



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes - Final Planning Commission

Thursday, March 16, 2017

8:30 AM

Council Chambers

1. Call to Order

Motion by Walkowski, seconded by Gibson, to appoint Commissioner Shonkwiler as acting chair until Chair Phillips arrives.. The motion passed by a vote of 5:0:4

Aye: 5 - Graham, Markewich, Shonkwiler, Walkowski and Gibson

Absent: 4 - McDonald, Henninger, Chairperson Phillips and Smith

2. Approval of the Minutes

[CPC 207](#) Minutes for the February 16, 2017, City Planning Commission Meeting

Presenter:

Eric Phillips, Chair, City Planning Commission

Motion by Walkowski, seconded by Graham, that the February 16, 2017 meeting minutes be approved . The motion passed by a vote of 5:0:4

Aye: 5 - Graham, Markewich, Shonkwiler, Walkowski and Gibson

Absent: 3 - McDonald, Henninger and Smith

Excused: 1 - Chairperson Phillips

3. Communications

3.A. [CPC-038](#) Chair Eric Phillips

3.B. [CPC-002](#) Director Updates, Peter Wysocki

4. CONSENT CALENDAR

4.A. [CPC UV](#) Approval of a Certificate of Designation for Stericycle, Inc. to operate
[15-00133-A1](#) a Medical Waste Transfer Facility at 4120 Mark Dabling Boulevard
[MN16](#)

(Quasi-Judicial)

Presenter:

Hannah Van Nimwegen, Planner II, Planning & Community
Development

This Planning Case was approved on the Consent Calendar.

- 4.B. [CPC ZC 17-00024](#) Ordinance No. 17-41 amending the zoning map of the City of Colorado Springs pertaining to 8.6 acres located at 707 Cresta Road from R1-9 (Single-Family Residential) to PK (Parks).

(Quasi-Judicial)

Presenter:

Lonna Thelen, Principal Planner, Planning & Community Development
 Peter Wysocki, Planning and Community Development Director

This Planning Case was referred to City Council on the Consent Calendar to approve the zone change of 8.6 acres from R1-9 (Single-Family Residential) to PK (Parks), based upon the findings that the change of zone request complies with the (3 review criteria for granting zone change as set forth in City Code Section 7.5.603.

- 4.C. [CPC CU 17-00012](#) Ecumenical Social Ministries Women’s Transitional Housing Conditional Use Permit

Presenter:

Ryan Tefertiller, Urban Planning Manager, Planning & Community Development

This Planning Case was approved on the Consent Calendar.

- 4.D. [CPC CM1 16-00132](#) A Conditional Use for a 40-foot bell tower telecommunications tower Commercial Mobile Radio Service (CMRS) with an equipment compound located at 640 Manitou Boulevard

(Quasi-Judicial)

Presenter:

Rachel Teixeira, Planner II, Planning and Community Development

This Planning Case was approved on the Consent Calendar.

Approval of the Consent Agenda

Motion by Walkowski, seconded by Markewich, that all matters on the Consent Calendar be passed, adopted, and approved by unanimous consent of the members present. The motion passed by a vote of 5:0:4

These items will be acted upon as a whole, unless a specific item is called for discussion by a Commissioner or a citizen wishing to address the Planning Commission. (Any items called up for separate consideration shall be acted upon following the Consent Vote.)

- Present:** 5 - Reggie Graham , Jeff Markewich, Robert Shonkwiler, Ray Walkowski and Sherrie Gibson
- Absent:** 3 - Rhonda McDonald, Vice Chair John Henninger and Carl Smith
- Excused:** 1 - Chairperson Eric Phillips

5. UNFINISHED BUSINESS

6. NEW BUSINESS CALENDAR

- 6.A.** [CPC CA 17-00027](#) Ordinance No. 17-38 amending Section 102 (General Standards) of Part 1 (General Standards) of Article 4 (Site Development Standards of Chapter 7 (Planning Development and Building) of the Code of the City of Colorado Springs 2001, As Amended, Pertaining to ADA Site Accessibility

(Legislative)

Presenter:

Meggan Herington, Assistant Director of Planning
Peter Wysocki, Director of Planning and Development

Staff presentation:

Meggan Herington gave a PowerPoint presentation regarding ADA Site Accessibility.

