

APPROVED AUGUST 13TH

**CITY OF EDMONDS
PLANNING BOARD MINUTES**

July 23, 2014

Chair Cloutier called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

BOARD MEMBERS PRESENT

Todd Cloutier, Chair
Bill Ellis
Careen Rubenkönig
Daniel Robles

STAFF PRESENT

Rob Chave, Planning Division Manager
Kernen Lien, Senior Planner
Karin Noyes, Recorder

BOARD MEMBERS ABSENT

Neil Tibbott, Vice Chair (excused)
Ian Duncan (excused)
Philip Lovell (excused)
Valerie Stewart (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER RUBENKONIG MOVED THAT THE MINUTES OF JULY 9 AND JUNE 25, 2014 BE APPROVED AS SUBMITTED. BOARD MEMBER ELLIS SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

The agenda was accepted as presented.

AUDIENCE COMMENTS

There was no one in the audience.

DIRECTOR/PLANNING MANAGER REPORT

The Board acknowledged and accepted the Development Services Director's written report dated July 23, 2014.

PUBLIC HEARING ON POTENTIAL AMENDMENTS TO THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) MODIFYING THE DEFINITION OF "LOT" (ECDC 21.55.010), DEFINING "LOT OF RECORD" (ECDC 21.55.015) AND ESTABLISHING A PROCESS FOR DETERMINING "INNOCENT PURCHASER" (ECDC 20.75.180) (FILE NUMBER AMD20140001)

Mr. Lien reviewed that the Planning Board heard an introduction to the legal lot issue on April 23rd, and reviewed draft code amendments on June 11th. He briefly reviewed the City's current definition of lot and prohibitions against issuing development permits for lots created outside the subdivision process as follows:

- ECDC 20.55.010 defines “lot,” as “A single tract of land legally created as a separate building site with frontage on a street or access easement. For purposes of this code, adjoining lots under common ownership, which were created without subdivision or short subdivision approval from applicable city or county governments, shall be considered as one lot.”
- ECDC 20.75.180 states that, “No building permit, septic tank permit or other development permit, shall be issued for any lot, tract or parcel of land divided in violation of this chapter unless the applicant for such a permit has applied to the hearing examiner and obtained a ruling that the public interest will not be adversely affected, thereby; provided, however, the prohibition contained in this section shall not apply to an innocent purchase.”

Mr. Lien explained that if a property is not legally created through the subdivision process is not considered a legal lot, and the City cannot issue a building permit for it. He shared an example of a subdivision that was recorded in 1915. Since the original subdivision, just one short plat has been approved (1950); the remaining parcels were created outside of the subdivision process and are not currently considered legal lots. He noted that there are several areas throughout the City where this problem exists. He referred to Attachment 1, which outlines the proposed code amendments and reviewed the following changes:

- In **ECDC 21.55.010**, the first sentence in the definition of “lot” would be changed to read, “A fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts and parcels.” Mr. Lien advised that this definition was taken from the State’s definition (RCW 58.17.020). The last two sentences of the existing definition, which talk about combining adjoining lots under common ownership, would remain unchanged.
- In **ECDC 21.55.015**, a new definition would be added for “lot of record.” This is a new term that would take the place of “legal lot.” As currently proposed, a “lot of record” means a single tract of land meeting any one of the criteria listed. (The criteria includes platted lots whose boundaries were established in a recorded plat or short plat, platted lots whose boundaries were established in an unrecorded short plat approved by the City between July 3, 1956 and March 19, 1974, unplatted lots that were created by deed prior to adoption of the City’s subdivision code in 1956, unplatted lots recognized as exempt by state law, and unplatted lots that have been recognized through a previous lot determination review as legal lots.

Mr. Lien said another issue that is being considered as part of the proposed code amendment is related to “innocent purchaser,” which is someone who unknowingly purchases an illegal lot. At this time, the City does not have a process for identifying whether or not a property owner is an “innocent purchaser.” The proposed amendment spells out the process and establishes criteria for making this determination. Once again, he referred to Attachment 1 and reviewed the following amendments.

