

**MINUTES OF THE  
CITY PLANNING COMMISSION  
SEPTEMBER 7, 2007  
J. MARTIN GRIESEL CONFERENCE ROOM  
TWO CENTENNIAL PLAZA – SUITE 700  
805 CENTRAL AVENUE**

**CALL TO ORDER**

Mr. Faux called the meeting to order at 9:05 a.m.

**Commission Members:**

**Present:** Caleb Faux, Donald Mooney, Scott Stiles, Rainer vom Hofe, John Schneider and Roxanne Qualls.

**Community Development and Planning Staff:** Charles Graves, Margaret Wuerstle, Bonnie Holman, Katherine Keough-Jurs, Jennifer Walke, and Alex Peppers.

**Law Department:**

Deborah Wyler Allison

Mr. Faux welcomed Ms. Roxanne Qualls to the Planning Commission. Ms. Deborah Wyler Allison swore her in.

Mr. Faux welcomed the new Director of the Department of City Planning, Charles Graves, III. Mr. Graves said that he was excited to be in Cincinnati and was looking forward to working with the Planning Commission, the City administration and the citizens in recreating a new Planning Department and making Cincinnati a greater City.

**APPROVAL OF MINUTES**

Submission of the minutes from the August 3, 2007 Planning Commission meeting for approval.

<b>Motion:</b>	Mr. Mooney moved approval of minutes.
<b>Second:</b>	Mr. vom Hofe
<b>Ayes:</b>	Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls
<b>Nays:</b>	None, <b>motion carried</b>

Submission of the minutes from the August 16, 2007 Planning Commission meeting for approval.

**DISCUSSION**

Mr. Schneider stated that during the August 16, 2007 Planning Commission meeting, Mr. Tarbell asked if the approval granted by the Commission to the Banks Developers was

“as-of right”. The question and the responses to the question were not recorded in the August 16, 2007 minutes and he felt that the minutes needed to contain that information. He stated that the rules should be clear to both the City and the developers to avoid potential disputes in the future.

Mr. Mooney said that since City funds were involved in the project, the Urban Design Review Board (UDRB) would have the opportunity to review Final Development Plans. Mr. Mooney stated that it would be helpful for planning staff to clarify the next steps in the Banks process and specific rights of approval and disapproval. He went on to say that he was aware that some owners of properties on the West side of Fort Washington Way were concerned with building heights in The Banks development and the effect the heights would have on their views.

Ms. Wuerstle said that she would review the recordings of the August 16, 2007 meeting and bring the minutes back to the next Planning Commission meeting. The process is such that once the Concept Plan is approved by City Council, whenever the developers are ready to move forward with a specific phase, they must return to the Planning Commission for Final Development Plan approval. At that point, the Planning Commission would have the opportunity to review the details of the project and, with input from the UDRB, approve or disapprove the plans for that phase. Mr. Faux said that the UDRB is advisory to the City Manager and their recommendations have no formal stature. He went on to say that it was important to clarify exactly what the Commission approved in order to dispel any confusion.

Mr. Faux stated that if the developer brought forth a plan for one of the blocks that had been approved for a 30-story building and the Planning Commission after seeing the detailed plans, felt that the final plan was not appropriate the Commission would be within their rights to disapprove the plan. Ms. Wuerstle said that he was correct. Mr. Faux added that he felt that the square footage cap would preclude building more than one 30-story building. Ms. Wuerstle agreed and went on to say that the developers had committed to building a mixed-use development not an office park.

Mr. Reggie Lyons, of the Building & Inspections Department (B&I), stated that the Urban Design Review Board often consults with B&I to learn the zoning parameters for projects that will be brought before them. He suggested that if the Planning Commission gave them the approved parameters, the UDRB would take those matters into consideration.

Ms. Wuerstle offered to prepare a staff report outlining the process and the as-of-right issue. The staff report would be presented at the next Planning Commission meeting. Mr. Faux agreed.

Mr. Faux stated that the Minutes from the August 16, 2007 Planning Commission meeting would be held for clarification based on Mr. Schneider’s request.

**CONSENT ITEMS**

**ITEM #1** A report and recommendation on authorizing the City Manager to enter into the Agreement with Parking Company of America, Inc. for City-owned property located between Eggleston, Culvert, Fourth and Fifth Streets, which property is not needed for any municipal purpose during the time of the lease.

**ITEM #2** A report and recommendation on authorizing the City Manager to execute a release of an easement for public walkway encumbering property owned by The Zoological Society of Cincinnati at 3427 Vine Street in Clifton.

**ITEM #3** A report and recommendation authorizing the sale of City-owned real property located at 1606 Hughes Street to Shannon Fieler in Mt. Auburn, which real property is no longer needed for any municipal purpose.

**Motion:** Mr. Mooney moved approval of Consent Items #1 -#3.  
**Second:** Mr. Schneider  
**Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls  
**Nays:** None, **motion carried**

**DISCUSSION ITEMS**

**ITEM #4** A report and recommendation on a request for variances of the Cincinnati Zoning Code to permit the subdivision of land at 845 Ezzard Charles Drive in the West End neighborhood.

*Mr. Steve Briggs, Senior Planner presented this item.*

**BACKGROUND:** The property is located on the south side of Ezzard Charles Drive, east of Interstate 75 and Winchell Avenue, north of West Court Street and west of Linn Street. The property is zoned RM 1.2. The property is approximately 8.29 acres in size containing 24 buildings with 288 rentable apartment units and is known as the Ezzard Charles Apartments.

The property was originally part of the Richmond-1 Redevelopment Area Subdivision that was approved by the City Planning Commission on October 14, 1960. There were 12 lots created in the subdivision. As a part of that original subdivision Lot 5 became the location for the West End neighborhood branch of the Public Library, Lot 7 became the location for the West End YMCA, Lot 10 became the location for Cincinnati Recreation Commission's Lincoln Park and Lot 8 became the location for 288 rentable apartment units in 24 buildings, the subject of this report. The apartment units were built in the early 1960's beginning around 1962. The pre-2004 zoning was R-7 Multi-Family High Density and this existing housing development would have been considered a group housing project under the old zoning code regulations.

The owner of the property, “The Medve Group, Inc.” has submitted an application to subdivide the property into two lots. The first lot would have 18 buildings with 216 rentable apartment units and second lot would have six buildings with 72 rentable apartment units. The property owner intends to renovate the apartment units in the smaller second lot creating renovated studio units using the existing structures. The reason for the proposed subdivision is to finance the rehabilitation of the apartment units in the smaller subdivision containing 72 rentable apartments in six buildings.

**VARIANCES:** The proposed new property line bisects an existing driveway that extends westward from the centerline of the western terminus of Clark Street. The line is equidistant from existing buildings, 19’- 9”. The new property line would create a rear property line for the larger Lot [labeled as Plat 1] and a rear property line for the smaller Lot [labeled as Plat 2]. The rear yard setback required in a RM 1.2 Multi-Family District is 30 feet. A variance would need to be granted for a rear yard less than 30 feet, thus reducing the required yard by 10’-3” to an approved 19’-9” for each new lot.

Section 1400-23 Principal Structures of the Cincinnati Zoning Code states: *No more than one principal structure may be constructed on a lot unless the development of more than one structure has been approved pursuant to Section 1403-13 Cluster Housing General Regulations or Chapter 1429, Planned Development Districts.* The Ezzard Charles Apartments pre-date the current zoning code.

The existing development does not comply with the Cluster Housing General Regulations because of existing parking lots and apartment buildings that encroach into the required 25-foot-wide buffer yard. In addition, the only permitted uses in a Cluster Housing Developments are single-family dwellings, the existing apartment housing does not comply with that requirement.

A Planned Development District for the existing apartment housing would be excessive because there are no new buildings being proposed. The property owner is proposing to renovate the existing apartment housing and no additional use authorized by the zoning code is being proposed for this exiting development.

A common requirement in the Cluster Housing General Regulations and Planned Development District is the filing of a covenant with Director of Buildings and Inspections assuring that the approved plan for the property is developed as approved.

The City Planning Commission must grant permission for Lot 1 to have 18 buildings with 216 rentable apartment units and Lot 2 to have six buildings with 72 rentable apartment units.