- A. Background Information and Stakeholder process
 - a. Independent Center voiced concerns regarding ADA compliance in the Spring of 2016.
 - i. Meeting held between City Planning Department, HBA, and the Independent Center discussing ADA Site Accessibility.
- B. Language contained with the Ordinance
 - a. Language has been reviewed by City ADA Coordinator
 - b. Reviewed by City Attorney's Office
 - c. Reviewed by the Code Scrub Committee
- C. History of ADA Law
 - a. Signed into law on July 26, 1990, by President George H.W. Bush
 - i. What law provides (<https://www.ada.gov/ada.intro.htm>)
- D. Law provides language for the Ordinance for the City.
- E. ADA Enforcement
 - a. The Department of Justice enforces compliance.
 - b. Complaints for ADA Deficiencies on a site
 - i. DOJ may file lawsuits in Federal Court to enforce ADA
- F. ADA Site Accessibility language added to City Code
 - a. Notes added to City Code under General Standards for ADA Accessibility in Section 7.4.102H
 - b. Notice and warning
 - i. Compliance with ADA, Federal or State Accessibility laws and regulations is property owner's responsibility.

- ii. City is not responsible for enforcement of ADA or any Federal or State Accessibility laws.
 - iii. Developers responsible for ADA Accessibility
 - c. Notes added to Development Plans and Preliminary Plats
 - i. Requires note be added that states the parties responsible for the plan are familiar with current accessibility criteria, specifications, and the plan reflects site elements required by applicable ADA design standards and guidelines published by USDOJ.
 - ii. Approval of plan by the City of Colorado Springs does not assure compliance with ADA or other Federal and State Accessibility laws.
 - iii. Compliance is the sole responsibility of the property owner.
 - 1. Expectation is for property owner and designer familiarize ADA requirements and design to meet the standards.
 - d. Development Plans submitted to the City of Colorado Springs will illustrate the provision of ADA accessible routes in accord with ADA design standards.
 - i. Routes must be shown on the development plan
 - 1. If missing question the applicant for the lack of ADA accessibility routes.
 - 2. If reasoning is sound for the lack of ADA accessibility (i.e. steep grade or not enough room on the site) this must be documented in the city's file.
 - 3. Approval of plan will not be held up due to this as long as justification for why site is not ADA compliant is documented.
 - 4. Notification to property owner and designer of the noted added to the plan of non-compliance of ADA accessibility and the reason for that.
- G. Colorado Springs not the only community enacting this provision
 - a. City and County of Denver will have similar language
 - b. Language for Colorado Springs City Code will be geared to meet a zoning code perspective.
- H. ADA Compliance
 - a. Direct citizens to the Independent Center regarding compliance.
 - b. Directed inquiries to appropriate resources
- I. Approval recommended
 - a. City Staff, Independent Center, HBA, Code Scrub Committee
 - i. Independent Center and HBA will use language for a model in other local jurisdictions.

Questions of Staff:

Commissioner Walkowski asked why put this in the code. Ms. Herington stated they wanted to remind the community they needed to be ADA compliant. This helps applicants to see when they review our code they need to design according to our standards. They will have to comply with ADA requirements. Planners will look on the plans for clear documentation of ADA

site accessibility. If not on the plan there will be documentation in the file stating why or why not.

Commissioner Walkowski asked how it would be evaluated. Ms. Herington said they would look at accessibility from public right-of-way for ADA compliance. They will try and eliminate problems for site accessibility and look where routes are located. Planning will look at one part of the accessibility which is access on the outside of the building.

Commissioner Markewich stated since we can't enforce this and if applicant refuses to be ADA compliant would you deny approval of the plans. Ms. Herington stated it would be scenario driven. We will have the discussion with the applicant/owner as to why it's not in compliance. There is an ability through DOJ to get a variance for some ADA accessibility. But the Planning Department's responsibility will to ensure documentation is in the file about ADA accessibility.

