

# Commercial Zoning Update Working Group



## Meeting Notes Wednesday, October 5, 2022 5:00 p.m.

---

### 1. Call to order

The meeting was called to order at 5:03 pm.

### 2. Roll call

Present: Barbara Kiely Miller, Josh Pollack, Lybra Loest, Tr. Kathy Stokebrand, Tr. Arthur Ircink, Chuck Hagner, Gary Brunk, Kate Flynn Post, Leslie Oberholtzer and Bart Griepentrog

Excused: Scott Kraehnke, Jon Krouse, Jake Bresette, Maggie Pipek and Matt Weiss

### 3. Discussion of Module 3 (Procedures, Planned Development Districts, and Legal Nonconformities)

Mr. Griepentrog noted that Ms. Oberholtzer provided an overview of this module at the last meeting. Ms. Oberholtzer opened the entire module up for conversation.

Ms. Flynn Post questioned the reason for including adjustments within the code. Tr. Stokebrand questioned if adjustments were currently known as variances. Ms. Oberholtzer explained that adjustments were not variances and that variances would still be an option within the code. She noted that variances were based on hardships caused by unique circumstances. Mr. Pollack confirmed that variances are considered by the Board of Appeals.

Ms. Oberholtzer noted that the proposed adjustments were built-in relief mechanisms to compensate for the level of detail included in the code. She stated that they provide a specified level of flexibility. She noted that they were called adjustments because the alternate designs were still required to meet the intentions of the code; they were not exceptions to the regulations. She exemplified principal entryways, which have four defined design options in the code, but noted that an alternate option that still met the intention of making the entryway standout would be allowed to be sought as a design adjustment if agreeable to the Design Review Board. She stated that not all communities have a Design Review Board, but since we did and they are believed to be functioning quite well, it made sense to allow them to consider these types of adjustments. She noted that the code is quite particular about a lot of details and that offering adjustments in identified locations is reasonable.

Ms. Kiely Miller questioned if adjustments came with limits. Ms. Oberholtzer noted that the adjustments were crafted specifically and needed to meet criteria. She

exampled that prohibited materials have been defined and that other adjustments were limited to their specific details, such as balconies or entryways. She also stated that the Design Review Board currently reviews projects in relation to a series of general intent statements and that these would function similarly. She noted that if adjustments are continually requested that updates to the code should be considered. She stated that the code should be understood as a living document. Ms. Kiely Miller stated that she just wanted to make sure the code was worth the paper it was written on and didn't want a developer to come in and possibly intimidate the Design Review Board into approving something that they shouldn't. She noted that it can be difficult to say no to people. Ms. Oberholtzer acknowledged her concerns and noted that is why the option of requesting a Planned Development District, which exempts these requirements, was being recommended to be removed. She noted that a developer cannot request an adjustment for something like an additional story to their building. She stated that a text amendment to the code would be required to change any height limits.

Tr. Stokebrand questioned why exception was being changed to adjustment in the draft code. Mr. Pollack stated that adjustment does not sound like anyone is cheating the system, rather it's the system working as designed. He noted that an adjustment represented a modest change that was within defined limits, not an overall exception to the rule. Ms. Kiely Miller noted that she liked how adjustments had defined limits, such as a maximum of 10%. Ms. Oberholtzer noted that there were two types of adjustments, planning (535-32B(2)) and design. She stated that the planning adjustments related to things of conventional zoning, such as setback and height. She noted that the current language within the planning adjustment section would be changed to "up to one foot" or "no more than one foot." She noted that the design adjustments were a bit broader and related to things that would've been in the current design guidelines.

Ms. Flynn Post questioned if the Village Attorney had reviewed the draft, and it was noted that he was consulted on various sections but would be asked to review the entirety of the draft when available. She questioned if the term adjustment had been reviewed and whether it was something that was relatively standard to form-based codes. Ms. Oberholtzer noted it was very standard but acknowledged there are different ways to implement codes from state to state.

