorized by the City Council, the planning commission or planning department, shall set a date for a public hearing ~~of the petition by the planning commission~~on any application to change district boundaries within forty-five (45) calendar days of the date the application is filed. ~~Such hearing shall be held only after a public~~In addition to any applicable notice requirements contained in Chapter 241 of the Nevada Revised Statutes, notice of the time, date and place of ~~such~~ the hearing ~~has been~~shall be published at least once in a newspaper of general circulation in the city at least ten (10) calendar days prior to ~~such~~the hearing date. ~~and the requirements of Nevada Revised Statutes chapter 241 have been complied with. Such~~The notice shall include a legal description and a physical description ~~of,~~ or ~~a~~ map ~~detailing~~, of the property proposed to be rezoned, and a statement of the existing and proposed zoning of the property, including a brief summary of the ~~intent of the~~ proposed zone change. ~~, and a general description of any regulations proposed to be amended. (Ord. 535, 12-14-1999)~~

b. In addition to publication of ~~such~~the notice of the hearing, a notice shall be sent by mail at least ten (10) calendar days before the hearing to the following:

(1) The applicant~~.~~;

(2) Each property owner, as listed on the county assessor's records, of real property located within three hundred feet (300') of the exterior boundary of the property being considered for the zone change~~.~~;

(3) ~~Each property~~The owners, as listed on the county assessor's records, of at least thirty (30) parcels nearest to the exterior boundary of the property being considered for the zone change~~, to the extent that notification required pursuant to subsection B1a(2) of this section is not duplicated.~~;

(4) Each tenant of a mobile home park if ~~said~~the park is located within three hundred feet (300') of the exterior boundary of the property being considered for the zone change~~.~~;and

(5) Any advisory board which has been established by the ~~governing body~~city council for the affected area or any area within three hundred feet (300') of the exterior boundary of the property being considered for the zone change.

2. Hearing Before the Planning Commission: ~~The planning commission shall hold its~~At the public hearing on the application, the planning commission ~~at which it~~ shall review ~~all~~the proposed change~~s and amendments,~~to the district boundaries and shall hear ~~all~~ evidence offered by the ~~petitioner~~ applicant and ~~parties in interest~~persons having an interest in the change, if any. ~~Such hearing shall be held within forty five (45) calendar days from date of application filing.~~

3. Planning Commission Action: ~~Within fifteen (15) calendar days a~~After the conclusion of the public hearing on the application but prior to consideration by the city council, the planning commission shall file a written report with the city council ~~that~~ recommending either that the application should be granted as requested, granted subject to ~~specific~~ conditions, or denied. The planning commission's ~~recommendation~~written report shall be transmitted to the city clerk and a copy mailed to the applicant. Failure by the planning commission to file a report with the city council in accordance with this subsection shall be deemed ~~approval by~~a recommendation by the planning commission to grant the application without conditions.

C. City Council Stage~~Public Hearing~~:

1. Adoption of Zone Change by Ordinance: All changes to zoning district boundaries shall be made by ordinance

2.~~1.~~ ~~Notice Of Hearing~~First Reading: ~~Subsequent to~~After ~~receipt of~~the city council receives the planning commission's recommendation on the application, a date shall be set for a first reading of the proposed ordinance to change the zoning district boundaries. ~~public hearing of the matter before the city council. The public hearing shall be conducted in accordance with publication and notification requirements contained in subsection B1 of this section.~~At the first reading, the city council shall consider the planning commission's recommendation, and shall hear comments from the applicant (if any) and any persons interested in the proposed zone change. The first reading shall comply with Section 2.110(1) of the City Charter. At the first reading, the city council may approve or reject the planning commission's recommendation in whole or in part. The city council may also take any of the following actions:

a. Approve the proposed zoning ordinance;
b. Place conditions on the proposed zoning ordinance;
c. Modify the proposed zoning ordinance; or
d. Disapprove the proposed zoning ordinance in its entirety.

3.~~2.~~ ~~Consideration~~Second Reading: ~~The city council shall at such public hearing on the application, consider the planning commission's recommendation, and hear all evidence offered by the applicant and parties in interest.~~

a. If the city council approves any or all of the proposed zoning ordinance at the first reading, with or without modifications or conditions, the proposed ordinance shall

proceed to a second reading. The second reading shall be a public hearing that satisfies the requirements of NRS 278.260, including notice requirements, and that complies with Section 2.110(2) of the City Charter.

~~3. Approve Or Deny Petition:~~

b. ~~a.~~At the conclusion of the ~~public hearing~~second reading, ~~or within fifteen (15) calendar days thereafter,~~ the city council shall either approve the zoning ordinance as approved at the first reading (subject to minor technical or nonsubstantive revisions, or the removal of conditions that have been satisfied) or shall disapprove the zoning ordinance in its entirety. ~~deny the petition. If the city council's decision is to approve an amendment to change zoning district boundaries, without conditions, or subject to conditions agreed to by the petitioner, the amendment shall be adopted by resolution of the city council and shall become effective as provided by law. Such resolution shall contain a description and map of the property approved for zone change and any conditions agreed to by the petitioner.~~

~~b. If the city council's decision is to approve an amendment to change, repeal or supplement regulations contained within the city zoning ordinance, the amendment shall be adopted by passage of an ordinance by the city council, pursuant to sections 2.100 and 2.110 of the city charter.~~

c. The failure of an applicant for a zoning change to satisfy conditions imposed by the city council in the proposed ordinance adopted at the first reading may be grounds for disapproval at the second reading

d. The city council may enact a zoning ordinance even if the applicant has not satisfied conditions in the proposed zoning ordinance adopted at the first reading. Alternatively, the city council may table the second reading to the next meeting, and to subsequent meetings thereafter, for the purpose of allowing an applicant to satisfy conditions.

e. The city council may rescind approval of any zoning change for any reason permitted by law, to include the failure of an applicant to satisfy conditions bearing a substantial relationship to the future use of the land, so long as no person has acquired a vested right in reliance on the zoning change; provided, any such rescission shall promote the public health, safety, morals or general welfare, and shall encourage the most appropriate use of the land.

4. Limitation on Reconsideration ~~O~~of Denied ~~Amendment~~Application: In the event ~~that~~ an application ~~for an amendment~~to change district boundaries is denied by the city council, ~~or is withdrawn after the planning commission hearing, the planning commission or~~the city council shall not reconsider ~~the~~an application ~~or any other application for the same amendment of this chapter as it applies to~~to change the same ~~property described in the original application~~district boundaries, or any part thereof, within a period of one (1) year from the date of the city council's decision.~~such denial action. (Ord. 477, 12-17-1996)~~

3-2-21-B: AMENDMENTS TO ZONING REGULATIONS:

The city council may amend Title 3, Chapter 2 of the Elko City Code (hereinafter the "zoning regulations" by ordinance, subject to the provisions of this section. The amendment may be initiated

by the city council or the planning commission on the motion of either body. If the proposed amendment is initiated by the planning commission, the planning commission shall file a written report with the city council containing a description of the proposed amendment and the reasons therefor. If the proposed amendment is initiated by the city council, the proposed amendment shall be presented to the planning commission, which shall then provide a recommendation to the city council. The city council may thereafter amend the zoning regulations by ordinance in accordance with Sections 2.090, 2.100 and 2.110 of the Elko City Charter.

Section 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict

Section 3: If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, the invalidity, unenforceability or provision shall not affect any remaining provisions of this ordinance.

Section 4: Upon adoption, the City Clerk of the City of Elko is hereby directed to have this ordinance published by title only, together with the Councilman voting for or against its passage in a newspaper of general circulation within the time established by law, for at least one publication.

Section 5: This Ordinance shall be effective upon the publication mentioned in Section 4

PASSED AND ADOPTED this __ day of _____, 2021 by the following vote of the Elko City Council.

AYES:

NAYS: None

ABSENT: None

ABSTAIN: None

APPROVED this _____ day of _____, 2021.

CITY OF ELKO

BY:_____
REECE KEENER, Mayor

ATTEST:

_____
KELLY WOOLDRIDGE, City Clerk

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action on Zoning Ordinance Amendment 2-21, Ordinance No. 860, an amendment to the City Zoning Ordinance, specifically Sections 3-2-2 (Definitions), 3-2-5 (Residential Zoning Districts), 3-2-6 (RB Residential Business District), and 3-5-4 (Uses Permitted and Minimum Standards), and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **May 4, 2021**

3. Agenda Category: ***NEW BUSINESS, PUBLIC HEARINGS***

4. Time Required: **20 Minutes**

5. Background Information: **At the April 6, 2021 meeting, Planning Commission took action to initiate an amendment to the City Zoning Ordinance to address accessory building regulations in the sections listed above.**

6. Business Impact Statement: **Not Required**

7. Supplemental Agenda Information: **Ordinance 860**

8. Recommended Motion: **Forward a recommendation to City Council to adopt an ordinance which approves Zoning Ordinance Amendment 2-21 of the Elko City Code specifically Sections 3-2-2 (Definitions), 3-2-5 (Residential Zoning Districts), 3-2-6 (RB Residential Business District), and 3-5-4 (Uses Permitted and Minimum Standards).**

9. Findings:

10. Prepared By: **Michele Rambo, AICP, Development Manager**

11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/4
Do not use pencil or red pen, they do not reproduce

Title: Zoning Ordinance Amendment 2-21, Ordinance No. 860
Applicant(s): City of Elko
Site Location: N/A
Current Zoning: N/A Date Received: N/A Date Public Notice: N/A
COMMENT: This is to amend Sections 3-2-2, 32-5, 3-2-16, + 3-5-4 of the Elko City Code

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/24/21
Recommend forward to C.C. for adoption

SAW
Initial

City Manager: Date: 4/23/21
No comments/concerns.

Initial

ORDINANCE 860

AN ORDINANCE AMENDING ELKO CITY CODE TITLE 3, SECTIONS 3-2-2 (DEFINITIONS), 3-2-5 (RESIDENTIAL ZONING DISTRICTS), 3-2-6 (RB RESIDENTIAL BUSINESS DISTRICT), AND 3-5-4 (USES PERMITTED AND MINIMUM STANDARDS) TO ADDRESS CHANGES TO THE REGULATIONS REGARDING ACCESSORY BUILDINGS IN RESIDENTIAL ZONING DISTRICTS AND OTHER MINOR CLARIFICATIONS

WHEREAS, recent issues with accessory buildings, specifically sheds, have necessitated the review and update of the Sections mentioned above; and

WHEREAS, the Planning Commission initiated Ordinance 860 at its meeting of April 6, 2021; and

WHEREAS, the City Council, at its April 13, 2021 regular meeting, initiated the amendment of corresponding provisions in Title 2 of the Elko City Code..

NOW THEREFORE, IT BE ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKO, NEVADA.

Section 1: Title 3, Chapter 2, Section 2 of the Elko City Code is hereby amended to read as follows:

3-2-2: DEFINITIONS:

The following terms, whenever used in this chapter, shall have the meanings indicated. Words used in the present tense include the future tense; words in the singular include the plural, and vice versa. The word "shall" is always mandatory, and the word "may" is permissive. The word "persons" includes an association, firm, partnership or corporation, as well as an individual. The word "occupied" and the word "used" shall be considered as meaning the same as the words "intended", "arranged" or "designed to be used or occupied". The word "dwelling" includes the word "residence"; the word "lot" includes the words "plot" or "parcel".

ABUTTING: The condition of two (2) adjoining properties having a common property line or boundary, including cases where two (2) or more lots adjoin only at a corner or corners, but not including cases where adjoining lots are separated by a street or alley.

ADJOINING, ADJACENT: The condition of being near to or close to, but not necessarily having a common dividing line; e.g., two (2) properties which are separated only by a street or alley shall be considered as adjoining one another.

ADULT BOOKSTORE: For the purposes of this chapter, means an establishment which merchandises printed material or movies which are intended to appeal to the prurient interests of the reader.

ADULT CARE FACILITY: An establishment that furnishes food, shelter, assistance and limited supervision only during the day to unrelated person(s) with an intellectual disability or with a physical disability who is aged or infirm.

ADULT MOTION PICTURE THEATER: A motion picture theater whose program, during the time of its operation, contains one or more motion pictures which are rated "X" by the Code Rating Administration

of the Motion Picture Association of America or are not rated, and whose program is intended to appeal to the prurient interests of the viewer.

AGRICULTURE: The practice of cultivating the soil, producing crops and raising livestock.

ALLEY:
A. A street or highway within a City block set apart for public use, vehicular traffic and local convenience;
B. A street or highway which primarily furnishes access to the rear entrances of abutting property.

AWNING: An architectural projection that provides weather protection, identity or decoration and is partially or wholly supported by the building to which it is attached. An awning is comprised of a lightweight frame structure over which a covering is attached.

BUILDING: ~~Any structure having a roof supported by columns or walls, and used for the support, shelter or enclosure of persons, animals, personal property or chattels of any kind.~~ **Any structure, regardless of whether it is affixed to real property that is used or intended for supporting or sheltering any human use or occupancy.**

BUILDING, ACCESSORY: A **detached** subordinate building on the same lot with a principal building or use, the use of which is customarily accessory and incidental to the main use of the principal building or use. ~~When attached to the principal building, such accessory building shall be considered a part of the principal building for purposes of setback and yard regulations.~~

BUILDING, ACCESSORY, NON-PERMANENT: A detached building that is not attached to or set upon a permanent foundation, such as a greenhouse, garden shed, storage shed, or other building designed to store garden tools, bicycles, holiday decorations, or similar items and that is usually purchased at a retail establishment.

BUILDING, ACCESSORY, PERMANENT: A detached building attached to or set upon a permanent foundation and/or connected to utilities, such as a greenhouse, pole barn, garage, or other building designed to store household items and/or vehicles and that is usually built on-site.

BUILDING HEIGHT: The vertical distance measured from grade to the highest point of the building.

BUILDING INSPECTOR: Qualified employee of the City of Elko Building Department delegated to do building inspections and enforce applicable portions of this Code.

BUILDING, PRINCIPAL: A building, or where the context so indicates, a group of buildings, within which is conducted the principal use of the lot on which the building is situated.

CAMPING: The use of real property owned or occupied by another person for living accommodation purposes outside of a structure that is affixed to the ground, to include uses such as, without limitation, the following when done in connection with outdoor living: a) overnight sleeping activities or making preparations to sleep overnight outside of a motor vehicle, recreational vehicle or trailer, such as the laying down of bedding on the ground for the purpose of sleeping overnight; b) storing personal belongings outside of a structure in connection with overnight sleeping activities; c) cooking outdoors or making a fire for the purpose of cooking food outdoors as approved by the City; or d) using any tent,

shelter or other mobile structure for sleeping overnight. "Camping" does not include using a motor vehicle, recreational vehicle or trailer as long-term shelter, for living accommodation purposes or for the purpose of storage of belongings.

CARPORT: An accessory building, attached or detached, having two (2) or more open sides, used by occupants of the principal building for automobile shelter or storage.

CHILDCARE CENTER: A childcare facility providing care for more than twelve (12) children.

CHILDCARE FACILITY: An establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis during the day or overnight, to five (5) or more children under eighteen (18) years of age, if compensation is received for the care of any of those children and provided that such establishment is licensed by the State and operated in accordance with State requirements.

CHILDCARE FAMILY HOME: A childcare facility providing care for not less than five (5) children and not more than six (6) children.

CHILDCARE GROUP HOME: A childcare facility providing care for not less than seven (7) children and not more than twelve (12) children.

CLINIC: A building, or part thereof, in which ambulatory patients are provided diagnostic, therapeutic or preventative medical, surgical, dental or optical treatment by a group of doctors acting jointly, but not providing for overnight residence of patients.

COMMON OPEN SPACE: A parcel or parcels of land, or an area of water, or a combination of land and water, within the site designated for planned unit residential development which is designed and intended for the use or enjoyment of the residents of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of such residents.

CONDITIONAL USE: A use permitted in zoning district regulations subject to a finding by the Planning Commission that all special conditions and requirements imposed shall be met.

CONSTRUCTION YARD: An area on, abutting or adjacent to a major construction or demolition site used on a temporary basis for the parking and storage of equipment used in the project, and the storage and preparation of materials and other items used in the project, including construction offices and shops.

CONVALESCENT HOME: See definition of nursing or convalescent home.

DRIVE-IN ESTABLISHMENT: A business enterprise, activity or use of land consisting of sales or services rendered to patrons who normally receive the products or utilize the services while in motor vehicles upon the premises, including, but not limited to, gas service stations, drive-in restaurants, drive- in laundry and dry cleaning pick up, and drive-in bank.

DWELLING, MULTIPLE-FAMILY: A building, or portion thereof, containing two (2) or more dwelling units.

DWELLING, SINGLE-FAMILY: A building containing only one (1) dwelling unit and which is constructed under the Building Code in accordance with title 2 of this Code, and which also includes manufactured homes developed to specific standards in accordance with subsection 3-2-3Q of this chapter.

DWELLING UNIT (DU): A single unit providing complete, independent living facilities for one (1) family, including permanent provisions for living, sleeping, eating, cooking and sanitation.

ERECTED: Built, constructed, altered, reconstructed or moved upon; any physical operations on a premises which are required for construction, excavation, fill, drainage and the like, shall be considered a part of erection.

ESSENTIAL SERVICE: The erection, construction, alteration or maintenance by a public utility of underground, surface or overhead gas, electrical, steam, water transmission or distribution systems, communication, supply or disposal systems, poles, wires, mains, drains, sewers, pipes, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith reasonably necessary for the furnishing of adequate service by such public utilities for the public health, safety or general welfare, not including buildings, electric substations and transmission towers.

EXCAVATION: Any breaking of ground, except common gardening and grounds care, and general agriculture.

FAMILY: An individual living alone; or, one (1) or more persons living together who are related by blood, marriage or other legal bond, and their dependents; or, a group of not more than five (5) unrelated persons living together as a single household in a dwelling unit. A "family" includes its domestic employees.

FULL FRONTAGE: All lot lines of any lot, parcel or tract of property adjacent to a road, street, alley or right-of-way, to include lots, parcels or tracts containing multiple borders or edges, such as corner lots.

GARAGE: A covered or enclosed outbuilding or part of a building designed for housing motor vehicles, boats, or trailers.

GAS SERVICE STATION: An establishment retailing motor fuels and lubricants directly to the public on the premises, including incidental sale of minor auto accessories and services.

GRADE: The average elevation of the finished ground surface adjacent to the exterior walls of a building or base of a structure.

HALFWAY HOUSE FOR RECOVERING ALCOHOL AND DRUG ABUSERS: A residence that provides housing and a living environment for recovering alcohol and drug abusers and is operated to facilitate their reintegration into the community, but does not provide treatment for alcohol or drug abuse. The term "halfway house for recovering alcohol and drug abusers" does not include a facility for transitional living for released offenders.

HOME OCCUPATION: A business customarily carried on in a business establishment that is permitted to be carried out in a residence as long as the use as a business is incidental to the primary residential

purpose and the residential character of the property is not changed. Every person permitted to carry on a home occupation shall obtain an annual business license.

HOSPITAL: A building, or group of buildings, in which sick or injured persons are given medical or surgical treatment, examination or care, including overnight residence, together with related facilities, e.g., laboratories, training facilities, staff residences, outpatient department and similar facilities which are an integral part of the principal use.

HOTEL, MOTEL: A building, or group of buildings, used primarily for accommodation of transient guests in rooms or suites.

HUMANITARIAN CAMPGROUND: A designated area that serves a humanitarian purpose by allowing people, with permission from the owner or occupier of the land, to engage in camping and that may or may not have toilets, showers and/or other amenities for campers to use.

HUMANITARIAN PURPOSE: A use which is not for profit and which is designed to allow people who are homeless or who cannot occupy their homes due to lack of utilities or other causes, to engage in life sustaining activities, such as eating and sleeping.

JUNKYARD: An open area where waste, used or secondhand materials are bought and sold, exchanged, stored, baled, packed, disassembled or handled, including, but not limited to, scrap iron and other metals, paper, rags, rubber tires, and bottles. A "junkyard" includes automobile wrecking yards and any area of more than one hundred twenty (120) square feet for storage, keeping or abandonment of junk, but does not include uses confined entirely within enclosed buildings.

LANDOWNER: The legal or beneficial owner or owners of all the land proposed to be included in the planned unit development. The holder of an option or contract of purchase, and lessee having a remaining term of not less than thirty (30) years, or another person having an enforceable proprietary interest in such land, is a "landowner" for the purposes of this chapter.

LICENSED HOUSE OF PROSTITUTION: A licensed commercial enterprise maintained for the convenience and resort of persons desiring lawful sexual intercourse.

LOADING SPACE: An off street space provided for the temporary parking of a vehicle while loading or unloading merchandise or materials, situated on the same lot with a building and entirely outside the right-of-way of any public street or alley.

LOT: A distinct part or parcel of land separated from other pieces or parcels by description, identified as such in a subdivision or on a record survey map, or described as such by metes and bounds, with the intention or for the purposes of sale, lease, or separate use, or for the purpose of building, including the following types of lots:
Corner Lot: A lot abutting two (2) or more intersecting streets.
Double Frontage Lot: A lot abutting two (2) parallel or approximately parallel streets.
Interior Lot: A lot having only one (1) side abutting a street.
Key Lot: An interior lot, one (1) side of which is contiguous to the rear line of a corner lot.

LOT AREA: The total area of a lot within the lot lines as measured on a horizontal plane.

LOT COVERAGE: That part or percentage of a lot occupied by principal and/or accessory buildings.

LOT DEPTH: The shortest distance, measured on a line parallel to the axis of the lot, between points on the front and rear lot lines.