Commissioner Markewich stated since neither city staff nor the planning commission is able to look at something and say this isn't ADA accessible is there the ability to deny something if there is a clear violation of these standards, still knowing it's up to the owner to comply. Ms. Herington stated we can deny something if it's specifically listed in the Parking Section of Chapter 7 which deals with ADA parking. If coming from the public right-of-way and the plan shows stairs but there is the ability to put in a ramp we will press harder for that. Conversely, if you cannot put in a ramp due to the grade being too steep we would be documented it's not in ADA compliance. We aren't saying we won't approve your development plan but we will document in the file the owner is aware of this issue. City Attorney Marc Smith said there was a provision in the zoning code (7.2.109: ***"Where any provision of this Zoning Code conflicts with any other provision of this City Code, or any other law or ordinance, the more stringent requirement, regulation, restriction, or land use limitation shall apply."***) Thus it would have to be looked at on an individual basis. He wouldn't say we'd deny a plan based on ADA but we might. It would depend on how that would work. We'll try and coordinate information to come into compliance or a reason for a waiver, but for a definitive answer of approval or no approval the Planning Department will work to ensure it complies with the law. These requirements will be required whether in our code or not.

Commissioner Shonkwiler commented about re-development in older area where parking requirement include on-street parking and the only way to get to parking area is on a city ramp, curb, intersection and that access is in poor repair. Who is responsible to take care of this problem in the public right-of-way if that is the only access from the street? Ms. Herington said if a redevelopment and the sidewalk is in disrepair as part of the building permit engineering would go out and inspect and say the need to fix it and we would expect those ramps to come into compliance with ADA standards.

Commissioner Shonkwiler said the ADA or the DOJ require the city to fix the sidewalks and ramps. Mr. Wysocki said if you're downtown in the Form Based Zone where there is a parking exemption there are handicap accessible

spaces indicated on the street. There are some provisions on how to accommodate handicap parking within on-street parking. This doesn't apply to single-family. In an apartment complex, a duplex or four-plex in a redevelopment area, you still need to provide some level of parking on site. We allow some credit for on-street parking. Really it is a case by case basis. However regarding the City's infrastructure such as with 2-C projects we are making sidewalks and intersections compliant.

Commissioner Shonkwiler asked about areas that are not being improved what triggers improvements for them. Mr. Wysocki said roadway improvements. Ms. Herington referenced the parking alternatives Planning Commission adopted at the end of 2016 and what that allows for parking and accessibility.

Supporters:

Patricia Yeager CEO of the Independent Center stated that RBD enforces the inside of a building and five feet out but nothing to the roadway. Right now there are many buildings that are accessible on the inside but not outside. ADA is a public law. We are trying to get the exterior path of travel looked at. Planners can look at this and tell the developer they need to make some changes for a clear path of travel and let them know if they don't comply the property owner could be sued. There needs to be something in the code identifying the path of travel. RBD isn't looking at it so we are starting with Colorado Springs for an ordinance and if adopted work with of municipalities so they can have the same language. If a developer refuses to do this and it's documented then it's discoverable.

Pat Going said he is on the board of directors of the Independent Center and Chairperson of the ADA Committee for Governor Hickenlopper's Advisory Group for Persons with Disabilities. Mr. Going said this is a major step forward. This has been a loophole over the years that haven't been address. Just because a plan is approved it doesn't mean the plan is ADA compliant. This is important step forward. The ADA passed in 1992 so we are only 25 years out of compliance.

Max Cup said he support this but is hesitant. He ask how much more time would it take for the planning not to approve a development plan. If you believe in the ADA then just put it in the code that they have to follow it.

City Attorney Marc said we haven't adopted the ADA and he isn't sure if other localities have adopted something similar to the ADA. It's a large stack of regulations. As far as enforcing the federal law he has not seen where we've contracted with the federal government for enforcement authority.

Mr. Wysocki said we, the city, as a property owner are subject to this law. We have to comply just like a private land owner has to comply and ensure continual compliance. We're concentrating on the development plan but it's really about continual compliance. The requirement for continual compliance it continues with the property. It's about everything regarding ADA and complying with the most recent and updated ADA requirement. It's not just about ADA. It's about hearing impaired, providing adequate access during public hearings etc. It's beyond accessibility from a parking stall to the front

door of a business. City Attorney Marc Smith was correct stating city's defer that to the DOJ. Building departments usually enforce ANSI which is a different part of accessibility standards as part of the building code. It's the big picture of continual accessibility. This came to light when we were notified of landowners restriping their handicap stalls. Mr. Wysocki gave an example of what happens when something is slightly out of compliance and who is responsible. Ultimately it's the landowner who is responsible for what needs to be done.

