

Planning Commission Staff Report

TO: PLANNING COMMISSION

FROM:

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MEETING DATE: MARCH 5, 2014

SUBJECT: Z13-36: REQUEST TO AMEND THE LAND DEVELOPMENT CODE,

CHAPTER 1 ZONING REGULATIONS, DIVISION 5

ADMINISTRATION, ARTICLE 5.4 <u>USE PERMITS</u>, SECTION 5.404 <u>EXPIRATION</u>; <u>MODIFICATIONS</u>; <u>REVOCATION</u>, SUBSECTION B MODIFICATIONS RELATED TO AUTHORIZING THE ZONING ADMINISTRATOR TO APPROVE MINOR MODIFICATIONS TO CONDITIONAL USE PERMITS FOR WIRELESS COMMUNICATION

FACILITIES (WCF).

STRATEGIC INITIATIVE: Technology Leader

The proposed text amendment will assist in improving service efficiency by allowing a greater number of Wireless Communication Facility (WCF) modifications to be approved administratively.

RECOMMENDED MOTION

FOR THE REASONS SET FORTH IN THE STAFF REPORT, MOVE TO RECOMMEND APPROVAL TO THE TOWN COUNCIL FOR Z13-36, AS REQUESTED.

BACKGROUND/DISCUSSION

History

Date Action

February 5, 2014 Planning Commission conducted the Citizen Review meeting to discuss

the proposed LDC amendment and initiated the amendment.

Overview

Article 5.4 of the Land Development Code (LDC) currently sets forth requirements for three use permit classifications:

- 1. *Administrative Use Permit.* A use permit approved by the Zoning Administrator for a use in specified districts based on a determination of compliance with standards set forth in the Base District Regulations and individual review of their location, design, configuration, intensity, and density of use or structures.
- 2. *Conditional Use Permit.* A use permit approved by the Planning Commission for a use in specified districts based on a determination of compliance with standards set forth in the Base District Regulations and individual review of their location, design, configuration, intensity, and density of use or structures.
- 3. **Special Use Permit.** A use permit approved by the Planning Commission for a use in any zoning district, based on consideration of the technical requirements of the use, characteristics of the location where the use is proposed to be established, and impacts on adjacent uses.

The first two types of these use permits are used to approve certain types of Wireless Communication Facilities (WCF) as detailed in Article 4.7 of the LDC. Approval or denial of either type of WCF use permit requires that "findings" be made by the Zoning Administrator or Planning Commission.

Additionally, LDC Article 5.4 includes regulations pertaining to expiration, modifications and revocation of use permits. This proposed text amendment will change the process for minor modifications to Conditional Use Permits (CUP) for WCFs. Currently, the Zoning Administrator may only approve reasonable changes to Administrative Use Permits (AUP) after finding that the changes do not alter a Final Design Review approval or any condition of the AUP. Under the existing LDC language, minor modifications to CUPs may only be granted by the decision-making body (Planning Commission) as detailed in the *Existing Zoning Code* section below.

Typical minor modifications to WCF use permits include:

- Upgrading the capacity of an existing facility to replace antennas at the same mounting height on a pole.
- Additional replacement antennas that will not dramatically change the visual impact of the existing facility.
- A slight increase (1'-2') in individual antenna height, which is visually insignificant at a 50' or 60' mounting height.
- Additional equipment within an existing equipment shelter that remains screened by the existing walls.

In each of these examples, the changes do not significantly alter the use permit approval and would not be more visually obtrusive than the existing facilities.

At the February Study Session, Planning Commissioners discussed the current approval process, timing of approvals and specifying the category of change that would require a hearing instead of a minor modification. Rather than add additional verbiage to the Zoning Code, staff will prepare a public resource document that provides some general examples of minor modifications and modifications requiring a public hearings so that it is clear to applicants.

Existing Zoning Code

The existing LDC Section 5.404 governing modifications to Use Permits reads as follows:

5.404 Expiration; Modifications; Revocation

- B. *Modifications*. No change is permitted in the use or structure for which a use permit has been issued except as follows:
 - 1. *Administrative Use Permit*. The Zoning Administrator may approve modifications to any Administrative Use Permit. Modifications are limited to reasonable changes to the Administrative Use Permit that do not substantially alter a Final Design Review approval or any condition of the Administrative Use Permit. The Zoning Administrator shall provide written records of the decision and supportive findings.
 - 2. Conditional Use and Special Use Permits. Modifications to a Conditional or Special Use Permit may be granted by the decision-making body pursuant to the procedures set forth in Article 5.2: Common Procedures.