LOT LINE: A line bounding a lot, including the following types of lot lines:
Front Lot Line: The lot line coinciding with the street line; or, in the case of a corner lot, the shorter of two (2) lot lines coinciding with street lines; or, in the case of a double frontage lot, both lot lines coinciding with street lines.
Rear Lot Line: The lot line opposite and farthest from the front lot line; for a pointed or irregular lot, the rear lot line shall be an imaginary line, parallel to and farthest from the front lot line, not less than ten feet (10') long and wholly within the lot.
Side Lot Line: Any lot line other than a front or rear lot line; in the case of a corner lot, the lot line abutting the side street is designated as the exterior side lot line and all other side lot lines are designated as interior side lot lines.

LOT OF RECORD: A lot which is part of a subdivision plat or other type of map used for the purpose of dividing or merging parcels of land, recorded in the Elko County Recorder's Office prior to the effective date hereof; or, a lot or parcel described by metes and bounds and having its description recorded in the Elko County Recorder's Office prior to the effective date hereof.

LOT WIDTH:
A. In case of a rectangular lot or a lot abutting on the outside of a street curve, the distance between side lot lines measured parallel to the street or to the street chord and measured on the street chord.
B. In the case of a lot abutting on the inside of a street curve, the distance between the side lot lines measured parallel to the street or the street chord at the rear line of the dwelling, or, where there is no dwelling, thirty feet (30') behind the minimum front setback line.

MAJOR ELECTRICAL TRANSMISSION LINE: Any electrical line carrying an electrical load of sixty six (66) kV and above.

METALLURGY: The reduction or extraction of metals from their ores by mechanical, physical or chemical methods, including their refinement and preparation for use as raw materials.

MINING: The extraction from the earth of gravel, stone, sand, and metallic or nonmetallic ore, and the crushing, washing, grading, storage and loading for transportation thereof.

MIXED USE: Combination of different uses including residential use within a shared building.

MOBILE HOME: As defined in the City of Elko mobile home ordinance 1 .

MOBILE HOME LOT: As defined in the City of Elko mobile home ordinance 2 .

MOBILE HOME PARK: As defined in the City of Elko mobile home ordinance 3 .

NONCONFORMING USE: Uses existing at the time of adoption of this chapter, but not in accordance with the provisions and requirements contained herein.

NURSING OR CONVALESCENT HOME: An establishment providing bed care, or chronic or convalescent care, for one (1) or more persons, exclusive of relatives, who by reason of illness or physical infirmity are unable to properly care for themselves; excluding, however, institutions for the care of alcoholics, drug addicts, and persons with mental or communicable diseases.

OFF STREET: Land which is not within the right-of-way of any street or alley.

PARK AND RIDE FACILITIES: Parking lots which are intended to allow commuters to park their vehicles and then transfer to some form of mass transportation, such as buses, trains or carpools.

PARKING LOT: An area other than for single-family dwellings used for the off street parking of more than two (2) motor vehicles, including parking spaces, access and maneuvering aisles.

PARKING SPACE: A fully accessible space adequate for the temporary parking of permitted vehicles, situated entirely outside the right-of-way of any public street.

PARTIES IN INTEREST: A term identifying the owners of property within three hundred feet (300') of specific property.

PERSON: Except where otherwise indicated, a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization, or a government, governmental agency or political subdivision of a government.

PLANNED SHOPPING CENTER: A business development not divided by a street and characterized by an organized and concentrated grouping of retail and service outlets served by a common circulation and parking system.

PLANNED UNIT DEVELOPMENT: An area of land controlled by a landowner, which is to be developed as a single entity for a number of dwelling units, the plans for which do not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the regulations established in any one (1) residential district created, from time to time, under the provisions of this chapter.

PLANNING COMMISSION: The City of Elko Planning Commission.

PRIVATE GARAGES: An enclosed accessory building, attached or detached, used for storage of motor vehicles used by occupants of the principal building and providing no public shop or services in connection therewith.

PUBLIC UTILITY: Any person, firm, corporation, municipality or Municipal board duly authorized under State or Municipal regulations, to furnish to the public electricity, gas, steam, communications, water, drainage, flood control, irrigation, garbage or trash disposal, or sewage disposal.

RAILROAD USE: The occupation and use of land, buildings and structures for purposes directly connected with rail transportation of articles, goods and passengers, including such facilities as tracks, sidings, signal devices and structures, shops and yards for maintenance and storage of rail machinery, loading platforms, passenger and freight terminals, but excluding warehouses, stockyards, grain

elevators, truck freight terminals and yards, and similar facilities, which are maintained and operated by the owning railroad company or by a lessee for purposes auxiliary to rail transportation.

RECREATION AND SOCIAL CLUBS: Buildings and grounds used for and operated by membership of fraternal organizations primarily not for profit, including golf clubs, tennis clubs, riding clubs, American Legion halls, Elks Club, and similar facilities.

RECREATIONAL VEHICLE: A vehicle self-propelled or otherwise, designated to temporarily shelter person en-route on a recreational or vacation trip. "Recreational vehicle" includes truck mounted campers, and self-propelled travel vans.

RECREATIONAL VEHICLE PARK: A lot, parcel or tract of land, having as its principal use the rental of space of temporary short term, transient occupancy by two (2) or more recreational vehicles, including any accessory buildings, structures and uses customarily incidental thereto.

REPAIR GARAGE: An establishment where these services may be allowed: normal activities of a gas service station, general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision services such as body, frame or fender straightening and repair; general painting and undercoating of automobiles; high speed washing; auto, boat or trailer rental; and general sales of auto parts or accessories.

RESIDENTIAL ESTABLISHMENT: A halfway house for recovering alcohol and drug abusers or a residential facility for groups.

RESIDENTIAL FACILITY FOR GROUPS: An establishment that furnishes food, shelter, assistance and limited supervision to unrelated person(s) with an intellectual disability or with a physical disability who is aged or infirm. The term does not include an establishment which provides care only during the day, a natural person who provides care for no more than two (2) persons in his own home, a natural person who provides care for one (1) or more persons related to him within the third degree of consanguinity or affinity, a halfway house for recovering alcohol and drug abusers, or a facility funded by a division or program of the Nevada Department of Health and Human Services.

RETAIL USE: A commercial establishment selling goods at retail; however, a home occupation shall not be considered as a retail use.

ROADWAY CLASSIFICATION: All roadway classifications shall be determined in accordance with the Transportation Component of the City of Elko Master Plan.

ROOMING HOUSE: A building other than a hotel or motel where, for compensation and by prearrangement for definite periods of time, lodging is provided for individuals who are not members of a resident family.

SCHOOL: A public or private building, or group of buildings, used for purposes of primary or secondary education, meeting all requirements of the Compulsory Education Laws of the State of Nevada.

SCREEN WALL: A masonry wall or opaque fence so constructed as to prevent the view of enclosed activities or uses from without.

SERVANT QUARTERS: An attached or detached building, or part thereof, housing persons employed on the premises.

SERVICE CLUBS: Buildings and grounds used for and operated by nonprofit organizations whose membership is open to any resident of the community, including YMCA, YWCA, Boy Scouts, Girl Scouts, Boys Club and any similar organizations having as its primary objective the improvement of the district, neighborhood or community and its social welfare.

SETBACK: The minimum horizontal distance between a lot line and the nearest point of a building, structure or use, as the context indicates, located on a lot. "Setback" shall not include eaves of the building.

STORY: That portion of a building included between the surface of any floor and the surface of the next floor above, or if there is no floor above, the space between the topmost floor and the roof having a usable floor area at least one-half ($^1/_2$) that of the floor area of the floor immediately below. A basement shall be considered a story when fifty percent (50%) or more of its cubic content is above grade.

STREET: A dedicated public way which affords the principal means of vehicular access to abutting property.

STREET LINE: A line demarcating the limits of a street right- of-way.

STREET, PRIVATE: A nondedicated, privately owned right-of-way or limited public way that affords the principal means of emergency and limited vehicular access and connection from the public street system to properties created through the division or subdivision of land.

STREET, PUBLIC: A dedicated public right-of-way that is part of the public street system and which affords the principal means of emergency and general vehicular access to abutting property.

STRUCTURE: ~~**Any constructed or erected material or combination of materials, the use of which requires location on the ground or attachment to something located on the ground and which requires a permit as defined and regulated by the Building Code, including buildings, stadiums, radio towers, sheds, storage bins, fences and signs.**~~ **Something built or constructed that may be placed upon or affixed to real property for a purpose, such as storage or protection from the elements.**
The term "structure" includes, without limitation, a building, a non-permanentized mobile home or an unattached shed placed on skids.

SWIMMING POOL: Any constructed pool, used for swimming, bathing or wading, whether above or below the ground surface and regardless of depth or water surface area.

TEMPORARY USE OR BUILDING: A use or structure permitted under the terms of this chapter to exist for a limited period of time.

TOWNHOUSE OR ROW HOUSE: A single-dwelling unit arranged side by side with other such units in a multi-family dwelling, completely independent of all other such units in the building by reason of separation therefrom by unpierced party walls.

USABLE FLOOR AREA: A term used in computing parking requirements, meaning the aggregate area of a building measured to the interior area, similarly measured, or each additional story which is connected to the first story by a fixed stairway, escalator, ramp or elevator, and the floor area of all accessory buildings, measured similarly, but excluding that part of any floor area which is occupied by heating, ventilating, or other permanently installed equipment required for operation of the building, and by unenclosed porches, light shafts, public corridors and public toilets. For uses not enclosed within a building, the area for sales, display or service shall be measured to determine equivalent usable floor area.

USE: The purpose for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied. The principal use is the main use to which the premises are devoted and the main purpose for which the premises exist. An accessory use is a use subordinate to the principal use on a lot and used for purposes clearly incidental to those of the principal use.

VARIANCE: A modification of the literal enforcement of the technical provisions and requirements of this chapter. The applicant for variance shall present adequate evidence to support the granting of a variance in accordance with section 3-2-22 of this chapter.

YARD: An open space located between any portion of a building and the nearest lot line, or the nearest adjacent building or group of buildings, as the context indicates, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.

YARD, FRONT: A yard extending across the full width of the lot and having a depth equal to the horizontal distance between the nearest point of the principal building and the front lot line, measured at right angles to the front lot line.

YARD, NONREQUIRED: Any yard with dimensions exceeding those required herein.

YARD, REAR: A yard extending across the full width of a lot and having a depth equal to the horizontal distance between the nearest point of the principal building and the rear lot line, measured at right angles to the rear lot line.

YARD, REQUIRED: A yard having the minimum dimensions required herein.

YARD, SIDE: A yard extending from the front lot line to the rear lot line between a side lot line and the principal building, and having a width equal to the horizontal distance between the nearest point of the principal building and the side lot line, measured at right angles to the side lot line. (Ord. 818, 4-25-2017)

Notes
1. See Section 3-5-3 of this title.
2. See Section 3-5-3 of this title.
3. See section 3-5-3 of this title.

Section 2: Title 3, Chapter 2, Section 5 of the Elko City Code is hereby amended to read as follows:

3-2-5: RESIDENTIAL ZONING DISTRICTS:

A. RS Residential Suburban District:

1. Intent: The purpose of the RS zoning district is to provide and preserve low density, single-family residential living areas that are semirural or agricultural in character and transitional in relationship to more urbanized residential areas of higher density, to allow for the sheltering of large domestic or farm animals on a lot or parcel in conjunction with an established residential use and to preclude the encroachment of land use activities that may be incompatible with the character of the semirural residential environment.

2. Principal Uses Permitted:

   Electrical power substations, sewer lift stations and water pumping stations wherein service to district residents requires location within the district.

   One single-family dwelling of a permanent character in a permanent location with each dwelling unit on its own parcel of land and provided all area and setback requirements are met.

   Publicly owned and operated parks and recreation areas and centers.

   Sheltering of farm animals:

   a. The keeping of domestic horses, donkeys, llamas and alpacas under the ownership of the resident occupant of the lot or parcel shall be considered as a permitted principal use; provided, that any combination of such animals on any one lot shall be limited to one animal for the first thirty thousand (30,000) square feet of lot area. One additional large animal may be maintained for each additional twenty thousand (20,000) square feet of lot area contained in the same lot.

   b. The keeping of domestic sheep and goats under the ownership of the resident occupant of the lot or parcel shall be considered as a permitted principal use; provided, that any combination of such animals on any one lot shall be limited to one animal for the first fifteen thousand (15,000) square feet of lot area. One additional small animal may be maintained for each additional ten thousand (10,000) square feet of lot area contained in the same lot.

   c. The keeping of such farm animals shall conform to all other provisions of law governing same, and no animal, nor any pen, stable, barn or corral shall be kept or maintained within one hundred feet (100') of any principal dwelling (other than that occupied by the owner of such domestic animal), any public building, park, school, hospital, or any other public place; or within eighty feet (80') of the front property line of the lot on which the animals are maintained, or within twenty five feet (25') of the side street of a corner lot. There shall be no killing or dressing of any such animals for commercial purposes.

   d. Poultry, rabbits or domestic fowl raised for food, education, scientific or furbearing purposes; provided, not more than twelve (12) of any one or combination of such animals and fowl may be maintained on one lot.

e. The keeping of such domestic animals or fowl shall conform to all other provisions of law governing same, and no fowl or animals, nor any pen or coop, shall be kept or maintained within fifty feet (50') of any window or door of any residence, dwelling or other building used for human habitation (other than that occupied by the owner of such domestic animals or fowl), or within sixty feet (60') of the front property line of the lot on which the animals are maintained, or within twenty five feet (25') of the side street on a corner lot.

3. Conditional Uses Permitted: Any of the following uses may be permitted as principal uses upon approval of a conditional use permit in accordance with the provisions of this chapter and those set forth in section 3-2-18 of this chapter regarding conditional use permits. In reviewing conditional use permit applications, the Planning Commission shall ensure that adequate light and air, ingress and egress, and compatibility with other uses in the neighborhood are maintained.

   Churches, church facility complexes and places of religious worship.

   Public buildings providing cultural, educational, administrative and fire and police service to residents of the district.

4. Accessory Uses Permitted: Accessory buildings, structures and uses customarily incidental to a permitted use may be permitted, except as otherwise provided in this chapter.

   Accessory buildings.

   Childcare family home.

   ~~**Garden house, tool house, remade; outdoor swimming pool and similar home recreational facilities; provided that such facilities are used solely by occupants of the premises and their guest.**~~

   Guesthouse or servants' quarters **provided they conform to all yard requirements applicable to the principal building.**

   Home occupations in accordance with other provisions in this chapter.

   Private garage or carport.

   Ramada, outdoor swimming pool, or similar home recreational facility so long as the facility is used solely by the occupants of the premises and their guests.

   Storage parking for recreational vehicles owned by the occupant; provided, that it is located in a garage, carport, rear or interior side yard, is not provided water or sewer service connections, and is not used for living purposes.

   Storage parking of boat, utility trailer, horse trailer and similar equipment owned by the occupant; provided, that such equipment is located in a garage, carport, rear or interior side yard.

5. Property Development Standards:

   a. Development standards shall ~~adhere to subsection G of this section~~ **comply with Section 3-2-5(G)**.

   b. Subdivisions within the RS District which are essentially independent and self-contained and, which are characterized by lots which are no less than one-half ($^1/_2$) acre in size, may utilize rural road standards in accordance with specifications contained within section 3-3-11 of this title.

6. Property Development Standards ~~F~~**f**or Accessory Buildings:

   All accessory buildings, both permanent and non-permanent, shall comply with Section 3-2-5(H).

   ~~**a. Building Height: The maximum height of an accessory building shall not exceed forty feet (40') or the current City airport master plan, whichever is more restrictive.**~~

   ~~**b. Building Setbacks: Any detached accessory building that is erected shall conform to front and side yard setback requirements. A mimimum rear setback of ten feet)10') shall be required.**~~

B. R1 Single-Family Residential District:

1. Intent: The purpose of the R1 zoning district is to provide and preserve low density residential living areas reserved predominantly for the development of single-family dwellings and to preclude the encroachment of land use activities that may be detrimental or injurious to the character or quality of the low density residential environment.

2. Principal Uses Permitted:

   Electrical power substations, sewer lift stations and water pumping stations wherein service to district residents requires location within the district.

   One single-family dwelling of a permanent character in a permanent location with each dwelling unit on its own parcel of land, and provided all area and setback requirements are met.

   Publicly owned and operated parks and recreation areas and centers.

3. Conditional Uses Permitted: Any of the following uses may be permitted as principal uses upon approval of a conditional use permit in accordance with provisions of this chapter and those set forth in section 3-2-18 of this chapter regarding conditional use permits. In reviewing conditional use permit applications, the planning commission shall ensure that adequate light and air, ingress and egress, and compatibility with other uses in the neighborhood are maintained.

   Churches, church facility complexes and places of religious worship.

Public buildings providing cultural, educational, administrative and fire and police service to residents of the district.

4. Accessory Uses Permitted: Accessory buildings, structures and uses customarily incidental to a permitted use may be permitted, except as otherwise provided in this chapter.

   Accessory buildings.

   Childcare family home.

   ~~**Garden house, tool house, remade; outdoor swimming pool and similar home recreational facilities; provided that such facilities are used solely by occupants of the premises and their guest.**~~

   Guesthouse or servants' quarters **provided they conform to all yard requirements applicable to the principal building.**

   Home occupations in accordance with other provisions in this chapter.

   Private garage or carport.

   Ramada, outdoor swimming pool, or similar home recreational facility so long as the facility is used solely by the occupants of the premises and their guests.

   Storage parking for recreational vehicles owned by the occupant; provided, that it is located in a garage, carport, rear or interior side yard, is not provided water or sewer service connections, and is not used for living purposes.

   Storage parking of boat, utility trailer, horse trailer and similar equipment owned by the occupant; provided, that such equipment is located in a garage, carport, rear or interior side yard.

5. Property Development Standards: Development standards shall ~~**adhere to subsection G of this section**~~ **comply with Section 3-2-5(G).**

6. Property Development Standards ~~**F**~~**f**or Accessory Buildings:

   All accessory buildings, both permanent and non-permanent, shall comply with Section 3-2-5(H).

   ~~**a. Building Height: The maximum building height shall not exceed twenty five feet (25'), or requirements contained within the city airport master plan, whichever is the most restrictive.**~~

   ~~**b. Building Setbacks: Any detached accessory building that is erected shall conform to front and side yard setback requirements. A minimum rear yard setback of ten feet**~~

~~(10') shall be required, which may be reduced to zero feet (0') if the rear lot line abuts a public alley.~~

~~c. Building Area: A detached accessory building shall be limited to a maximum area of one thousand (1,000) square feet or ten percent (10%) of the lot area, whichever is greater, but not to exceed one thousand two hundred (1,200) square feet.~~

C. R2 Two-Family Residential District:

1. Intent: The purpose of the R2 zoning district is to provide and preserve medium density residential living areas appropriate primarily for single-family and two-family dwellings, limited multiple residential uses and neighborhood service type uses where appropriate, and to preclude uses that would detract or be detrimental to the character of the medium density residential environment.

2. Principal Uses Permitted:

   Electrical power substations, sewer lift stations and water pumping stations wherein service to district residents requires location within the district.

   One single-family dwelling or one two-family dwelling (duplex) of a permanent character in a permanent location with each dwelling unit on its own parcel of land, and provided all area and setback requirements are met.

   Publicly owned and operated parks and recreation areas and centers.

3. Conditional Uses Permitted: Any of the following uses may be permitted as principal uses upon approval of a conditional use permit in accordance with provisions of this chapter and those set forth in section 3-2-18 of this chapter. In reviewing conditional use permit applications, the planning commission shall ensure that adequate light and air, ingress and egress, and compatibility with other uses in the neighborhood are maintained.

   Childcare group home.

   Churches, church facility complexes and places of religious worship.

   One three-family dwelling (triplex) or one four- family dwelling (fourplex) of a permanent character in a permanent location with each dwelling unit on its own parcel of land and contingent upon any dwelling unit more than a two-family dwelling providing an additional two thousand two hundred (2,200) square feet of lot area per unit, and provided setback requirements are met.

   Public buildings providing cultural, educational, administrative and fire and police service to residents of the district.

   Recreational, social and service clubs.

4. Accessory Uses Permitted: Accessory buildings, structures and uses customarily incidental to a permitted use may be permitted, except as otherwise provided in this chapter.

   Accessory buildings. Lots with single-family dwelling units may have both permanent and non-permanent accessory buildings. Lots with multiple-family dwelling units may only have permanent accessory buildings.

   Childcare family home.

   ~~**Garden house, tool house, remade; outdoor swimming pool and similar home recreational facilities; provided that such facilities are used solely by occupants of the premises and their guest.**~~

   Guesthouse or servants' quarters **provided they conform to all yard requirements applicable to the principal building.**

   Home occupations in accordance with other provisions in this chapter.

   Private garage or carport.

   Ramada, outdoor swimming pool, or similar home recreational facility so long as the facility is used solely by the occupants of the premises and their guests.

   Storage parking for recreational vehicles owned by the occupant; provided, that it is located in a garage, carport, rear or interior side yard, is not provided water or sewer service connections, and is not used for living purposes.

   Storage parking of boat, utility trailer, horse trailer and similar equipment owned by the occupant; provided, that such equipment is located in a garage, carport, rear or interior side yard.

5. Property Development Standards: Development standards shall ~~**adhere to subsection G of this section**~~ **comply with Section 3-2-5(G).**

6. Property Development Standards ~~**F**~~**f**or Accessory Buildings:

   All accessory buildings, both permanent and non-permanent, shall comply with Section 3-2-5(H).