**CRITERIA:** Section 700.3 of the Subdivision Regulations permits the City Planning Commission to grant variances of the Zoning Code for a subdivision of land containing two or more principal buildings provided:

1. The subdivision does not create building sites for additional buildings. The subdivision creates two lots. The first lot would have 18 buildings with 216

rentable apartment units and second lot would have six buildings with 72 rentable apartment units. The existing apartment complex would not change in current maximum density or existing number of buildings.

2. The buildings were constructed prior to February 13, 2004 The Ezzard Charles Apartments were constructed in the early 1960's
3. The variance will not be detrimental to the public welfare or injurious to the interests of other property owners in the vicinity. The request states that the intent is to turn the smaller subdivision into future renovated studio units using the existing structures. The existing development pattern will not change but building conditions will be improved.

**NOTIFICATION:** The adjacent property owners and the West End Community Council have been sent notification of this variance request.

**CONCLUSIONS:**

1. The application meets the criteria of Section 700.3 of the Subdivision Regulations.
2. Approval of the variances for rear yard set back provides for the proposed rear property line between Lot 1 and Lot 2.
3. The proposed rear property line is equidistant from existing buildings.
4. No new building sites are being created.
5. The existing development pattern will not change but building conditions will be improved.

**RECOMMENDATION:**

The staff of the Department of Community Development and Planning recommended that the City Planning Commission take the following action:

1. Grant a variance to Schedule 1405-07 Rear Yard Setback in the RM 1.2 Multi Family District Regulations of the Zoning Code to create a new rear property line for proposed Lot 1 and Lot 2 and
2. Grant a variance to Section 1400-23 Principal Structure to permit Lot 1 to have 18 buildings with 216 rentable apartment units and Lot 2 to have six buildings with 72 rentable apartment units.

**DISCUSSION**

Mr. Briggs gave a brief overview of the staff report and presented a map to illustrate the proposed subdivision of land at 845 Ezzard Charles Drive. He explained that the necessity for the variances was financial and presented photos to show the current site.

Mr. Schneider asked if the property would be fenced. Mr. Briggs stated that he was not aware of any plans to fence the property.

Mr. vom Hofe asked if the current use and layout of the sites would remain the same. Mr. Briggs responded that the existing development pattern would not change but the building conditions would be improved.

Mr. Schneider stated that he approved of the staff recommendations.

Mr. Ken Sharkey of the Medve Group, Inc, stated that they had owned the property since 1983 and had done some exterior improvements in the past. He went on to say that the buildings were almost obsolete and needed interior improvements to remain competitive. Ms. Qualls asked if there were plans to construct additional buildings. Mr. Sharkey replied that they had no plans for new buildings. They wanted to do phased renovations of the existing buildings. He added that they had long-term residents and that Cincinnati had been a good market for his company.

**Motion:** Mr. vom Hofe moved approval Item #4.  
**Second:** Mr. Schneider  
**Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls  
**Nays:** None, **motion carried**

**ITEM #5** A report and recommendation on a proposed zone change from RM-1.2 Residential Multi-Family District and CG-A Commercial General Auto District to IR Institutional Residential District at 5500 Verulam Avenue in Pleasant Ridge.

*Ms. Katherine Keough-Jurs, Senior Planner presented this item.*

**BACKGROUND:**

The property located at 5500 Verulam Avenue is a vacant nursing home that holds approximately 121 beds. The building is three stories in height, about 30,000 square feet in size, and was built in 1970. The nursing home closed in approximately 2004. The new owners of the property hope to use the building as a diagnostic hospital for behavioral health care for residents of nearby nursing homes. Patients would be temporarily transferred to this facility for approximately 7 to 10 days for diagnosis and change in treatment. After testing and treatment, the patients would return to their nursing homes. The new use of this site will require the new owners to completely renovate the interior of the building to convert the 121-bed facility to 21-28 larger rooms with private restroom facilities. There are currently no plans to alter the building's exterior.

Although the building's use is related to the needs of nursing home residents, it is technically classified and licensed by the State of Ohio as a hospital. Nursing Homes are

permitted uses in the RM-1.2 Residential Multi-Family District, but Hospitals are not, thereby requiring a change of zoning.

Initially, Staff recommended the CG-A Commercial General-Auto zoning district, as that was the district immediately adjacent to the site that permitted Hospitals. However, after preliminary discussions with the Pleasant Ridge Community Council, it became clear that the CG-A zone could be harmful to surrounding residential uses in the future. In the instance that the proposed use changed or the property was sold again, a great variety of auto-oriented commercial uses could locate to the site. As the site is accessed from Ridge Avenue by way of Mapleleaf Avenue and Verulam Avenue, any commercial use could cause harm to the surrounding residential properties.

As a result of these concerns, the Petitioner instead requested a change to the IR Institutional-Residential District, which permits Hospitals, Schools, and other major institutions but does not permit most commercial uses except as accessory to the primary use. The IR District also requires any new buildings to be constructed behind a substantial buffer, protecting surrounding neighbors from any future new construction.

**EXISTING CONDITIONS:**

The total property petitioned for rezoning is approximately 3.5 acres in size. The entire area consists of two portions separated by railroad tracks. The 3.05-acre portion zoned RM-1.2 is located at the terminus of Verulam Avenue and the .43-acre portion is located at the terminus of Tanner Avenue. The Verulam Avenue property is the location of the vacant nursing home and two parking areas. The Tanner Avenue property is vacant.

The property surrounding the parcel is as follows:

North: RM-1.2 Residential Multi-Family and SF-4 Residential Single Family

West: RM-1.2 Residential Multi-Family

South: SF-2 Residential Single Family and CG-A Commercial General-Auto

East: SF-6 Residential Single Family and CG-A Commercial General-Auto

**PLANS:**

There are currently no Plans for the Pleasant Ridge community that encompass or make reference to this property.

**PUBLIC COMMENT:**

Planning staff held a public conference on this zone change request on August 17, 2007. Nine people were in attendance, including the Agent for the Petitioner and a representative of the Pleasant Ridge Community Council. The surrounding property owners in attendance were concerned about two issues: 1) the proposed new use, and 2) the potential future uses. Regarding the proposed use, some property owners were concerned about the use of the term “behavioral,” and wondered if it meant that the patients would create a safety issue or result in an increase in crime. Others were concerned that the facility would cause their property values to decrease. Others were concerned about increased traffic. Regarding future uses, most of the property owners present were concerned about the future uses that could be built on the site if the zoning

were changed to IR. The IR District permits Transitional Housing for Programs 5 and 6 as well as Transportation Passenger Facilities. Some residents were concerned with any zone that would permit the building to be torn down and multi-family housing to be built in its place (that would be permitted under the current RM-1.2). The residents were opposed to anything in the future that would cause increased crime, decreased property values, or an increase in traffic on Mapleleaf Avenue or Verulam Avenue.

The Pleasant Ridge Community Council voted to support the request for a zone change from RM-1.2 and CG-A to IR at their regularly scheduled meeting on August 7, 2007.

#### **ANALYSIS OF THE PROPOSED CHANGE:**

When considering this request, the primary concern should be the impact of the new zone on the surrounding residential properties. The previous use, a nursing home, was considered to be reasonably acceptable to surrounding property owners, although there were complaints of increased traffic, particularly ambulance traffic with accompanying sirens, particularly at night. Although the proposed use is classified as a Hospital, it will have little in common with a traditional Hospital facility. Because of the short pre-scheduled stay there would be no ambulance traffic as most patients would arrive during the day via nursing home transportation (often called “ambulettes”). The facility will be staffed at a ratio of 3:1, with 85 total employees in three shifts. The heaviest volume of staff would be during the day shift. In this instance, the proposed new arrangement may be less disruptive to the neighborhood than the previous use.

