

MEMORANDUM

DATE: August 23, 2019

TO: City Council President William Wooldredge and Members of City Council
David Basil, Mayor

FROM: Land Development Update Team: Greg Hannan, Kris McMaster, Nick Sugar, Matt Vazzana, Thomas Sheridan

RE: LDC Code Update for Administrative Changes Draft of 3-11-19 and Public Meeting Comments from 8-20-19

➤ **The LDC team proposed amendments by organizing each proposed revision into three separate categories:**

1. **Clarification:** Revision to clarify an existing regulation without proposing a substantive change to the regulation.
2. **Update:** Revision to existing regulations and procedures to improve clarity, efficiency, and/or modernization.
3. **Legal:** Revision to support legal interpretation of existing regulation or proposed change to respond to recent case law.

➤ **Planning Commission began reviewing proposed amendments last June 15, 2018 completing their review on March 11, 2019 after many reviews and revisions with the recommendation to adopt the code amendments with the two following conditions:**

1. **A-Frame signs** amendments have been removed and further review with City Merchants and staff with all types of signage is currently under review with a recommendation to Council this fall.

Staff Comment: The A-Frame Signage will be reviewed at a later date so that staff is able to work with the merchants and business community to determine revisions to the code to include A-Frame Signage and all other types of signage.

2. **Performance Standards-** Section 1207.10 Performance Standards be further studied regarding potential conflicts with existing city ordinances and with existing business operations.

Staff Comment: Pursuant to Section 648.12, construction work is not permitted between the hours of 10:00 p.m. and 6:00 a.m. in the City. The proposed hours for construction activity (contained in the performance standards of the LDC) are more restrictive than Section 648.12. If necessary, Staff will propose separate amendments (at a later date) to make Section 648.12 consistent with the LDC.

➤ **Comments from Public Hearing held on August 20, 2019 Before City Council:**

The City received a collection of comments through written submission in response to the public hearing held on August 20, 2019. Based on the comments received, the City is proposing two further revisions for Council's consideration to the currently proposed LDC draft.

Proposed Revisions in Response to Public Hearing Comments

1. **PUBLIC COMMENT: Revise LDC to Incorporate "Natural Grade of Land"**

It was suggested that Staff revise the LDC so that all height measurements of structures are measured from the "natural grade of land". Upon review, while Staff does not believe that all sections should be updated to include "natural grade of land", it is believed there should be clarity within the regulations proposed relative to measurement of accessory structures. Therefore, Staff proposes revising proposed Section 1206.03(b)(5) to include the same provisions proposed in Section 1206.03(a)(5)(E) of the draft LDC.

2. **PUBLIC COMMENT: The Proposed Revisions re: "Impervious Surface Coverage" Are Needlessly Complicated**

It was suggested that the proposed addition of "into the water table" with respect to regulating a site's impervious surface coverage adds unnecessary "clutter" and confusion to the LDC. Upon review, to add clarity, Staff proposes to add the following definition for "water table" to the LDC: "An underground boundary between the soil surface and the area where groundwater saturates spaces between soils, sediments, and cracks in rock."

Response to Other Public Comments

1. **PUBLIC COMMENT: Revise the Current Definition of "Party-in-interest"**

It was suggested that the current "party-in-interest" definition is too restrictive and that anyone who can allege that they might "suffer substantial adverse consequences" should have the right to appeal the City's zoning decisions (regardless of whether the City's action involves their own property or someone else's property that could be in a different zoning district on the other side of town). Staff disagrees with the suggested revision.

First, the current definition is not too restrictive. Currently, the "party-in-interest" definition permits the applicant or owner of property that has been the subject of a final order or decision of either the City Manager or a land use board to file an appeal. The definition also permits third parties who have testified in person (or, through a lawyer) on a matter at a Planning Commission meeting (and who live within 300 feet) to also file an appeal of a decision. And, in addition to the above, the LDC also provides notice to both

the neighbors and the public at large of upcoming zoning hearings. And this, in turn, permits residents of the City to come out and voice their objection/support for proposed projects. Because of the above, it is the opinion of the Staff that the current “party-in-interest” definition coupled with the LDC’s notice and public hearing requirements creates the optimum balance of community input relative to control of private property rights pursuant to the LDC.

Similarly, Staff rejects the suggestion that anyone (regardless of where they live) that might be able to allege that they “may suffer substantial adverse consequences” should have the right to intervene in a third party’s right to legally use their private property pursuant to the LDC. Adopting this suggestion would introduce far too much subjectivity in the administration of the City’s zoning laws. Zoning laws (and the regulations associated with third party objections to a City’s zoning decisions) must be narrowly tailored to protect both the property owner’s rights to a fair hearing before the City AND the certainty that a project, once approved by the City, will not be continuously subject to attack by third parties. Additionally, Staff is of the opinion that tasking the City’s land use boards with the obligation to make individual rulings, prior to reviewing a land owner’s zoning application, on whether an individual “may suffer substantial adverse consequences” is, at a minimum, likely to be a large administrative burden for the City. Additionally, Staff is of the opinion that the suggestion could create the somewhat-backward outcome whereby third parties would have the right to appeal the City’s decision on whether or not that same third party could “suffer substantial adverse consequences” from another party’s proposed use of their land before that other party has even had the opportunity to present their proposed use of the land to the City for approval.

2. PUBLIC COMMENT: Revise the Time Limits on the Various Zoning Certificates

It was suggested that the proposed tiers of deadlines for zoning certificates based on the type of construction project should be revised to reflect the tight construction window in Northeast Ohio. Staff agrees. This was already factored into the LDC’s proposed revisions. Indeed, it is partly because of the tight construction window in Northeast Ohio that the LDC revision proposes a tiered deadline system for zoning certificates based on the type of project with major developments receiving a full 24 months for completion of construction and minor/basic projects (houses, fences, decks, alterations, etc.) receiving 12 months for completion of construction. It is Staff’s experience and opinion that, on the average, minor/basic projects can be successfully completed within 12 months and larger projects can be completed within 24 months. Additionally, a one-time 6-month permit extension application is proposed in the event a property owner encounters unforeseen difficulty (weather related or otherwise).

As for suggestions related to the objection of the removal of regulations related to a property owner needing to commence work within a certain time frame of receiving their zoning certificate, Staff is of the opinion that requirements related to timeframes for commencement are: (a) of limited zoning value due to the fact that the City’s primary focus is timely project completion (not tracking timeframe for project commencement) and (b) constitute a significant administrative burden (especially in light of their limited zoning value).

3. PUBLIC COMMENT: Section 1201.09(c)(1) Contains an Uncertain Meaning

It was suggested that Section 1201.09(c)(1) should be rewritten to better express the original drafter's intent. Staff is of the opinion that the Section does not need to be modified or rewritten as the existing language clearly captures the drafter's original intent.

4. PUBLIC COMMENT: The City Does Not Like Ecology Anymore

It was suggested that the removal of the LDC's current variance standard whereby "ecological integrity" is linked to a review that is based upon the metrics included within the Index of Ecological Integrity ("IEI") (attached to the current LDC as Exhibit "B") is not environmentally friendly. To the contrary, Staff has proposed to remove both the variance standard and Exhibit "B" because Staff believes that limiting the BZBA's review of the ecological impact of a proposed variance to the IEI is, in itself, limiting. Staff is of the opinion that the BZBA should be able to consider a site's unique ecological attributes without regard to any specific metric or standard. Consequently, Staff recommends removal of Section 1204.03(c) as this will permit the BZBA to review and consider all ecological factors of a site without being married to one set of metrics (here, the IEI).