   ~~**a. Building Height: The maximum building height shall not exceed twenty five feet (25'), or requirements contained within the city airport master plan, whichever is the most restrictive.**~~

   ~~**b. Building Setbacks: Any detached accessory building that is erected shall conform to front and side yard setback requirements. A minimum rear yard setback of ten feet (10') shall be required, which may be reduced to zero feet (0') if the rear lot line abuts a public alley.**~~

~~c. Building Area: A detached accessory building shall be limited to a maximum area of one thousand (1,000) square feet or ten percent (10%) of the lot area, whichever is greater, but not to exceed one thousand two hundred (1,200) square feet.~~

D. R3 Multiple-Family Residential District:

1. Intent: The purpose of the R3 zoning district is to provide and preserve residential areas appropriate primarily for multiple-family residential uses of higher density usually along or in close proximity to arterial roadway corridors, and to preclude uses that would detract or be detrimental to the character or function of the high density residential environment.

2. Principal Uses Permitted:

   Electrical power substations, sewer lift stations and water pumping stations wherein service to district residents requires location within the district.

   Publicly owned and operated parks and recreation areas and centers.

3. Conditional Uses Permitted: Any of the following uses may be permitted as principal uses upon approval of a conditional use permit in accordance with provisions of this chapter and those set forth in section 3-2-18 of this chapter. In reviewing conditional use permit applications, the planning commission shall ensure that adequate light and air, ingress and egress, and compatibility with other uses in the neighborhood are maintained.

   Childcare center.

   Churches, church facility complexes and places of religious worship.

   Multiple-family residential developments which contain five (5) or more units located on a single lot or parcel; townhouse or row house developments.

   Public buildings providing cultural, educational, administrative, and fire and police service to residents of the district.

   Recreation, social and service clubs.

4. **Accessory Uses Permitted: Accessory buildings, structures, and uses customarily incidental to a permitted use shall be permitted, except as otherwise provided in this chapter.**

5. Property Development Standards: Development standards shall ~~**adhere to subsections E6 and G of this section**~~ **comply with Sections 3-2-5 (E)(6) and 3-2-5(G)**.

~~**5**~~**6**. Property Development Standards ~~**F**~~**f**or Accessory Buildings: Development standards for accessory buildings within the R3 district shall ~~**be the same standards established by the district**~~ **comply with Section 3-2-5(H)**.

~~**6**~~**7**. General Regulations:

a. The outdoor storage of goods or materials shall be prohibited.

c. The minimum site area necessary to establish an R3 zoning district shall be one acre.

E. R Single-Family ~~A~~and Multiple-Family Residential District:

1. Intent: The purpose of the R zoning district is to provide for a mixture and diversity of housing types for both single- family and multi-family residential development where such development is desirable, and limited institutional, office and neighborhood service type uses where appropriate, and to preclude land uses that would be detrimental to a mixed and varied residential environment.

2. Principal Uses Permitted:

   Adult care facility which serves ten (10) or fewer.

   Electric power substations, sewer lift stations, and water pump stations wherein service to district residents requires location within the district.

   Multiple-family residential units, including a duplex, triplex, or a fourplex located on a single lot or parcel, provided area and setback requirements are met.

   One single-family dwelling of a permanent character in a permanent location with each dwelling unit on its own parcel of land and provided all area and setback requirements are met.

   Publicly owned and operated parks and recreation areas and centers.

   Residential facility for groups of ten (10) or fewer.

3. Conditional Uses Permitted: Any of the following uses may be permitted as principal uses upon approval of a conditional use permit in accordance with provisions of this chapter and those set forth in section 3-2-18 of this chapter regarding conditional use permits. In reviewing conditional use permit applications, the planning commission shall ensure that adequate light and air, ingress and egress, and compatibility with other uses in the neighborhood are maintained.

   Adult care facility which serves eleven (11) or more.

   Childcare center; childcare group home.

   Churches, church facility complexes and places of religious worship.

   Halfway house for recovering alcohol and drug abusers.

   Healing arts, healthcare facilities, but not including animal hospital.

Multiple-family residential developments which contain five (5) or more units located on a single lot or parcel; townhouse or row house developments.

Public buildings providing cultural, educational, administrative, and fire and police service to residents of the district.

Recreation, social and service clubs.

Residential facility for groups of eleven (11) or more.

Teaching of creative arts.

4. Accessory Uses Permitted: Accessory buildings, structures and uses customarily incidental to a permitted use, except as otherwise provided in this chapter.

Accessory buildings. Lots with single-family dwelling units may have both permanent and non-permanent accessory buildings. Lots with multiple-family dwelling units may only have permanent accessory buildings.

Childcare family home.

~~**Garden house, tool house, remade; outdoor swimming pool and similar home recreational facilities; provided that such facilities are used solely by occupants of the premises and their guest.**~~

Guesthouse or servants' quarters **provided they conform to all yard requirements applicable to the principal building.**

Home occupations in accordance with other provisions in this chapter.

Private garage or carport.

Ramada, outdoor swimming pool, or similar home recreational facility so long as the facility is used solely by the occupants of the premises and their guests.

Rooms in the principal building for roomers, not exceeding two (2) such persons per dwelling unit; provided, that adequate additional off street parking space shall be provided.

Storage parking for recreational vehicles owned by the occupant; provided, that it is located in a garage, carport, rear or interior side yard, is not provided water or sewer service connections, and is not used for living purposes.

Storage parking of boat, utility trailer, horse trailer and similar equipment owned by the occupant; provided, that such equipment is located in a garage, carport, rear or interior side yard.

5. Property Development Standards: Development standards shall ~~**adhere to subsection G of this section**~~ **comply with Section 3-2-5(G).**

6. Additional Property Development Standards ~~F~~for Multiple- Family Residential Developments:

   a. Minimum Distance ~~B~~between Buildings ~~O~~on ~~T~~the Same Lot: The minimum distance between the opposing exterior walls of detached buildings, or parts of attached or semiattached buildings, on the same lot, shall be:

      (1) If both walls are front walls, or contain main entrances or living room windows: Thirty feet (30');

      (2) If one wall is a front wall, or contains a main entrance or living room windows, and one wall is a side or rear wall containing no doors or windows: Twenty four feet (24');

      (3) If both walls are side or rear walls containing windows or secondary entrances: Twenty four feet (24');

      (4) If one wall is a side or rear wall containing windows or secondary entrances and one wall contains no doors or windows: Eighteen feet (18');

      (5) If neither wall contains windows or doors: Ten feet (10').

   b. Additional Placement Regulations For Multi-Family Dwellings: If the front of a building, or part thereof, faces on an interior side or rear lot line, the building, or that part thereof, shall be set back from such lot line not less than twenty feet (20').

   c. Separation Of Semidetached Dwellings Or Row Houses: When, for purposes of sale or separate ownership, a two-family or multi-family dwelling and the land in and upon which such dwellings are situated, is to be subdivided into separate lots having one dwelling unit per lot, such lots shall be exempt from all interior side yard requirements.

7. Property Development Standards ~~F~~for Accessory Buildings:

   All accessory buildings, both permanent and non-permanent, shall comply with Section 3-2-5(H).

   ~~**a. Building Height: The maximum building height shall not exceed twenty five feet (25'), or requirements contained within the city airport master plan, whichever is the most restrictive.**~~

   ~~**b. Building Setbacks: Any detached accessory building that is erected shall conform to front and side yard setback requirements. A minimum rear yard setback of ten feet (10') shall be required, which may be reduced to zero feet (0') if the rear lot line abuts a public alley.**~~

~~c. Building Area: A detached accessory building shall be limited to a maximum area of one thousand (1,000) square feet or ten percent (10%) of the lot area, whichever is greater, but not to exceed one thousand two hundred (1,200) square feet.~~

8. Exceptions:

   a. Lots Of Record: On each existing lot of record, the side yards shall have a width of not less than five and one-half feet ($5^1/_2$'), and a front yard of not less than twelve feet (12') for single-family dwelling units.

   b. Detached Guesthouse ~~O~~or Servants' Quarters: Detached guesthouses and servants' quarters are permitted in any district; provided, however, that they shall conform to all yard requirements applicable to the principal building.

F. RO Residential Office District:

1. Intent: The purpose of the RO zoning district is to establish a residential zone that is transitional in character and location to more intense commercial districts, and to promote a mixed pattern of compatible development consisting primarily of residential uses and a blend of professional office, limited service and retail activities that are recognized as low traffic generators. The RO district is intended to protect the integrity of established residential neighborhoods from noise and excessive levels of traffic while at the same time afford the opportunity for compatible office, service and retail development in a mixed use setting.

2. Principal Uses Permitted:

   Electric power substations, sewer lift stations, and water pump stations wherein service to district residents requires location within the district.

   Multiple-family residential units, including a duplex, triplex, or a fourplex located on a single lot or parcel, provided area and setback requirements are met.

   One single-family dwelling of a permanent character in a permanent location with each dwelling unit on its own parcel of land and provided all area and setback requirements are met.

   Publicly owned and operated parks and recreation areas and centers.

3. Conditional Uses Permitted:

   Art studios.

   Barber and beauty shops.

   Florists.

Multiple-family residential developments which contain five (5) or more units located on a single lot or parcel; townhouse, condominium or attached housing developments.

Offices, medical and professional.

Photographic studios.

Restaurants, limited in scale and hours of operation, such as ice cream parlors, sandwich and beverage shops, delicatessens.

Retail and service establishments, limited in scale and hours of operation, such as boutiques, gift shops and similar uses.

Schools for music, dance, teaching and creative arts.

Similar uses determined to be functionally comparable to conditional permitted uses in this zone.

4. **Accessory Uses Permitted: Accessory buildings, structures, and uses customarily incidental to a permitted use, except as otherwise provided in this chapter.**

   Accessory buildings. Lots with single-family dwelling units may have both permanent and non-permanent accessory buildings. Lots with multiple-family dwelling units may only have permanent accessory buildings.

   Childcare family home.

   Guesthouse or servants' quarters provided they conform to all yard requirements applicable to the principal building.

   Home occupations in accordance with other provisions in this chapter.

   Private garage or carport.

   Ramada, outdoor swimming pool, or similar home recreational facility so long as the facility is used solely by the occupants of the premises and their guests.

   Storage parking for recreational vehicles owned by the occupant; provided, that it is located in a garage, carport, rear or interior side yard, is not provided water or sewer service connections, and is not used for living purposes.

   Storage parking of boat, utility trailer, horse trailer and similar equipment owned by the occupant; provided, that such equipment is located in a garage, carport, rear or interior side yard.

5. Property Development Standards: Development standards shall ~~**adhere to subsection G of this section**~~ **comply with Section 3-2-5(G)**.

~~5~~6. Property Development Standards ~~F~~for Accessory Buildings: Development standards for accessory buildings ~~within the RO district shall be the same standards established for the R district~~ shall comply with Section 3-2-5(H).

~~6~~7. General Regulations:

a. The outdoor storage of goods or materials shall be prohibited.

b. Warehousing or the indoor storage of goods or materials beyond that normally incidental to permitted uses shall be prohibited.

c. One wall mounted, nonilluminated sign, for each lot of record not to exceed twelve (12) square feet in area or one freestanding, nonilluminated sign for each lot of record not to exceed six feet (6') in height and twelve (12) square feet in area may be permitted for any approved conditional use. The planning commission may modify such regulations as part of the conditional use permit procedure.

G. Residential Zoning Districts Area, Setback, ~~A~~and Height Schedule ~~F~~for Principal ~~and Certain Accessory Use~~ Buildings:

1. Table ~~O~~of Area Requirements:

~~AREA REQUIREMENTS~~

	Minimum Requirements				**Building Setbacks**				**Maximum Height Requirements**
Zoning Districts	Corner Lot Area	Lot Area	Lot Width	Lot Depth	Front Yard	Rear Yard	Interior Side Yard	Exterior Side Yard	Building Height
RS		15,000 sq. ft.	80 ft.	180 ft.	25 ft.	20 ft.	10 ft.	20 ft.	35 ft. [1]
R1	6,500 sq. ft.	6,000 sq. ft.	60 ft.	100 ft.	15 ft.[6]	20 ft.	$5^1/_2$ ft.	15 ft.[5]	35 ft.[1]
R2	6,500 sq. ft.	6,000 sq. ft.	60 ft.	100 ft.	15 ft.[6]	20 ft.	7 ft.	15 ft.[5]	35 ft.[1]
R3		12,000 sq. ft.[4]	80 ft.	100 ft.	20 ft.	20 ft.	10 ft.	15 ft.[5]	45 ft.[1]
R	6,500 sq. ft.	6,000 sq. ft.[4]	60 ft.	100 ft.	15 ft.[6]	20 ft.	10 ft.[2,3]	15 ft.[5]	45 ft.[1]
RO		6,000 sq. ft.[4]	60 ft.	100 ft.	15 ft.[6]	20 ft.	10 ft.[2,3]	~~12~~15 ft.	45 ft.[1]

Notes:

1. Height limitations contained within the current ~~c~~City of Elko ~~a~~Airport ~~m~~Master ~~p~~Plan shall supersede the height restrictions indicated in the above table where more restrictive.
2. For single-family dwellings, interior side yard setbacks shall be 5 ½ feet.
3. For multi-family dwellings, interior side yard setbacks shall be 7 feet.

4. For three- and four-family dwellings on the same lot, a minimum of 2,200 square feet of lot area is required for each dwelling unit.
5. For residences in existence at the time of enactment hereof (November 25, 2003), exterior side yard setbacks shall be 12 feet.
6. Garages, whether attached or detached, and carports shall be set back 20 feet from the front lot line; provided, that for any garage in existence prior to March 26, 2013, the front yard setback shall be 15 feet. ~~The term "garage", as used in this chapter, means a covered or enclosed outbuilding (or part of a building) for housing motor vehicles, boats or trailers.~~

2. Residential Lots ~~O~~of Record:

a. A single lot or parcel of land of record in the office of the county recorder as of the effective date of the city subdivision ordinance (December 9, 1975), and which does not meet minimum requirements for lot area, lot width or lot depth shall be considered a buildable lot for one single-family dwelling, provided all other requirements of this chapter are satisfied.

b. For existing platted subdivisions characterized by twenty five foot (25') wide lots and situated within a residential zoning district, any lot or parcel reconfiguration or resubdivision shall adhere to a minimum lot area of five thousand (5,000) square feet.

H. Residential Zoning Districts Area, Setback, and Height Schedule for Accessory Buildings:

1. Requirements for Non-Permanent Accessory Buildings:

	Minimum Requirements		Building Setbacks[3]				Maximum Height Requirements
Zoning Districts	Maximum Cumulative Square Feet of All Acc. Buildings[2]	Minimum Separation from Other Buildings	Front Yard	Rear Yard	Interior Side Yard	Exterior Side Yard	Building Height
RS		5 ft.	25 ft.	5 ft.[4]	5 ft.	5 ft.	35 ft.[1]
R1	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	35 ft.[1]
R2	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	35 ft.[1]
R	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	45 ft.[1]
RO	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	45 ft.[1]
RB	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	25 ft.[1]

Notes:

1. Height limitations contained within the current City of Elko Airport Master Plan shall supersede the height restrictions indicated in the above table where more restrictive.
2. Includes both permanent and non-permanent accessory buildings.
3. No buildings or structures shall be located within any easement.
4. Setback can be reduced to 0 feet if the rear lot line abuts a public alley.
5. Garages and/or carports shall be setback 20 feet from the front or exterior side property line.

2. Requirements for Permanent Accessory Buildings:

	Minimum Requirements		Building Setbacks[3]				Maximum Height Requirements
Zoning Districts	Maximum Cumulative Square Feet of All Acc. Buildings[2]	Minimum Separation from Other Buildings	Front Yard	Rear Yard	Interior Side Yard	Exterior Side Yard	Building Height
RS		5 ft.	25 ft.	5 ft.[4]	5 ft.	5 ft.	35 ft.[1]
R1	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	35 ft.[1]
R2	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	35 ft.[1]
R3	10% of lot size or 1,200 sq. ft.	5 ft.	20 ft.	5 ft.[4]	5 ft.	5 ft.	45 ft.[1]
R	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	45 ft.[1]
RO	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	45 ft.[1]
RB	10% of lot size or 1,200 sq. ft.	5 ft.	15 ft.[5]	5 ft.[4]	5 ft.	5 ft.	25 ft.[1]

Notes:

1. Height limitations contained within the current City of Elko Airport Master Plan shall supersede the height restrictions indicated in the above table where more restrictive.
2. Includes both permanent and non-permanent accessory buildings.
3. No buildings or structures shall be located within any easement.
4. Setback can be reduced to 0 feet if the rear lot line abuts a public alley.
5. Garages and/or carports shall be setback 20 feet from the front or exterior side property line.

Section 3: Title 3, Chapter 2, Section 6 of the Elko City Code is hereby amended to read as follows:

3-2-6: RB RESIDENTIAL BUSINESS DISTRICT:

A. Intent: This zoning district is intended to allow conversion of residential structures located along arterial and collector roads in areas of transition to an appropriate mix of residential, light retail and service commercial uses that provides good transitions with nearby residential uses and neighborhoods. This zone allows existing residential uses to remain and be improved, while also allowing low scale, low intensity commercial and business operations to be developed as part of infill projects. The district is intended to protect established residential neighborhoods from the type of land use associated with high levels of noise, illumination and traffic that could be detrimental to the characteristics of the residential neighborhood.

B. District Boundary: The initial district boundary includes properties within the 5th Street corridor that are located between Pine Street and Walnut Street along the northeast side of 5th Street, and between Pine Street and Willow Street along the southwest side of 5th Street, with at least one property line abutting the right-of-way of 5th Street, and the following lots that are not

abutting the 5th Street right-of- way: Lots 21 & 22 of Block 98 and Lots 15 & 16 of Block 66, as shown on the Map of the First Addition to the Town of Elko, recorded as File No. 5, Elko County records.

1. The district boundaries may be amended in accordance with section 3-2-21 of this chapter.

2. The maximum distance allowed from the east or west side of 5th Street right-of-way to the district boundary is one hundred twenty five feet (125').

C. Principal Uses Permitted:

1. The following residential uses are permitted:

Multiple-family residential units, including a duplex, triplex, or a fourplex located on a single lot or parcel, provided all area and setback requirements are met.

One single-family dwelling of a permanent character in a permanent location on its own parcel of land, provided all area and setback requirements are met.

2. The following commercial uses are permitted:

Art galleries and studios.

Bakeries.

Banks, financial institutions, not including short term lending businesses such as title loans or payday lending.

Barber and beauty shops.

Bicycle repair.

Bookstores.

Childcare centers.

Coffee shops.

Corner stores.

Florists.

Healing art, healthcare facilities, including medical and dental offices.

Laboratories: medical, dental, optical.

Laundry or dry cleaning pick up outlets.

Lodges, fraternal organizations, recreation, social and service clubs.

Offices, to include the following uses and activities: government, business and professional, including accountants, architects, collection agencies, chiropractors, employment agencies, engineers, health services, insurance agencies, law offices, real estate, stenographic services, title insurance firms.

Pharmacies when operated in conjunction with, and within the same building as, a medical clinic.

Photographic studios.

Schools for music, dance, teaching and creative arts.

Trade schools.

Travel agencies.

Uses determined to be functionally comparable to principal permitted uses in this zone.

D. Conditional Uses Permitted:

1. The following uses are permitted with a conditional use permit:

Churches, church facility complexes and places of religious worship.

Convalescent hospitals, sanitariums, nursing homes, homes for the aged.

Funeral homes and mortuaries.

Mixed uses within structures containing one or more residential dwelling units in which a significant portion of the space within the structure includes one or more principal commercial permitted uses.

Multiple-family residential developments which contain five (5) or more units located on a single lot or parcel; townhouse, condominium or attached housing developments.

Restaurants, sandwich and beverage shops, delicatessens.

Theaters, indoor.

Uses determined to be functionally comparable to conditional permitted uses in this zone.

E. Accessory Uses Permitted:

1. Accessory buildings, structures and uses customarily incidental to a permitted use, except as otherwise provided **for** in this chapter, are permitted for the following uses:

Accessory buildings. Lots with single-family dwelling units may have both permanent and non-permanent accessory buildings. Lots with multiple-family dwelling units may only have permanent accessory buildings.

Childcare family home.

~~**Garden house, tool house, remade; outdoor swimming pool and similar home recreational facilities; provided that such facilities are used solely by occupants of the premises and their guest.**~~

Guesthouse or servants' quarters **provided they conform to all yard requirements applicable to the principal building.**

Home occupations in accordance with other provisions in this chapter.

Private garage or carport.

Ramada, outdoor swimming pool, or similar home recreational facility so long as the facility is used solely by the occupants of the premises and their guests.

Rooms in the principal building for roomers, not exceeding two (2) such persons per dwelling unit; provided, that adequate additional off street parking space shall be provided.

Storage parking for recreational vehicles owned by the occupant; provided, that it is located in a garage, carport, rear or interior side yard, is not provided water or sewer service connections, and is not used for living purposes.

Storage parking of boat, utility trailer, horse trailer and similar equipment owned by the occupant; provided, that such equipment is located in a garage, carport, rear or interior side yard.

F. Property Development Standards:

1. Lot Area:

   a. Commercial Uses: The lot area shall be of sufficient size to provide for the building, off-street parking and landscaping.

   b. Residential Uses: Residential uses less than five (5) units and not attached to a commercial use shall provide the minimum lot area required in the R District.