Other neighborhood concerns are regarding crime and potential future uses. The petitioners have stated that the proposed new use will not house patients that will cause problems for surrounding neighbors; the patients will be older and primarily bed-ridden. There is no plan to construct a fence surrounding the property or provide additional security. As for the future use of the property under new zoning, there is indeed no guarantee that the property would never be used in another manner, either as a more traditional hospital, as transitional housing, as multi-family housing, or as a station for light-rail. However, if one assumes that single-family residential use is always the most preferable option to surrounding property owners, and no other type of development is permitted to take place, then redevelopment of this property may not occur for some time. The site at 5500 Verulam Avenue is an irregularly shaped lot bordered entirely to the south by railroad tracks and located at the terminus of a street in a primarily residential area. More immediate reuse of the building will eliminate a vacant eyesore from the neighborhood, and put the building to productive use. If the building would continue to sit vacant, it could be worse for the surrounding neighborhood as it may deteriorate further and cause additional blight.

#### **CONCLUSIONS:**

1. A rezoning to the IR Institutional-Residential district will allow the new owner to reuse the property as a diagnostic hospital.
2. The IR Institutional-Residential district will provide a buffer to surrounding properties if future construction occurs.

3. The Pleasant Ridge Community Council voted to support this zone change on August 7, 2007.

**RECOMMENDATION:**

The staff of the Department of Community Development and Planning recommended that City Planning Commission take the following action:

**Approve** the zone change from RM-1.2 Residential Multi-Family District and CG-A Commercial General Auto District to IR Institutional Residential District at 5500 Verulam Avenue in Pleasant Ridge.

**DISCUSSION**

Ms. Keough-Jurs gave a brief overview of the staff report and presented maps and drawings illustrating the proposed zone change. She explained that the new owners of the property hope to use the building as a diagnostic hospital for behavioral health care for residents of nearby nursing homes. The use would be technically classified and licensed by the State of Ohio as a hospital. She went on to explain that nursing homes are permitted uses in the RM-1.2 Residential Multi-Family District, but Hospitals are not, thereby requiring a change of zoning.

Mr. Mooney asked if the Community Council was consulted regarding the project. Ms. Keough-Jurs stated that they were contacted and had several meetings with staff and the applicants to determine the best zoning district to use. She said that there were some residents that had concerns about possible future uses of the site such as transitional housing and halfway houses. Another resident had concerns over a transportation passenger facility being permitted in the IR zone. There was a rail line adjacent to the site. Ms. Keough-Jurs pointed out that there was a different site proposed for passenger facilities for any future light rail. She said that after weighing the options, staff determined that the IR district would best suit the proposal.

Mr. vom Hofe asked if the two parcels were linked. Ms. Keough-Jurs stated that the properties were separated by railroad tracks and the smaller parcel was vacant. Mr. Schneider asked if the neighborhood had any suggestions for the use of the smaller triangular shaped parcel. She referred the question to Mr. Stan Goodman, agent for the petitioner.

Mr. Goodman presented photographs of the site and described the surrounding neighborhood businesses and properties. He stated that the smaller parcel was obtained to provide a site for a storm water and sanitary sewer connection. It is connected to the larger parcel by an easement under the railroad line. He explained that it was heavily covered in vegetation. He said that the staff report was very complete in its description of the proposed zone change and renovation of the building. He added that the new owners would be spending 1.2 million dollars for the renovation.

Mr. Faux asked if any exterior work would be done. Mr. Goodman responded that the exterior would be cleaned up, some painting would be done and possibly a new roof would be put on the building.

Mr. Don Sykes, the new hospital developer and administer, stated that improvements would be made to the exterior and that the majority of the funds would be used for a new roof and interior renovations. Mr. Stiles asked about the number of jobs that would be created. Mr. Sykes estimated that there would be 80 new jobs created. Mr. Schneider asked how many hospitals Mr. Sykes had managed and if he had ever abandoned one. Mr. Sykes replied that he had managed four hospitals during his 20-year career and had never abandoned one. He went on to say that any other use for the building would not be economically feasible. He explained that the financial reimbursement for the high acuity patients was much higher than for nursing home care and thus a 20-bed facility was financially feasible.

Mr. Mooney asked if the same owner owned the nursing home across the street from the proposed hospital site. Mr. Sykes said that originally both buildings were owned by a New York company and subsequently sold to a local buyer.

**Motion:** Mr. Mooney moved approval of Item #5.  
**Second:** Mr. vom Hofe  
**Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls  
**Nays:** None, **motion carried**

Ms. Margaret Wuerstle, Chief Planner explained to the Planning Commissioners that Items #6 - #17 were text amendments that had been reviewed and approve by the Text Amendment Committee. She said that she was aware of opposition to Item # 17 and Item #18. She introduced Mr. Alex Peppers, Planning Co-op student from the University of Cincinnati and explained that Mr. Peppers would be presenting the text amendments.

Mr. Mooney explained to new Planning Commission member, Roxanne Qualls and the new Planning Department Director, Charles Graves, that the City had adopted a new Zoning Code in 2004. New single-family zoning districts were created and some multi-family districts were eliminated. He went on to explain that over the past few years situations had arisen that caused the need for adjustments or clarifications in the Zoning Code. The Text Amendment Committee was formed to review concerns and forward to the Planning Commission text amendments that were needed.

Ms. Qualls stated that she was hoping at some time to talk with her fellow Planning Commissioners about taking a Form Base Code approach. She said that she felt that although creating a Form Base Code would be a great deal of work for Planning Staff and the Planning Commission, in the long run it might be much more satisfactory for the neighborhoods. It would also eliminate the process of continual modification of the current Zoning Code.

Mr. Faux stated that Item #17 would be heard next since there were people signed up to speak on the item.

**ITEM #17** Addition to § 1445-01 Purpose of Variances

*Mr. Alex Peppers, Planning Co-op student, presented this item.*

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on text amendments as related to the standards in the Zoning Code that can be granted relief by the Hearing Examiner through the variance process.

**PROPOSED TEXT AMENDMENT:**

**§ 1445-01. Purpose of Variances.**

The variance procedures are intended to provide a means by which relief from dimensional, numerical or locational standards may be granted from a particular application of the Cincinnati Zoning Code that is unreasonable and creates practical difficulties. Variances from the use regulations of this code are not authorized.

**JUSTIFICATION:**

The Zoning Code currently allows variances from dimensional standards only. Occasionally, variances are requested from numerical or locational standards of the Code such as the number of parking spaces, residential uses on the first floor in certain commercial districts or the location of an accessory structure. These types of variances cannot even be considered under the existing Code. There may be situations where such variances are warranted. The new language allows for additional flexibility while ensuring that the purpose and intent of the Zoning are upheld.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Gary Wollenweber of Hyde Park stated that he spoke to other residents in the Hyde Park neighborhood about this text amendment. They believe that the Zoning Hearing Examiner can misuse this authority as has been done by previous Examiners through the allowance of front yard parking in residential areas. They believe this would give too much freedom and undermine the intent of the Zoning Code. Gary commented that specific issues (i.e. regarding allowances for drive-throughs) should be addressed as such through the Code and not through “blanket” measures such as this. Gary stated that Hyde Park Community Council was going to vote on this issue later that evening and was almost positive that they would vote to oppose this text amendment.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

## **DISCUSSION**

Mr. Mooney stated that he would like an explanation of the differences between dimensional, numerical and locational standards. He said that there was some concern that adding numerical and locational standards would expand the scope for potential variances.

Mr. Peppers gave a brief overview of the staff report and stated that currently the zoning code allowed variances from only dimensional standards. He explained that numerical would mean the number of items such as signs or parking spaces. Locational would mean the location of an accessory structure and dimensional refers to lot size and the setbacks.

Mr. Faux explained that the Hearing Examiner hears all variance requests and neighbors would be able to attend and voice support or objection.

Mr. Carl Ubelacker, President of the Hyde Park Neighborhood Council, stated that parking requirements in the Zoning Code were inadequate. The proposed text amendment would allow the Hearing Examiner to grant a reduction in the number of parking spaces required or parking locations. He felt that front yard parking belonged in the suburbs. He stated that he opposed adding numerical and locational standards.

Mr. Schneider asked if there were other front yard and side yard uses that had been requested. Mr. Uebelacker said that the biggest concern was front yard parking. Ms. Wuerstle said that recently swimming pools and sheds had been requested for side yards.