Ms. Herington said from a staff perspective and a review perspective she wasn't familiar with the ADA Accessibility and of the issues from public right-of-way into the site. The Independent Center has done a great job educating staff. Staff now looks at things with a finer eye for those specific details as they come up and going forward.

Opponents: None

Questions of Staff: None

Rebuttal: None

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Walkowski said include the ADA code into the City Code is a good idea. It brings awareness to the issues. This is codifying a point of connection from the city planners and the development community in addressing the ADA compliance. He liked the comments for the Independence Center about the path of travel. It's a gap of what RBD looks at and what should be looked at in the planning process. He's in favor of this ordinance.

Commissioner Gibson said she's encourage by what staff and the community to bring these thing forward. This is a step in the right direction.

Commissioner Shonkwiler said he's glad this is happening and it's important to work with these things to try and make it better. He's a little bit worried a bit about redevelopment in older areas of the city and you try and retrofit those building. He hopes there will be accommodations for older buildings habitable and useable. In support

A motion was made by Walkowski, seconded by Shonkwiler, to Recommend to City Council approval of an ordinance amending Section 102 (General Standards) of Part 1 (General Standards) of Article 4 (Site Development Standards) of Chapter 7 (Planning Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to ADA accessibility. The motion carried by the following vote: 6:0:3

**6.B. CPC CA
17-00026**

An ordinance amending Section 502 (Development Plans) of Part 5 (Concept Plans and Development Plans) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended,

pertaining to Development Plan Review Criteria.

(Legislative)

Presenter:

Peter Wysocki, Planning and Community Development Director
Carl Schueler, Comprehensive Planning Manager

Staff presentation:

Mr. Schueler provided the Commissioners information regarding areas that would change with this Code amendment. Mr. Schueler stated the only change to the section of Code is related to the 12 criteria staff uses to review development plans as part of their normal process.

When doing a significant project of any type (other than single-family residential) there is development review process that is completed that typically reviewed administratively using these criteria. Exceptions include situations where other hearing-based applications are being concurrently processed, development plans elevated to a hearing by the Planning Director, or appeals of development plans.

The Infill Steering Committee initially raised concerns with the tenor of the criteria, and particularly the “harmonious and compatible” language that is and continues to be in the Code. That language gave the impression that the status quo should be honored in all cases, thus making it difficult for infill projects that may change the use of a property even if it’s consistent with existing zoning.

He noted that after a long process of discussions and meetings the ordinance presented is mostly a consensus opinion of the Code Scrub Committee. There were some on the Committee who would like to have more additional discretion in the language and other wanted less discretion.

In the first criteria it still allows for the subjectivity of staff and ultimately Planning Commission and City Council to say even though this use might be otherwise allowable under the zoning code there are factors related to that use. The language has been reworded to have the presumption that change is okay and that adaptation of use is also okay in some instances and the expectation is not just about adhering to the status quo.

In the second proposed criteria, which are new, the development plan must comply with any other existing approved plans that are applicable to the site. This statement was not in the criteria up to this point. The balance of the criteria pertain to updating the important details, pertaining to requirements such as landscaping, parking and adhering to prior approvals etc. .

Staff recommends approval. Staff has worked with the Code Scrub Committee to come up with this language and both CONO and HBA have been a part of this process.

Questions:

Commissioner Markewich stated our Code is designed not to have specific design guidelines and in the first item talks about exterior building materials. Isn't that getting into design standards? Mr. Schueler said to a limited degree, yes. In some cases, compatibility does pertain to what a building looks like from the outside. What is important here is the Planning Director can take a development plan and make the decision that this is one that merits review by a discretionary body like Planning Commission. Mr. Peter Wysocki, Planning Director, said city staff already exercises this discretion. There have been some projects that through neighborhood input they've asked the developer to make the project more in character with the surrounding neighborhood. Mr. Wysocki affirmed the City Code does not have design guidelines or standards and what is there is rudimentary. This is being set up so if the City chooses to adopt design guidelines this gives the City the ability to make sure the development plan complies with that.

Mr. Schueler said the one exception for design standards is in the Form-Based Zone where there are some design requirements and some on the Infill Steering Committee have wondered if we should move to a more Form-Based Zone approach to some of the corridors. It may be that this approach will be taken with the expected overlay zoning for the North Nevada Avenue corridor. This criterion allows for the possibility with future plans or overlay zoning.

