

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2008-011.

Description:

Consider and take appropriate action on an ordinance amending Section 25-2-531 (“Height Limit Exceptions”) of the Land Development Code (LDC). The proposed amendment would allow “fly towers”, associated with public performing arts theatres, to exceed the height limit of the base zoning district by thirty-three percent (33%). This height increase would be established as an exception to the base district.

Background:

On May 5, 2008 the City Council approved Resolution No. 20080508-047. The language of this resolution initiated an amendment to LDC Section 25-2-531 (“Height Limit Exceptions”), “to add an exception for fly towers constructed for and within a public performing arts theatre to permit said fly towers to exceed a zoning district height limit by up to 33%”. The proposed amendment implements the direction provided by this resolution.

Discussion:

Pursuant to Resolution No. 20080508-047, approved by the City Council on May 5, 2008, the Watershed Protection and Development Review Department is processing an amendment to Section 25-2-531 (“Height Limit Exceptions”) of the City Code.

Section 25-2-531 establishes exceptions to zoning district height limits for certain specified building elements (parapet walls, elevator penthouses, heating / cooling equipment, etc...) and accessory uses / structures (flagpole, television / radio receiving antenna, etc...). The proposed amendment would add the following to the list of exceptions: “fly towers constructed for and within a public performing arts theatre”. Said fly towers would be allowed to exceed the zoning district height limit up to thirty-three percent (33%). This proposal only provides for an exception to the height, not from any other provisions or standards of the Code.

Fly towers are the structure and rigging behind and above the stage in a performing arts theatre. The purpose of a fly tower is a system to move set pieces, lights, microphones and other equipment on and off stage and to lift or "fly" the scenery above the stage. The tower has to be tall enough to allow scenery to be "flown out" at a height at which the audience can't see it.

LDC Section 25-2-4 (“Commercial Uses Described”) defines “Theatres” as: “...the use of a site for presentation of plays, motion pictures, or other dramatic performances within a building”. The resolution adopted was specifically worded for “public performing arts theatres”, which would exclude private performing arts theatres and motion picture theatres. Currently the closest use classification in the LDC remains “theatres”. “Public performing arts theatre” would be interpreted as a subset of the larger “theatre” classification and, as stated, would exclude private performing arts theatres, as well as

motion picture theaters. The term “public” is broadly interpreted as anything owned or operated by a governmental agency.

“Theatres” are currently allowed by right in the following zoning districts:

- GR, Community Commercial;
- CBD, Central Business District;
- DMU, Downtown Mixed Use;
- CS, General Commercial Services;
- CS-1, Commercial – Liquor Sales;
- CH, Commercial Highway Services;
- IP, Industrial Park;
- MI, Major Industry;
- LI, Light Industrial Services

“Theatres” are a conditional use in the following districts:

- CR, Commercial Recreation
- L, Lake Commercial.

Other districts which allow theatres include:

- AV, Aviation Services;
- RD, Research and Development;
- PUD, Planned Unit Development;
- P, Public.

In summary, the proposed amendment would allow (by exception) “fly towers” associated with a public performing arts theatre to exceed the zoning district height limit up to 33%. The applicability of this amendment would include those districts which allow theatres as a permitted use. As an exception this height increase is administrative and not a discretionary decision. A facility meeting the definition of a public performing arts theatre would be allowed a fly tower in excess of the base district height.

Staff Recommendation:

Staff recommends the proposed Code amendment.

Planning Commission Date and Action:

The Planning Commission conducted a duly noticed public hearing at their regular meeting of June 10, 2008. At this meeting the Commission, following receipt of public testimony, made a motion to recommend approval of the proposed amendment to the City Council subject to the following: (1) Fly towers, proposed pursuant to this amendment, shall be subject to Residential Compatibility Standards; (2) Broaden the provisions of the ordinance to include “private” as well as public performing arts theatres; (3) Limit the provisions of the amendment to a small number of zoning district in which theatres would

normally operate, specifically: CBD, Central Business District; DMU, Downtown Mixed Use; CS, Commercial Services; and, CS-1, Commercial – Liquor Sales; (4) and, a proposed performing arts theatre with a fly tower that exceeds the maximum height of the base zoning district, up to 33% of the zoning district height limit, shall be a Conditional Use subject to discretionary approval. (*See the attached "Draft" minutes excerpt from the 6/10/08 Commission meeting*).

With respect to Item #1 from the Commission's recommendation, there is nothing in the proposed amendment which would exempt these facilities from any applicable design and / or compatibility requirements. The only regulation proposed to be "excepted" by this amendment is maximum building height, and that exception only extends to the "fly tower" associated with a performing arts theatre. For this reason staff does not feel that there is any specific ordinance language necessary to accomplish Commission's intent with regards to this condition.

City Council Date and Action:

Public Hearing is set for June 18, 2008

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