Mr. Faux explained that no Zoning Code can anticipate every circumstance that could arise in a complex City. Mr. Mooney agreed that there were unique circumstances that required variances.

Mr. Steven Kurtz, Zoning Hearing Examiner, stated that the numerical and locational standards language was inadvertently omitted when the Zoning Code was created. The text amendment would correct the omission. He gave examples of situations that needed variances. He went on to say that under the old zoning code, anything except use was eligible for a variance. A case-by-case review is sometimes needed.

Mr. Faux stated that the charge of the Planning Commission in developing the new Zoning Code was to facilitate development.

Ms. Qualls stated that she attended the Bold Fusion Event and one of the main messages was that quality of life in a community matters and quality is driven by the quality of the built environment. As we look at being competitive as a City, and attracting people to live in the City, it is clear that people are choosing places based on the quality of the community not just job opportunities. One of the challenges that the City faces is making decisions based on a Zoning Code that no longer responds to the environment in which

we operate. The decisions continue to degrade the quality of the built environment and inevitably result in the suburbanization of the urban environment. Traditional zoning codes have alternatives and progressive cities are adopting those alternatives. Things such as Form Based Codes and Smart Codes are the direction most cities are taking. She stated for that reason she would not support the staff recommendations to approve the text amendment. She went on to say that the current Zoning Code was inadequate to ensure the future success of the City.

Mr. Uebelacker suggested that the \$500 fee for filing appeals of variance requests should be eliminated for community organizations.

Mr. Schneider asked Mr. Graves for his opinion on best practices for Cincinnati. Mr. Graves replied that the new trend was Form Based Zoning. He said that it has advantages but that an educational process and comparison to the current Zoning Code would need to be done first. He stated that it was important to look at best practices. He went on to say that Form Based Codes and Smart Codes are very popular and more cities are moving toward those approaches. They are a total change in terms of the traditional zoning. He said that he felt that it was an opportune time to look at new ideas but that the educational process would have to be done with the neighborhoods, citizens and various City entities.

Mr. Schneider asked for a brief description of Form Base Coding. Ms. Qualls responded that Form Base Coding sets the envelope in context of proportions. It preserves the form without dictating the taste of what goes into the form. It reduces time in the development process. Mr. Stiles asked if the variance process was eliminated. Ms. Qualls said that it was. Mr. Graves stated that the topics of Form Base Coding and Smart Codes deserved more discussion and that he would like the opportunity to spend more time discussing the pros and cons with the Planning Commission.

Mr. Stiles said that the Administration supports streamlining the development process and has supported the Hearing Examiner in resolving unique situations. He said that initially he was going to support the staff recommendations but felt that it would be better to discuss the matter more fully prior to acting. He suggested holding the item.

Mr. Lyons stated that there were many unique situations that need variances. The variance process allows flexibility to remain competitive.

Mr. Faux stated that he felt that it was a good idea to look into the possibility of Form Based Coding. He said that Mr. Graves mentioned that it was a radical departure from past practice and having been through the process of revising the Zoning Code once, knew that change for the City is a long and difficult process. It took almost five years to adopt the new Zoning Code and cost a great deal of time and money. There is still opposition to things that were changed to add flexibility and speed to the development process. He agreed that the City of Cincinnati couldn't remain static and not change. He said that he felt that there was merit in investigating new zoning options but that in the

meantime it would be sensible to approve the text amendment with the knowledge that it was a stopgap measure.

Mr. Mooney stated that he was also interested in investigating new ideas. However, any new system would take years to implement and in the meantime the City still needs to be responsive to unique situations. The text amendment allows Mr. Kurtz to resolve issues in a timelier manner. Mr. Faux concurred.

Mr. vom Hofe stated that he felt that it would be beneficial to learn about other options before taking action on the text amendment.

Mr. Kurtz stated that if the text amendments were not approved, a hardship would be created. The text amendments are geared to making the Zoning Code cleaner. He felt that if the Commission waited they would be doing a disservice to the public.

Mr. Mooney suggested holding all of the text amendments.

Mr. Graves stated that he saw the advantages for approving Items #6-#16 which were not controversial and suggested tabling Items #17 and #18.

Ms. Wuerstle explained the direct conflicts in the parking regulations in the Zoning Code for Item #14. She stated that approving the staff recommendations would clean up a problem in the Zoning Code and help it to function properly. She said that some of the text amendments were cleaning up inconsistencies.

<b>Motion:</b>	Mr. Mooney moved approval of Item #17 and #18.
<b>Second:</b>	Mr. Faux
<b>Ayes:</b>	Mr. Faux, Mr. Mooney and Mr. Stiles
<b>Nays:</b>	Ms. Qualls, Mr. Schneider and Mr. vom Hofe, <b>motion failed</b>

Ms. Qualls asked for an explanation on which amendments addressed inconsistencies in the code. Ms. Wuerstle went through each text amendment to explain the issues.

Items #6 and #7 were discussed concurrently.

**ITEM #6** Addition of § 1401-01-D9 Drive-Through Components (also changes to § 1401-01-D10 Drive-Through Establishment and § 1401-01-D11 Dwelling Unit)

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on text amendments to §1401-01-D9. Drive-Through Facilities/Establishment and the creation of a new definition for “Drive-Through Components”.

**PROPOSED TEXT AMENDMENT:**

**§1401-01-D9 Drive-Through Components**

**“Drive-Through Components” means any equipment or signage integral to the drive-through operations including but not limited to menu boards, pick-up or service windows, queueing lines, ATMs and voice boxes.**

**§1401-01-D9~~10~~ Drive-Through Facility/Establishment**

“Drive-through facility/establishment” means any commercial business which by design, type of operation, or nature of business, has as one of its functions the provision of services to motor vehicles or their occupants, or the provision of services to the occupants of motor vehicles while they remain in a vehicle. (\*revised 7/22/05 by Ordinance #243-2005)

**§ 1401-01-D10~~1~~. Dwelling Unit.**

“Dwelling unit” means one or more rooms with a single kitchen designed for occupancy by one family for living and sleeping purposes.

**JUSTIFICATION:**

An amendment is proposed to add a new definition for Drive-Through Components because additional text amendments are being proposed that will regulate where drive-through components can be located in each of the commercial districts. This definition is necessary to ensure that it is clear about what constitutes “drive-through components”. The amendment is proposed to ensure clarity and consistency for implementation of the Zoning Code.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

**ITEM #7** Changes to § 1409-13 Drive-Through Facilities

*Ms. Wuerstle, Chief Planner, introduced text amendment items #6 and #7.*

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on a text amendment to §1409-13. Drive Through Facilities in the CN-M and CC-M zoning districts.

**PROPOSED TEXT AMENDMENT:**

**§ 1409-13. Drive-Through Facilities Components**

In CN-P and CC-P – No drive-through facilities components allowed.

In CN-M and CC-M – Drive-through facilities components must be located ~~at~~ in the rear yard or on the building elevation facing the rear yard, ~~of the building~~. Drive-through components on a corner lot require conditional use approval pursuant to Chapter 1445 Variance, Special Exception and Conditional Uses.

In CC-A and CG-A – No restriction on location.

**JUSTIFICATION:**

An interpretation has been made that drive-through facilities in the CN-M and CC-M zoning districts can be located at the rear 50% of a building. This means that a drive-through window or menu board can be located in the side yard of a building as long as it is back 50% or more from the front wall of the building. The intent of this section was to permit drive-through facilities in the CN-M and the CC-M districts only if they could be located in the rear yard of a building or on the rear wall or elevation of a building. The CN-M and the CC-M districts provide for a mix of pedestrian and auto-oriented development. Older, pedestrian-oriented buildings may be intermixed with newer auto-oriented uses. The amendment is proposed to ensure a complementary and compatible mix of these uses by requiring that the drive-through facilities are limited to the rear yard of buildings.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment

**DISCUSSION**

Ms. Wuerstle gave a brief overview of the staff reports for Items #6 and #7 and explained the components and definitions.

Mr. Mooney asked why the physical locations of the components would be important. Ms. Wuerstle explained that drive-thru components are not allowed in side yards in some districts. Ms. Qualls agreed that drive-thru components do not belong in some districts.