Ms. Flynn Post questioned if the Design Review Board members were comfortable with how prescriptive the code is being written. Ms. Loest noted that the current guidelines didn't always offer the structure necessary to review, modify or reject designs that the community wanted. She believed the standards would help all parties involved. Mr. Griepentrog noted that Chair Kraehnke has participated throughout the process and provided comments outside of the meetings. Mr. Griepentrog also noted that the full DRB would be invited to participate in the presentation of the draft code to the Plan Commission on October 25<sup>th</sup>. Mr. Griepentrog noted that the form-based standards would be easier to enforce than subjective language related to character. Ms. Loest agreed. Ms. Kiely Miller confirmed that the code would make the DRB's job easier. Ms. Oberholtzer noted

that was one of the primary purposes and benefits of a form-based code. She noted that the codes get better every year as new metrics are defined or modified. She also clarified that the form-based codes she writes do not dictate style. Ms. Flynn Post appreciated the explanation and noted that she wanted to make sure the code we walk away with isn't too restrictive and allowed for diversity. Ms. Kiely Miller asked Ms. Oberholtzer if she thought this code still allowed for creativity, and Ms. Oberholtzer confirmed that it did. She noted that a wide variety of styles can be built, but that the buildings will be built close to the street, with quality materials and feature pedestrian-oriented elements. She stated that some architects may not want to follow all of the form requirements, such as ground floor windows, but that those elements are expected from the community to complement the whole corridor.

Ms. Oberholtzer confirmed that using the term adjustment was acceptable to the Group. Tr. Stokebrand noted it still felt like a bit of a euphemism to her, but she wasn't going to challenge it.

Mr. Pollack noted it would be helpful to show the areas of jurisdiction with respect to adjustments, variances, and exceptions. Ms. Oberholtzer noted that the proposed planning adjustments related to dimensional standards that are usually staff approved in most communities but were being proposed to go to the Plan Commission in this draft. Mr. Pollack later noted that he would be agreeable to providing this authority to staff. Mr. Griepentrog noted that the Plan Commission could discuss doing so in the next phase of review. Ms. Oberholtzer stated that the defined design adjustments would be reviewed by the DRB with subjective criteria, similar to how they currently utilize the existing design guidelines. She noted that they were required because the new code has more requirements that might occasionally need some flexibility. She noted that those adjustments need to be identified at the time of application for specific review. She stated it was up to the developer to consider whether they wanted to comply with the code or open themselves up to more discretionary review with any adjustments.

Tr. Stokebrand questioned where the appeals process was located. Ms. Oberholtzer noted it would be at the end of the design review process, that it had not changed and would be taken up by the Board of Appeals. Tr. Stokebrand confirmed that appeals applications are filed with the Clerk, not the Planning Department.

Mr. Pollack summarized that the Plan Commission is being assigned a new power in reviewing planning adjustments and maintains its current power to approve conditional use permits, although those permits are substantially reduced in scope. He noted that they would also review temporary uses and parking special exceptions. He believed the updated code made new development much more predictable, while making less work for the Plan Commission because discretion was being reduced. Mr. Griepentrog agreed and noted that conditional use permits were limited to certain areas and included specific review criteria to make the Plan Commission's role clearer. Mr. Pollack requested that similar criteria be defined for adjustments and exceptions to make those reviews clearer as well. He noted that the parking special exception currently had a 13-part test, which left a lot of discretion. Ms. Kiely Miller noted that conditional use permits have a 7-part test. Mr. Griepentrog

noted that criteria for both types of adjustments was defined in the code and had only 2 parts, one of which related back to the intents and purposes of the related code sections. Ms. Oberholtzer noted that updating parking standards was not part of this project's scope but was willing to review and update the conditional use permit review criteria, if necessary. Mr. Griepentrog noted that the Plan Commission could look at redefining the review criteria for parking special exceptions in the future.

Tr. Stokebrand questioned the inclusion of "ensuring adequate light, air, and privacy for village residents" within the Purpose & Intent statements of the Review Procedures section. She believed it was very subjective. Ms. Oberholtzer noted that intent statements usually were subjective, and that this language is one of the earliest reasons for zoning. She stated this was being carried over from the current code and suggested that she would've written this with more specificity. Tr. Stokebrand questioned if someone could use this statement to challenge the height of a neighboring building. Ms. Oberholtzer stated that these statements did not override defined regulations, such as height limits, but should support their adoption or revisions, or be referenced when looking at adjustments. Mr. Pollack confirmed that discretion could be applied to the review of the adjustment, but not the regulation.

Tr. Stokebrand questioned why applicants were required to provide color details, if color was not being regulated. Ms. Oberholtzer stated it was in the developer's best interest to share what colors they are proposing and noted that the DRB can suggest colors, but just can't deny a project based on them. Mr. Pollack stated it was always preferable to know the full details of any proposal.