2. Lot Width:

   a. Commercial Uses: No requirement.

   b. Residential Uses: Residential buildings less than five (5) residential units and which do not contain a commercial use shall provide the minimum lot width required in the R District.

3. Front, Rear, Interior Side ~~A~~and Exterior Side Yard for New Development Or Expansion:

    a. Commercial Uses: Zero feet (0').

    b. Residential Uses:

        (1) New development of residential buildings containing less than five (5) residential units and which do not contain a commercial use shall conform to the yard standards required in the R District.

        (2) Expansion upon existing principal permitted use shall have the following setbacks:

            (A) Front: Five feet (5').

            (B) Rear: Five feet (5').

            (C) Interior side: Three feet (3').

            (D) Exterior side: Five feet (5').

4. Building Height: Building height shall not exceed forty five feet (45'), or requirements contained within the City Airport Master Plan, whichever is the most restrictive.

5. Landscaping:

    a. Commercial uses shall provide landscaping as described in subsection 3-2-10B2a of this chapter.

    b. Landscaping within an adjacent right-of-way may be used to satisfy landscaping requirements, so long as it is maintained by the property owner.

    c. With approval from the Planning Department, a lighted art element incorporated into the business signage may be allowed in lieu of required landscaping, but only if the developed property has physical conditions that prevent the property owner from installing the landscaping that would otherwise be required.

6. Signage:

    a. Free standing signage shall be limited to a maximum height of six feet (6').

    b. Signs shall be made of materials that enhance the appearance of the neighborhood, such as wood, stone, non- reflective or patinated metals, or similar materials.

    c. Illuminated signs located adjacent to any residential area shall be shielded to direct light downward and away from adjacent properties such that there is no spillover light and shall be controlled by a rheostat or functional equivalent to avoid excessive glare visible from residential properties.

d. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

e. Wall signs shall not be allowed on any facade on the interior side that faces property zoned R - Single Family and Multiple Family Residential or that has a residential principal permitted use.

7. Off-Street Parking:

a. Commercial and residential uses must comply with applicable provisions contained in section 3-2-17 of this chapter.

b. On-street parking adjacent to commercial property may be used to satisfy off-street parking requirements.

G. Property Development Standards for Accessory Buildings:

All accessory buildings, both permanent and non-permanent, shall comply with Section 3-2-5(H).

~~**a. Building Height: The maximum building height shall not exceed twenty five feet (25'), or requirements contained within the city airport master plan, whichever is the most restrictive.**~~

~~**b. Building Setbacks: Any detached accessory building that is erected shall conform to front and side yard setback requirements. A minimum rear yard setback of five feet (5') shall be required, which may be reduced to zero feet (0') if the rear lot line abuts a public alley.**~~

~~**c. Building Area: A detached accessory building shall be limited to a maximum area of one thousand (1,000) square feet or ten percent (10%) of the lot area, whichever is greater, but not to exceed one thousand two hundred (1,200) square feet.**~~

H. Building Development Standards ~~F~~for Commercial Uses: Buildings used for commercial purposes shall meet the following standards:

1. Low-intensity building and site lighting shall be installed in such a manner as to minimize light spillover and glare into residential neighborhoods.

2. Commercial storefront exterior materials and colors shall harmonize with the surrounding properties. Exterior treatments characterized by an overly bright, shiny, reflective or artificial appearance shall not be permitted.

3. The appearance of handicap ramps and entries shall be integrated into the design of the property they serve, minimize visual impact from the public right-of-way, provide the most direct building access possible, and comply with the Americans ~~W~~with Disabilities Act.

4. The visual impact of parking and mechanical equipment from the public right-of-way shall be minimized through the use of screening or landscaping.

5. Awnings shall not obscure the character-defining features of the building.

I. General Regulations ~~F~~f~~f~~or Commercial Uses: Commercial uses shall be subject to the following restrictions:

1. The outdoor storage of goods or materials is prohibited.

2. Warehousing or the indoor storage of goods or materials beyond that normally incidental to permitted uses is prohibited.

3. The appearance of handicap ramps and entries shall be integrated into the design of the property they serve, minimize impact on the public right-of-way, provide the most direct building access as possible, and comply with the Americans ~~W~~w~~w~~ith Disabilities Act.

4. Commercial buildings and associated structures and other improvements shall be designed in a manner that minimizes conflicts between pedestrian traffic and vehicles.

5. Commercial building facades shall be designed and constructed in a manner that avoids large expanses of undifferentiated space.

6. Commercial uses shall not have adverse impacts on the use and enjoyment of adjacent residential properties.

Section 4: Title 3, Chapter 5, Section 4 of the Elko City Code is hereby amended to read as follows:

3-5-4: USES PERMITTED AND MINIMUM STANDARDS:

A. Uses Permitted:

Accessory buildings.

Community recreation buildings and facilities, laundry, car wash, boat or storage facilities serving the mobile home or RV park; provided, however, that the architectural design of all non-mobile home structures shall be subject to approval by the planning commission prior to issuance of any conditional use permit, and all applicable state and city requirements.

Management offices (RMH-1 and RMH-4 only). One or more single-family dwellings or mobile homes used exclusively for office and living quarters by the operator or manager of the mobile home or RV park. The architectural design of a non-mobile home office shall be subject to approval by the planning commission prior to the issuance of any conditional use permit.

Mobile homes, manufactured homes, RVs. One mobile home, manufactured home or RV per space, including doublewide or expandable mobile home units.

Residential uses.

B. Standards ~~F~~for Development; Requirement:

1. Minimum Overall Area:

    a. RMH-1: Two (2) acres;

    b. RMH-2: One acre;

    c. RMH-3: One acre;

    d. RMH-4: Two (2) acres.

2. Maximum Building Height: The height of any building shall in no manner be such as to create a nuisance or safety hazard for air traffic into and about the Elko Municipal Airport.

3. Minimum Net Space Area: Minimum net space area for each mobile home, RV or manufactured home:

    a. RMH-1: Four thousand (4,000) square feet;

    b. RMH-2: Six thousand (6,000) square feet;

    c. RMH-3: Six thousand (6,000) square feet;

    d. RMH-4: One thousand two hundred sixty five (1,265) square feet.

4. Minimum Frontage Width: Minimum mobile home, RV or manufactured home space frontage width:

    a. RMH-1: Forty feet (40');

    b. RMH-2: Sixty feet (60');

    c. RMH-3: Sixty feet (60');

    d. RMH-4: Twenty three feet (23').

5. Minimum Setback, Public Street: Minimum setback of any building, mobile home, RV or manufactured home from a bordering public street line is fifteen feet (15'), except that garages and carports shall be set back twenty feet (20') from the front lot line.

6. Minimum Setback, Internal Street: Minimum setback from internal street in mobile home parks is twelve feet (12'), except that garages and carports shall be set back twenty feet (20') from the front lot line.

7. Minimum Side, Rear Setbacks, Separations: Minimum side and rear setbacks or separation for each mobile home, RV or manufactured home lot, where such side and rear does not border on public or internal streets:

   a. RMH-1: Five feet (5') from space side line; seven and one- half feet ($7^1/_2$') from space rear line.

   b. RMH-2: Five and one-half feet ($5^1/_2$') from side property line; ten feet (10') from rear property line.

   c. RMH-3: Five and one-half feet ($5^1/_2$') from side property line; ten feet (10') from rear property line.

   d. RMH-4: Ten feet (10') separation between units or structures.

8. **Property Development Standards for Accessory Buildings:**

   a. Building Height: The maximum building height for all accessory buildings shall not exceed twenty-five (25) feet, or the building height requirements contained within the City of Elko Airport Master Plan, whichever is the most restrictive.

   b. Building Setbacks:

      1. Permanent and Non-Permanent Accessory Buildings:

         a. Front: Fifteen (15) feet except that garages and carports shall be set back twenty (20) feet from any street from which they are accessed.

         b. Rear: Five (5) feet

         c. Interior Side: Five (5) feet

         d. Exterior Side: Five (5) feet except that garages and carports shall be set back twenty (20) feet from any street from which they are accessed.

   c. Building Area: The cumulative square feet of all accessory buildings shall be limited to a maximum area of ten percent (10%) of the lot area or one thousand, two hundred (1,200) square feet.

   d. Detached guesthouses are permitted with the exception of RMH 3 and RMH 4 districts, so long as they conform to all yard requirements applicable to the principal building.

   e. The minimum distance between all buildings on the parcel shall be five (5) feet.

   f. No building or structure shall be located on any easement.

9. Expandable Sections, Separation Requirements: Expandable sections of a mobile home, manufactured home or RV shall be considered a part of the mobile home, RV or manufactured home proper for setback or separation requirements.

~~9~~10. Underground Utilities: All utilities shall be placed underground.

~~10~~11. Other Statutes ~~A~~and Regulations Applicable: Where applicable, all site preparation, construction, mobile home, RV and manufactured home installation, utility connections and occupancy shall be in accordance with the requirements of the Nevada statutes and regulations of this code and ordinances.

C. Transportation Systems Requirements:

1. Access; Alignment ~~A~~and Grading of Streets: All mobile home, RV or manufactured home spaces shall be provided with safe and convenient vehicular access from public or private streets. Alignment and grading of streets shall be properly adapted to topography.

2. Street Surfacing: All streets shall have a paved all weather surface approved by the city engineer and drained in a manner approved by the city engineer.

3. Paved Curb Section: All streets shall have a paved, back of curb to back of curb section not less than:

   a. RMH-1: Forty two feet (42') in width;

   b. RMH-2: Fifty feet (50') in width;

   c. RMH-3: Fifty feet (50') in width;

   d. RMH-4: Twenty feet (20') in width with off street parking.

4. Curb/Gutter Sections; Sidewalk: All streets shall require curb/gutter sections on both sides and have a five foot (5') paved sidewalk:

   a. RMH-1: At least one side of street;

   b. RMH-2: Both sides of street;

   c. RMH-3: Both sides of street;

   d. RMH-4: On both sides of dedicated public streets.

5. Off Street Parking: A minimum of two (2) off street parking spaces per mobile home or manufactured home space shall be required. One per RV site shall be required on streets twenty feet (20') in width.

6. Emergency Vehicular Access: In all districts, adequate provisions for emergency vehicular access during inclement weather shall be provided on internal streets.

7. Storm Drainage: Adequate storm drainage shall be provided and shall be reviewed by the city engineer for his approval.

8. Signs ~~A~~a and Lighting: All streets shall be properly signed and lighted. Lighting systems to be approved by the city engineer.

D. General Requirements:

1. Paving: All vehicle parking spaces and driveways shall be paved with a hard surface material.

2. Recreation ~~O~~o r Open Space Area: The planning commission shall require mobile home and RV parks to have at least one recreation area or usable open space accessible from all spaces, the cumulative size of which recreation area shall not be less than:

   a. A minimum of two hundred (200) square feet of outdoor recreation area per mobile home space or fifty (50) square feet per RV site shall be provided, exclusive of required yards or setback area. The minimum size for any single outdoor recreation area shall be two thousand four hundred (2,400) square feet in mobile home parks and one thousand two hundred (1,200) square feet in RV parks, with a minimum width of twenty four feet (24').

   b. Parks catering to family use shall provide larger recreation areas and adequate playgrounds. A minimum of three hundred (300) square feet of outdoor recreation area per mobile home space or seventy five (75) square feet per RV site shall be provided, exclusive of required yards or setback areas. All recreation areas and landscaping plans shall be approved prior to issuance of a conditional use permit by the planning commission.

3. Pedestrianways: When included as additions to required sidewalks, pedestrianways shall have a minimum width of four feet (4') and shall be surfaced in concrete or hard surface material.

4. Water Supply: An accessible, adequate, safe and potable supply of water for domestic purposes shall be provided to each mobile home or manufactured home space or lot and RV site, and proof of the same shall be provided to the planning commission before approval of any conditional use permit. Such supply of water shall be in conformance with any applicable Nevada statutes and regulations and city ordinances, and furnished through a pipe distribution system directly connected to the city water service.

5. Sewerage Facilities: An adequate and safe sewer system shall be provided to each mobile home, manufactured home or RV space, lot or site. Such sewer system shall be in conformance with any applicable Nevada statutes and regulations and city ordinances, and directly connected through a pipe collection system to the city sewer facilities.

6. Refuse ~~A~~a nd Garbage: Storage, collection and disposal of garbage and refuse shall be in conformance with any applicable Nevada statutes and regulations and city ordinances. In mobile home and RV parks, one metal dumpster with lid per twenty five (25) spaces located

no more than one hundred fifty feet (150') from mobile home lots and RV sites shall be required.

7. Fuel Supply ~~A~~and Storage: Installation of liquid petroleum gas or fuel oil containers within a mobile home or manufactured home subdivision or mobile home or RV park shall be in conformance with any applicable Nevada statutes and city ordinances.

8. Fire Protection: In every mobile home or RV park, mobile home subdivision or manufactured home subdivision, fire hydrants shall be installed as may be required by the fire department.

9. Tie Downs: Tie downs for all mobile homes shall be provided in accordance with state fire marshal regulations and applicable Nevada statutes and regulations. Tie downs shall not be required on RV sites.

10. Skirting:

    a. Skirting shall be of durable materials suitable for exterior exposures, and be installed in accordance with the manufacturer's installation instructions. It shall be secured, as necessary, to assure stability, to minimize vibrations, to minimize susceptibility to wind damage and to compensate for possible frost heave.

    b. If combustion air for heat producing appliance is taken from within the under floor area, ventilation shall be adequate to assure proper operation of the appliances.

    c. Use of combustible material (such as hay, straw, cardboard, etc.) shall be prohibited.

11. Fences: Mobile home and RV parks adjacent to residential zones shall be fenced with a solid view screening decorative fence not more than six feet (6') nor less than three feet (3') in height around the entire boundary of the park. However, no such fence over three feet (3') in height shall be allowed within thirty feet (30') of the intersection of any two (2) streets. The design and construction materials of said fence shall be subject to approval by the planning commission prior to the issuance of any conditional use permit. (RMH-1 and RMH-4 districts only.)

12. Floodplain: No mobile home or manufactured home subdivision, mobile home or RV park which is proposed to be constructed below the 100-year floodplain elevation of the Humboldt River and other drainage as defined by the U.S. army corps of engineers, shall be approved by the planning commission.

13. Grading, Erosion Protections; Avoidance Of Visual Scars On Hillsides; Protection Of Underground Utility Lines: Whenever it may be necessary for the developer of a mobile home, manufactured home subdivision, mobile home or RV park to cut and fill, or to alter the contours of the land in any way, he shall comply with the provisions of the city building code.

14. Management: The holder of a valid city business license for the operation of a mobile home or RV park shall be responsible for compliance with this chapter and other applicable ordinances (e.g., section 5-1-1 of this code) or Nevada statutes and regulations. He/she shall

maintain the mobile home or RV park in a neat, orderly and sanitary condition at all times. (RMH-1 and RMH-4 districts only.)

15. Signs: All signs for the mobile home or RV park, including the height, size, location, appearance and illumination of such signs, shall be subject to approval of the planning commission prior to the issuance of any conditional use permit. No signs will be installed without approval of said sign by the planning commission. The applicant shall submit a plan showing the locations of such signs and architectural elevations showing the heights, shapes, size and manner of illumination of the signs. (RMH-1 and RMH-4 districts only.)

16. Landscaping: Exposed ground surfaces in the park shall be covered with stone, screening or other materials or protected with a vegetative growth in a well-kept manner, either of which is capable of preventing soil erosion and eliminating objectionable dust. (RMH-1 and RMH-4 districts only.)

17. Plan: A copy of the final approved plan for the mobile home or RV park shall be conspicuously posted on the site near office, or as designated by the fire department and the license holder shall be responsible for maintenance of the park as per the final approved plan thereafter. (RMH-1 and RMH-4 districts only.)

18. Space Numbering: All spaces shall be numbered, and such number shall be posted in a place clearly visible and conspicuous from the internal street. (RMH-1 and RMH-4 districts only.)

19. Electrical: All mobile home parks shall comply with the national electrical code, article 550, part B. All recreational vehicle parks shall comply with the national electrical code, article 551, part B.

20. Public Telephone: At least one public telephone is required for a mobile home or RV park.

21. Dump Stations: Permitted dump stations in RV parks shall meet all applicable Nevada statutes and regulations and city requirements.

22. Fuel Cylinders: No extra or empty fuel cylinders are allowed to be stored on RV sites. Fuel cylinders being used shall comply with the latest edition of NFPA 58 (standard for the storage and handling of liqu~~i~~efied petroleum gases).

23. Other Requirements: Where this code does not address a particular problem, the use of the latest edition of NFPA 501A (manufactured home installations, sites and communities), 501D (recreational vehicle parks and campgrounds) and 501C (fire safety criteria for recreational vehicles) will be used. Wherever 501A, 501D and 501C and this code differ, the requirements which are more stringent shall apply.

E. Additional Requirements ~~F~~for Mobile Home Subdivision Utilizing Small Lots ~~A~~and Homeowners' Associations ~~I~~in RMH-2 ~~O~~or RMH-3 Residential Mobile Home Districts: All mobile home subdivisions shall be subject to issuance of a conditional use permit, following review by the planning commission. Applications and procedures shall be in the manner provided by this title. Additionally, such subdivisions shall comply with Nevada Revised Statutes chapter 278, the subdivision and other applicable ordinances and regulations of the city and any health

regulations of the state health department. In addition to all applicable requirements set forth in subsections A through D of this section, all mobile home subdivisions shall be required to conform to the following standards:

1. Development Requirements: Development requirements shall be as follows:

    a. Minimum overall area: Two (2) acres;

    b. Minimum lot area: Four thousand five hundred (4,500) square feet;

    c. Minimum lot width: Forty five feet (45');

    d. Minimum setback from bordering public street line: Fifteen feet (15'), except that garages and carports shall be set back twenty feet (20') from the front lot line;

    e. Minimum setback from internal street: Twelve feet (12'), except that garages and carports shall be set back twenty feet (20') from the front lot line;

    f. Minimum setback from property line: Seven and one-half feet ($7^1/_2$');

    g. Minimum distance between mobile home sides or side and end: Fifteen feet (15'); between ends: Fifteen feet (15');

    h. Expandable sections of a mobile home or attached accessory building shall be considered a part of the mobile home proper for setback requirements.

2. Street System:

    a. All mobile home lots shall be provided with safe and convenient vehicular access from public or private streets. Alignment and gradient of streets shall be properly adapted to topography.

    b. All streets shall be paved and drained in a manner approved by the public works department. Streets shall have a designed structural section based on traffic volumes and soil conditions, but in no event shall the asphaltic pavement be less than two inches (2") in thickness, placed on a base material at least six inches (6") thick and approved by the public works department.

    c. Access to mobile home subdivisions shall be designed to minimize congestion and traffic hazards and provide for safe movement of traffic at the entrance or exits to adjoining streets.

    d. All interior streets shall have a paved section not less than forty feet (40') in width, back of curb to back of curb, and a right of way not less than fifty feet (50').

    e. All streets shall be properly signed and lighted. Lighting system is to be approved by the public works department and shall provide a minimum level of lighting approved by the city engineer.

f. Adequate provisions for snow removal and snow storage areas shall be provided.

g. All streets shall have four foot (4') concrete paved sidewalks on both sides of street.

3. General Requirements:

a. Pavement ~~O~~o**o**f Spaces ~~A~~a**a**nd Driveways: All vehicle parking spaces and driveways shall be paved.

b. Covering Of Ground Surfaces: Exposed ground surfaces in all other parts of the mobile home subdivision shall be covered with stone, screening or other material or protected with a vegetative growth in a well-kept manner, either of which is capable of preventing soil erosion and eliminating objectionable dust.

c. Refuse ~~A~~a**a**nd Garbage: Storage, collection and disposal of garbage and refuse shall be in conformance to any applicable Nevada statutes and regulations, and regulations of the city and state health departments 1 .

d. Fuel Supply ~~A~~a**a**nd Storage: Installation of liquefied petroleum gas or fuel oil containers within a mobile home subdivision shall be in conformance to any applicable Nevada statutes and regulations, and city ordinances, and to the satisfaction of the fire department.

e. Fire Protection: In every mobile home subdivision there shall be installed, and properly maintained, fire hydrants as required by the fire department.

f. Fences: Mobile home subdivisions shall be fenced with a screened fence not more than six feet (6') nor less than four feet (4') in height around the entire boundary of the subdivision, subject to waiver in specific cases by the planning commission at its discretion.

g. Variations: The planning commission, as part of the conditional use permit procedure, may vary the above requirements in its recommendation to the city. (Ord. 771, 3-26-2013)

Notes
1. See subsection 3-2-3(L) of this title.

Section 5: All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict

Section 6: If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, the invalidity, unenforceability or provision shall not affect any remaining provisions of this ordinance.

Section 7: Upon adoption, the City Clerk of the City of Elko is hereby directed to have this ordinance published by title only, together with the Councilman voting for or against its passage in a newspaper of general circulation within the time established by law, for at least one publication.

Section 8: This Ordinance shall be effective upon the publication mentioned in Section 7.

PASSED AND ADOPTED this _4th_ day of _May_, 2021 by the following vote of the Elko City Council.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED this _____ day of _____ 2020.

