




*Building a Better and Safer Austin Together*

To: Chair Cohen  
Board of Adjustment Members

From: Brent D. Lloyd   
Development Officer, DSD

Date: July 8, 2022

Subject: **Windsor Village Site Plan (Case No. Case No. SP-2020-093520)**  
**Appeal of Staff Interpretation of Subchapter E Requirements**

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The matter before the Board of Adjustment (“BOA”) is an administrative appeal of a decision by the Development Services Department (“DSD”) to approve the Windsor Village Site Plan (Case No. SP-2020-093520), which Appellants contend is inconsistent with applicable zoning regulations. In particular, the issue of code interpretation before the Board is whether the site plan application complies with the requirements of Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*) of the Land Development Code (“LDC”).

To assist the Board in understanding the issues, this report is laid out as follows: (1) General background on the development, at pp. 1-2; (2) Procedural requirements for the appeal, at p.2; (3) A summary of the issues before the Board, at pp. 2-3; and (4) DSD’s response to the issues raised by Appellants, at pp. 3-6.

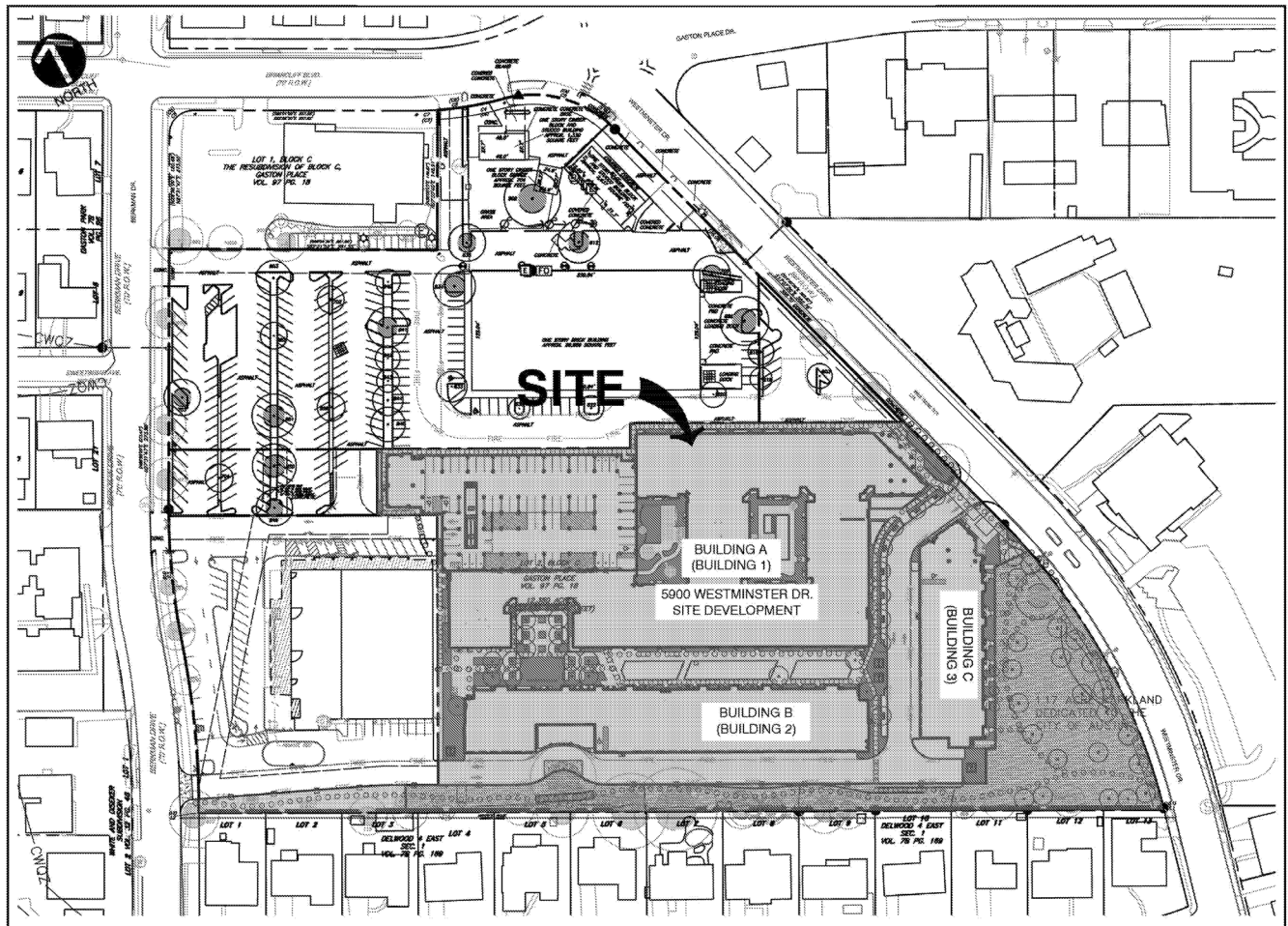
## **1. Summary of Site Plan Application**

