

MEMORANDUM

TO: Planning Commission

FROM: Brett Lenart, Planning Services Manager

DATE: February 11, 2017

SUBJECT: Proposes Zoning Ordinance Amendments – Active Uses, Accessory Structures, Fueling Stations

This memorandum summarizes 3 proposed zoning ordinance amendments:

Active Use Requirements in Downtown Blocks

Active use requirements are a strategy to require active street-level uses in core downtown districts. The development of these amendments are toward the goal of minimizing the presence of those uses that more typically have a “9-5” intensity and leads to areas that are lacking in activity in the core downtown district. The proposed ordinance language was originally included a package of ordinance amendments that resulted from the A2D2 Downtown planning initiative.

In 2009, a several ordinances were recommended for approval by the Planning Commission, to the City Council. During the City Council’s consideration of the proposed ordinances at that time, the Council struck the proposed active uses restriction language from the final adopted version. The language was struck, presumably, due to concerns expressed about how such language could limit leasing options for such buildings.

In January, the City Council directed planning staff and the Planning Commission to reconsider active use language and present are commendation to the City Council by March 16th.

Here is the proposed draft language which would be new ordinance language:

Buildings located in the D1 district and fronting retail streets must contain street-level uses that comply with the following requirements. For purposes of this section, retail streets are defined as:

- *North Main, from Huron to Miller (west side)*
- *South Main, from Huron to Packard (both sides)*
- *West Washington, from Ashley to Main (both sides)*
- *East Washington, from Main to Fifth Avenue (both sides)*
- *West Liberty, from Ashley to Main (both sides)*
- *East Liberty, from Main to State (both sides)*
- *South State, from Washington to William (both sides)*
- *North University, from State to Thayer (north side)*
- *South University, from East University to Washtenaw (both sides)*

1. A minimum of 60 percent of each building frontage at street level must be occupied by Active Uses. The Active Use(s) shall be located within the building and have a minimum depth of 25

feet from the exterior of the front wall. The remaining 40 percent of each building frontage at street level may contain other permitted uses and/or shared lobbies or vehicular entrances. Active Use(s) are:

- *Retail Sales*
- *Restaurant or Bar*
- *Personal or Business Services*
- *Theater*
- *Entertainment, General*

2. Pedestrian access to required street level uses shall be provided directly from the public sidewalk or through a shared lobby with an entrance from the public sidewalk. Pedestrian entrances in buildings constructed after the effective date of this section (_____, 2017) shall not be located more than 2 feet above or below the grade of the public sidewalk unless the pedestrian entrance is at the same elevation as the abutting public open space.

In evaluating this proposed ordinance change, the Ordinance Revisions Committee may consider the following:

- Should consideration of active uses include a requirement of transparency at the street level. By ensuring transparency, it would further the goals of an active street experience.
- Consideration of requiring active uses at the corner of any building.
- Is the requirement the right level? Should a higher percentage of active uses be considered?

On January 24th, the Ordinance Review Committee (ORC) considered this amendment. Discussion at the Committee was extensive over the proposed ordinance. Commissioners at the Committee meeting considered the aspects of the proposed ordinance presented by the Planning Manager.

The proposed language intends to ensure, through ordinance requirement, that uses at the ground level of core downtown streets (referenced on map) would be restricted to those that typically provide an extended and/or evening focused operation. This ordinance intends to limit uses that are less active (e.g. banks, residential lobbies, and other office uses that close around 5:00) to occupy no more than 40% of a building's ground level. There would be no restriction on such uses on upper floors of buildings in the designated areas.

The Ordinance Review Committee expressed concern over this approach, as some communities in the past have had negative experiences in this regard, and the lack of flexibility that would result for the long-term use of such spaces. There was also discussion regarding the active uses definitions, and concerns over the general nature of some categories. If moving forward, the ORC discussed the importance of clarifying such definitions, particularly around financial services, banks, and/or offices.

The ORC discussed the design standards incorporated into the premium language as a better approach to pedestrian experience. This language, that follows, requires transparency and other standards along a wider range of downtown areas than the drafted active uses:

Premium Ordinance excerpt:

- a) *Intent. These building frontage designations, in coordination with the downtown character overlay zoning districts, are designed to support the pedestrian-scale character of downtown streets.*
1. *Primary Street: Lot frontage where placement of buildings at the front property line is desired.*
 2. *Secondary Street: Lot frontage where a range of building setbacks from the front property line is acceptable.*
 3. *Front Yard Street: Lot frontage where a setback from the front property line is desired.*
- (b) *Buildings and additions constructed after the effective date of this section (December 26, 2009) on lots zoned D1 or D2 in the downtown character overlay zoning districts shall comply with the building frontage standards in Table 5:10.20B, as applicable.*