CITY OF ELKO

BY:_____
REECE KEENER, Mayor

ATTEST:

_____
KELLY WOOLDRIDGE, City Clerk

QUINLAN™

February 25, 2021 | Volume 15 | Issue 4

Zoning Bulletin

in this issue:

Permits

Storage facility challenges denial of certificate-of-occupancy application in area zoned as General Industry District

Citation: *ProTerra, Inc. v. Cleveland Board of Zoning Appeals, 2020-Ohio-6739, 2020 WL 7396502 (Ohio Ct. App. 8th Dist. Cuyahoga County 2020)*

ProTerra Inc. (ProTerra) filed a certificate-of-occupancy (COO) application for a temporary storage, material handling, and screening operation at 691 East 165 Street, in Cleveland's Collinwood neighborhood, which was zoned as a General Industry District.

Cleveland's Department of Building and Housing Zoning Administrator sent ProTerra a notice of nonconformance denying its COO application on account of three zoning-code violations:

- a parking lot that was too small and not paved;
- asphalt grindings surfacing and unpaved roadways, in violation of the ordinances; and
- open yard storage of used construction material within 500 feet of a residential district without a seven-foot solid wall or fence, all in violation of Cleveland Codified Ordinances

Thereafter, ProTerra sought variances from the Board of Zoning Appeals (BZA) for all three violations.

The BZA denied ProTerrra's requests for variances. It appealed.

DECISION: Reversed; case sent back for further proceedings.

The BZA has applied the wrong legal standard when evaluating ProTerra's variance requests.

A CLOSER LOOK

The BZA based its decision "on how ProTerra used its property rather than the reasonableness of the variances for the parking lot, paving, and fencing," the court explained.

"The BZA appear[ed] to have been persuaded by the community members' complaints about ProTerra's use of its property and the mess it ha[d] created for the neighborhood. But the issue before the BZA was not whether ProTerra should be allowed to operate. Instead, the BZA needed to decide whether a strict application of the zoning code related to ProTerra's parking lot, paving, and fencing would have caused the company practical difficulties. The BZA did not make that determination," the court added.

Further, while the BZA had "applied the wrong standard, [it] did make specific findings related to all three conditions in [the applicable ordinances]. The BZA found that ProTerra would not suffer an 'unreasonable hardship,' that it was 'not denied any use of property,' and that granting the variances 'would be contrary to the purpose and intent of the Code.' " But, it "did not make any specific findings related to the seven 'practical difficulty' factors [from another case the Supreme Court of Ohio had decided] likely because the BZA improperly switched the standards for area and use variances."

That case, *Duncan v. Village of Middlefield*, involved a property owner who requested a variance from local zoning requirements. After the zoning board of appeals denied the variance request, the property owner appealed. A lower court affirmed the zoning board of appeals (ZBA) decision and the appeals court reversed. Ultimately, the Supreme Court of Ohio ruled that the property owner hadn't run into "practical difficulty" justifying an area variance, as the local zoning ordinance did not prevent the property owner from obtaining any benefit from land.

THE BOTTOM LINE

ProTerra argued "that the BZA incorrectly applied the 'unnecessary hardship' standard, that the BZA failed to consider the factors from Duncan, . . . and that the evidence presented at the hearing shows that ProTerra established practical difficulties," the court explained. "The trial court did not address ProTerra's argument that the BZA applied the wrong legal standard or find that its application of the 'unnecessary hardship' standard was harmless error. We are unable to determine from the trial court's judgment entry whether the trial court analyzed the evidence under the 'practical difficulty' standard to affirm the BZA's decision," the court found.

The trial court's judgment hadn't "include[d] any detail into its reasoning. The trial court merely identified [a specific section of the code] as authority for the appeal, stated that the trial court considered the parties' briefs and evidence, and found that the BZA's 'decision to deny ProTerra's variance requests was supported by a preponderance of reliable, probative and substantial evidence.' "

Because, the trial court's judgment hadn't "identif[ied] or analyze[d] the evidence in the record, d[id] not discuss any relevant testimony, and d[id] not apply any evidence in the record to the 'practical difficulties' factors articulated in Duncan, the reviewing court couldn't determine whether [it had] fulfilled its obligation . . . to review the evidence, nor c[ould the reviewing court] perform [a] more limited appellate review."

The case cited is Duncan v. Village of Middlefield, 23 Ohio St. 3d 83, 491 N.E.2d 692 (1986).

Case Note:

ProTerra first applied for a COO in November 2016 and had resubmitted its application with revised site plans four times in response to notices of nonconformance with the zoning code, the court explained.

Standing

Did neighbor have standing to challenge decision to grant variance giving homeowner's parking lot project the green light?

Citation: *In Re Adams, 2020 WL 7491072 (Pa. Commw. Ct. 2020)*

Janice Yager owned and lived at a residence located at 1944 Hamilton Street in Philadelphia. Yager also owned a vacant lot next door, which was located at 1942 Hamilton Street.

Contributors

Laura Scott, Esq.

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

THOMSON REUTERS®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084
email: west.customerservice@thomsonreuters.com
ISSN 0514-7905

Yager applied for permits to use the property as non-accessory private parking with a six-foot fence and gate. The city's Department of Licenses and Inspections (L&I) refused the request, stating that the proposed use and fence height were not in compliance with the city's zoning code.

Yager appealed that decision, arguing that she wanted to park on the property because finding street parking was difficult and her husband had Parkinson's disease. Yager admitted that she could, but had not, purchased parking in a nearby garage or applied to have a handicapped spot put in front of her home.

A representative from the Logan Square Neighborhood Association along with several neighbors testified in favor of the variance. The sole dissenter Roseanne Adams, asserted she would not have objected to the request to construct the parking lot if Yager had agreed to consolidate the two lots into one or placed a deed restriction on the property in question.

Adams also raised safety concerns. In Adams' view people at the bus stop would have their backs toward the proposed parking spaces, and a user of the parking space would have to back out onto the street.

The Zoning Board of Appeals (ZBA) granted Yager's request for the variance provided the fence did not exceed four feet in height and the parking would only be used by the residents of 1942 Hamilton Street. Also, it stated approval was for a temporary five-year term. In support of its findings, the ZBA stated that community growth reduced the parking available and, based on Yager's husband's Parkinson's diagnosis, proximate parking was a concern for Yager. It also found that the proposed fence would be limited to a maximum height of four feet—a height permitted by code, so the fence didn't require a variance.

Adams appealed.

DECISION: Affirmed.

Adams didn't have standing to challenge the ZBA's decision.

LET'S BACK UP A BIT

Adams had appealed the ZBA's decision to the trial court. Yager intervened and filed a request to quash the appeal. Yager argued Adams was not an aggrieved person and, therefore, lacked standing.

The court affirmed the ZBA's decision granting Yager's application for a variance on the merits. The court, however, didn't rule on the request to quash. Instead, it found the ZBA's decision was supported by substantial evidence and that the ZBA had properly determined "that the effect and enforceability of the applicable neighborhood development agreement (NDA) were outside of its jurisdiction." It also found Adams' "involvement in the NDA did not grant her aggrieved party standing to appeal the ZBA's decision."

Adams then appealed that ruling to the Commonwealth Court of Pennsylvania, which vacated and sent the case back to the trial court to determine whether Adams had standing to appeal from the ZBA's decision.

The trial court then granted Yager's request to quash. It found that Adams had lacked standing to challenge the variance application. Adams again appealed to the Commonwealth Court of Pennsylvania.

Before the court, Adams contended standing to challenge the variance existed because of her home's proximity to the property at issue—specifically, she described how her home was located just 250 feet away, so, in her view, she was sufficiently close to the property to have standing, noting that "no case has ruled that an objector living only 250 feet away and on the same city block as the [Property] given a variance lacks sufficient proximity to be denied standing."

In Yager's view, Adams was not an "aggrieved person" since she hadn't "suffered [any] direct, immediate, or substantial impact by the variance being granted." Also, Yager asserted, "aggrieved party status require[d] more than mere proximity to the [p]roperty" and "even assuming that Adams live[d] within 250 feet of the [p]roperty, Adams c[ould not] see the parking spaces from her home, and therefore Adams [wa]s not directly impacted."

THE COURT'S RATIONALE

Adams wasn't an "aggrieved person." She had to show a "substantial"—direct and immediate—interest. "For an interest to qualify as 'substantial, there must be some discernible effect on some interest other than the abstract interest all citizens have in the outcome of the proceedings,' " the court explained.

Also, an interest was "direct where the party c[ould] demonstrate some causation of harm to her interest." "To be considered immediate, a party's interest must have 'a causal connection between the action complained of and the injury to the person challenging it.' "

Further, the "proximity between a party's property interest and the property at issue may be sufficient to establish a perceivable adverse impact," and it was "well established that an adjoining property owner, who testifie[d] in opposition to a variance request before the zoning board, ha[d] sufficient interest conferring standing to appeal the board's decision." But "absent an assertion of a particular harm, standing ha[d] been denied to objectors with no property interest in the immediate vicinity . . . and parties [we]re not necessarily aggrieved merely because they participated in the hearing before the ZBA."

Adams failed to establish standing, the court found because her property—while located about 250 feet away—wasn't "adjoining or even catty-cornered to the [p]roperty." Her "home's location down the block and across the street [wa]s not sufficiently close to the [p]roperty to confer standing based on proximity alone."

Beyond that, Adams also "failed to articulate a particular harm that she w[ould] suffer by the proposed use of the [p]roperty for parking." Her "general concerns about the safety of individuals waiting for the bus near the [p]roperty and general resentment that allowing a parking pad 'd[id] nothing for the neighborhood,' . . . [we]re 'merely abstract interest[s] all citizens have in the outcome of the proceedings.' "

Therefore, the trial court's decision to quash the appeal based on Adams' lack of standing was affirmed.

Practically Speaking:

The "burden of proof in obtaining a variance [wa]s upon the landowner." "To establish entitlement to a variance, an applicant must show an unnecessary hardship resulting from the property's unique physical conditions or circumstances; that such hardship is not self-imposed by the applicant; that granting the variance would not adversely affect the public health, safety or welfare; and that the variance, if granted, would represent the minimum necessary to afford relief," the court added.

Constitutional Challenge

Constitutionality of New Jersey Cemetery Act called into question

Citation: *Rosedale and Rosehill Cemetary Association v. Township of Reading, 2020 WL 7768457 (D.N.J. 2020)*

The planning board for the Township of Readington, New Jersey denied a request by the Rosedale and Rosehill Cemetery Association (the plaintiffs), a non-profit cemetery company, to open a cemetery. The plaintiffs challenged the decision, claiming the New Jersey Cemetery Act (NJCA) gave the township unfettered discretion to establish cemeteries, which they contended violated their due-process rights.

The township argued the NJCA's provisions constituted a "permissible delegation of state legislative power and that it [had] properly denied Rosedale's application." The state intervened to defend the NJCA's constitutionality.

Before the court was the plaintiffs' request for judgment without a trial and the township's cross-motion for judgment.

DECISION: Request for judgment without a trial granted in part.

The court granted in part the plaintiffs' request for judgment without a trial and denied the township's request.

The court found a specific provision of the NJCA was "unconstitutionally vague under the Due Process Clause of Fourteenth Amendment" and could not be severed from the rest of the act's provisions, so the NJCA was declared unconstitutional. The court noted, though, that the order would be stayed for 30 days before taking effect to give the state legislature a chance to amend the law.

A CLOSER LOOK

Constitutionality—The plaintiffs contended the "standardless delegation by a legislature to a municipality" such as the one found in the NJCA violated the Fourteenth Amendment's Due Process Clause. The township asserted that the law "borrow[ed] a standard from the Municipal Land Use Law to restrain [its] discretion, and that it is nevertheless constitutional because 'for more than 100 years' it ha[d] not been 'challenged.' "

Under the Fourteenth Amendment, "no state 'shall . . . deprive any person of life, liberty, or property, without due process of law.' " The Supreme Court had previously "invoked the Due Process Clause to void a statute if it [wa]s excessively vague, *i.e.*, its prohibitions are not clearly defined."

Further, "[t]he vagueness doctrine 'addresse[d] at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way," the court explained.

Therefore, "if a state or federal statute, or local ordinance, fail[ed] to give 'a person of ordinary intelligence fair notice' of what [wa]s prohibited or required, then it [wa]s void for vagueness."

In reviewing the requests for judgment without a trial, the court analyzed the plaintiffs' vagueness claim under the Due Process Clause, "while recognizing that the consent provision in the Cemetery Act [wa]s a permissible delegation of state power."

Ultimately, the court found that "because the [t]ownship ha[d] unfettered discretion to withhold its consent . . . , which le[ft] [applicants] such as [the p]laintiff[s] in the dark as to what a successful application for a new cemetery require[d], it [wa]s void for vagueness under the Due Process Clause," the court concluded.

Severability—The court agreed with the plaintiffs that the provision in the NJCA in question wasn't severable from the act. The subsection in question was a "threshold requirement set forth" in the New Jersey Statutes Annotated (NJSA).

Severability of a state law was a question of state law, the court noted. And, "[t]he touchstone [wa]s legislative intent."

The key question for the court to address concerning legislative intent was "whether the objectionable feature of the statute c[ould] be exercised without substantial impairment of the principal object of the statute." "Severance [wa]s warranted where there [wa]s 'such a manifest independence of the parts as to clearly indicate a legislative intention that the constitutional insufficiency of the one part would not render the remainder inoperative,' " the court added, "such as when 'the remaining portion [of the statute] form[ed] a complete act within itself.' "

The bottom line: "In determining whether severing subsection (a) would defeat the principal legislative objective of [NJSA] as a whole, it is critical to understand the relationship between subsections (d) and (a). Under subsection (d), a municipality may grant consent to a new cemetery even if the limitations in subsections (b) and (c) apply, *i.e.*, there are more than five cemeteries in a municipality, three percent of municipal land is dedicated to cemeteries, *or* a proposed cemetery is more than 250 acres," the court wrote. "Historically, municipalities lacked the power to consent in these circumstances, and

thus new cemeteries generally could not open, until the legislature enacted the waiver provision some 100 years after the consent provision in subsection (a) first appeared. . . . Subsection (a), on the other hand, empowers municipalities to grant or withhold consent even if subsections (b) and (c) do not trigger subsection (d), *i.e.*, there are fewer than five cemeteries in town, less than three percent of town land is dedicated to cemeteries, *and* the proposed cemetery is smaller than 250 acres," it added.

"When subsection (a) [wa]s read in conjunction with subsection (d), it bec[ame] clear that a municipality must *affirmatively authorize* any new cemetery within its borders," the court concluded. "In this sense, subsection (a) demonstrates a clear legislative intent to always give municipalities a say over new cemeteries, regardless of how many cemeteries currently exist, how big they are, or any other factor. Indeed, under the Cemetery Act, which preempts the field of cemetery regulation, 'municipalities have little power to legislate existing cemeteries,' " but "[t]he residuum of power [they] retain on the act is to exclude new cemeteries . . . within their boundaries."

Further, "subsection (a) demonstrate[d] a clear legislative intent to give municipalities the *final* say over whether a new cemetery may open. While the original consent provision included a procedure under which an applicant could appeal a municipality's decision to the State Board of Health, . . . and citizens could also appeal to the Health Board a decision they found objectionable, in 1971 the legislature amended the statute to remove the appeal procedure entirely, leaving municipal decisions unreviewable."

What was "more compelling" the court found was that "if subsection (a) were severed, and the conditions in (b) and (c) did not trigger subsection (d), NJSA would not apply at all. In these cases, municipalities would lose their consent power altogether and town zoning committees or planning boards would be newly empowered to decide, in the end, whether new cemeteries may open—despite a longstanding signal from the legislature that municipalities should have the last word all of the time."

And, while subsection (a) was "just one provision among 38 in the [NJCA], severing it from the remainder of the provisions in NJSA frustrate[d] the core legislative plan of that part of the statute—comprehensive municipal consent—such that this [c]ourt must invalidate NJSA [section 45:27-25] 'as a unitary whole.' "

The case cited is Grayned v. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).

Variances

Homeowners who tore down existing structure need variance to setback zoning ordinance

Citation: *Moreschi v. Village of Williams Bay, 2020 WI 95, 2020 WL 7756329 (Wis. 2020)*

Linn Township (Linn), Wisconsin property owner's Gail Moreschi's parcel abutted Suzanne and William Edwards' (the homeowners) land who had torn down an existing home on their property with plans to rebuild.

The new home plans required a variance to the setback zoning ordinance, and after Linn approved the building plans, the zoning board granted the zoning variance, which the homeowners said was necessary to install a septic system due to a 12-percent slope on the land and trees Linn required them to preserve. In other words, they asserted that there wasn't anywhere else for them to install the septic system.

The placement of the septic impacted where exactly on the lot the homeowners could build their home. They contended their request met five conditions under the "Village of Williams Bay Extraterritorial Zoning (ETZ) Ordinance," namely:

- their proposal was consistent with the purpose and intent of local development;
- their lot's slope constituted "an exceptional circumstance";
- they didn't cause something requiring the variance;
- they couldn't build their home without the variance; and
- the variance wouldn't result in any harm to Moreschi's property because their new home would be three feet further away from Moreschi's property line than the previous one.

Moreschi opposed the homeowners' variance request, claiming they had several other options that wouldn't require a variance. For example Moreschi contended they could move their driveway to accommodate a new septic system, install a smaller system, use a holding tank instead of a septic system, or build a smaller home. In Moreschi's view, since the homeowners wouldn't be prevented from building any home, a variance wasn't necessary to preserve their property rights.

The zoning board heard from members of the community on the homeowners' variance request. Some in favor of the variance noted that the homeowners' plans were consistent with attempts to "modernize" the subdivision and that denying them a variance would frustrate that process. Those against granting the variance claimed the 12-percent slope wasn't an "exceptional circumstance" because "virtually all properties" in the subdivision had similar slopes.

The board voted to grant the homeowners' request for a variance.

Moreschi filed for "a writ of certiorari in the Walworth County Circuit Court." She claimed the board had improperly granted the variance because it failed to find beyond a reasonable doubt all five conditions required under the applicable ordinance.

The court granted the writ, giving the board a couple of weeks to return a certified transcript of the record. Around this time, Moreschi obtained a draft of the board's minutes reflecting the unanimous approval of the variance. Under

the heading "Board of Appeals[']] Findings," the draft minutes indicated that the board had approved the variance because it "felt that there was a lack of detriment."

At a subsequent board meeting, the board issued "approved" minutes from the hearing when the variance was granted, which included expansive factual findings not included in the draft minutes. The board also issued a signed, written document titled "Determination Form," which reiterated the factual findings from the approved minutes and included specific conclusions on each of the five conditions required under the ordinance.

Specifically, the board found beyond a reasonable doubt that the requested variance was consistent with the purpose and content of the regulations for the district and a permitted use—a single family residence, exceptional circumstances existed due to the 12-percent slope of the land, economic hardship wasn't the basis for granting the variance; the variance was necessary to preserve the property rights and enjoyment of the property by the owner looking to build a single family home on the property that was consistent with other homes in the district, and the variance would not create a substantial detriment to the adjacent properties because the new home would be further set back from the property lines than the pre-existing home.

The board then submitted the certiorari record to the circuit court. The record contained the approved minutes, the Determination Form, a recording of the original hearing, the homeowners' variance application, and documents the parties presented at the hearing. Following briefing and a hearing, the circuit court affirmed the board's decision granting the variance.

Moreschi appealed the circuit court's decision on both procedural and substantive grounds:

- **the procedural claim alleged Moreschi's due process rights were violated when the board included the approved minutes and Determination Form in the certiorari record** (in Moreschi's view, the court should have only reviewed the documents that existed at the time she filed for a writ: the transcript of the variance hearing and the draft minutes); and
- **the substantive claim asserted that the board made its decision under the incorrect theory of law** because at the time Moreschi filed for a writ, the board had not explicitly found beyond a reasonable doubt that the homeowners' variance met the five conditions set forth in the ordinance.

The appeals court rejected Moreschi's claims. That's when Moreschi took the claims to the Supreme Court of Wisconsin.

DECISION: Affirmed.

The board properly applied the applicable ordinance when granting the variance to the homeowners.

The board had reached its decision "under the correct theory of law," the court explained. "A board proceeds on a correct theory of law when it relies on the applicable ordinances . . . and applies them correctly," the court noted.

The applicable ordinance stated that the board " 'shall grant no variance' unless it finds 'beyond a reasonable doubt' that five conditions are satisfied," the court added. On the Determination Form, the board "recounted the relevant facts, applied those facts, and concluded that each of the five conditions in [the ordinance] were satisfied beyond a reasonable doubt." Therefore, it "relied on the correct ordinance and applied that ordinance correctly," and it had ultimately "proceeded under the correct theory of law."

Case Note:

The Supreme Court of Wisconsin explained that an individual aggrieved by a local zoning board decision had 30 days after the filing of the decision in the board of appeals office to "commence a certiorari-review action" like the one filed in this case.

Permitted Use

Church seeks to convert much of property into an inn and restaurant to be used in conjunction with event space

Citation: *Buckley v. Zoning Board of Appeals of City of Geneva, 189 A.D.3d 2080, 2020 WL 7651953 (4th Dep't 2020)*

Trinity Episcopal Church (TEC) and McGroarty Investments, LLC (McGroarty) proposed a project to renovate TEC's church and rectory by creating an inn with guest rooms, a restaurant, and a parking lot expansion. TEC's sanctuary would remain a place of worship, but it would also be used as an event space under the proposed project plan. The project plan also called for two church wings to be turned into a 21-room inn and restaurant. And, the lower level of the church would be converted to office space, washrooms, a kitchen, and "flex space."

The project wasn't a permitted use within the multifamily residential and historic district in which the church and rectory were located. So, TEC and McGroaty completed a use variance application and filed it with the Zoning Board of Appeals of City of Geneva (ZBA).

The ZBA approved the use variance for the project, and those opposed to the project appealed that decision. They claimed there wasn't a rational basis for granting the use variance.