Proposed Zoning Code

Planning staff proposes a text amendment to the LDC to modify the process relating to modifications to Conditional Use Permits for WCFs. The LDC is hereby amended to read as follows (additions in ALL CAPS; deletions in strikeout):

Article 5.4: Use Permits

5.404 Expiration; Modifications; Revocation

- B. *Modifications*. No change is permitted in the use or structure for which a use permit has been issued except as follows:
 - 1. *Administrative Use Permit*. The Zoning Administrator may approve modifications to any Administrative Use Permit. Modifications are limited to reasonable changes to the Administrative Use Permit that do not substantially alter a Final Design Review approval or any condition of the Administrative Use Permit. The Zoning Administrator shall provide written records of the decision and supportive findings.
 - 2. Conditional Use and Special Use Permits. Modifications to a Conditional or Special Use Permit may be granted by the decision-making body pursuant to the procedures set forth in Article 5.2: Common Procedures. THE ZONING ADMINISTRATOR MAY APPROVE REASONABLE CHANGES TO CONDITONAL USE PERMITS FOR WIRELESS COMMUNICATION FACILITIES (WCF) THAT DO NOT SUBSTANTIALLY ALTER THE USE PERMIT APPROVAL OR ANY CONDITION OF APPROVAL. THE ZONING ADMINISTRATOR SHALL PROVIDE WRITTEN RECORDS OF THE WCF DECISION AND SUPPORTIVE FINDINGS.

The effect of this amendment will be to allow the Zoning Administrator to administratively approve minor modifications to conditional use permits for wireless communication facilities.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town.

Staff has received no comment from the public.

STAFF RECOMMENDATION

For the following reasons: The proposed text amendment will assist in improving service efficiency by allowing a greater number of Wireless Communication Facility modifications to be approved administratively, the amendment will maintain the Town's uncluttered appearance and

prevent visual blight, and all required public notice and meetings have been held, the Planning Commission moves to recommend approval to the Town Council for Z13-36, a request to amend the Town of Gilbert Land Development Code to allow the Zoning Administrator to administratively approve minor modifications to conditional use permits for wireless communication facilities.

Respectfully submitted,

Mike Milillo Senior Planner, CSBA

Attachments:

1. Minutes of the Planning Commission Study Session, dated February 5, 2014

Z13-36 Attachment 1: Minutes of the Planning Commission Study Session, dated February 5, 2014 March 5, 2014

the North and East side and a neighborhood yogurt shop will also be within. Parking is sufficient with 38 spaces provided and 37 spaces required. Traffic has reviewed the site and everything looks appropriate.

Commissioner Peterson commented that the other Dunkin' Donuts that the Commission approved at Lindsay and Warner Roads has the same provision that they can open at 4:00 AM. She said that she did not have any issue with them extending their hours and doubted that they would be open at 11 PM as they do not seem to stay open that late.

Commissioner Cavenee said that there would be headlights at 4:00 AM and he assumed that Design Review would deal with that and asked if there were any other thoughts about 4:00 AM that would impact the adjacent property.

Planner Ward said that lighting would be looked at by Design Review but to the East of the drive aisle there will be a landscape buffer. He said that staff believed that those issues would be taken care of.

Chairman Wittmann pointed out that there would be a six-foot screen wall around the subject property.

Z13-37 - Request to amend Ordinances No.1900, 2179, 2195, 2304, 2413, 2425 and 2443 to amend the conditions of development within the Cooley Station Planned Area Development (PAD) for approximately 24 acres of real property generally located east and south of the southeast corner of Wade Drive and Vest Avenue, consisting of approximately 24 acres of Single Family Detached (SF-D) zoning districts with a Planned Area Development overlay zoning district as shown on the exhibit (map), which is available for viewing in the Planning and Development Services Office. The request is to amend the layout out for this acreage to create a new parcel 1B and the conditions of development as follows: illustrate a new street section for the residential alley streets.

Senior Planner Maria Cadavid stated that this piece was 24 acres. The rezoning proposes to delineate new boundaries for parcel 1B for the development of a residential community of 191 single family detached lots in the Cooley Station. The applicant will revise the layout of the lots to include the private streets as part of the lot area and will be able to stay within the lot coverage limit of 55% for the Single-Family Detached (SF-D) zoning district in the Cooley Station (Z13-16 – Ordinance No. 2443). The applicant also proposes to add a street section detail to be applied on future residential alley streets in the Cooley Station to satisfy engineering requirements. Ms. Cadavid said that the applicant will create in Cooley Station a new parcel, 1B. She noted that there would be no deviations from the code, the ordinance will be changed or revised to reflect the new created parcel and also a street section that engineering is asking for. Most of the development will be a garden type of housing with different sizes of lots. The only public streets will be Vest Avenue and Wade Drive; the remainder will be private residential alleys. Engineering required that they add a street section detail which is being done by the applicant.

Commissioner Cavenee said that in looking at the comparison of the existing and proposed, everything looks exactly in line with the existing. He asked if they were doing the exact same scenario that they have done elsewhere.

Planner Cadavid said the builder was bringing in a brand-new product that does not need a General Plan Amendment which is within the density range. They are proposing to create a new parcel 1B and add a new Street section detail in the ordinance exhibit.

Z13-36 - Citizen Review and initiation of amendment to the Town of Gilbert Land Development Code, Chapter 1 Zoning Regulations, Division 5 Administration, Article 5.4 Use Permits, Section 5.404 Expiration; Modifications; Revocation, Subsection B Modifications related to allowing the Zoning Administrator to approve minor modifications to Conditional Use Permits for Wireless Communication Facilities (WCF).