- Motion:** Mr. Mooney moved approval Item #6 and #7.
- Second:** Mr. Schneider
- Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls
- Nays:** None, **motion carried**

**ITEM #8** Change to § 1401-01-H Height (also elimination of § 1401-01-H1 Height, Building)

*Ms. Wuerstle, Chief Planner, introduced text amendment item #8.*

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on a text amendment related to the definition of Height.

**PROPOSED TEXT AMENDMENT:**

**§ 1401-01-H. Height.**

“Height” means the vertical dimension as determined in §1400-27-H. Height measured from finished grade, unless otherwise specified.

~~§ 1401-01-H1. Height, Building. (\*revised 7/22/05 by Ordinance #247 2005)~~

~~“Building height” is measured from the established grade in the front of the lot or from the average natural grade at the building line, if higher to the top of the cornice of flat roofs, or to the deck line of a mansard roof, or to the mid-height of the highest gable or dormer in a pitched or hipped roof, or, if there are no gables or dormers, to the mid-height of a pitched or hipped roof.~~

**JUSTIFICATION:**

As §1401-01-H is currently written, the finished grade could be substantially higher than the existing grade. This has created negative impacts for certain neighborhoods. However, in researching this issue the ZTAC determined that the Measurements section of the Zoning Code and specifically §1400-27-H. Height clearly explains how the height of buildings and structures is to be measured. Therefore, the definition section (§1401-01-H) should reference the Measurement section of the Code. Section 1401-01-H1 should be deleted from the Definition section because it is a regulation and is already covered in the Measurement section of the Code.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment

**DISCUSSION**

Ms. Wuerstle gave a brief overview of the staff report and explained that the Measurements section of the Zoning Code and specifically §1400-27-H. Height clearly

explains how the height of buildings and structures are to be measured. Therefore, the definition section (§1401-01-H) should reference the Measurement section of the Code. Section 1401-01-H1 should be deleted from the Definition section because it is a regulation and is already covered in the Measurement section of the Code.

**Motion:** Mr. Schneider moved approval of Item #8.  
**Second:** Mr. vom Hofe  
**Ayes:** Mr. Faux, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls  
**Nays:** Mr. Mooney, **motion carried**

**ITEM #9** Addition of § 1401-01-P25 Public Vehicle Operations and Service

*Ms. Wuerstle, Chief Planner, introduced text amendment item #9.*

**PURPOSE:**

To obtain input and direction from the Planning Commission on a zoning text amendment adding a definition for Public Vehicle Operations and Service.

**PROPOSED TEXT AMENDMENT:**

**§ 1401-01-P25. Public Vehicle Operations and Service.**

**“Public vehicle operations and service” means any public vehicle as licensed by the Cincinnati Municipal Code Chapter 407 and includes any vehicle by which individual service for compensation in the transportation of persons on the public streets is furnished or offered to be furnished along with the business offices, dispatching and service of the fleet vehicles.**

The Zoning Code will be amended to permit Public Vehicle Operations and Service in the following zoning districts:

- CC-A
- CG-A
- ML
- MG

The Zoning Code will be amended to permit as a *Conditional Use* in the following zoning districts:

- DD-C

**JUSTIFICATION:**

The Zoning Code does not specifically define taxi and limousine operations nor does it list taxi and/or limousine operations in the Use Regulations of any of the zoning districts. Due to recent requests to locate taxi and limousine operations, it was determined by the Zoning Text Amendment Committee (ZTAC) that regulations should be developed for this use classification to ensure that taxi and limousine services are developed in locations compatible with the impacts and intensity of such uses. Additionally, the ZTAC felt that the definition should be consistent with §407-1-P1. Public Vehicle. of the Cincinnati Municipal Code.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

**DISCUSSION**

Ms. Wuerstle gave a brief overview of the staff reports for Item #9 and explained that the text amendment would provide regulations for how and where taxi and/or limousine operations could be located.

Mr. Lyons said that in the past the use was classified as auto repair, and permitted in the CCA and CGA zoning districts.

Mr. Stiles said that screening would be needed around taxi parking areas.

Mr. Schneider stated that he felt the taxi/limousine use would be a poor use of land in the downtown. Mr. Mooney moved to remove the taxi and limousine use from the Downtown District.

Ms. Qualls asked if landscaping was required or if only a chain link fence would suffice. Ms. Wuerstle explained that the requirements for screening are spelled out in the Zoning Code. Mr. Faux also explained that some locations would be grandfathered without screening.

- Motion:** Mr. Mooney moved approval of Item #9 as amended to remove taxi and limousines from the Downtown District.
- Second:** Mr. Schneider
- Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls
- Nays:** None, **motion carried**

**ITEM #10** Changes to § 1401-01-T1 Transportation Facility

Ms. Wuerstle, Chief Planner, introduced text amendment item #10. Items #11 and #12 were discussed concurrently.

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on text amendments related to the definitions of transportation facilities.

**PROPOSED TEXT AMENDMENT:**

**1401-01-T1.                      Transportation Facility.**

“Transportation facility” means a category of uses including:

- (a) *Airports.* Facilities for the takeoff and landing of airplanes and helicopters, including runways, aircraft storage buildings, public terminal buildings and parking, helicopter pads and support activities such as airport operations and air traffic control.
- (b) *Heliports.* Facilities intended solely for takeoff and landing of helicopters.
- (c) *Railroad, right-of-way.* Railroad land used for through tracks. Railroad, train yard uses are prohibited.
- (d) *Railroad, train yard.* Railroad areas used for classification yards, switch tracks, team tracks, storage tracks and freight yards.
- (e) *Transportation passenger terminals operation.* Facilities for passenger transportation operations, holding facilities, and maintenance operations which includes rail stations, bus terminals, urban and regional transit stations and scenic and sightseeing facilities, but does not include airports and heliports.

**JUSTIFICATION:**

Amendments have been proposed to regulate taxi and limousine operations as “public vehicle operations and service”. In reviewing the definitions for various transportation related operations, the ZTAC determined that the above definition should be revised. Certain uses would not be addressed under the word “terminal” such as school bus facilities or Metro bus maintenance operations. Changing the wording makes this definition more encompassing and also differentiates it from “public vehicle operations and service.”

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

**ITEM #11** Addition of § 1419-39 Public Vehicle Operations and Service to § 1419 Additional Development Regulations

*Ms. Wuerstle, Chief Planner, introduced text amendment item #11.*

**PURPOSE:**

To obtain input and direction from the Planning Commission on a zoning text amendment for additional development regulations for Public Vehicle Operations and Service.

**PROPOSED TEXT AMENDMENT:**

**§ 1419-39. Public Vehicle Operations and Service.**

**Public vehicle operations and service must be located, developed and operated in compliance with the following:**

- a) **All public vehicles must first obtain licensing according to Chapter 407 of the City of Cincinnati Municipal Code.**
- b) **Off-Street Parking. Off-street parking shall be provided for all public vehicles and employee vehicles as set forth in Schedule 1425-19-A; Off-Street Parking and Loading Requirements and shall be allowed only in designated off-street spaces. Vehicles must be licensed and operational. Any storage or repairs must be indoors.**
- c) **Operations. Operations shall be limited to the fleet owned or leased by the operator of the facility. Dispatching shall be made by radio or other telecommunications; loud speakers shall be prohibited.**
- d) **Vehicle Repairs. All servicing shall be performed only on licensed public vehicles in accordance with Section 1419-27(a),(b), (d), and (e) Vehicle Repairs.**
- e) **Screening. All outdoor parking must comply with Chapter 1425: Parking and Loading Regulations.**

**JUSTIFICATION:**

The Zoning Code does not specifically define taxi and limousine operations nor does it list taxi and/or limousine operations in the Use Regulations of any of the zoning districts. Due to recent requests to locate taxi and limousine operations, it was determined by the Zoning Text Amendment Committee that regulations should be developed for this use

classification to ensure that taxi and limousine services are developed in locations compatible with the impacts and intensity of such uses.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

**ITEM #12** Addition to § 1425-19-A Off-Street Parking and Loading Requirements

*Ms. Wuerstle, Chief Planner, introduced text amendment item #12.*

**PURPOSE:**

To obtain input and direction from the Planning Commission on a zoning text amendment for §1425-19-A regarding parking requirements for Taxi or Limousine Operations and Service.