Subchapter E authorizes the construction of Vertical Mixed Use (“VMU”) development to facilitate a mix of commercial and residential uses on properties with “V” zoning. The site plan approval at issue in this is appeal is for a VMU development located at 5900 Westminster Drive, which is located in the University Hills/Windsor Park Neighborhood Plan between Westminster Drive and Berkman Drive. (For reference, a location map of the site is provided on the following page.)

The site plan application consists of three VMU buildings located on Lot 1 and a 1.17-acre park dedicated to the City of Austin on Lot 3, with Westminster Drive serving as the principal street frontage for the development. Lots 2 and 4 are not proposed for development as part of this application.

Building A is a 261,842 square foot building comprised of multi-family residential and retail. Building B is a 78,223 square foot building comprised of multi-family residential. Building B is connected to Building A via a structural awning and is therefore considered one structure. Building C is a 43,200 square foot building comprised of multi-family residential, personal services, and retail.

# SITE DEVELOPMENT PLANS



## 2. Procedural Requirements for Appeal

Appellants own the property located at 5801 Westminister Drive, which is occupied by Austin Mennonite Church and located within 200 feet of the development at issue. They filed their appeal on May 19, 2022, which was within 20 days of the date the site plan was approved on May 2, 2022. For these reasons, staff accepted the appeal as timely and believes the matter is properly before the BOA for consideration.

In acting on the appeal, the BOA may uphold, modify, or reverse DSD's decision, as provided in LDC § 25-1-192 (*Power to Act on Appeal*), based on whether the site plan complies with applicable zoning regulations. The burden is on the Appellant to show that staff's approval of the site plan was based on an incorrect interpretation or application of the Subchapter E requirements referenced in their appeal.

## 3. Summary of Issues

The issue of code interpretation before the Board can be summarized as follows:

*In approving the proposed site plan, did staff correctly apply the regulations under Chapter 25-2, Subchapter E (Design Standards and Mixed Use)? Specifically:*

## **Article 1 – General Provisions**

### [1.1 General Intent](#)

### [1.5 Alternative Equivalent Compliance](#)

## **Article 2 – Site Development Standards**

### [2.1 Intent](#)

### [2.2 Relationship of Buildings to Streets and Walkways](#)

### [2.8 Shade and Shelter](#)

## **Article 3 – Building Design Standards**

### [3.1 Intent](#)

## **Article 4 – Mixed Use**

### [4.1 Intent](#)

### [4.3 Vertical Mixed Use Buildings.](#)

#### **4. DSD’s Position on Appeal**

DSD recommends that the BOA uphold staff’s decision approving the site plan application. As discussed below, staff concludes that the application complies with all applicable Subchapter E regulations.