Senior Planner Mike Milillo stated that Z13–36 was a request for a recommendation for initiation from the Planning Commission and also to hold the Citizen Review meeting as required by code for a proposed

Planning Commission Study Session 2-5-14 amendment that would amend the Use Permit section of the Land Development Code (LDC) and would allow for administrative approval of minor modifications to Wireless Communication Facilities (WCF) that currently have to go to the Planning Commission. The staff report outlines basic numbers over the past several years and staff gets numerous requests from the constantly changing wireless communication technology always upgrading to new types of telecommunication equipment. Any of those that were originally approved by Administrative Use Permits, the Planning Commission never sees because they are allowed by code to be approved administratively. If the Wireless Communication Facility was originally approved by Conditional Use Permit the only way that those minor modifications can be approved currently is by bringing them back to the Planning Commission as the decision-making body. In 2013 staff saw 6 modifications to Wireless Communication Facilities that had to come back to the Planning Commission and many times they are minor modifications such as adding a few more antennas. When looking at the antennas which are 60 or 70 feet above ground level there is really not much of a visual impact. They are not similar to other types of Use Permits where there are more than just visual impacts. Planner Milillo displayed some typical types of antenna approvals that staff is asked to do. He noted that when the case was brought back to the Commission for public hearing the following statement from page 3 of the staff report needed to be included: "The Zoning Administrator shall provide written records of the decision and supportive findings." Planner Milillo referred to the following information from page 3 of the staff report:

Conditional Use and Special Use Permits. Modifications to a Conditional or Special Use Permit may be granted by the decision-making body pursuant to the procedures set forth in Article 5.2: Common Procedures. THE ZONING ADMINISTRATOR MAY APPROVE REASONABLE CHANGES TO CONDITONAL USE PERMITS FOR WIRELESS COMMUNICATION FACILITIES (WCF) THAT DO NOT SUBSTANTIALLY ALTER THE USE PERMIT APPROVAL OR ANY CONDITION OF APPROVAL.

Vice Chairman Oehler asked for an example of what would be substantial.

Planner Milillo indicated the exhibit and noted that on that particular monopole there were 4 levels of different antenna facilities. It is obviously 4 different wireless communication providers. He said for example if there wasn't anything on the top and AT&T now wanted to place those antennas up at the very top of the pole, thus having antennas 15 or 20 feet higher on the poles, that would be something that staff would think was more significant and would want to bring before the Planning Commission, especially if the location was immediately adjacent to residential.

Commissioner Sippel asked if when minor requests have come to them in the past would staff typically put them on the Consent Agenda and let them go through without discussion.

Planner Milillo said that many times they do have them on the Consent Agenda. The impact on the applicant is that they must pay a full fee and wait to go through the public hearing process so it slows down the whole process.

Chairman Wittmann stated that they can take from the time of application 3 to 4 months or longer to get through the whole process.

Commissioner Peterson said that sometimes it really is a minor change and they have had residents from the public come in and really get upset because of the type of facility that is being discussed, which seems to be one of the more controversial things that they discussed as a Planning Commission. Even if it is something minor the public comes in and gets upset and that could be alleviated and be made easier by not trying to explain to them that it is just something minor and that the tower is exactly the same and may even be downsizing in some cases. Commissioner Peterson said that with the technology changing she really agrees with that.

Commissioner Cavenee said that to make it clearer to the applicants, would there be more merit in specifying the category of change that would require a hearing; for example, a change in the monopole or

number of bands, or something of that nature. Could it be categorized so that an applicant could look at the environment and say yes I do or no I don't have to go through the process? He said that he did not understand monopole's well enough to know what those categories might be but it seemed as though that would be more clear rather than just use the term reasonable or substantial change.

Planner Milillo said that many times they have conversations or correspondence that gets to that very issue. He said that normally staff asks the applicant to send them a couple of schematic drawings and diagrams and they make the determination as to whether or not it can be done administratively. At the current time that can only be done if it was originally an Administrative Use Permit.

Commissioner Cavenee said that he did not have any strong feelings either way other than to perhaps make it clearer for the applicant and easier on the staff to not have to make that decision and deal with the pushback if the applicant does not agree with the substantial classification. He said if it was impossible to delineate those categories, he understood.

Planner Milillo said that he did not think it was impossible and perhaps they could look at providing some criteria.

Commissioner Cavenee said that it would be helpful even if the information was general.

Chairman Wittmann said she thought that was a good point as a lot of times the applicant will refer to the code initially to figure out what process they will need to undertake.

Chairman Wittmann asked if there was anyone in the public who wished to come forward to discuss the case. Seeing none, she initiated the text amendment.

Discussion of Regular Meeting Agenda

Vice Chairman Oehler proposed that they move items 10, Z13-39, 11, GP13-15 and 12, Z13-26 to the consent agenda.

A motion was made by Chairman Jennifer Wittmann and seconded by Commissioner Kristopher Sippel to adjourn the Study Session meeting and go into Executive Session.

Motion carried 6 - 0

DJOURN MEETING
tudy Session Meeting adjourned at 5:35 p.m.
Chairman Jennifer Wittmann
TTEST:
Recorder Margo Fry
tudy Chair