**PROPOSED TEXT AMENDMENT:**

**Schedule 1425-19-A: Off-Street Parking and Loading Requirements**

<i>Transportation, Communication and Utilities Uses</i>	Required parking (Sq. Ft. of Floor Area)	Loading User Group
Communications facilities	1 for every 600 sq. ft. plus every 3 auditorium seats	1 for 2
Public utility distribution system	1 for every 1,000 sq. ft.	
Public utility maintenance yard	1 for every 1,000 sq. ft.	
Public utility plant	1 for every 1,000 sq. ft.	
Transportation facilities		
Airports	1 for every 250 sq. ft of terminal building	1
Heliports	None	
Railroad train yards	None	
Railroad right-of-way	None	
<u>Public Vehicle Operations and Service</u>	<u>1 for every employee plus 1 for every taxi and/or limousine</u>	
Transportation passenger terminals	1 for every 2,000 sq. ft.	
Truck terminal and warehouse	0-100,000 sq. ft.: 1 for every 2,000 feet Over 100,000: 1 for every 4,000 sq. ft. over 100,000 sq. ft.	4
Watercraft and riverfront facilities		

Barge terminals	1 for every 2,000 sq. ft.
Boat and ship yards	1 for every 2,000 sq. ft.
Commercial piers and ports	1 for every 2,000 sq. ft.
Marinas	1 for every two berths
Marine sales and services	1 for every 400 sq. ft.
<b><i>Agriculture and Extractive Uses</i></b>	
Farming	1 for every site
Mining and quarrying	1 for every 1,000 sq. ft.

**JUSTIFICATION:**

The Zoning Code does not specifically define taxi and limousine operations nor does it list taxi and/or limousine operations in the Use Regulations of any of the zoning districts. Due to recent requests to locate taxi and limousine operations, it was determined by the Zoning Text Amendment Committee that regulations should be developed for this use classification to ensure that taxi and limousine services are developed in locations compatible with the impacts and intensity of such uses. This amendment addresses the parking requirements for establishment of a taxi and/or limousine operation.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Gary Wollenweber of Hyde Park made statements concerning some taxi or limousine services that operate 24 hours a day, 7 days a week and may have a large number of employees. He believed that having one off-street parking space reserved for every employee in this situation would be harsh and could be a very large number. Gary suggested that possibly taking the number of the largest shift, whenever that may be, and reserving that many off-street parking spaces instead of one for every single employee.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment as written.

**DISCUSSION**

Ms. Wuerstle gave a brief overview of the staff report for Item #10 and explained that the text amendment was related to the previous text amendment on taxis and limousines. This amendment helped to clarify that taxi and limousine operations are not a transportation passenger terminal operation yet still provides regulations for the metro bus holding and maintenance facilities. Ms. Wuerstle explained that Items #10, #11 and #12 involve sections of the Zoning Code that needed to be amended in order to properly regulate taxi and limousines. Item #9 created the definitions for public vehicle operations and services and also identified the zoning districts that would permit this use. Item #11 put additional development regulations in place to ensure that taxi and limousine operations were licensed properly, the operations provided parking and limited where

repairs to the vehicles could be performed. Item #12 added specific parking requirements for this use.

- Motion:** Mr. Mooney moved approval of Item #10, #11 and #12.  
**Second:** Mr. Schneider  
**Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls  
**Nays:** None, **motion carried**

**ITEM #13** Addition to § 1403-05 Land Use Regulations

*Ms. Wuerstle, Chief Planner, introduced text amendment item #13.*

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on text amendments related to the uses subject to limitations in each zoning district.

**PROPOSED TEXT AMENDMENT:**

**§ 1403-05. Land Use Regulations.**

Schedule 1403-05 below prescribes the land use regulations for SF Districts. The regulations for each subdistrict are established by letter designations as follows:

- (f) "P" designates permitted uses. These uses may be subject to additional regulations as indicated.
- (g) "L" designates uses that are permitted, subject to certain limitations. Numeric suffixes refer to limitations listed at the bottom of Schedule 1403-05. Modifications to the limitations are prohibited unless otherwise specified.
- (h) "C" designates uses permitted only after review and approval of the conditional use by the Zoning Hearing Examiner. These uses may be subject to additional regulations as indicated.

Uses are defined in Chapter 1401, Definitions. Uses not listed in the Schedule 1403-05 are prohibited.

**This amendment would need to be repeated for each district of the Zoning Code.**

**JUSTIFICATION:**

Variations are allowed for any dimensional standard of the Zoning code. An amendment is proposed to allow variations for any numerical and locational standard of the Code in addition to the dimensional standards. It is the intention of the ZTAC to review each

limitation to determine if conditional use approval should be allowed for the limitation. The Code should be clear on how the limitations can be modified.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

**DISCUSSION**

Ms. Wuerstle presented a brief overview of the staff report and explained the letter designations in the land use regulations. Mr. Mooney asked if this Item was linked to Item #17. Ms. Wuerstle said that it was and Mr. Mooney moved to hold the Item.

- Motion:** Mr. Mooney moved to hold Item #13
- Second:** Mr. Schneider
- Ayes:** Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls
- Nays:** Mr. Faux, **motion carried**

**ITEM #14** Changes and Additions to § 1419-21 Limited or Full Service Restaurants and Drinking Establishments

*Ms. Wuerstle, Chief Planner, introduced text amendment item #14.*

**PURPOSE:**

To obtain input and direction from the Planning Commission on a zoning text amendment as it relates to the parking requirements of outdoor areas of limited or full service restaurants and/or drinking areas.

**PROPOSED TEXT AMENDMENT:**

**§ 1419-21. Limited or Full Service Restaurants and Drinking Establishments.**

Outdoor areas of limited or full service restaurants and drinking establishments must be located, developed and operated in compliance with the following:

- (a) **Residential District Boundary Line.** For the purposes of this section the term "residential district boundary line" shall mean the district boundary line of the SF-20, SF-10, SF-6, SF-4, SF-2, RMX, RM-2.0, RM-1.2, and RM-0.7 districts.

- (b) **Location.** Outdoor areas on any public sidewalk or alley requires a revocable street privilege. Any outdoor area located within 100 feet of a residential district boundary line requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.
- (c) **Maximum Size.** Within 500 feet of a residential district boundary line, the outdoor area may not exceed 50 percent of the indoor area accessible to the public. Additional area requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.
- (d) **Barriers.** Decorative walls or fencing must enclose an outdoor area.
- (e) **Entertainment.** Within 500 feet of a residential district boundary line, entertainment, including the use of audio/visual equipment or amplified sound is prohibited unless conditional use approval is obtained pursuant to the procedures and criteria of Chapter 1445, Variance, Special Exceptions and Conditional Uses.
- (f) **Fixtures.** Furniture and fixtures provided for use in an outdoor eating area may consist only of movable tables, chairs, umbrellas, planters, lights and heaters. Lighting fixtures may be permanently affixed onto the exterior front of the building. All movable furniture and fixtures must be removed during the off-season.
- (g) **Hours of Operation.** Within 100 feet of a residential district boundary line the use of outdoor areas is prohibited between Midnight PM and 7 AM on Friday and Saturday and 10 PM and 7 AM on all other days unless conditional use approval is obtain pursuant to Chapter 1445 Variance, Special Exception and Conditional Uses. In all other locations, the use of outdoor areas shall be prohibited after 2:00 AM.
- (h) **Breweries and Wineries.** Beer and wine production accessory to a limited or full service restaurant is limited to an area that may not exceed 10,000 sq. ft and may not produce any objectionable odor, dust or fumes.
- (i) **Required Buffer Yards.** Where any side or rear yard of the permitted use abuts a residential district boundary line, a 10 foot buffer area ensuring visual and sonic separation shall be provided pursuant to Chapter 1423-03 Landscaping Plan.
- (j) **Parking Requirements for Outdoor Areas.** ~~Off-street parking shall be calculated at 1 space per 300 square feet of outdoor floor area.~~ Off-street parking ~~facilities~~ spaces must be made permanently available to the use served. [For parking requirements for outdoor areas of eating and drinking](#)