- **ECDC 20.75.180** would be changed to read, “No building permit, septic tank permit or other development permit shall be issued for any lot unless: 1) the subject property is a lot of record as defined in 21.55.015; or 2) the property owner is determined to be an innocent purchaser in accordance with 20.75.080.A.”
- **ECDC 20.75.180.A** outlines a process for determining the status of an innocent purchaser. As currently proposed, an owner of property could obtain “lot of record” status for a parcel that does not meet the “lot of record” definition if he/she meets all the criteria listed in the section. In addition to meeting the criteria, the applicant would be required to make improvements to the property that would likely have been required by the City had the property been properly subdivided. An additional provision was added based on the Board’s last discussion, which requires that an affirmative determination of “innocent purchaser” and “lot of record” status be recorded by the county auditor. The City Attorney has advised that only affirmative determinations should be recorded. Recording instances where applications for status was denied could cloud the title and open the City to potential lawsuits. The “innocent purchaser” process would be a Type II staff decision, with notice to property owners within 300 feet.

Board Member Ellis asked if some illegal lots would be unable to conform to the zoning code. Mr. Lien replied that lots that do not meet the zoning requirements could be granted “lot of record” status, but they would be subject to the nonconforming lot standards found in ECDC 20.75.180. Board Member Ellis referred to the example shown earlier by Mr. Lien and asked if

the smaller lots would become nonconforming if they become “lots of record.” Mr. Lien answered that the majority of the small lots would meet the area standards, but some are short on width. However, there is one situation where the Planning Board denied a subdivision application in the early 1970’s because the parcels were well below the standard, but shortly after that, the parcels were divided and sold anyway. Most of the lots are already developed. Even those that do not meet the dimensional standards could obtain “lot of record” status, but they would be subject to the current zoning standards at the time of a building permit. Board Member Ellis summarized that the provision is basically an amnesty program for the innocent purchaser.

Mr. Lien recommended the Board forward the proposed amendments to the City Council with a recommendation of approval.

THE PUBLIC HEARING WAS OPENED. THERE WAS NO ONE IN THE AUDIENCE TO PARTICIPATE, AND THE PUBLIC HEARING WAS SUBSEQUENTLY CLOSED.

CHAIR CLOUTIER MOVED THAT THE PLANNING BOARD FORWARD THE PROPOSED AMENDMENTS REGARDING DEFINITION OF LOT, LOT OF RECORD, AND INNOCENT PURCHASER PROCESS (FILE NUMBER AMD20140001) TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL AS SUBMITTED. BOARD MEMBER ELLIS SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

PUBLIC HEARING ON POTENTIAL AMENDMENTS TO THE CITY OF EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) MODIFYING THE PROVISIONS OF THE GENERAL COMMERCIAL (CG) ZONES

Mr. Chave explained that this is a public hearing on proposed amendments to the ECDC modifying the provisions of the CG and CG2 zones. The amendments focus on two sets of changes:

- Parking. The parking standards for all CG-zoned properties would be set at a uniform standard (1 space per 400 square feet of leasable building space). The parking standard could be further reduced (1 space per 600 square feet of leasable building space) for properties that only have frontage adjoining other CG zones. The proposed amendment would also provide for development-specific parking studies.

Mr. Chave explained that the proposed amendment is an attempt to address the problems that occur when parking standards vary according to different kinds of uses. Staff has generally found that a blended parking rate works better and removes obstacles for businesses changing hands. He explained that many of the City’s current standards come from the 1960s and 1970s when individual parking standards were widely used. This approach has resulted in a lot of empty parking space because the standards were set to accommodate peak use. Not only does this leave a lot vacant asphalt the majority of the year, it does not accommodate the notion that uses are set up to perform differently, even in the same use classifications. The once-size-fits-all approach does not necessary work well.

- Uses. The amendment would remove the requirement for two floors of commercial space within all CG developments. A range of options are being considered, such as no commercial space requirement or a general commercial space requirement that could be distributed in any manner desired within the overall development.

Mr. Chave explained that, right now, there is a general prohibition of residential uses in the first and second floors of any development in the CG zones, with the exception of very large developments (2 or more acres). He reminded the Board that the City’s long-standing policy has talked about a mixture of uses. With increased availability and usage of transit, such as the Swift Bus Rapid Transit System, jurisdictions up and down the corridor have been doing a quite a bit of planning in recent years to encourage more mixed use, transit-friendly development. He also reminded the Board that much of the City’s capacity to accommodate its residential and commercial growth targets is focused on the Highway 99 Corridor. He suggested the time is ripe to remove the two-story commercial requirement. He recalled recent discussions that Board has had with the Highway 99 Task Force, who has indicated support for removing the requirement to encourage more residential development. It was suggested that having more residential development along the corridor would result in more eyes on the street with an emphasis on safety and mixed use.

APPROVED

THE PUBLIC HEARING WAS OPENED. THERE WAS NO ONE IN THE AUDIENCE TO PARTICIPATE, AND THE PUBLIC HEARING WAS SUBSEQUENTLY CLOSED.