Tr. Stokebrand questioned the 7-day notice requirement. She wanted to know if that meant business days or calendar days, and whether this was assumed to mean a mailed notice. She desired for the requirements to be more specific. Mr. Griepentrog noted that he was open for discussion and stated that more specificity was desirable so that it was not open for interpretation or challenge. He noted that notices are typically mailed, but if the mail has already been picked up that staff has hand-delivered notices. Tr. Stokebrand suggested increasing the notice to 10 days. Ms. Kiely Miller interpreted the notice requirement to say that the recipient had to receive the notice 7 days in advance. Mr. Griepentrog detailed the current staff process, which included an agenda deadline of 10 days prior to the next meeting (Tuesday), with the agenda and notices produced one week before the meeting (Thursday). He was open to increasing the notice to 10 calendar days, which would move the deadline for submission back to the Friday of the week before with mailed notices on Monday. Mr. Hagner questioned if anyone has ever complained about the current notice procedure. Mr. Griepentrog confirmed that they have because staff can't control how fast mail is delivered or opened and sometimes notices aren't read until the day prior to the meeting, which is seen as too late by many. Tr. Stokebrand noted that increasing the notice period seemed to give both staff and residents more time. Mr. Pollack suggested that staff confirm that a 10-day notice would not negatively impact any existing workflows. Ms. Kiely Miller noted that we can't control

if people let their mail stack up, but we can give them a reasonable amount of time to learn about the project. Consensus was granted by the group to make the update in both sections.

Mr. Griepentrog noted that upon consultation with the Village Attorney that he is requesting that reference to close session meetings be removed from both the Plan Commission and DRB review procedures. He stated it was unlikely that it would ever be needed or used properly. Ms. Kiely Miller and Mr. Pollack agreed.

Tr. Stokebrand questioned the standards of the written findings of the design review process. Mr. Griepentrog noted that after every meeting a letter is generated documenting the final action. This letter is both filed with the application in the Planning & Development Department and mailed to the applicant. This letter is in addition to meeting minutes, which take longer to generate and require adoption before publication. He noted that the Plan Commission particularly might not meet for months, and having this letter is useful to close out the application. Tr. Stokebrand noted that these letters are not posted on the website. Mr. Griepentrog noted that anyone can contact his office for a copy of the letter.

Ms. Flynn Post questioned why meeting minutes need to be so detailed. Mr. Griepentrog noted for this project the detail was being documented so that the specific direction of the Group can be documented and followed-up with. He noted that for other meetings details are included to document a clear record for potential appeals, which the Board of Appeals has required. He did not wish to have items remanded back for additional discussion and meetings. It was noted that DRB meetings are not recorded. Tr. Stokebrand believed the detail was extremely valuable. Ms. Kiely Miller agreed. Tr. Ircink noted it was extremely time consuming for staff to provide that level of service, particularly if recordings are available. Mr. Pollack noted that the level of discretion in the proposed code is much less, which should lessen the need for such details to be included. Ms. Kiely Miller stated the detail was valuable, particularly if discussion takes place over multiple meetings so that people can remember what was discussed and where things left off.

#### **4. Discussion of any remaining matters from Module 1 (Commercial & Mixed Use Districts, and Uses) and Module 2 (Building Design, and Landscape & Site Design)**

Ms. Flynn Post wanted to make sure that the code included as many elements of green infrastructure and sustainability as could be practical. She questioned stormwater management practices, such as infiltration basins and rain gardens. Mr. Griepentrog noted that requests for curb cut requirements were also previously discussed. Ms. Oberholtzer noted that the site design section details that landscape islands can be used for stormwater management but does not require it. She cautioned that best management practices for stormwater management can get very detailed and go beyond the scope of zoning. Mr. Griepentrog noted that he was comfortable reviewing things on a simple metric basis, such as lineal feet of curb or surface areas, but did not have the expertise to enforce continued operations of stormwater facilities. Ms. Oberholtzer noted that once you start requiring stormwater elements you need to be able to manage them as well otherwise they will fill up and

cause other negative impacts. She suggested that adopting a best management practice manual or guidebook was possible. Tr. Ircink questioned if green infrastructure could somehow be incentivized.

Tr. Stokebrand questioned if sustainability could be included within the purpose and intent statements. Mr. Brunk pointed out that sustainability was included within the purpose statements of the Landscape & Site Design section. Ms. Oberholtzer noted that she would go back and look at the intent statements, but she was hesitant to modify them too much. Mr. Griepentrog acknowledged that the general concepts were well-established but was not opposed to rewording them for usability.