[establishments see §1425-19-A: Off-street Parking and Loading Requirements.](#)

**JUSTIFICATION:**

The Economic Development Committee approved the above text amendments on October 3, 2006. However, there is a conflict caused by having the parking requirement for outdoor areas listed in both §1419-21 and §1425-19-A. Section 1419-21 allows a Special Exception to be requested for relief from the parking requirement while §1425-19-A allows a variance to be requested from the parking requirement. The Special Exception criteria are more lenient than the criteria for granting a Variance. Furthermore, removing the regulation from §1419-21, keeps the structure of the Zoning Code consistent. Leaving the parking requirement reference to §1425-19-A in §14991-21 makes the Zoning Code easier to use for the public.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

**DISCUSSION**

Ms. Wuerstle gave a brief overview of the staff report and explained that there was a conflict caused by having the parking requirement for outdoor areas listed in both §1419-21 and §1425-19-A. Currently, the Zoning Code would require both a variance and a special exception for any deviation from the specified parking requirement. She further explained that there were less parking spaces required for an outdoor eating and drinking area because they are not used on a year-round basis.

**Motion:** Mr. Stiles moved approval Item #14.  
**Second:** Mr. vom Hofe  
**Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls  
**Nays:** None, **motion carried**

**ITEM #15** Change to § 1421-01 Accessory Residential Structures and Addition to § 1425-35 Access Drive and Maneuvering Aisles

*Ms. Wuerstle, Chief Planner, introduced text amendment item #15.*

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on text amendments to §1425-35 Access Drive and Maneuvering Aisles and §1421-01 Accessory residential Structures related to garage doors facing an alley.

**PROPOSED TEXT AMENDMENT:**

**§ 1421-01. Accessory Residential Structures.**

Structures ancillary to a principal structure are considered accessory structures. This section establishes regulations for residential accessory structures. All accessory structures must be located, developed and operated in compliance with the following:

- (k) **Location.** Accessory structures, are not permitted in a front yard or a side yard except for fences and walls, flagpoles, lamp posts, arbors, trellis, birdbaths, decorative fountains or other similar structures as determined appropriate by the Director of Buildings and Inspections. (\*revised 7/22/05 by Ordinance #246-2005)
- (l) **Minimum Distance from Principal Structure:** One foot. Accessory structures, other than fences and walls, within one foot of the principal structure are considered part of the principal structure.
- (m) **Maximum Size:** 800 square feet for all structures other than fences and walls.
- (n) **Maximum Number of Accessory Buildings:** Two.
- (o) **Maximum Height:** 15 feet.
- (p) **Setbacks.** A minimum three-foot rear yard setback and three-foot side yard setback is required except that any outdoor enclosure for pets shall be no less than 20 feet from all property lines. ~~The setback for garage doors facing an alley is 20 feet from the alley centerline in order to provide an adequate turning radius.~~ (\*revised 7/22/05 by Ordinance #246-2005)

**§ 1425-35. Access Drive and Maneuvering Aisles.**

Access drives for parking purposes are permitted only in connection with uses permitted, except for access drives to restricted parking lots allowed by the Director of Buildings and Inspections in connection with uses in more restricted districts.

- (q) **Parking Access.** An access drive connecting the required parking spaces to a street must be provided either on the same premises as the principal building or in the form of a recorded easement. Where provided on the same premises as the principal building, the access drives must have a minimum width of eight feet and a maximum aggregate width of 20 feet. Where provided in the form of a recorded easement, the access drive must

have a minimum width of eight feet, except where the access drive serves more than two properties in which case the access drive must be 16 feet.

- (r) **Maneuvering Aisles.** Maneuvering aisles and driveways may serve both required parking spaces and loading spaces if they meet the requirements specified in §1425-19 and § 1425-25 for both parking and loading facilities.
- (s) **Requirement for Wider Driveway.** The City Engineer may require a wider driveway and driveway opening for a development.
- (t) **Driveway Visibility.** Visibility from a driveway may not be blocked between a height of three feet and seven feet for a depth of five feet from the street property line and five feet from the edge of the driveway or at the nearest property line intersecting the street property line, whichever is less. Refer to Figure 1425-35.
- (u) [Garage Doors Facing an Alley. Any garage door facing an alley shall provide an adequate turning radius.](#)

**JUSTIFICATION:**

The setback requirement in §1421-01(f) is not consistent for detached garages and attached garages. Attached garages are not considered accessory structures according to the definition of “accessory structures”. Therefore, an attached garage could be setback 0 feet from the property line in certain districts. This amendment removes the requirement from the Accessory Structures section of the Zoning Code and places it in the Parking and Loading Regulations section of the Code.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Gary Wollenweber of Hyde Park, who participates on the Zoning Text Amendment Committee, stated that he dislikes the word “adequate.” He believes the word is too vague and that there should be an actual dimension replacing the word “adequate.” The Zoning Text Amendment Committee was aware of this situation when discussing this specific text amendment and decided to add the word “adequate” in this section for the purpose of allowing flexibility. The Director of Buildings and Inspections would then make the interpretation from there.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

**DISCUSSION**

Ms. Wuerstle gave a brief overview of the staff report and explained that there was an inconsistency in the Code on how this regulation was applied to detached garages and attached garages. This amendment would fix the inconsistency. The Planning Commissioners had no additional questions or comments.

**Motion:** Ms. Qualls moved approval of Item #15  
**Second:** Mr. Stiles  
**Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls  
**Nays:** None, **motion carried**

**ITEM #16** Changes and Additions to § 1421-33 Fences and Walls

*Ms. Wuerstle, Chief Planner, introduced text amendment item #16.*

**PURPOSE:**

To obtain approval from the City Planning Commission (CPC) on a text amendment related to the height of fences and walls.

**PROPOSED TEXT AMENDMENT:**

**§ 1421-33. Fences and Walls.**

All fences and walls are accessory structures and must comply with the provisions of this section, any other applicable provisions of the Cincinnati Zoning Code, and any applicable provisions of the Municipal Code.

- (v) **General.** Fences and walls are permitted in all zoning districts and may be required for specific uses, as provided in Chapter 1419, Additional Development Regulations, or as buffering between certain uses, as provided in Chapter 1423, Landscaping and Buffer Yards.
- (w) **Maximum Height.** In any front, corner side yard or corner rear yard the maximum height of any fence or wall or any combination thereof, may not exceed four feet in residential districts and six feet in all other districts and may not exceed an opacity of 50 percent (EXCEPTION: Fences and walls used as parking lot screening per § 1425-27). In any interior side or rear yard, the maximum height may not exceed six feet and may be 100 percent opaque. (\*revised 7/22/05 by Ordinance #248-2005)
- (x) **Entry Gateway.** An entry gateway, trellis or other entry structure may be permitted in the required front yard provided the maximum height and width do not exceed ten feet.
- ~~(y) **Fences With Retaining Walls.** A combination wall or fence on top of a retaining wall may be erected. The retaining wall portion may be erected up to a level of the higher finished grade. The fence or wall portion must comply with the requirement of subsection (b) above.~~

- (z) **Driveway Visibility.** All fences are subject to the driveway visibility requirements of § 1425-37.
- (aa) **Electrical Fences and Razor Wire.** Electrical, barbed and razor wire fences are prohibited in SF, RM, O, DD and IR Districts and are an accessory conditional use in C, M and RF Districts.
- (bb) **Decks and Railings.** Within the limits of a rear yard in a residential district, decks and railings for above ground swimming pools may be up to eight feet above grade and located at least three feet from all property lines.

**JUSTIFICATION:**

As the Zoning Code is currently written, the finished grade could be substantially higher than the existing grade, which may create negative impacts for surrounding properties.

**PUBLIC STAFF CONFERENCE:**

The Planning Division staff held a public conference on this Zoning Text Amendment on Tuesday, August 14, 2007. Those in attendance were not opposed.

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendment.

**DISCUSSION**

Ms. Wuerstle gave a brief overview of the staff report and gave an example of a project where this loophole had been used.