DECISION: Affirmed.

Substantial evidence existed to support the contention that the ZBA had a rational basis for granting the use variance.

The ZBA had " 'broad discretion' in determining whether to grant the requested variance . . . , and judicial review [wa]s limited to whether the determination was illegal, arbitrary or an abuse of discretion," the court explained.

The court's role wasn't to "substitute its judgment for that of the ZBA, even if there [wa]s substantial evidence supporting a contrary determination."

The bottom line: "Where there [wa]s substantial evidence in the record to support the rationality of the ZBA's determination, the determination should be affirmed upon judicial review," the court explained. "Here, upon our review of the record, we conclude that the determination of the ZBA [wa]s not illegal, arbitrary or capricious, or an abuse of discretion inasmuch as TEC and McGroarty established that 'applicable zoning regulations and restrictions ha[d] caused unnecessary hardship,' i.e., that they could not realize a reasonable return with respect to the property, that the hardship was unique, that the variance would not alter the essential character of the neighborhood, and that the hardship was not self-created," the court wrote.

In addition, the ZBA had complied with substantive and procedural requirements at play under the applicable environmental law. It had "properly 'identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination.' "

Zoning News From Around The Nation

California

Court rules Thousand Oaks acted lawfully in not requiring church to file for new or amended permits

Dos Vientos Community Preservation Association (DVCPA) filed suit against the City of Thousand Oaks, California, alleging that it erred by not requiring Godspeak Calvary Chapel Church, a nonprofit organization, to file new or amended permits to operate within a former YMCA building it rented.

The Ventura County Superior Court ruled the DVPCA couldn't force the city to discriminate by requiring the nonprofit to obtain a new or amended development permit, *Overton County News* reported. In the tentative rule, the judge noted that the city's zoning code didn't require that a cumbersome development permit had to be obtained before a private facility was sold and converted for use as a church.

Source: *overtoncountynews.com*

Connecticut

DOJ files discrimination lawsuit against Town of Wilcott

The Department of Justice (DOJ) has filed a lawsuit against the Town of Wolcott, Connecticut, alleging that it discriminated against disabled individuals, in violation of the Fair Housing Act (FHA). Specifically, the DOJ asserts the town wouldn't allow an adult group home to operate on the basis of the proposed residents' disabilities, and that it revised zoning regulations to bar an adult community residence for those with disabilities from operating there.

"The Fair Housing Act protects the right of individuals with disabilities to live and pursue happiness in this free country without suffering the indignity and injustice of discrimination dressed up as 'zoning laws' enacted or enforced as a result of misguided stereotypes and warped fears," said Assistant Attorney General Eric Dreiband of the Civil Rights Division. "Disability discrimination is unconscionable, unlawful, and unnecessarily injures people. The Fair Housing Act prohibits municipalities from applying their zoning laws in a manner that discriminates because of disability. The Civil Rights Division is committed to eliminating illegal discriminatory barriers and ensuring that the Fair Housing Act protects the right of persons with disabilities to enjoy homes of their choosing."

"Persons with disabilities have a right to housing that meets their needs, including group homes," said Anna María Farías, Assistant Secretary for Fair Housing and Equal Opportunity for the Department of Housing and Urban Development (HUD). "HUD will continue working with the Justice Department to take appropriate action when discriminatory policies and practices unlawfully deny housing opportunities to those who need them the most," Farías added.

The case arose after a special use permit application was denied and the owner/operator of the proposed home filed a complaint with HUD. The DOJ is seeking a court order to bar the town from applying the zoning regulations in a way that discriminates against those with disabilities. It is also seeking damages to compensate the victims of the alleged discrimination.

The owner/operator also filed a case challenging the town's actions. That case, *Self Inc. v. Town of Wolcott* is pending in federal court.

Source: *justice.gov*

Illinois

Aurora City Council to discuss possibility of animal-sales-related ordinance

Recently, The Aurora City Council's Rules, Administration and Procedures Committee held a meeting to determine if the city should consider regulating pet-shop-related animal sales, the Chicago Tribune reported recently. Aurora's corporation counsel told the news outlet there weren't many regulations on the books for this and that the committee would be examining how other communities have dealt with the issue.

In neighboring Naperville, an animal-pet regulations took effect January 1, 2021. Under that regulation, pet store animals for sale cannot come from breeders; instead they must come from animal control or shelters.

Source: *chicagotribune.com*

Louisiana

St. Tammany Parish's rezoning decision concerning close to 70 acres of land upheld

The 22nd Judicial District Court of Louisiana has granted St. Tammany Parish judgment without a trial concerning a lawsuit challenging its decision to rezone land as an advanced manufacturing and logistics district, *Nola.com* reported recently. Residents filed suit against the parish in opposition to a proposed medical equipment distribution company's proposal to build a facility on close

to 70 acres of land between the parish's Ochsner Boulevard and Interstate 12, the news outlet reported.

According to the judge, the parish had provided dozens of rational reasons for its rezoning decision.

Source: *nola.com*

Maryland

Solar farm being considered in Harford County slated for public hearing

In Harford County, planning officials initially denied a request for a solar power facility proposed in the Creswell area. A court ruling from 2019, however, gave the project, the green light. As of print time, a hearing before the Maryland Public Service Commission was set to take place, *The Baltimore Sun* reported.

The chief development officer for the applicant that wants to build the solar power facility, Pro-Tech Energy Solutions LLC of New Jersey, told the news outlet that the use of the solar panels on the proposed property wouldn't be permanent and that they, along with supporting infrastructure, could be removed after 25 to 30 years, the news outlet reported. At that time, the area could return to being used as farmland for future use.

Access to governmental documents related to the proposal to construct a solar power facility in Harford County can be found at *webapp.psc.state.md.us/newIntranet/casenum/CaseAction_new.cfm?CaseNumber=9652*.

Source: *baltimoresun.com*

Massachusetts

Land court rules homeowners' application to add enclosure to existing deck should have been granted

Landowners in Sharon, Massachusetts filed a lawsuit against local zoning board of appeals (ZBA) members after the ZBA denied their application for a special use permit to enclose an existing deck at the back of their home.

The court found the ZBA had applied an "improper legal standard in considering the [a]pplication." There was "no rational view of the facts would support the conclusion that the [a]pplication failed to meet one or more of the relevant criteria found" in the applicable state law—G. L. c. 40A—or Sharon's zoning bylaw, the court found.

Therefore, the court ruled the application met the requirements needed for approval under state law and the local bylaws.

The case cited is Denny v. Brahmachari, 2020 WL 7682475 (Mass. Land Ct. 2020).

New Hampshire

Zoning board to appeal court ruling on affordable housing project

In December 2020, a judge ruled the Swanzey Zoning Board of Adjustment (ZBA) erred in denying a special exception concerning a proposed affordable housing project for the elderly, *The Keene Sentinel* reported recently. The judge sent the case back to the ZBA to re-evaluate its decision.

But, the ZBA then voted to appeal the court's ruling, the news outlet reported.

The developer, Avanru Development Group, of the proposed facility, which would be situated along Route 32 in Swanzey and consist of 76 affordable housing units for those age 62 and older, said asserted the complex would benefit the community by addressing Cheshire County's rental vacancy rate.

Source: *sentinelsource.com*

QUINLAN™

March 10, 2021 | Volume 15 | Issue 5

Zoning Bulletin

in this issue:

Use Permit

Controversy over 'monopine' at the center of zoning-related lawsuit after city denies permit request

Citation: *GTE Mobilnet of California Limited Partnership v. City of Berkeley, 2021 WL 308605 (N.D. Cal. 2021)*

GTE Mobilnet of California Limited Partnership dba Verizon Wireless (Verizon) filed suit against the city of Berkeley, California alleging it unlawfully denied its application to build a personal wireless service facility within the city limits.

According to Verizon, it filed an application for a use permit with the city in 2018 to construct, operate, and maintain an unoccupied personal wireless service facility (the project), which would consist of six antennas and remote radio units mounted on a new 50-foot pole, with associated equipment and a standby generator installed at ground level.

East Bay Municipal Utility District owned the proposed project site at 0 Euclid Avenue, which houses a 2.6 million-gallon water storage tank. The property was in the Single Family Residential—Hillside Overlay (R-1H) Zoning District, and Verizon proposed to disguise the 50-foot cell tower to look like a pine tree—also known as a "monopine."

Verizon claimed that due to the features of the property, the ground-mounted equipment would not be visible from the surrounding streets and the monopine would be largely screened from view or blend into the backdrop of existing trees.

The city's planning staff asked Verizon for photo-simulations of alternative designs and hired an expert to conduct peer review of certain aspects of its application. According to Verizon, the peer review confirmed that the project would comply with Federal Communications Commission safety limits on radio-frequency (RF) emissions. Verizon also submitted reports confirming that the project would comply with the city's noise standards.

The city's planning staff recommended approval of the application to the city's Zoning Adjustment Board (ZAB). At a public hearing to review the application, project opponents voiced concerns over the environmental effects of RF emissions, aesthetics, noise, property values, the need for the project, and various procedural issues.

The ZAB voted unanimously to deny the application on the basis that Verizon had not satisfied various code requirements for approval.

Verizon appealed the ZAB's denial to the Berkeley City Council (BCC) and submitted additional evidence in support of the application. The city council held another public hearing, and the opponents again raised concerns about

THOMSON REUTERS®

Mat #42689098

aesthetics, environmental impacts, and safety risks, and procedural issues. Then, the BCC voted to deny the application.

After the hearing, the city posted an annotated agenda on its website that summarized the denial. Verizon alleged that the application should have been approved because there were no valid or lawful grounds for denial.

THE LAWSUIT

Verizon filed suit against the city alleging its denial of the application was not lawful because it wasn't in writing, which violated the Telecommunications Act (the Act) and was not based on substantial evidence. And, it asserted the denial was unlawful because it barred Verizon from providing personal wireless services, in violation of the Act.

Contributors

Laura Scott, Esq.

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

THOMSON REUTERS®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084
email: west.customerservice@thomsonreuters.com
ISSN 0514-7905

A group called the Berryman Reservoir Neighbors (BRN) requested to intervene in the lawsuit. The group consisted of residents who lived near the proposed cell tower. And, each had participated in the review of Verizon's application before the ZAB and BCC. They all believed the cell tower would adversely affect their interests.

Verizon opposed their request to intervene, but the court granted BRN's request and ordered it to file an answer. Rather than filing an answer, BRN requested to dismiss the complaint.

Verizon then requested to amend and supplement its complaint.

DECISION: Verizon's request to amend granted.

The court rejected both of BRN's arguments against granting Verizon's request—it argued a proposed failure-to-act claim by Verizon was futile because the statute of limitations applicable to claims under the Act barred it.

STATUTE OF LIMITATIONS

BRN claimed "Verizon's application was subject to the 150-day deadline under the Shot Clock Ruling, and the deadline was extended numerous times by agreement between Verizon and [the city]. The last of their agreements extended the deadline to July 10, 2020, which Verizon allege[d] was the 'outside deadline for the [c]ity to take final action on the [a]pplication.' "

BRN also contended—and Verizon did not dispute, "that Verizon was required to commence an action challenging [city's] alleged failure to act 'within 30 days after such . . . failure to act.' " "According to BRN, since Verizon waited until November 17, 2020 to move for leave to add the failure to act claim, the proposed claim [wa]s 'plainly barred by the statute of limitations.' "

Verizon asserted that the proposed first amended complaint (FAC) related back to the date of the original complaint—August 6, 2020—because the original and amended claims all arose out of the same transaction and occurrence. Under the applicable rule of federal procedure, "[a]n amendment to a pleading relates back to the date of the original pleading when. . .the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading[.]"

In a previously decided case, a wireless telecommunications service provider had applied to a zoning board for permission to erect an antenna in Wilmington, Delaware. The zoning board "denied the application at an October 2016 hearing but did not put the decision in writing on the date of the hearing 'or anytime soon thereafter.' "

Then, the provider filed suit against Wilmington in federal court within 30 days of the oral decision, challenging the denial under the Act. The zoning board didn't issue a written decision on the application until December 2016, which was after the city had filed its answer to the complaint.

Both parties in that case filed requests for judgment

without a trial. Then, the provider asked to amend or supplement the initial complaint to include the issuance of the written decision on the application.

The lower court granted the request to supplement and the city asked the court to dismiss the supplemental complaint as untimely. The court granted the city's cross request for judgment without a trial. It found "the initial complaint 'was irreparably unripe because both the [Act] and Delaware law require[d] the [zoning board] to issue a written decision before the agency's action could be considered final.' " So, the provider in that case "had filed its complaint too soon."

The court also found "the supplemental complaint 'could not fix the ripeness problem because it was filed past the 30-day window for seeking review of the [zoning board's] final action.' "

On appeal, the Third U.S. Circuit Court of Appeals ruled that "the zoning board's oral decision was not a 'final action' within the meaning of the [Act], and that 'only a written decision can serve as a locality's final action when denying an application' for purposes of starting the 30-day time limit for filing suit." Therefore, it found the provider's original claim for relief, challenging the October 2016 oral decision, wasn't ripe for review when it was filed.

In addition, the Third Circuit concluded "the supplemental complaint, which was filed more than 30 days after the zoning board issued its written decision, was untimely under the [Act]." As a result, it found the lower court "only had jurisdiction if [the provider's] supplemental complaint cured the ripeness flaw in its original complaint by relating back to the original filing date."

Ultimately, the Third Circuit found that "an untimely supplemental complaint c[ould], by relating back, cure an initial complaint that was unripe." This approach taken by the Third Circuit was "consistent with Ninth Circuit law," the court in this case noted.

And, the facts of the Third Circuit case were present in this case. "Here, the proposed FAC add[ed] an allegation that Verizon filed its lawsuit 'in an abundance of caution' on August 6, 2020, within 30 days of the [BCC's] vote, because it was concerned 'that [Berkeley] or a potential intervenor might argue that the annotated agenda published on [the city's] website shortly after the [BCC] voted to deny the [a]pplication constituted a written denial.' "

THE BOTTOM LINE

"In this case, Verizon's proposed FAC relates back, because it [wa]s crystal clear that '[b]oth complaints rel[ied] on the same core facts,' and '[t]he written denial was a certification . . . of the earlier . . . denial.' " And, BRN didn't dispute that the original and amended claims "arose out of the conduct, transaction, or occurrence set out" in the complaint.

Building Permit

Cemetery association challenges denial of permit, but was the issue 'ripe' for federal court review?

Citation: *Ferncliff Cemetery Association v. Town of Greenburgh, New York, 2021 WL 319487 (2d Cir. 2021)*

The Second U.S. Circuit has jurisdiction over Connecticut, New York, and Vermont.

The Town of Greenburgh, New York denied the Ferncliff Cemetery Association's (Ferncliff) request for a building permit. Ferncliff challenged that decision in court.

The court granted the town's request to dismiss the case on the grounds that it lacked subject matter jurisdiction because the claims weren't ripe for review. Ferncliff appealed to the Second U.S. Circuit Court of Appeals.

DECISION: Affirmed.

All of the issues Ferncliff raised on appeal lacked merit.

"Land use challenges, whether pursued as a takings claim under the Fifth Amendment or as violations of equal protection or due process, are subject to the ripeness requirement articulated in *Williamson County Regional Planning Commission v. Hamilton Bank*," the Second Circuit explained. Part of the *Williamson* "ripeness test" stated that "a land use challenge [wa]s not ripe for judicial review until the government entity charged with implementing the relevant regulations ha[d] reached a 'final decision' regarding their application to the property at issue."

Further, "the final decision requirement 'condition[ed] federal review on a property owner submitting at least one meaningful application for a variance' " Also, "[a] property owner w[ould] be excused from seeking a variance, however, if doing so would be futile."

"Futility occur[red] 'when a zoning agency lacks discretion to grant variances or has dug in its heels and made clear that all such applications w[ould] be denied,' " the court explained.

THE BOTTOM LINE

In reviewing the record of the case, the court found the lower court had properly granted the town's request for dismissal. "Ferncliff argue[d] that the [lower court] erred in concluding that its constitutional claims failed the first part of *Williamson*'s ripeness test, submitting that there was a final decision as to the parcel. We do not agree," the court ruled.

For instance, Ferncliff didn't make any "allegation that it ha[d] sought or made an application for a variance after the [t]own's Zoning Board of Appeals (ZBA) upheld the denial of the building permit. Instead, Ferncliff appealed the ZBA's decision in state courts, which ha[d] affirmed the ZBA's decision, and then further filed a motion for leave to appeal to the New York Court of Appeals."

Ultimately, Ferncliff asserted that "its failure to obtain a

final decision by way of making a variance application [wa]s excused by the doctrine of futility." But, it didn't "allege that the entities charged with approving use variances lack[ed] discretion to grant the relief it s[ought], nor ha[d] Ferncliff alleged that the ZBA . . . made clear that Ferncliff's applications for relief by way of a variance w[ould] be denied."

PRACTICALLY SPEAKING

The ZBA had "advised [Ferncliff that] a use variance was required," the court explained. On appeal, Ferncliff took issue with the town board and tax assessor's "subsequent actions," but such actions did not suffice "as substitutes for evidence that the ZBA or the relevant entity ha[d] 'dug in its heels and made clear that all such [variance] applications w[ould] be denied.' " Therefore, Ferncliff did not "demonstrate futility."

Ferncliff took issue with the town board and tax assessor's "subsequent actions," but such actions did not suffice "as substitutes for evidence that the ZBA or the relevant entity ha[d] 'dug in its heels and made clear that all such [variance] applications w[ould] be denied.'"

Since Ferncliff hadn't "obtained a final determination or demonstrated that the futility exception applie[d], [its] federal constitutional claims were premature," the court found, reiterating that the lower court hadn't erred in dismissing its claims for lack of subject matter jurisdiction on the ground of ripeness.

The case cited is Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985) (overruled by, Knick v. Township of Scott, Pennsylvania, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019)).

Immunity

Land use director asserts dismissal from lawsuit warranted

Citation: *Hasbrouck v. Yavapai County, 2021 WL 321894 (D. Ariz. 2021)*

A married couple, the Hasbroucks, filed suit against Yavapai County, Arizona, 11 of its officials and employees, including the land use director, and one state official (collectively, the county) claiming constitutional violations. The Hasbroucks' lawsuit arose out of series of disputes dating all the way back to the 1990s concerning a piece of land they owned in the county.

The land use director asked to be dismissed on the basis that immunity applied.

DECISION: Request granted.

The land use director was entitled to immunity in an individual capacity.

A CLOSER LOOK AT THE FACTS

In 1996, the Hasbroucks bought and moved onto land in Ash Fork, Yavapai County, Arizona. They had plans to remodel the home on the parcel and build new structures on it in accordance with plans submitted to and orally approved by Yavapai County officials.

But, a disagreement with the county erupted over various zoning issues, especially sewage and water issues. According to the Hasbroucks, they had been told they didn't need permits to make improvements to the property's sewage disposal system, but they sought and were awarded a permit anyway.

Due to personal reasons, the Hasbroucks weren't able to start their remodeling project until 2001. Around this time, they also stored 20-foot steel shipping containers on the lot.

Also in 2001, the Hasbroucks got into a disagreement with the Arizona Department of Revenue (ADOR) about the tax assessment of their property. ADOR insisted on assessing property at $400,000 based on property's value after the ongoing construction project was to be completed.

In 2006, a diagram was posted on the Yavapai County Assessor's website showing that Plaintiffs' property was out of zoning compliance and that certain portions of the structure on the property were not being calculated for tax purposes.

From 2001 to 2007, the Hasbroucks had conflicts with neighbors and the county regarding the storage of items on their property and the use of water resources.

In 2012, the Hasbroucks' building permits were "cancelled" without their knowledge, but they continued to remodel the property. It wasn't until 2018 that they learned of the cancellation.

In 2017, the county board of supervisors passed a zoning ordinance limiting the number of storage sheds on a property. As a result, the county placed a "Notice of Violation" placard on the Hasbroucks' property.

The county's land use director filed a notice of violation against them, which initiated an administrative proceeding. The Hasbroucks filed constitutional challenges to this notice of violation.

The Hasbroucks "failed to demonstrate that [the] conduct violated clearly established law," the court found. Therefore, the claim against the land use director in an individual capacity had to be dismissed.

The Hasbroucks were ordered to have their property inspected. If the property wasn't compliant, they would be

charged a civil penalty of $7,500. At first, the Hasbroucks tried to comply by selling off the equipment they had stored on their property, but apparently they didn't do enough because the land use director sent them a notice of non-compliance based on the property inspection.

WHY THE LAND USE DIRECTOR WAS ENTITLED TO IMMUNITY

The land use director was entitled to immunity, the court found. The complaint alleged the director erred in prosecuting a zoning case. But, the Hasbroucks "failed to demonstrate that [the] conduct violated clearly established law," the court found. Therefore, the claim against the land use director in an individual capacity had to be dismissed.

Case Note:

The Hasbroucks alleged the county violated the Fourth, Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution as well as its "Ex Post Facto and Bill of Attainder clauses."

Taking

Neighbors to demolition site challenge city's decision to grant parking lot to neighbor without just compensation

Citation: *RDB Properties, LLC v. City of Berwyn, 2021 WL 318235 (7th Cir. 2021)*

The Seventh U.S. Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

The City of Berwyn, Illinois permitted a local business to demolish residential homes it had owned so it could build a private parking lot on cleared space. RDB Properties and its member-manager (collectively RDB) owned property near the demolition site and claimed RDB's rights under the Fifth Amendment had been violated. Specifically, RDB argued an illegal taking had occurred.