Board Member Ellis asked if the proposed amendments would make Edmonds' portion of the highway consistent with parcels on either side in Shoreline and Lynnwood. Mr. Chave said staff has not done a thorough investigation of the zoning on the Shoreline and Lynnwood segments of the highway. However, he does not believe that either have a two-story commercial requirement. Board Member Ellis said he is not concerned about small differences in zoning, but he doesn't want the City's zoning to be too different from the zoning on the Shoreline and Lynnwood segments. Mr. Chave said he would be concerned about chopping up the zoning in the Edmonds segment, but he is not as concerned that the Edmonds segment is consistent with neighboring jurisdictions. He recalled discussions the City had with Lynnwood years ago regarding compatibility between the two segments that resulted in some general guidelines. Lynnwood has taken the next step to push the mixed-use, transit-oriented development idea forward, and the City of Edmonds is playing catch up to some degree.

Board Member Robles asked if the proposed amendments are an attempt to apply form-based code to the properties along Highway 99. Mr. Chave said not at this point. Board Member Robles asked if parking on the first floor would constitute a commercial use. Mr. Chave answered that parking would be allowed on the first floor, but it would not count as part of the commercial use requirement. If the Board recommends the option of requiring the equivalent of half or one floor of commercial space, a development that provides parking on the ground floor would have to locate the commercial space elsewhere in the building. While the proposed amendment would offer flexibility to developers, it would not be considered a form-based code because it does not address location of buildings, relationship to the street, etc. He acknowledged that there are some design standards for the CG zones, but they are fairly limited. The Board would likely consider a more form-based code approach in future discussions about potential amendments that encourage transit-oriented development along the corridor. He noted that the Development Services Director intends request funding to start this work in 2015.

The Board reviewed the proposed amendments as follows:

- ECDC 16.60.010.C. This amendment would remove the general prohibition of residential uses on the first and second story of any structure. The code would provide for specific criteria for mixed-use development, but without the general residential prohibition. **The Board Members concurred with this proposed amendment.**
- ECDC 16.60.020.A. The minimum street setback requirements would be amended to re-establish a larger standard setback for other uses while retaining the 4-foot setback for car dealerships. Chair Cloutier asked if this change could be a problem if uses change. Mr. Chave said he does not anticipate future problems. The buildings associated with car dealerships are set back, with rows of cars along the street. **The Board Members concurred with this proposed amendment.**
- ECDC 16.60.020.B. There are two options being considered related to mixed-use developments. One option would remove any commercial requirement, and the second option would still require a certain amount of commercial use but enable it to be configured as the owner wishes.

Board Member Ellis expressed concern that eliminating the commercial requirement entirely could diminish the commercial presence on Highway 99. Chair Cloutier noted that it could also end up enhancing the commercial presence. He noted that mandating commercial space on Highway 99 has not been successful to this point. Although he doesn't feel strongly either way, Board Member Ellis indicated his preference for scaling back the commercial requirement as an incremental step. He said he is unclear on what impact either option would have on future development along the corridor. Chair Cloutier agreed but said he supports allowing more flexibility to developers within the boundaries set forth by the zoning code.

Mr. Chave reported that the City has received a number of inquiries from people wanting to add to their existing properties. For example, an owner of a multi-family residential development wanted to construct a new building, but the commercial requirement killed the project. Just last week, the City received an inquiry from a developer who was looking for six to eight acres to construct a large multi-family residential project. While he indicated a willingness to provide some commercial space, he was not supportive of a large commercial/residential mixed-use development.

APPROVED

Board Member Ellis asked Mr. Chave which option would best satisfy the goal of creating mixed-use development. Mr. Chave said either option would be justifiable. Starting with a scaled-back version (half equivalent) would preserve commercial space and open the area up for more options. Removing the commercial requirement entirely would also work simply because the area is already heavily developed with commercial uses and it would be a long time before it would tip the other way to become predominantly residential. If this trend does occur, the code could be adjusted accordingly to correct the problem. The City has been pointing towards Highway 99, with unlimited heights, to accommodate much of its allocated growth. However, there are very few residential units in the CG zone, and it is not likely developers will construct residential units given the current two-story commercial requirement.

Board Member Robles asked what the “sweet spot” would be for the appropriate amount of commercial versus residential development. Mr. Chave said it would be different for every developer, depending on their experience, how much money they have, etc. Again, he said either option would work, but he cautioned that requiring the equivalent of one floor of commercial space might not be viable.