Ms. Oberholtzer pointed out that the pedestrian-focused design featured and required throughout the code is inherently sustainable. She reiterated that stormwater is not easy to pull into zoning but noted that the code does give credit to using semipervious materials. Mr. Pollack agreed that the general regulations support sustainability and noted that anything additional would be going after a minor percent of improvement. Ms. Oberholtzer pointed out that the draft code includes bird-friendly design, which is above current standards, and that the code includes requirements to “green-up” parking lots. Ms. Flynn Post stated the code also required drought-tolerant or native landscaping and deterred light pollution.

Ms. Kiely Miller questioned if commercial properties were required to disconnect their downspouts like residential customers are currently being required to do. Mr. Griepentrog pointed out the current program is being enforced by MMSD who has defined the parameters of the program.

Ms. Oberholtzer noted that a few additional tweaks to the code, including the bird-friendly design section were expected to be presented in the updated code. With respect to the bird-friendly design section she noted that options to achieve compliance would be offered. Ms. Flynn Post questioned if cost estimates were ever confirmed. Mr. Griepentrog noted that Mr. Hagner had provided a spreadsheet detailing the potential cost of treating “regular” glass on up to three stories with treatments such as film. Mr. Hagner noted that the additional cost ranged from \$10,000 - \$42,000 depending on what treatments were utilized, which represented a nominal percentage of the overall cost of construction. He pointed out that all studies show that it is more cost effective to install bird-friendly designs from the outset rather than retrofitting them. He also noted that every component of a building’s design contributes to cost and decisions on where to spend money are made in recognition of multiple factors. He believed bird-friendly design reflected the community character of Shorewood and therefore any such costs could be justified. Tr. Ircink suggested that a program could be developed to help offset those costs or that grants might be available from other organizations.

Mr. Griepentrog noted that a complete set of code revisions was expected to be compiled within the next week for his review, at which time he would review the draft to confirm that all the updates discussed throughout the Working Group meetings have been addressed. He also noted that being able to review the code update in its entirety would provide the opportunity to review for consistency with respect to things like purpose and intent statements that are contained separately within each module.

Mr. Griepentrog stated that he would be preparing a cover memo overviewing and highlighting the draft code updates for the October 25<sup>th</sup> Plan Commission meeting. He expects the memo to include a summary of the process and reference to the discussions of the Working Group. He also noted that he hoped to be able to highlight how each of the representative groups had influenced the draft code. He stated that Ms. Oberholtzer would present the full draft of the code to the Plan Commission at that meeting, and that the Design Review Board and Working Group would be invited to attend.

## **5. Confirmation of public open house date and format**

Mr. Griepentrog noted that the week of November 14<sup>th</sup> was targeted for the public open house. He stated that Wednesday, November 16<sup>th</sup> from 4:00 pm – 7:00 pm at Village Hall was his recommendation. The group had no objections or conflicts.

Ms. Oberholtzer noted that the purpose of this open house is to present the code to the public and highlight how it aligns with the direction provided at earlier public workshops and the Working Group. She noted that a series of boards will be displayed for people to review and have one-on-one conversations. Mr. Brunk stated that visuals are extremely helpful for explaining the regulations contained within the code. He suggested re-using the photos from the image preference survey. Tr. Stokebrand and Ms. Kiely Miller agreed that showing the figures and charts within the code would be a good idea. Tr. Stokebrand requested that the process be highlighted as well. Mr. Pollack cautioned that participants will be coming to the open house with less context and things need to be simplified and highlighted for the audience. Mr. Griepentrog suggested that he could make a handout summarizing some of those highlights from the Plan Commission memo.

Ms. Kiely Miller questioned what type of feedback mechanisms would be offered. Ms. Oberholtzer noted that comment cards will be available and other options like post-it notes or the online submission of comments would be considered.

Mr. Griepentrog pointed out that the presentation of the code to the Plan Commission will be recorded and posted online for people to review in advance. Ms. Flynn Post questioned if that recording could also be shown at the open house, and Mr. Griepentrog believed it could be possible to set that up in the side committee room, if people were interested.

Ms. Oberholtzer stated that she would really like to see Working Group members attend and participate in the discussions at the open house.

Mr. Griepentrog thanked everyone for their participation in the Working Group meetings and overall process. He reminded them that they would be invited to the upcoming Plan Commission meeting. He noted that he did not think the Working Group would need to be reconvened for anything, but that if that was requested, he would reach out to them to confirm their availabilities.

## **6. Public comment**

No public comment was provided.

## 7. **Adjournment**

The meeting adjourned at 6:59 pm.

Respectfully submitted,



Bart Griepentrog, AICP  
Planning & Development Director