Table 5:10.20B – Downtown Character Overlay Zoning Districts Building Frontage Standards (Additional Regulations for the D1 and D2 Districts)			
Designation at Right-of-Way Line	Required Front Setback		Additional Requirements and Exceptions
	Minimum	Maximum	
<i>Primary Street</i>	<i>0 feet</i>	<i>5 feet at the streetwall</i>	<i>(1) Up to 20% of the building frontage may exceed the maximum front setback requirement for entry court or plaza area.</i> <i>(2) The maximum front setback may be exceeded up to a maximum of 16 feet from the back of curb to allow for pedestrian circulation.</i> <i>(3) Vehicle access shall be provided from a public alley, if accessible.</i> <i>(4) Recesses and alcoves on the level of the adjacent street to accommodate entry ways, display windows, planters, or similar features shall not be considered as setbacks, provided the streetwall of upper stories complies with the maximum required front setback.</i>
<i>Secondary street</i>	<i>0 feet</i>	<i>10 feet at the streetwall</i>	<i>(1) Up to 20% of the building frontage may exceed the maximum front setback requirement for entry court or plaza area.</i>
<i>Front yard street</i>	<i>15 feet</i>	<i>None</i>	<i>(1) The average of the established front setbacks of buildings within 100 feet may be used, if less than 15 feet.</i> <i>(2) Unenclosed porches may encroach 8 feet into the required front open space.</i>

- (5) *Building Design Requirements on Primary and Secondary Streets.*

Buildings and additions constructed after the effective date of this sub-section ([adoption date]) on lots in the downtown character overlay zoning districts with primary and secondary street frontages shall comply with the following building design requirements:

- (a) The height of the street level floor, from its floor to the next floor above, must be no less than 15 feet but not exceed 20 feet.*
- (b) A minimum of 60% of the street floor level façade must be windows or transparent glazing.*
- (c) The bottom of all windows on the ground floor level of the adjacent street may not be more than 2.5 feet from the adjacent sidewalk level.*
- (d) The following materials are restricted or prohibited on facades visible from primary and secondary streets: aluminum or vinyl siding, or an exterior insulation finishing system, except for accents eight feet from street level or higher.*
- (e) The following materials are required: glass, brick; cut stone; cast stone; or high-quality finished metal. Other materials may be permitted if recommended by the Design Review Board and approved by the Planning Commission as part of a site plan.*

Toward the direction provided by the City Council, goals of the working session are to review the proposed language, determine any additional information required, and discuss next steps to meet the March recommendation timeline requested.

Accessory Structures

This proposed Zoning Ordinance Amendment would result in changes to the placement of accessory structures on some lots. Currently the Ordinance prohibits the placement of accessory structures within any required front open space. The inclusion of the word “required” creates a situation on some parcels where an accessory structure could be constructed in the front yard because the required front yard is not the same as the “established front yard.” The language below is current accessory building language, with a proposed amendment indicated:

5:59. - Accessory buildings.

(1) Accessory buildings in the R-1, R-2, R-3, R-4, R-5, R-6, and P zoning districts shall conform to the following regulations, except as may otherwise be provided in this chapter:

- (a) Accessory buildings shall not exceed 21 feet in height.*
- (b) Accessory buildings shall not be erected in any ~~required~~ front open space.*
- (c) Accessory buildings may occupy required side open space provided that such buildings are more distant from the street than any part of the principal building on the same lot and any part of the principal building on any lot abutting said required side open space; provided, however, that such accessory buildings are not closer than 3 feet to any lot line.*
- (d) Accessory buildings may occupy required rear open spaces provided that such buildings do not occupy more than 35% of the required rear open space and are not closer than 3 feet to any lot line.*
- (e) On any corner lot in a residential zoning district, no part of any accessory building shall be nearer the exterior side lot line than the required open space as regulated in section 5:58.*
- (f) An attached garage or carport shall not occupy any portion of the required side open space.*

In January, the ORC reviewed this proposed ordinance, and recommended adoption. While this ordinance will have the effect of limiting options for accessory buildings for some properties (e.g. lots with small rear yards and “through” lots), it will emphasize the accessory nature of such structures, and relegate them to the side or rear of the primary structure or use. Based on the initial feedback at the ORC, this ordinance amendment is proposed for an upcoming regular meeting agenda. This working session discussion however, will still provide an opportunity for dialogue by the commission on the proposed amendment, or an opportunity to discuss any additional information or analysis desired.

Fueling Stations

In 2014, the City Council approved a set of ordinance changes that clarified the definition and use of drive-thru facilities in the Zoning Ordinance. One unintended consequence of this change, was the elimination of fueling stations as a permitted use in the C-3 district. As the C-3 district is intended to include automobile-oriented commercial uses, it is an appropriate location for auto fueling stations. Currently, the C-3 district only provides one permitted principal use, which is “any permitted use in the C2-B district.” The Ordinance Revisions Committee should consider adding a second permitted use, Fueling Stations.

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