##### **A. *The mix of uses included in the site plan complies with Subchapter E’s requirements for VMU development.***

Appellant contends that a greater percentage of the development should be devoted to commercial uses that will be accessible to the surrounding neighborhood and align more closely to the intent of the Windsor Park neighborhood plan. While DSD understands Appellant’s concerns, the approved mix of residential and commercial uses included in the site plan complies with Subchapter E and is consistent with how staff has applied these regulations in past cases.

Per Subsection 4.4.3 B (*Mix of Uses*) of Subchapter E, “a use on the ground floor [of a VMU building] must be different from a use on an upper floor.” Because the requirement does not specify what percentage of each floor must be dedicated to a particular use, DSD has consistently interpreted Subsection 4.4.3.B as simply requiring that some degree of differentiation exist between uses on the ground floor and upper floor. The proposed site plan complies with this requirement in that the ground floor of Buildings A and C both contain commercial uses, while the upper floors contain residential uses. Building B is connected to Building A via a structural awning, so the two are treated as a single VMU building per longstanding practice.

Additionally, the proposed site plan complies with Subsection 4.4.3 C (*Pedestrian-Oriented Commercial Spaces*). The retail spaces located on the corners of Buildings A and C and the personal services/live-work units in Building C comprise the entirety of the frontage of the site plan along Westminster Drive, which exceeds the requirement that 75 percent of the frontage along the principal uses be devoted to commercial uses.

##### **B. *The development complies with Subchapter E’s internal connectivity requirements.***

For development on sites of “five acres or larger,” Subchapter E requires an Internal Circulation Route

("ICR") in compliance with Subsection 2.2.5 (*Internal Circulation Routes: Sidewalks and Building Placement Requirements for Large Sites*). ICRs, which can take the form of public streets or publicly-accessible private drives, help to enhance pedestrian and vehicular connectivity and make development more accessible to the public realm. To help tailor ICR requirements to unique site features, Section 1.5 of Subchapter E authorizes DSD to allow Alternative Equivalent Compliance ("AEC") from ICR requirements.

When staff determined that an ICR was required, the Applicant opted to remove the gates from what had been planned as an internal fire route connecting Westminster and Berkman Drive. This created a publicly accessible connection through the site. Consistent with AEC approved in other VMU developments, the Applicant was permitted to provide pedestrian walkways and a shaded sidewalk along just one side of the internal connection, rather than full sidewalks on both sides. The result is appropriate to the context of the development, including the overall mix of uses, the amount of publicly dedicated parkland, and the presence of eight heritage trees on the site, 3-4 of which impact the southern portion of the internal connection.

This is a reasonable outcome for this development, particularly given that the size of the site is close to the five-acre cutoff below which no ICRs are required. DSD disagrees with Appellants on this issue and offers the following summary of how site area was calculated during the review process:

Initially, the 1.17 tract (Lot 3) to be dedicated as public parkland was excluded from the calculation of site area because it will be owned by the City and is not considered part of the development. This approach is consistent with the definition of "site" under LDC § 25-1-21(105), which focuses on the developable areas of a property: "[Site] means a contiguous area intended for development, or the area on which a building has been proposed to be built or has been built."

As a result of excluding Lot 3, the total site area was determined to be 4.97 acres, which is just under the five-acre trigger for compliance with the ICR requirement. Nonetheless, as discussed above, review staff encouraged the Applicant to provide internal connectivity through the AEC process, and the proposed plans were revised to include a publicly accessible connection between Westminster and Berkman as well as pedestrian walkways throughout the site.

Appellants have also argued that Lots 2 and 4 should be included in the calculation of site area. However, the Applicant has chosen not to include those parcels in the site plan application, and DSD cannot require them to do so.

