



## CITY COUNCIL AGENDA ITEM

**To:** Mayor Graham and City Council

**From:** Ted Shekell, Planning Director  
Walter Denton, City Administrator

**Date:** January 17, 2008

**Subject:** An **ORDINANCE** to approve zoning amendments to Article 9 "Planned Uses" and Article 15 "Variances"

---

**List of committees that have reviewed:** At the Community Development Committee meeting on January 14, 2008, the Committee reviewed the proposed zoning text amendments and unanimously recommended both of them for approval by the full Council.

**Background:.** The Planning Commission held a public hearing on both referenced text amendments at their January 8, 2008 meeting. The Commission voted unanimously to accept both text amendments. Both amendments have been drafted by Dan Vogel and reviewed and recommended by staff.

**A) Amendment to Article 9 "Planned Uses":** *Staff Summary* - On August 21, 2006, the City Council approved several modifications to the Planned Use Ordinance, one of which included removing the requirement that a planned use approval be required for a "change of use". At that time, requiring a planned use for a "change of use", was deemed too broad and was subsequently removed by ordinance. This was supported by staff and the Council. After a subsequent period of evaluation, further refinement of this provision is needed. In particular, as a result of this change those properties that have had commercial zoning, often for many years, but that have always been used only as a residence, are not now being considered planned uses (although they were prior to the amendment in 2006). As a result, they are often requiring either multiple variances from the City's ZHO or they are facing difficulty meeting the requirements of the City's site plan and other development ordinances. This is frequently placing staff in the difficult position of trying to administratively approve site plans and projects that are not well suited for conversion or that may require multiple variances. Staff believes the decisions on these conversions, including any variances, or site plan modifications, are better suited for review by the Planning Commission and City Council as legislative decisions.

There are several properties in the City that are commercially-zoned B-1 or O-1 but have historically been used as residences. These properties are considered legal non-conforming uses. Staff refers to these properties as "potential residential conversions." Staff conducted a field survey to determine the number of potential residential conversions that exist in the City. The result of the survey was that there are 46 potential residential conversions. Below is a summary of the majority of the properties (the other 3 are scattered throughout the City):

- 18 properties are within 2 blocks of the intersection of State St and Lincoln Ave.
- 9 properties are within 3 blocks of the intersection of W Hwy 50 and Lincoln Ave.
- 5 properties are near Casa Azteca Restaurant off of W Hwy 50
- 5 properties are within 1,000 ft of the Spur (intersection of State St and W Hwy 50)
- 6 properties are on the north side of W Hwy 50, just east of Old Collinsville Rd.

*The proposed Text Amendment is shown below in bold, underlined, italics.*

## **Section 9.010 Planned Use — When Required**

- A. Change in Zoning and New Construction Requiring Planned Use Approval. A Planned Use approval shall be required for any proposed amendment or change in zoning, **change of use from a residential to a non-residential use**, or any construction of a new building for any non-accessory use within the MXD, MR, O-1, B-1, B-2 or "I" districts where any of the following exists:
1. The subject property is adjacent to or within 250 feet of any property used for residential, public assembly, including church/religious, or school purposes;
  2. A new structure of 20,000 square feet or more is proposed;
  3. Two or more buildings are proposed on one lot;
  4. When traffic generation per a traffic study submitted by the applicant, if requested at the discretion of the City, shows any level of service of "D" or worse pursuant to the accepted national traffic standards; or
  5. When required by Table of Uses in this Chapter or otherwise required elsewhere in this Chapter;

**B) Amendment to Article 15 "Variances" : Staff Summary** - This proposed amendment is to Section 15.060 and 15.070 of the City's Zoning Ordinance, which pertains to appeals to variance decisions made by the City's Zoning Hearing Officer (ZHO). Currently, this Section makes provision for a 21 day right-of-review by the City Council of all ZHO decisions, however, this Section provides no details as to how those appeals should be handled. Additionally, this Section was written with the anticipation that the City could become a home rule entity, which subsequently occurred. Given that fact, and to provide greater detail as to how appeals to the City Council should be governed, this Section of the zoning ordinance needs to be amended.

The proposed amendment closely mirrors the process for appeals of Special Uses, found in Section 7.040 (5). With Special Uses, the PC has authority to grant final approvals, however, the City Council has an automatic 21 day right-of-review period during which time the Council may vote to undertake additional review or they may concur with the PC's decision and simply let the 21 day period expire, at which time the PC's decision becomes final. While Section 15.060 governing appeals on variances presently alludes to the 21 day review period, the ordinance doesn't provide details as to how the appeals are to be conducted. This proposed draft amendment provides for those details.

**Legal Considerations, if any:** None

**Budget Impact:** None

**Staff Recommendation:** Staff recommends approval of the text amendments as presented above.