Board Member Robles asked if the City wants to distinguish its segment of Highway 99 so that people know they are entering the City. Chair Cloutier pointed out that Highway 99 has its own character, and it would not be practical to think the Edmonds segment could be its own center. They did add some signage to recognize the international neighborhood, but he cautioned against changing the standards significantly so that the Edmonds segment of Highway 99 is substantially different.

Mr. Chave recalled a proposal that was previously presented by the Behar Company for a mixed-use development for property on Highway 99. While Mr. Behar was not opposed to providing commercial space in the first two floors of each building, he has been unable to find a developer interested in the project. This supports the proposal to reduce or eliminate the commercial requirement. Chair Cloutier added that having a commercial requirement limits a property owner’s ability to fill the space, which is essentially an added tax to the property. If there is a demand, developers will build commercial space. If there is not a demand, he questioned why the City should force it. He noted there is not a lack of commercial space on Highway 99 now, and eliminating the commercial requirement would not change the area overnight.

Mr. Chave said he does not envision Highway 99 ever becoming a series of apartment blocks without the support of commercial businesses. He anticipates more residential development along the corridor, and this will most likely be accompanied by commercial development whether it is mandated or not. Chair Cloutier said that would be particularly true for the transit corridors. He cautioned against slowing down development by requiring an ideal that is not realistic or feasible. Again, Mr. Chave reminded the Board that change will not happen quickly even if the amendments are adopted, and there will be time for the City to adjust the commercial requirement in the future if needed.

Mr. Chave also reminded the Board of the Highway 99 Task Force’s recommendation that there needs to be more residential development in order for Highway 99 to be a successful corridor. Currently, there are commercial properties that do not contribute in terms of safety, attractiveness, etc. Chair Cloutier pointed out the recent improvements on Shoreline’s segment of Highway 99. They do not have a commercial requirement, and the newer residential and commercial developments have improved the quality of that segment of the corridor.

Noting that four Board Members were absent, Board Member Rubenkonig suggested the Board postpone their recommendation on the proposed amendments until all Board Members have an opportunity to weigh in on the issues, particularly related to the commercial use requirement. She said she would also be interested in feedback from the Highway 99 Task Force and Economic Development Commission. Chair Cloutier referred to minutes from the Board’s joint meeting with the Highway 99 Task Force. He noted that the Task Force specifically asked the Board to address the parking and commercial use requirements, as they believe the current requirements stifle development on Highway 99.

Board Member Ellis said the Board’s discussion has persuaded him to support elimination of the commercial requirement altogether, with the idea that change would happen slowly and the City could revisit the issue if necessary. While he is prepared to make a recommendation, he would also support postponing the recommendation until a future meeting.

Chair Cloutier said he is in favor of moving forward with a recommendation now. While he believes either approach to the commercial use requirement would be acceptable, he prefers to eliminate the requirement entirely. While the absent Board Members have not publicly voiced their specific preference, he recalled that all Board Members indicated support for reducing and/or eliminating the requirement at their last discussion.

While he leans towards supporting elimination of the commercial requirement, Board Member Ellis cautioned that he sensed some push back from some City Council Members about any amendment that would lessen the commercial character of Highway 99. Chair Cloutier referred to the minutes from the Board's joint meeting with the Highway 99 Task Force, where it was discussed that improving the residential housing opportunities would also improve the character and quality of the commercial development along the highway. Mr. Chave recalled that at the City Council's retreat, there was strong consensus for making adjustments to the CG and CG2 zoning, but there may be differences of opinion on which way to go.

The majority of the Board indicated support for eliminating the commercial requirement altogether (Option 1). However, Board Member Rubenkönig expressed her preference for scaling back, but not eliminating the requirement (Option 2).

- ECDC 16.60.030.B. There are two options being considered, and Option 1 shows two concepts. One is a flat parking rate for commercial uses rather than the current parking standard that varies according to the individual use. The second concept is that the parking rate could vary according to whether the property fronts only on Highway 99 as opposed to other streets. The logic is that a property fronting only on Highway 99 might have less of a concern about spill-over into the surrounding neighborhoods. Option 2 shows another concept, wherein a project-specific parking study could be done to determine the specific parking standards that would be applied to a development.

Mr. Chave referred to Attachment 5, which provides a comparison of parking standards from surrounding communities to illustrate that the table values are not out of line. For properties adjoining any other zone than CG and CG2, the proposed parking requirement for non-residential uses would be 1 space per 400 square feet of leasable building space, and the parking requirement for residential uses would be consistent with what is required in the multi-family zone. For properties with street frontage adjoining only CG and CG2 zones, the proposed parking requirement for nonresidential properties would be 1 space per 600 square feet of leasable building space and the parking requirement for residential uses would be 1 space per dwelling unit. The more flexible standard would not be necessary if the Board recommends allowing developers to submit project-specific studies to determine the appropriate required parking for the development.