The lower court granted the city's request for dismissal for failure to state a claim. RDB appealed.

DECISION: Affirmed.

The complaint didn't state any type of takings claims, so the lower court was correct to dismiss the claim.

A CLOSER LOOK

The city granted a zoning variance to the Turano Baking Company (TBC), which wanted to expand its operations onto residential property south of its existing facility. To allow TBC to go forward with the project required a rezoning from residential to mixed use.

The city agreed to let TBC cut off access to a parking lot that stretched along one side of the street behind the business. RDB claimed this deprived it of parking spaces. With fewer city parking spaces, its property value was diminished, it asserted. They also contended there weren't enough handicap parking spots as a result, and that the city's failure to enforce the parking-lot ordinance resulted in increased noise, lighting, traffic, and safety problems.

RDB filed suit against the city alleging their property had been taken without just compensation in violation of the Fifth Amendment of the U.S. Constitution. The city asked the court to dismiss the lawsuit for failure to state a claim. It argued it didn't have a role in an alleged taking because the actions at issue were those of TBD, a private entity.

The lower court granted the city's request to dismiss, but for a different reason. The court disagreed with the city's contention that RDB's harm only arose from Turano's actions since it had granted TBC the zoning variance, transferred public land to it, and approved the parking lot design and construction. But, the court found that RDB's allegations were "severe enough" for a constitutional taking. For instance, in the court's view, the increased noise, traffic, security risk, excess light, loss of aesthetic value and on-street parking, denied them "all" or an "essential" use of their property, which it reasoned was necessary to state a takings claim. RDB appealed.

THE APPEALS COURT'S RULING

"The Fifth Amendment prevents the government from taking private property for public use without just compensation," the court noted. "The Takings Clause protects private persons from government action that forces them disproportionately to bear a burden that should be shouldered by the general public," it added.

Many types of government actions might trigger the need to provide just compensation under the Fifth Amendment, such as:

- "permanent physical invasions";
- "deprivation of a property's entire value";
- "exactions"; and
- "regulations that unduly interfere[d] with property rights."

Further, the Supreme Court had outlined two types of takings requiring compensation:

- **a per se taking**—this occurred "when the government physically seize[d] private property or directly appropriate[d] it"; or
- **a regulatory taking**—this took place "when government regulation of private property bec[ame] sufficiently onerous" because the government's action "interfere[d] too much with private property interests."
- To determine if a regulation went "too far" a court would "weigh the factors set forth in *Penn Central Transp. Co. v. New York City*: (1) the economic impact on the claimant, (2) the extent of the regulation's interference with 'investment-backed expectations,' and (3) the character of the regulation."

In RDB's view, a per se—physical—taking had

occurred. "But their argument misses one crucial point: they do not, and never have, owned any street parking places. It is impossible to suffer a taking of property that one does not have. Physical encroachment in a per se taking claim must be on private property," the court explained.

While RDB "allude[d] to unspecified 'property interests' . . . in valuable street parking, [it] point[ed] to nothing that would support such interests." Therefore, a physical "seizure" was not present.

RDB's claim that a regulatory taking occurred also failed. It contended "property-value decline, resulting from the loss of street parking and increased disturbances, sufficiently proved the first two *Penn Central* factors—economic impact (severe . . .) and regulatory interference with investment-backed expectations." And, RDB asserted it could meet the third *Penn Central* factor—"whether a regulation acts more like a direct taking than a mere exercise of governmental discretion—by alleging that the [c]ity's actions forced [it] disproportionately to bear the costs associated with [TBC's] expanded lot."

But, even if the court accepted RDB's statements as true, the complaint didn't allege a regulatory taking. "To plead a regulatory taking, . . . RDB . . . needed to point to some property right—not just some value—lost as a result of the [c]ity's actions." And, a "closer look at . . . RDB's two regulatory-takings claims—the loss of street-parking access and the loss of the property's aesthetic value—show[ed] why they are legally inadequate."

The rezoning, which according to RDB took away street-parking access, didn't support its claim. "[T]he fact that street parking might be desirable or valuable does not show that the [c]ity's decision to eliminate a few spaces amounts to a taking, either from the standpoint of economic impact or interference with investment-backed expectations." "Nor did . . . RDB . . . plausibly allege a deprivation of property rights, as opposed to an incidental decrease in property value," the court added.

Finally, the "loss-of-street-parking allegations fare[d] no better under the third *Penn Central* factor, which ask[ed] whether the regulation should be characterized as a direct taking, rather than an exercise of governmental discretion. Contrary to . . . RDB . . . assertions, closing off some public-street surfaces for parking [wa]s not an invasion of private property. And the land on which [TBC] built its new parking spaces was property that it had acquired—it was not public land, and it was not land owned by . . . RDB."

THE BOTTOM LINE

The only role the city played was to re-zone so the parking lot would be a permitted use. "Nothing in this picture even remotely approximates the type of government action *Penn Central* considers a taking. The [c]ity's decision to allow T[BC] to build a larger parking lot differ[ed] from the regulation in [previous case law], where a governmental mandate—that private-property owners allow a physical attachment to their buildings—actually invaded the owners' right to exclude others from their property."

The only role the city played was to re-zone so the parking lot would be a permitted use.

In this case, the decision by the city on how to use public roads did "not deprive . . . RDB . . . of any stick in the proverbial bundle of property rights, as required by *Penn Central*."

CASE NOTE

RDB also claimed the property lost its aesthetic value as a result of the city's action. In its view, the city failed to require TBC to ensure that its parking lot complied with local requirements for fencing, landscaping, and lighting. In addition, the property's value fell as a result of excess noise, light, and security risks caused by the increased traffic, RDB asserted. "But this claim similarly falls short of satisfying *Penn Central*. Courts have been reluctant to find a taking when property values have dropped because of noise and light pollution."

The case cited is Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631, 11 Env't. Rep. Cas. (BNA) 1801, 8 Envtl. L. Rep. 20528 (1978).

Zoning News From Around The Nation

Connecticut

Opinion piece calls for reform of state's zoning laws

In an opinion piece for the *Connecticut Mirror*, a Stamford resident and member of the Desegregate Connecticut coalition, which promotes inclusion in state land use, wrote that the state needs to examine its zoning restrictions. The author wrote that while land use regulations may have originally been designed to keep neighborhood character intact, now have an excessively restrictive and prohibitively expensive impact on local communities.

In the author's view, zoning restrictions concerning single-family housing, minimum lot sizes and setback requirements, height and parking limits, etc., mean that those who can't afford to live in wealthy communities have been priced out of the market. He added that if fourplexes or apartments were permitted in such communities, those without the financial means individually could pool resources to live there.

Recently, *PBS Newshour* ran a podcast series called "Roads to Recovery," which featured a segment "on efforts to reform Connecticut's land use laws, and the complicated mix of history, politics, and racial dynamics that impact who gets to live where," its website stated. "Advocates say restrictive land-use laws have led to inequality and a lack of affordable housing, while some local officials worry about losing a say over what can be built and where. This segment is part of the initiative,

Chasing the Dream: Poverty and Opportunity in America," the news outlet reported. For more information, visit pbs.org/newshour/show/how-zoning-can-restrict-or-even-prevent-affordable-housing#audio for more information.

Source: *ctmirror.org*

Georgia

Alpharetta considers proposal for mixed use complex on Northwinds Parkway

In February 2021, zoning officials in Alpharetta conducted an informational meeting to give the public a chance to learn more about a request to permit a mixed-use complex on the city's Northwinds Parkway near the Kimball Bridge Road intersection, the *Atlantic Journal-Constitution* reported. The $160 million mixed-use complex would include a boutique hotel, a wellness center, condominiums, and space for retail and restaurants.

At the meeting, the public was invited to discuss questions or concerns with the developer of what's being called "The Bailey."

For more on public hearings on The Bailey, visit alpharetta.ga.us/government/departments/community-development/public-hearings/mp-21-01-clup-21-02-z-21-03-cu-21-02-v-21-04-the-bailey-northwinds.

Sources: *ajc.com; alpharetta.ga.us*

Maine

Downtown development gets green light in Auburn

According to a recent report by the *Lewiston Sun Journal*, the Auburn City Council has approved two measures that pave the way for development in the downtown area of the city. The changes will expand the form-based code district in Auburn called the Traditional Downtown Neighborhood. This means building owners will have an easier time renovating or constructing additions, the news outlet reported.

According to Auburn's website, in 2014, the city's planning staff and planning board worked to "develop . . . a simple, easy to understand and administrate Form Based Code for close to 100 acres of Downtown Auburn and New Auburn." "Form Based Code to help bring back traditional development patterns by providing a focus on building placement, safe walkable streets, greater flexibility of land uses and a more simplified development process. The Auburn City Council adopted the Form Based Code (FBC) in May of 2016," it stated.

For more information about the city's form-based code, visit auburnmaine.gov/pages/government/form-based-code-info.

Source: *sunjournal.com*

Massachusetts

Bay State's 'Comb City' considering amendment to permit commercial-kitchen operation; SJC to hear new zoning cases

On February 8, 2021, Leominster's city council was expected to vote on whether to amend a zoning ordinance to permit commercial kitchens to operate in the city's commercial zone, the *Sentinel & Enterprise* reported recently. The current regulation restricts commercial kitchens to establishments that sell a product, Leominster's mayor told the news outlet.

The city's planning board is also joining the discussion. The news outlet reported that it had considered the approval of commercial kitchens in the commercial zone with a special permit and site-plan approval.

For more information on the proposed amendment, visit leominster-ma.gov/civicax/filebank/blobdload.aspx?BlobID=31591.

In other news out of Massachusetts, the Supreme Judicial Court was slated to hear two cases raising the issue of how much authority local municipalities have in permitting adult-use cannabis businesses.

Mederi Inc. vs. City of Salem (case docket available at ma-appellatecourts.org/docket/SJC-13010), involves the following issue: "Where an applicant for a marijuana retail establishment (MRE) license has obtained a special permit to operate under applicable zoning bylaws or ordinances; the applicant contends that it has met all requirements of the municipality's application process; and it contends that an applicant may not proceed to the Cannabis Control Commission without a certificate that it has executed a host community agreement (HCA) with the municipality, whether a municipality's decision not to execute a HCA with the applicant impermissibly usurps the authority of the commission to determine to whom a MRE license will issue, pursuant to" Massachusetts law (G. L. c. 94G).

CommCan Inc. vs. Town of Manfield (case docket available at ma-appellatecourts.org/docket/SJC-13029) involves the issue of: "[W]hether G. L. c. 94G, § 3 (a) (1), prohibits the town's zoning bylaws from operating to prevent the plaintiffs from converting their licensed medical marijuana dispensary to a retail marijuana establishment; and, more specifically, whether the plaintiffs are presently 'engaged in' in the cultivation, manufacture or sale of marijuana or marijuana products for purposes of § 3 (a) (1), where the plaintiffs hold a State-issued provisional license to operate a medical marijuana dispensary and have obtained a special permit from the town to construct and operate the dispensary, subject to a pending appeal, but where construction of the dispensary has not yet begun."

As of print time, the court was scheduled to hear arguments in these cases on February 3, 2021.

Sources: *sentinelandenterprise.com; Leominster.gov; ma-appellatecourts.org*

Michigan

Township investigates whether zoning violations occurred after explosions rock one Marion neighborhood

Residents in Marion, Michigan heard several explosions recently coming from a worksite on the township's Harvest Drive, *whmi.com* reported. The parcel in question is zoned rural residential, but neighbors say the owner of the property, a contractor, may be running a business more indus-

trial in nature. While a nursery would be allowed under the residential rural zoning ordinance, the neighbors told Marion's Board of Trustees (BOT) blasts shook their home and sent smoke plumes 80 feet into the air, the news outlet reported.

In addition, the neighbors explained to the BOT that dump trucks and landscaping equipment operate at the site from early morning until late at night. In their view, the township may have been "duped" into believing the contractor was going to be operating an agriculture business raising shrubs and trees, the news outlet reported.

One BOT voted to send the matter to the township's planner to launch an investigation and potential enforcement.

Source: *whmi.com*

New Hampshire

HAB is up and running to address disputes over what may be built, when, and how

The New Hampshire Housing Appeals Board (HAB) is now operational, the *Concord Monitor* reported recently. HAB presents an opportunity for individuals to appeal planning and zoning board decisions rather than taking their grievances directly to a New Hampshire superior court, the news outlet explained.

According to HAB's website, the New Hampshire Legislature established the three-member board in 2020. HAB is currently "accepting Planning and Zoning appeals in accordance with its statutory authorization." The appeal filing procedures and deadlines can be found at gencourt.state.nh.us/rsa/html/LXIV/679/679-mrg.htm.

HAB noted that "most appeals will be subject to a mediation requirement. If mediation is not successful, the board will hold a public hearing and issue a decision with detailed findings, which is appealable to the New Hampshire Supreme Court."

HAB also explained that matters appealable to it include:

- planning Board decisions on subdivisions or site plans;
- Board of Adjustment decisions on variances, special exceptions, equitable waivers, administrative appeals, and ordinance administration;
- the use of innovative land-use controls;
- growth-management (including interim) controls;
- historic district heritage, and conservation commission decisions; and
- decisions concerning municipal permits and fees applicable to housing and housing developments.

"Matters subject to [HAB's] authority may also include mixed-use combinations of residential and non-residential uses. Such different uses may occur on separate properties, provided such properties are all a part of a common scheme of development," it explained.

Sources: *concordmonitor.com; hab.nh.gov*

Virginia

Zoning changes may be on the horizon for Prince William County

At a meeting on February 2, 2021, the Prince William Board of County Supervisors was slated to discuss the possibility of expanding agricultural uses in some parts of the county, *InsideNova.com* reported recently. Specifically, the board was scheduled to hear where a zoning amendment should be enacted that would give landowners more flexibility to keep cattle where a property is situated in an agriculturally zoned area. At the present time, farm animals are not allowed as an accessory use on agricultural lots under 10 acres if the primary use of the property is residential or where a property is zoned residential, the news outlet reported.

At the meeting the Board of County Supervisors was expected to discuss using the Prince William County Domestic Fowl Overlay District (DFOD) map to permit cattle on parcels under 10 acres that are cleared for birds. For more information on the DFOD map, visit pwcgov.org/government/dept/planning/zoning/Pages/Domestic-Fowl-Overlay-District-Recommendations.aspx.

Source: *insidenova.com; pwcgov.org*

QUINLAN™

March 25, 2021 | Volume 15 | Issue 6

Zoning Bulletin

in this issue:

Permits

Billboard company challenges zoning administrator's denial of permit to construct new signage

Citation: *Reagan Outdoor Advertising v. Salt Lake City Corporation, 2021 WL 409788 (D. Utah 2021)*

Ralph Becker served as mayor of Salt Lake City, Utah from 2008 to 2017. One of his areas of focus was reducing the number of billboards in the city.

Between 2007 and 2015, Reagan Outdoor Advertising (ROA) maintained or displayed billboards on a commercial property located at 218 East 400 South in Salt Lake City pursuant to a lease with the property's owner.

Around September 2014, ROA negotiated with the property's owner to renew this lease. What ROA didn't know was that the owner had sold all billboard rights associated with the property to the city for $250,000.

The city agreed to pay the owner an additional $100,000 if ROA was unable to construct a replacement billboard elsewhere. Because of this agreement, ROA wasn't able to renew its lease and had to take the billboard down and deposit credits into the city's billboard bank, which provided a way for a billboard owner to remove and relocate the billboard to a different location or to construct a replacement billboard at the new location. Also, billboard bank credits expired if they weren't used within three years.

ROA could use the billboard credits within a "special gateway" on properties located on 400 South between 200 East and 800 East. The credits could only be used on a property with a zoning classification equal to or less restrictive than the property from which the billboard had been removed.

The city's zoning administrator denied the permit on the basis that the property was subject to a more restrictive zoning classification than the property where ROA had removed the billboard.

ROA appealed the denial to the city's hearing office, which upheld the zoning administrator's decision. But, the decision was upheld, so ROA filed an appeal in state court.

While that case was pending, the city rezoned the 400 South Special Gateway in 2012, so ROA didn't have a place to use its billboard credits. Due to rezoning, the property where the billboard had been located remained in a "D-1 zone" but the other properties within the special gateway were placed in "Transit Station Area" (TSA) zones.

ROA wanted to erect a replacement billboard on a property within a TSA zone, which the zoning administrator and hearing officer both found was more restrictive than the D-1 zone. ROA complained that it hadn't been given notice of the rezoning.

THOMSON REUTERS®

Mat #42689101

ROA asserted that its due process rights had been violated and that the city had violated state-law takings provisions. The city asked for dismissal.

DECISION: Request for dismissal granted.

ROA couldn't establish claims for procedural or substantive due process or equal protection violations under the Constitution.

Procedural due process—ROA asserted the city violated its procedural due process rights without adequate process by rezoning the special gateway, buying the billboard rights previously leased to it, and denying its application to use the billboard credits to build a replacement billboard.

ROA still owned the billboard itself, and the billboard was still in its possession. Therefore, it hadn't "suffered any injury to this property interest." It contended while it didn't have "a protectable property interest in the renewal of the [l]ease," it nevertheless argue[d] that "[the city] terminated its 'associated property rights' without due process of law." But, "any 'associated' right that ended when the lease expired was not a protected property interest because [ROA] lacked any 'implied right to renew a lease,' " the court ruled.

And, the court didn't need to decide whether ROA "had a constitutionally protected property interest in the billboard credits because [it found] that, even if it did, [ROA] was afforded due process in connection with the [c]ity's denial of the request to use these credits to construct a replacement billboard."

Further, ROA wasn't entitled to any special notice about the city's plans with respect to rezoning. The city publicly posted notice of the rezoning in the newspaper, through a mailing to affected property owners (ROA wasn't a property owner, it was a lease holder), and at a public meeting.

Substantive due process—ROA alleged that the city's solicitation of the property owner to sell its rights to maintain a billboard on the property while ROA was negotiating its billboard lease violated its substantive due process rights. ROA hadn't "alleged that the legislative action of rezoning the properties within the 400 South Special Gateway restrict[ed] fundamental rights deeply rooted in this Nation's history and tradition," the court explained. Thus, the issue was subject to "rational basis review."

ROA argued the rezoning didn't "bear a rational relationship to any other legitimate government interests and that its sole purpose was to eliminate [its] billboard," the court explained. But, even if that was the case, the city had a "legitimate interest in regulating and reducing the number of billboards."

Also, because the city was "acting as [a] market participant, [its] negotiation for and purchase of the billboard rights may not be subject to substantive due process scrutiny at all," the court added. "To the extent these actions constitute executive action subject to substantive due process scrutiny, the court . . . rejects [ROA's] claim. In light of the [c]ity's legitimate interests in regulating and reducing the number of billboards, the court cannot say that the negotiation and purchase of the billboard rights, whether or not considered in connection with the rezoning, constituted 'conduct intended to injure in some way *unjustifiable by any government interest.*' "

Equal protection—The court also addressed whether ROA's equal protection rights had been violated under Section 1983. ROA alleged it was a member of a group of billboard owners the city had exhibited public animosity toward.

But, ROA didn't allege the city's actions "implicated fundamental rights." Also, "billboard ownership [wa]s not a suspect classification, and [ROA] ha[d] not alleged that the [city's] actions were based on a suspect classification such as race, sex, or national origin."

The bottom line: The city had a "legitimate interest in regulating and reducing the number of billboards," so the court couldn't "say that [its] alleged differential treatment

Contributors

Laura Scott, Esq.

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

THOMSON REUTERS®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084
email: west.customerservice@thomsonreuters.com
ISSN 0514-7905

of [ROA]—whether as a billboard owner or as a member of a class of one—lacked a rational relationship to a legitimate government interest."

A CLOSER LOOK

ROA also claimed the city had a policy, custom, or practice that violated its rights. But, since no constitutional violation was present, the municipality couldn't be held liable under Section 1983, the court explained.

Case note:

The rezoning ordinance had been publicly posted, published in a newspaper, and mailed to the property owners of properties located within the rezoning area. ROA hadn't received mailed notice because it leased the property where the billboard was located and wasn't the property owner. And, the ordinance didn't change the zoning classification of that property "in all events," the court wrote.

Taking

Farm enterprise company challenges county's decision to enact bills it said resulted in unconstitutional taking of land

Citation: *Clayland Farm Enterprises, LLC v. Talbot County, Maryland, 987 F.3d 346 (4th Cir. 2021)*

The Fourth U.S. Circuit has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

Siblings John Camper III and Jeanne Bryan (the Campers or the Camper family) owned Clayland Farm Enterprises LLC (Clayland) in equal shares. Clayland owned approximately 106 acres of waterfront property adjacent to the Chesapeake Bay in the Village of Royal Oak in Talbot County, Maryland. The property consisted of eight plots ranging from more than 88 acres down to around two acres.

Since 1969, the Camper family had used the property for farming and leased parts of it for residential use. Clayland earned up to $10,000 annually through sharecropping. And, through the residential leasing, it generated up to $1,340 a month between 2006 and 2018. Clayland also leased an eight-acre plant nursery to a relative for $1 per year.

In 1991, Talbot County granted the Campers approval to build a six-lot subdivision: "Darby Farm." But, neither the Campers nor Clayland ever proceeded with developing the subdivision.

Talbot County adopted Bill No. 1214, which addressed density and subdivision restrictions, followed by Bill No. 1257, which extended Bill No. 1214's restrictions on village center (VC) zones (including decreased density of residential units and the limitations on new subdivisions) until Talbot county adopted comprehensive rezoning and land use regulations regarding density under the county's comprehensive plan.