Mr. Schueler provided some additional background by stating there are situations where for many decades properties have been zoned a particular type of zoning and it has not fundamentally changed, whereas the character of the area and the areas around that neighborhood have changed. Thus, there will be times when people want to do a project and we have a zone-to-zone relationship from commercial to residential we will need to look at the context so see what those relationships ought to be. We want developers and property owners to be able to rely on their zoning.

Mr. Schueler added that have reduced the language about buffering. In the criteria there is the assumption you have to buffer and sometimes you don't want to buffer. It's fine to put two uses together without the buffering. As the city redevelops everything will not always be compatible.

Commissioner Walkowski said he wanted to discuss some possible unintended consequences. In the existing review criteria # 1 it essentially says the project will be harmonious with surrounding land uses and neighborhoods and then we switch to is it compatible and harmonious with surrounding buildings and uses. You have taken out the word land. Are we talking about uses being compatible or land uses being compatible? Mr. Schueler said from a staff's perspective it is the presumption the property is zoned and the developer ought to be able to develop it generally consistent with that zoning. Unless there is a particular plan that says one cannot develop this particular type of project, it shifts the presumption more towards how the property is zoned. In the original language anyone could make the argument that nothing is compatible either because it was new, different, not there previously, or they just do not like it. There is still strong language in the ordinance to protect property owners and neighbors and

for the commission to be able to make a determination the project isn't a good fit.

Commissioner Walkowski said when you have intersections of zones such as commercial and residential and you have uses that have to be compatible like between single-family residential and retail store and yet they are not compatible. Mr. Schueler said they can be made compatible. There are many situations within the city where you have commercial used next to a residential use. We like this in terms of mixed use. Staff likes that in terms of having connectivity and close relationship of uses but want to make sure it works in that specific context and any significant impacts that can be mitigated and worked out to make it a better project we want to leave that discretion in the criteria to allow staff and Planning Commission to make that determination.

Commissioner Walkowski said in # 8 we talk about natural features. It talks about identified and sensitive hazardous. What is a hazardous natural feature? Mr. Schueler said something like a landslide. Commissioner Walkowski said it mentions an identified feature, how exactly is it identified. Mr. Schueler said there are procedures in place to look at existing information for the site that's been done previously. We may have to look historical information on that site. That criteria has been in there all along.

Commissioner Walkowski said in # 10 he likes the information about cross access but the words to the extent practical, that's a broad statement. If you have a development and you're trying to get cross access and the property owners indicated the project would negatively impact me and I want a particular amount of money, is that practical. Mr. Schueler said that is why the language is in there and written that way. Because neither City Staff nor the applicant has the ability to go to a neighbor and say they have to let them have access through the site. Commissioner Walkowski said you are really encouraging not requiring. Mr. Schueler said that was correct.

Supporters: None

Opponents: None

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Shonkwiler said this is a big improvement over what has been available in the past. This will help to allow redevelopment of older areas of the City so they are more usable and more habitable and so they do not fall into disrepair. This will help. His perspective is if you have the zoning in place then you should be able to build but still this is better than what we have and he will be in support.

Commissioner Markewich said he would be in support. It's a step in the right direction especially since we are undergoing the Comprehensive Plan process and focusing on infill. These changes will make it easier in the future to get appropriate projects through and make it easier to redevelop and work with the code.

Commissioner Walkowski said he agrees this is an improvement and will be in support as well. The City has done a lot of work with master plans and smaller neighborhood plans and this allows those plans to be incorporated into the project and development review criteria we review these items.

Motion by Shonkwiler, seconded by Gibson, to Recommend adoption to City Council of an ordinance amending Section 502 (Development Plans) of Part 5 (Concept Plans and Development Plans) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Development Review Criteria.. The motion passed by a vote of 6:0:3

Aye: 6 - Graham, Markewich, Chairperson Phillips, Shonkwiler, Walkowski and Gibson

Absent: 3 - McDonald, Henninger and Smith

7. Informational Reports

7.A. [CPC 209](#) Interactive Infill Map

Presenter:
Page Saulsbury, Comprehensive Planning

8. Adjourn