The Board indicated support for the table (Option 1), as well as allowing for project-specific studies (Option 2).

The Board requested information regarding the review process for project-specific parking studies. Mr. Chave advised that, as currently proposed in ECDC 16.60.030, Architectural Design Board review would be required for any project exceeding 60 feet in height in the CG zone and 75 feet in height in the CG2 zone. Projects not exceeding these height limits may be reviewed by staff as a Type I decision. He concluded that most projects would not exceed this height limit, so ADB review and public notice would not be required.

The Board agreed that project-specific parking studies should be a Type II Decision, which would be a staff decision with a public notice requirement.

BOARD MEMBER ELLIS MOVED THAT THE BOARD FORWARD THE PROPOSED AMENDMENTS TO THE CG AND CG2 ZONES AS PRESENTED, INCLUDING:

- **REMOVAL OF THE GENERAL PROHIBITION OF RESIDENTIAL USES ON THE FIRST AND SECOND STORY OF ANY STRUCTURE (ECDC 16.60.010.C)**
- **RE-ESTABLISHMENT OF THE LARGER STANDARD SETBACK FOR OTHER USES WHILE RETAINING THE 4-FOOT SETBACK FOR CAR DEALERSHIPS (ECDC 16.60.020.A)**

APPROVED

- **ELIMINATION OF THE REQUIREMENT FOR GENERAL COMMERCIAL SPACE AS PER OPTION 1 (ECDC 16.60.020.B).**
- **SETTING A FLAT PARKING STANDARD AS PER OPTION 1 (ECDC 16.60.030.B) ALLOWING A MORE FLEXIBLE STANDARD FOR PROPERTIES THAT ADJOIN ONLY CG AND CG2 ZONES. ALSO ALLOWING DEVELOPERS TO DO PROJECT-SPECIFIC PARKING STUDIES AS PER OPTION 2 TO DETERMINE THE APPROPRIATE REQUIRED PARKING FOR THE PROJECT. LANGUAGE SHOULD BE ADDED TO OPTION 2 TO MAKE PARKING STUDIES TYPE II DECISIONS.**

CHAIR CLOUTIER SECONDED THE MOTION.

Board Member Rubenkönig once against stated that she is not in favor of eliminating the general commercial requirement altogether. She believes the incremental approach outlined in Option 2 of ECDC 16.60.020.B would be more appropriate.

THE MOTION CARRIED 3-1, WITH BOARD MEMBER RUBENKONIG VOTING IN OPPOSITION.

REVIEW OF EXTENDED AGENDA

The Board reviewed their extended agenda, noting that their work for the remainder of the year will focus on various elements of the Comprehensive Plan update. Mr. Chave explained that much of the emphasis will be on the land use element and updating data to adopt the new growth targets. He said he does not anticipate any wholesale changes in land use patterns.

Chair Cloutier recalled the Board’s retreat discussion about issues in the code they should focus on in order to streamline and simplify the application and review processes by removing ambiguities. He suggested that these issues should be added to the extended agenda, as well.

Mr. Chave reported that staff made a presentation to the City Council on July 22nd regarding the upcoming Critical Areas Ordinance update. They are beginning the process of advertising for a consultant to get the project started, but the Board probably won’t see a lot of information until November or December.

PLANNING BOARD CHAIR COMMENTS

Chair Cloutier said he understands Board Member Rubenkönig’s concern about being called upon to vote on matters that were discussed prior to her joining the Board. Board Member Rubenkönig said she is also concerned about taking action when only half of the Board Members are present. Chair Cloutier pointed out that the Board had two previous discussions about the items on the agenda, and he felt comfortable moving them forward.

PLANNING BOARD MEMBER COMMENTS

Board Member Robles pointed out that eliminating the commercial requirement in the CG and CG2 zones will allow the City to collect clear information on what the market wants. From that, they can make a logical decision about cutting back. However, he also expressed some caution against the over concentration of housing.

Board Member Rubenkönig reported that she attended the event celebrating the new historical signage on Fourth Avenue. At the event, she was invited by Frances Chapin and Carrie Hite to participate in the stakeholder meetings regarding the Fourth Avenue Arts Corridor as a representative of the Planning Board. She advised that she attended the group’s last meeting on July 22nd and will share more information at a future date.

ADJOURNMENT

The Board meeting was adjourned at 8:15 p.m.

APPROVED