Then, the county enacted a new comprehensive plan and a new comprehensive rezoning plan, which took effect on November 10, 2018. As a result, Clayland's property was converted from a VC zone to a Resource Conservation (RC) zone. An RC zones allowed residential development at a density of only one unit per 20 acres. The 2018 Comprehensive Rezoning also caused Bill No. 1257—which extended Bill No. 1214's density and subdivision restrictions—to expire.

THE LAWSUIT

Clayland filed suit against Talbot County alleging Bill Nos. 1214 and 1257 constituted an unconstitutional taking in violating of the Fourteenth Amendment. Clayland also contended the county had engaged in a civil conspiracy to violate its Fourteenth Amendment due process rights.

The county asked the lower court for judgment without a trial, which the court granted. Clayland appealed.

DECISION: Affirmed.

Clayton wasn't subject to a regulatory taking; and the county didn't violate Clayton's due process rights in enacting Bill Nos. 1214 and 1257.

REGULATORY TAKING

The court examined how the county's actions with respect to Bill Nos. 1214 and 1257 affected its and Clayland's interests. While certain factors weighed in Clayland's favor, ultimately, the court found the bills "were public-benefit regulations that did not deprive Clayland of all development potential and—most significantly, and perhaps even decisively—did not divest Clayland of any vested rights." Therefore, the bills didn't "constitute a regulatory taking."

TAKINGS CLAIM FACTORS CONSIDERED

The court analyzed several factors to determine whether each factor weighed in favor of the county or Clayland.

Economic impact— "Under Bill Nos. 1214 and 1257, Clayland could subdivide any existing parcel into one additional lot, develop at one unit per two acres, or proceed with the approved six-lot Darby Farm subdivision. The first factor, therefore, weighs in favor of the [c]ounty."

Reasonable investment-backed expectations—This factor also weighed in the county's favor. "A takings claim must be premised on a preexisting property right," the court explained. Here, "Clayland had no affected preexisting development rights in relation to the [p]roperty," because under state law, "to obtain a 'vested right' in the existing zoning use which w[ould] be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved

so that the neighborhood may be advised that the land is being devoted to that use." While Clayland retained the right to develop Darby Farms—a six-lot subdivision—it "never obtained a permit, began construction, or took *any* action on any other development to which it now claim[ed] entitlement. Clayland could not reasonably expect that its zoning designation would remain unchanged in perpetuity," the court noted.

The character of the governmental action—"Interference with property [wa]s less likely to be considered a taking when it '[arose] from some public program adjusting the benefits and burdens of economic life to promote the common good," the court explained. Both Bill Nos. 1214 and 1257 "were 'paradigm[atic]' public-benefit regulations" as they were enacted "to control the density of development to prevent the overburdening of public services, environmental damage, and other harms."

And, while the bills imposed development restrictions for six years— "a lengthy" amount of time— "the exacting rezoning process involved ensur[ed] compliance with Maryland state law" by coming about following public comment and hearings.

SUBSTANTIVE DUE PROCESS

Clayland couldn't "establish that the [b]ills limiting development—Bill Nos. 1214 and 1257—deprived it of a property interest because Clayland lacked any relevant, cognizable property interest," the Fourth U.S. Circuit Court of Appeals ruled.

"Clayland had no affected development rights under Maryland law," the court added. "The inquiry ends there."

And, regardless of this finding, "Bill Nos. 1214 and 1257 were also reasonable and substantially related to public health and safety. The County enacted [them] to maintain the status quo leading up to the new comprehensive plan and concomitant rezoning, which in turn were intended to bring the [county's Comprehensive Water and Sewer Plan] and 2005 Comprehensive Plan into conformity with each other, given the existing sewer problems and the need to protect the ecological area."

Rezoning

Request for rezone of farm area to low density 'R-15' single-family residential district lands in court

Citation: *Two Parks, LLC, Plaintiff, v. Kershaw County, South Carolina, Defendant., 2021 WL 492439 (D.S.C. 2021)*

Two Parks LLC (Two Parks) owned close to 100 acres of unoccupied land off of Friends Neck Road in Lugoff, South Carolina. The parcel had previously been part of a larger tract called Lugoff Farms, which was zoned RD-1 (rural resource district). Within an RD-1 zone, residential development was restricted to parcels of at least one acre with 100 feet of road frontage.

Two Parks asked the Kershaw County Planning Commission (KCPC) for an amendment of the zoning ordinance/map to rezone Lugoff Farms to R-15, the designation for low density, single-family residential districts.

The KCPC investigated the request and concluded that R-15 zoning would be appropriate for the Lugoff Farms parcel, which was contiguous with other property that had already been zoned R-15 and developed with residential units. Also, the proposal for R-15 zoning complied with the goals of Kershaw County's adopted Comprehensive Plan and Future Use Map.

While the KCPC recommended approval to the Kershaw County Council (KCC), the KCC voted unanimously to deny the rezoning request. At a meeting to determine how it would vote, the KCC heard from seven individuals who had registered their opposition to the rezoning request—and one of the objectors presented a petition signed by 250 residents who opposed it.

Two Parks filed suit. It claimed that in denying the rezoning request the KCC had acted "arbitrarily, capriciously, and without any rational basis." The KCC asked the court for judgment without a trial.

DECISION: Request for judgment granted.

The KCC was within its rights to deny the rezoning request.

There was a fair amount of public opposition to Two Park's rezoning request, the court ruled. "[I]t is obvious to this [c]ourt that the [KCC's] decision on whether to grant Two Parks the zoning variance was debatable," it added. And, where "the validity of the legislative classification for zoning purposes [was] fairly debatable, the legislative judgment must be allowed to control," the court explained.

Plainly put, there was a rationale basis for the KCC's conclusion. Further, there wasn't any evidence that Two Parks had been singled out for discrimination in some way, so an underlying argument it made that it had been subjected to unlawful bias failed, since it was "nothing more than speculation and conjecture."

PRACTICALLY SPEAKING

The evidence showed "much public opposition to Two Parks' request for a rezoning of the land off of Friends Neck Road in Lugoff, South Carolina, for a host of reasons, some relevant to [KCC's] review and some, perhaps, not," the court found. But, the KCC's actions didn't rise to the level of constituting a constitutional violation of Two Parks' rights.

Zoning Classification

In dispute over zoning board's classification of a residence should case be thrown out on procedural grounds?

Citation: *Marsh v. Roanoke City, 2021 WL 457437 (Va. Cir. Ct. 2021)*

In October 2020, the Roanoke City, Virginia Board of Zoning Appeals (BZA) issued a decision concerning the zoning classification for a residence. The property owner appealed that decision to a court.

Roanoke City requested dismissal of the lawsuit, alleging the owner hadn't complied with state law requirements by naming the correct government body (the Roanoke City Council) in their filing.

The owner stated the governing body had to be included in the petition with the court within 30 days of the filing and that omitting the word "Council" from the filing constituted "a scrivener's error and a misnomer" under the applicable rule.

DECISION: Request for dismissal granted.

The owner had to identify the governing body at the party to the petition within 30 days of the BZA's final decision, the court found. If that procedure was not followed, a court didn't have "the discretion to permit amendment of the petition to add the governing body once the 30 days have passed." And, if a party asked the court to dismiss because the proper party to the lawsuit hadn't been named, the court had to grant the request.

THE BOTTOM LINE

Here, the owner "failed to name a necessary party, the City Council of Roanoke in the Petition," the court wrote. Instead. the owner "named Roanoke City, which [wa]s not the governing body" required under the applicable rule.

Non-Conforming Use

Historic inn challenges ZBA's decision to affirm denial of tent permits for upcoming weddings on the property

Citation: *The Hedges Inn, LLC v. Zoning Bd. of Appeals of the Village of East Hampton, 2021 WL 219148 (N.Y. Sup 2021)*

The owners of property located at 74 James Lane in East Hampton, New York operated a historic inn and restauration on the property known as The Hedges Inn. The inn was located East Hampton's R160 residential district, and the operation of the inn constituted a preexisting nonconforming commercial use in this type of district.

The applicable code defined the term "nonconforming use" as "[a]ny use of a building, structure, lot, land or part thereof lawfully existing." The property's most recent certificate of occupancy as:

- a three-story wood frame inn consisting of 14 rooms and a restaurant with maximum occupancy of 113 people;
- an unfinished basement;
- a two-story barn, which was not used for sleeping;
- a gazebo;
- a slate patio with awning (no sides allowed) and other slate patios;
- brick walkways; and
- an irrigation pit.

The property owner claimed customary accessory uses of the property had historically included outdoor special events, sometimes in tents, including weddings, bar and bat mitzvahs, and graduation and anniversary parties. The owner also asserted that from 2001 through 2017 the Hedges Inn had submitted no fewer than 14 applications for, and subsequently obtained, permits from the village for outdoor and tented events at the property.

On February 19, 2018, the Hedges inn submitted permit applications with village officials ahead of four weddings that were scheduled to be held outdoors in tents between March and September 2018. As of that date, the applicable chapter of the code required "any person or other entity proposing to hold an 'assemblage of persons,' . . . to obtain a permit from the village."

The zoning board denied the Hedges Inn's request for the tent permits. It found the inn had violated a specific section of the village's zoning code. After the Zoning Board of Appeals of the Village of East Hampton (ZBA) upheld that decision, the owner appealed to the court, asking for declaratory relief.

DECISION: Request for declaratory relief granted.

The denial of the request for tent permits was proper.

"[A] for-profit business like a restaurant or inn has a financial motivation attached to the use of its property, and that due to the nature and volume of that use, residences located in proximity to such a business may be more impacted than residences located in proximity to properties on which not-for-profit businesses are operated," the court explained. "Nevertheless, the village can (and already has) implemented legislation to prevent the expansion of nonconforming uses, and it can also require that permits be issued relative to the holding of an outdoor event subject to conditions regulating noise, parking, and other community concerns. What it has done here, by contrast, violates the uniformity requirement," it ruled.

The bottom line: A specific section of the Code of the Village of East Hampton—Section 139-15 (D)—had been enacted in violation of New York Village Law Section 7-702, which "authorize[d] the adoption of zoning regulations and the division of a village into districts but provide[d] that 'such regulations shall be uniform for each class or kind of buildings, throughout such district but the regulations in one district may differ from those in other districts.' "

A CLOSER LOOK

The inn alleged that New York's Village Law barred the village from singling it out for disparate treatment and that there wasn't any rational basis for barring special events outdoors or in tents at inns or restaurants located in the village's residential districts—when such events could be held at residential properties in those districts. The inn also stressed that the village continued to "permit special events outdoors and in tents at other properties in the same district, including a church, a farm, a library, and a historical society, even though none of those properties is residential."

Zoning News From Around The Nation

Florida

Former President Trump will likely be able to stay at his Mar-a-Lago residence

Recently, the town attorney for Palm Beach, Florida opined that former President Donald Trump will likely be able to live at his Mar-a-Lago property, *Fox News* reported. That's because The Mar-a-Lago Club Inc.'s 1993 Declaration of Use Agreement filed with the town doesn't specifically bar him from residing on the premises in an owners' suite.

The question arose after local residents grew concerned over potential, ongoing protests that could take place outside of Mar-a-Lago, and thus near their homes.

The town attorney noted that Palm Beach's zoning club permits private clubs to have living quarters for their bona fide employees, the news outlet reported. And, there's evidence that former President Trump fits that definition as proscribed under the town code. Specifically, an employee is defined as one working onsite for the entity, which may include sole proprietors, partners, limited partners, and corporate officers, etc.

The news outlet explained that neither the Palm Beach Town Council nor its mayor objected to the legal findings that were presented. Therefore, the town will not take any action at this time, the town manager told the news outlet.

Source: *foxnews.com*

Indiana

Court rules against neighbor's attempt to block logging business from operating

In Indiana, a Brown Circuit Court judge has denied a request to block a logging company's operations, the *Brown County Democrat* reported recently. The case arose after Sherrie Mitchell filed an action asking the court to determine if the Brown County Board of Zoning Appeals (BZA) erred in giving Christina Buccos, a neighbor, the green light to operate a family logging business.

Mitchell questioned the BZA's decision to grant a special exception to operate the Buccos' land despite the fact that before Mitchell filed suit the BZA had revoked that special exception for general industrial use. Specifically, Mitchell sought an injunction to ensure the logging business could not go forward and asked to recoup court fees.

The judge denied the request for an injunction. Mitchell filed suit against the BZA (not Buccos). The BZA argued Mitchell isn't entitled to fees because Brown County didn't act maliciously or in bad faith in addressing Buccos' request.

For court documents related to this case, visit public.courts.in.gov/mycase#/vw/CaseSummary/eyJ2Ijp7IkNhc2VUb2tlbiI6InFOWTJHN3JQZWlYVHdhTXNyZXR5N2VRQWRGYnJoMDRHWVJIWlVOTkhoZ0UxIn19.

Source: *bcdemocrat.com*

Louisiana

Louisville's LDC change paves the way for community gardens, tiny homes

On February 4, 2021, the Louisville Metro Office of Planning & Design Services (LMOPD) released *Confronting Racism in City Planning & Zoning*. The report's introduction notes that the LMOPD, joined by Louisville's mayor and its planning commission, is currently "reviewing the Land Development Code (LDC) to identify and address land use regulations and policies that have inequitable impacts on Louisville residents."

Within the report, which is available at storymaps.arcgis.com/stories/b723811e6d3c4b5b86151e884bdb7f3d, you'll find information about:

- zoning and land use regulations generally; and
- how specific policies, people, and regulations have shaped the city.

The report also includes a link to the Plan 2040: A Comprehensive Plan for Louisville Metro, which is available at louisvilleky.gov/document/plan2040louisvillemetrocomprehensiveplanfinal11-1-18pdf.

"Plan 2040 sets a framework for growth by using five guiding principles-Connected, Healthy, Authentic, Sustainable and Equitable-to strategically manage all the benefits and challenges that come from adding more people. People are moving to cities in our country and across the globe; with Plan 2040, we'll be ready to welcome them," wrote Louisville Mayor Greg Fischer in an introductory letter.

Also, in January 2021, Land Development Code (LDC) reform recommendations were released. A chart, which can be found at louisvilleky.gov/planning-design/document/ldc-reform-recommendations-summary-chart-2-1-21, outlines the various phases of the amendments (six months or more, 12-18 months, 24 months or more), the issues those amendments address, and summaries of the amendments, which relate to issues like tiny homes, private yards, duplexes, flexible maximum building height, accessory dwelling units, residential setbacks, etc.

Sources: *louisvilleky.gov; storymaps.arcgis.com*

Maryland

Montgomery County Planning Department has issued assessment of zoning text amendment addressing 'missing middle housing'

In February 2021, the Montgomery County Planning Department, which is part of The Maryland-National Capital Park and Planning Commission (M-NCPPC), provided its assessment of Zoning Text Amendment 20-07 (ZTA) to the county's planning board. The goal is to "inform the Board's comments to send to the County Council on this policy ahead of its public hearing next week. This ZTA would amend the county's Zoning Code to allow duplexes, townhouses, and small multi-family structures, also known as Missing Middle Housing," the planning department stated in a press release.

Specifically the ZTA would amend the zoning code to permit duplexes, townhouses, and small multi-family structures to be constructed within a mile of a Metro station entrance. "Planning Board members generally supported the ZTA, but highlighted elements that need to be adjusted to make the policy most effective at creating Missing Middle Housing in the comments they voted to transmit to County Council," the press release explained.

In providing their technical expertise, the planning department staff noted that:

- The county's "current housing options are often not affordable for low-income families and middle-income residents";
- "[t]he current housing shortage combined with the projection of 200,000 more residents expected to be in the county by 2045 indicate that a mix of housing types is needed to meet the demand"; and
- Missing Middle Housing would provide new and existing residents with a choice between "single-family homes and downtown high-rise apartments at the right size and price point for their needs."

"It is critical that we expand Missing Middle Housing options in Montgomery County," said Planning Board Chair Casey Anderson.

The ZTA 20-07 Planning Board Staff Report can be found at montgomeryplanningboard.org/wp-content/uploads/2021/01/ZTA-20-07_Final.pdf. And, for more on Missing Middle Housing, visit montgomeryplanning.org/planning/housing/missing-middle-housing/.

Source: *montgomeryplanning.org*

Massachusetts

Governor issues economic development plan; local ZBA approves request to operate dance studio after cease-and-desist order

Gov. Charlie Baker has signed House No. 5250, An Act Enabling Partnerships in Growth, which "provides a five-year roadmap backed by more than $626 million in capital authorizations and key policy provisions to support economic growth and improve housing stability across Massachusetts," the governor's office stated in a press release.

The signing followed the Baker-Polito Administration's 2019 rollout of an economic development plan entitled *Partnerships for Growth: A plan to enable the Commonwealth's regions to build, connect and lead.* This plan has four pillars:

- responding to the housing crisis;
- building vibrant communities;
- supporting business competitiveness; and
- training a skilled workforce, the governor's office explained.

"This new law provides tools needed to respond to both the challenges posed by COVID-19 as well as those that existed before the virus took hold, especially the housing crisis. We are pleased to implement these policy changes, especially the Housing Choice provisions we proposed more than three years ago to make it easier to increase production and zoning reforms in communities that want and need it," said Governor Baker. "While we continue to make progress we still have much work to do in the months ahead to help businesses recover, get people back to work, and restore the Commonwealth's economic vitality," he added.

The office explained that to expand the state's housing stock, battle the current housing crisis, and rejuvenate neighborhoods and communities, this bill sets aside funding to:

- stabilize neighborhoods "to return blighted or vacant units back to productive use, including in communities disproportionately affected by COVID-19";
- produce new, high-density, mixed income housing near commuter rail stations and other transportation hubs;
- build affordable, multi-family "climate resilient" housing equipped to reduce greenhouse gas emissions;
- convert vacant or underutilized properties in bustling commercial, housing, or green-space zones;
- support rural and small-town development projects; and
- provide community and regional planning help for municipalities or regions "to address shared goals related to community development, housing production or other issues of local and regional concern."

Also, "[w]ith the simple majority threshold, municipalities that pursue rezoning efforts, including those enabling new housing near transit or in downtowns, would gain approval if they achieve more than 50 percent of the vote, as opposed to the current supermajority of more than two-thirds," the governor's office stated. "Prior to this historic change in law, Massachusetts was one of only a few remaining states to require a supermajority to change local zoning," it noted.

Further, changes to zoning that focus on best practices for housing growth qualifying for a simple majority threshold include:

- constructing "mixed-use, multi-family, and starter

homes, and adopting 40R 'Smart Growth' zoning in town centers and near transit";

- permitting accessory dwelling unit, or in-law apartment, development;
- approving "Smart Growth or Starter Homes districts that put housing near existing activity centers";
- "[g]ranting increased density through a special permit process";
- "[a]llowing for the transfer of development rights and enacting natural resource protection zoning"; and
- lowering "parking requirements and dimensional requirements, such as minimum lot sizes."

In other news out of the Bay State, the Sandwich Zoning Board of Appeals (ZBA) has voted to overturn the decision of the town's building commissioner to issue a cease-and-desist order concerning a home-based dance studio, *The Cape Cod Times* reported recently.

The building commissioner found that the property located at 604 Route 6A, which was undergoing renovations, hadn't met local zoning codes for occupation as a home. In February 2021, however, the ZBA overturned the building commissioner's decision.

Sources: *capecodtimes.com*; *mass.gov*

New York

Proposal to advance Brooklyn's Spice Factory development a disappointment to New York City Council

The New York City Planning Commission (PC) recently certified a controversial proposal to rezone 960 Franklin Avenue—the Old Spice Factory—in Brooklyn. Now that the project has received the green light from the PC to proceed under New York's uniform land use review process, two city council members have made their opinions on the matter known.

In a statement about the rezoning proposal, New York City Council Speaker Corey Johnson and Majority Leader Laurie Cumbo said, "The Council is disappointed that Continuum continues to advance this proposal despite widespread opposition in the community, as well as the clear danger posed to the Brooklyn Botanic Garden's conservatory greenhouses by the shadows that would be cast by these huge towers."

"The Brooklyn Botanic Garden is a priceless public asset that must be preserved for generations to come and we will not support any proposal that will harm the Garden. We share the concerns raised by the City Planning Commission today and urge Continuum to drop this proposal and instead work towards a viable project that addresses Crown Heights' needs for affordable housing and community services while respecting neighborhood character and our beloved institutions like the Botanic Garden," they added.

According to the Brooklyn Botanic Garden's website, its "plant collections are under serious threat from a proposed massive development complex of four buildings, including two 39-story towers at 960 Franklin Avenue just 150 feet from the Garden. Towers of this size would block hours of sunlight to the Garden's 23 conservatories, greenhouses, and nurseries, which grow plants for the entire 52-acre Garden site and its community programs," it stated. "Current zoning protects the Garden's access to sunlight by capping building height at this location. These laws must remain in place to prevent irreparable damage to the Garden."

Sources: *council.nyc.gov*; *bbg.org*

Ohio

Short-term mixed-use zoning amendment likely to pass in Middleburg Heights

Cleveland.com reported recently that the Middleburg Heights Planning Commission was likely to issue a recommendation to the Middleburg City Council to adopt a short-term ordinance that will amend its mixed-use zoning requirements. As of print time, the vote had not yet taken place.

Officials had previously designated the city's Southland Shopping Center as a good place to focus on mixed-use development. In 2020, Middelburg's mayor told the news outlet that the goal is to transform the space located at West 130th Street and Smith Road into a place where people can gather. And, there's been talk of connecting the shopping district to residential areas through bike paths.

Source: *cleveland.com*