Mr. Faux stated that a situation caused by inconsistency in measurement had come before the Zoning Board of Appeals in regards to the replacement of a swimming pool and slide. He went on to say that in some circumstances topography causes difficult situations.

Mr. Mooney stated that he had concerns with the proposed text amendment and explained that it was difficult to legislate taste.

- Motion:** Mr. Schneider moved approval of Item #16
- Second:** Mr. vom Hofe
- Ayes:** Mr. Faux, Mr. Stiles, Mr. vom Hofe and Mr. Schneider
- Nays:** Mr. Mooney and Ms. Qualls, **motion carried**

**ITEM #18** Proposed text amendments to §1425-19: Off-Street Parking and Loading Requirements of the Zoning Code, providing a 2,000 square foot parking requirement exemption for commercial uses in the Urban Mix District.

*Ms. Jennifer Walke, Senior Planner presented this item.*

**PURPOSE:**

To obtain approval from the City Planning Commission for text amendments to correct the omission of the Urban Mix District in the recent text amendment to the Off-Street Parking and Loading Requirements providing a 2,000 square foot exemption for commercial uses.

**PROPOSED TEXT AMENDMENT:**

**RECOMMENDATION:**

The Department of Community Development and Planning staff recommended that the City Planning Commission approve the requested text amendments.

**DISCUSSION**

Ms. Walke gave a brief overview of the staff report.

Mr. Faux explained the 2,000 square foot exemption for parking requirements. Ms. Wuerstle further explained that the exception depended on the intensity of the district and was not given to auto orientated developments in CG-A Districts. Mr. Schneider commented that parking requirements were a detriment to the downtown area.

Mr. Uebelacker stated that he did not support the automatic parking exception.

Mr. Mooney stated that the text amendment was only to extend the 2,000 square foot exemption to the Urban Mix District, which was overlooked when the Urban Mix District was created.

- Motion:** Mr. Mooney moved approval of Item #18
- Second:** Ms. Qualls
- Ayes:** Mr. Faux, Mr. Stiles, Mr. vom Hofe, Mr. Schneider, Mr. Mooney and Ms. Qualls
- Nays:** none, **motion carried**

**ITEM #19** A report and recommendation on the conveyance of property within Planned Development District No. 43, The Banks.

*Ms. Margaret Wuerstle, Chief Planner presented this item.*

**BACKGROUND:** The City of Cincinnati presently owns the fee simple interest in certain portions of the real estate on which The Banks project in Planned Development District No. 43 (The Banks) is to be developed. In addition, Hamilton County (the County) presently owns the fee simple interest in certain portions of the real estate on which The Banks is to be developed. Some of the real estate interest may be air rights or ground rights and some may be both air and ground rights. In order for The Banks and the Central Riverfront Park project to proceed, some of the County’s real estate must be transferred to the City. The City must then transfer some of its real estate interests to The

Banks Developer (Developer). Other real estate interests of the City will be transferred to the County. All property transfers are set forth in the Master Development Agreement (MDA) for The Banks and the Cooperation Agreement between The Board of County Commissioners of Hamilton County and The City of Cincinnati.

It is the intention of both the County and the City (Public Parties) to have the MDA and the Cooperation Agreement approved in September 2007. The Municipal Code of the City of Cincinnati requires that the Planning Commission approve the acceptance of land by the City, the sale of City owned property and the lease of City owned property, if the lease is for five or more years. Site work for the implementation of Phase I of The Banks is expected to commence by the end of 2007. In order to expedite the transfer of property, as each lot is needed for construction of the improvements, The Banks Working Group is requesting that the Planning Commission authorize and the City Council approve all needed conveyances for implementation of The Banks project. The property will be transferred to the Developer not more than 120 days prior to the anticipated commencement of the construction of improvements to any of the development lots in the project area. The Closing on each lot must occur within 30 days after the Public Parties receive the written request from the Developer for the development lots. As a condition of the delivery of each Development Deed, the Developer must agree to a Payment-In-Lieu-of-Taxes and each Development Deed will include a right of re-entry by the City. Accordingly, the transfer process will be more efficient if the Planning Commission authorizes all conveyances at this time for inclusion in the MDA and Cooperation Agreement.

On August 16, 2007, the Planning Commission approved the acceptance and conveyance of property for implementation of The Banks project. Since that time, it was discovered that one additional conveyance is needed. The prior approval by the Planning Commission authorized the conveyance of the air rights of the dedicated right-of-way of Theodore M. Berry Way between Walnut Street and Main Street to the Developer. The Planning Commission also needs to authorize the conveyance of the ground rights of the dedicated right-of-way of Theodore M. Berry Way between Walnut Street and Main Street to Hamilton County.

### **RECOMMENDATION**

The staff of the City Planning Department recommended that the City Planning Commission take the following action on the transfer of properties within The Banks:

1. Authorize the conveyance of the portion of the dedicated right-of-way of Theodore M. Berry Way between Walnut Street and Main Street from the City of Cincinnati as follows: air rights to the Developer and ground rights to Hamilton County.

### **DISCUSSION**

Ms. Wuerstle gave a brief overview of the staff report and explained that an additional conveyance was needed for the ground rights to go to the county. The Commission had conveyed the air rights at the August 16, 2007 meeting. She said that the transfers of

property were very complicated and that other issues may arise in the future as the process continues.

Ms. Qualls asked if it would be acceptable to hold the item until the next meeting.

Ms. Karen Alder, of the Real Estate Division, explained that the property was in Phase I of the development and that the developers would like the Phase I plat recorded.

Ms. Terry Mastin, of the Real Estate Division, explained that in a prior acceptance of some streets for The Banks Phase II subdivision, the county incorrectly accepted the property. In order to correct the situation, the City needs to transfer the ownership. The transfer would have to be done prior to completing any Phase I agreements with the developer.

Mr. Mooney stated that he supported the staff recommendations and wanted The Banks development to move forward. He explained that it would be City Council's prerogative to either approve or disapprove The Banks items passed by the Planning Commission.

Ms. Mastin stated that this item would authorize the City Manager to sell the property at a future date. The developers are asking that the Phase I plat be recorded immediately.

**Motion:** Mr. Mooney moved approval of Item #19  
**Second:** Mr. Schneider  
**Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe and Mr. Schneider  
**Nays:** Ms. Qualls, **motion carried**

Mr. Schneider stated that he felt that it would be possible for the developers to put five 30-story buildings on the riverbank. Mr. Faux stated that the developers would be required to come before the Planning Commission for approval prior to construction on each phase of the development. Mr. Schneider felt that the Commission approval was setting high expectations for the developers regarding the heights that may not be approved.

Mr. Faux stated that he felt that the Planning Commission has made it clear that in general they stand behind the original plans of the Riverfront Master Plan. The Planning Commissioners have recognized that there was a need for some flexibility and allowed an increase in square footage and density. If the developers presented plans for multiple 30-story buildings, they would knowingly be requesting something different than what the Planning Commission has consistently asked for and stood for.

Ms. Qualls said that she felt that the developers would use the flexibility that was granted to put pressure on the Planning Commission and City Council. She stated that it was important that the developers have a clear knowledge of what was approved.

Mr. Faux informed the Planning Commission that there was a vacancy on the Regional Planning Commission due to Mr. Tarbells departure. He said that Ms. Qualls had expressed interest in filling the vacancy and asked if the Commissioners would like to make the appointment.

- Motion:** Mr. Schneider moved to appoint Ms. Qualls as the City Planning Commissions member on the Regional Planning Commission.
- Second:** Mr. vom Hofe
- Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Ms. Qualls and Mr. Schneider
- Nays:** None, **motion carried**

Mr. Graves said that he would like to meet with each of the Planning Commissioners in the next couple of weeks.

**ADJOURN**

- Motion:** Mr. Schneider moved to adjourn.
- Second:** Mr. vom Hofe
- Ayes:** Mr. Faux, Mr. Mooney, Mr. Stiles, Mr. vom Hofe, Mr. Schneider and Ms. Qualls
- Nays:** None, **motion carried**

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Charles C. Graves, III  
Director, Department of City Planning

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Caleb Faux, Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_