### **C. Intent of Subchapter E**

Appellants contend that the approved site plan is inconsistent with the intent statements included in Subchapter E. While DSD must approve a site plan application that meets applicable regulations, staff are also mindful of Subchapter E's intent and believe that the development as a whole furthers several objectives for VMU development:

Per Section 1.1 (*General Intent*), Subchapter E is intended to "generally [address] the physical relationship between commercial and other nonresidential development and adjacent properties, public streets, neighborhoods, and the natural environment, in order to implement the City Council's vision for a more attractive, efficient, and livable community." The proposed site plan is consistent with this objective, as the proposed development will combine a mix of commercial and residential uses within high-quality buildings that actively engage and relate to Westminster Drive.

Per Section 2.1 (*Intent*), Subchapter E's site development standards are intended to ensure the creation of a high-quality, efficient, and attractive streetscape that is user-friendly and appropriate for pedestrians, cyclists, and motorists, including important streetscape enrichment features such as shade, street trees and furniture, engaging architectural features, and convenient and approachable building entrances.

The Windsor Village site plan furthers these objectives in several ways:

- Building A provides entrances along Westminster Drive for both the residential portion and the commercial portion of the building. The commercial portion of Building A is located directly adjacent to the roadway for pedestrian and visual engagement with the streetscape.
- Building C provides building entrances along Westminster Drive for the retail space and the building's personal service/live-work units, some including trees for shading.
- The project provides an internal road throughout the site, a sidewalk with street trees along one side of portion of the internal road, an ADA accessible path along the southern edge of the property, and an internal greenspace that is accessible from the internal road and sidewalk.
- Additionally, through a concurrent subdivision process, the project has dedicated 1.17 acres to the City of Austin for a new park at the eastern end of the property adjacent to Westminster Drive.

Per Section 4.1 (*Intent*), Subchapter E's requirements for mixed-use development encourage a compatible and sustainable mix of uses within a pedestrian-friendly design. The Windsor Village site plan provides a mix of uses along Westminster Drive, with ground floor commercial spaces in Building A and C and residential uses on the upper floors. The buildings address the street and provide circulation throughout the site and along Westminster Drive.

**D.      *The site plan complies with Subchapter E's shade and shelter requirements.***

The proposed site plan meets the requirements in Section 2.8 (*Shade and Shelter*), which are intended to ensure adequate shade and shelter is available to facilitate pedestrian activity. The development includes a 50-percent shaded sidewalk along Westminster Drive, which is the principal street. Per staff's approval of AEC for ICR requirements, as discussed in Section B (p. 4), above, a shaded sidewalk is provided along the internal connection through site. The building entrances are located under shade devices.

**E.      *DSD's review process satisfied the intent of Section 4.3.3 and included numerous meetings with the Applicant to review applicable VMU requirements.***

Appellants contend that a pre-application conference between staff and the Applicant was not held, as required under Section 4.3.3.A. As listed on the following page, staff met on numerous occasions with the Applicant to discuss VMU requirements, which covers many of the same issues as pre-application conference. Additionally, while staff has been unable to verify the exact timing, it is possible that one or more of these meetings occurred before the Applicant had elected to utilize VMU development standards.



## A-1/6-Staff report

<b>Updates</b>	<b>External Meetings</b>	<b>Internal meetings</b>
Update 1 – February 9, 2021	June 16, 2021	September 28, 2021
Update 2 – April 13, 2021	October 7, 2021	October 21, 2021
Update 3 – July 11, 2021	November 19, 2021	November 3, 2021
Update 4 – September 30, 2021	November 30, 2021	November 18, 2021
Update 5 – December 22, 2021	December 3, 2021	January 20, 2022
Update 6 – February 9, 2022	December 6, 2021	February 22, 2022
	January 14, 2022	April 28, 2022
<i>*Permit issued April 18, 2022</i>	April 21, 2022	April 29, 2022

### **Conclusion**

For the reasons stated above, DSD recommends that the BOA uphold staff's decision approving the Windsor Village site plan.

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Jennifer Verhulst, Assistant Director, Land Use Review, DSD  
Lyndi Garwood, Principal Planner, Regulatory Policy & Administration, DSD