

GENERAL INFORMATION

Applicant: City of Bloomington

Location: Citywide

Request: Study Item to review the expansion of administrative and streamlined development approvals.

HISTORY

City Council Action: 11/02/2009 – Adopted an ordinance establishing new administrative procedures and fees for development applications (Ordinance #2009-33) (Case #10000J-09).

CHRONOLOGY

Planning Commission	05/23/2024	Study Item #1 held
	06/06/2024	Study Item #2 held
Council	07/01/2024	Item continued
	07/15/2024	Study Item scheduled

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PROPOSAL

Reducing procedural, financial, and other barriers to achieving the approval of development applications or plans is recognized as a means to support a resilient and vibrant local economy and housing supply. Lowering barriers can often also be beneficial from an equity perspective by expanding opportunity. The following study will examine various methods to streamline the approval of development applications in Bloomington. Staff has identified 10 potential categories of

amendments to the Zoning Code and associated chapters that have the potential to streamline processes and/or reduce barriers to development approval. This project was included as part of the adopted 2024 Planning Commission Work Plan. Staff is seeking to build consensus and receive feedback about the preparation of a future ordinance for consideration by the Planning Commission and City Council.

BACKGROUND

The City last examined the potential for establishing administrative development approvals in 2009 as part of an overhaul of administrative provisions for development applications. The policy decisions made as part of this effort resulted in the current procedural requirements and process that guide development review and approval in Bloomington. This current study includes recommendations that build on and expand from the work that was completed in 2009.

Multiple City of Bloomington plans, policies, and actions are supportive of exploring the expansion of administrative and streamlined development approvals, including:

- Bloomington Comprehensive Plan Forward 2040 (see Strategy #1.3, Goal #4, Strategy #4.6, and Strategy #4.7 of the Land Use Element, and Strategies #1.3, #2.1, #2.2, #3.2, #3.3 and #4.2 of the Housing Element)
- Bloomington. Tomorrow. Together. (BTT) Five-Year Strategic Plan (see Objective/Priority #3 – A Community with Equitable Economic Growth)

Beyond Bloomington, staff has observed that more cities, both locally and nationally, are looking at ways to streamline development to increase housing production, economic opportunity, and community resiliency overall. A few examples of these efforts are the Green Tape Program in Silver Spring, MD, the Modern Zoning Code in Boise, ID, and locally Rochester, MN's Unified Development Code. Moving Bloomington's development review process in a more streamlined direction is consistent with building best practice.

PROJECT PROCESS AND GOALS

To evaluate the effectiveness of various methods to reduce barriers to development approval, staff has established four questions of evaluation by which to consider whether or not to pursue various sub-projects proposed within the broader study. The four questions ask whether the proposed intervention is effective in streamlining development approval:

- 1) Reduces Time or Duration for Approval;
- 2) Reduces Cost (application and other fees associated with development review procedures);
- 3) Increases Procedural Simplicity; and/or
- 4) Increases Certainty/Confidence in Approval

The evaluation questions can also be viewed as key goals of the overall project. If Bloomington’s development review process can allow for faster, less costly, and more confident outcomes while still maintaining the public health, safety, and welfare, Bloomington may position itself to have a market advantage in the region and increased interest from the development and business community. These changes benefit existing Bloomington residents and businesses the most, who are the most common development applicants.

ANALYSIS

To support research and analysis of the Bloomington Zoning Code to determine methods to streamline development, staff has broken the overall project up into 11 sub-projects as shown in Table 1:

Table 1 – List of Streamlining Sub-Projects

Sub-Project #	Sub Project Name	Sub-Project Description
1	DRC Review Requirements	Grant staff the authority to require DRC review for applications that involve a change in use (building permit) when appropriate.
2	Administrative Site Plan Review	Allow all Code-compliant projects to go through administrative (Planning Manager) review and approval of their Final Site and Building Plans (FSBPs)
3	Expand Staff level Approval Authority	If full administrative site plan review is not supported, expand the allowances for administrative approval of FSBPs for Code-compliant projects by increasing the project size and/or number of dwelling units that may be approved at the staff level.
4	Remove FSBP Requirement for ADUs and Two-Family Dwellings	If Code-compliant, exempt accessory dwelling units (ADUs) and two-family dwellings from the FSBP requirement (admin zoning approval), similar to single-family dwellings.
5	Conditional Uses Review	Designate some uses that are currently conditional as permitted when risk of use conflicts or nuisance characteristics is lower, thereby removing CUP requirement.

Sub-Project #	Sub Project Name	Sub-Project Description
6	Planning Commission Approval of all CUPs/IUPs	Grant authority to approve all or some Conditional Use Permits (CUPs) and Interim Use Permits (IUPs) that currently must be approved by the Council to the Planning Commission, subject to appeal.
7	Planning Commission Approval of FDPs w/No Flexibility	Grant authority to Planning Commission (or Planning Manager if administrative site plan review is supported) to approve Final Development Plans (FDPs) that do not include flexibility requests.
8	Designating Planning Commission as Board of Adjustment	Grant the Planning Commission the authority to act on variances, subject to appeal.
9	Tent Extension Approval Authority	Grant authority to approve tent permit extensions beyond 25 days per year to the Planning Commission, subject to appeal.
10	Certificate of Appropriateness Approval Authority	Modification to shift approval authority for Certificate of Appropriateness permit to the Planning Commission, subject to appeal.
11	Reasonable Accommodation Process	Create a formal process by which a person can request a waiver to City regulations based upon a reasonable accommodation under the American with Disabilities Act and Fair Housing Amendments Act.

Background, analysis, and recommendation(s) are provided below for each sub-project within the broader study.

Project #1 – DRC Review Requirements

The City’s Development Review Committee (DRC) is a formal internal staff work group that reviews both preliminary and formal development applications. Applications Processes provisions in City Code (Sec. 21.502.01) specify which applications must be reviewed by DRC. Currently, there is no formal requirement that DRC review projects that are permitted uses from a zoning perspective and represent a simple change of zoning use. Amending the City Code to clarify that DRC review may be required as determined by the Issuing Authority for change of zoning use situations (building permit only) would allow staff to coordinate complex reviews of permitted uses through a DRC review when necessary.

If the recommendations to increase administrative and streamlined approvals as described below are supported, staff recommends this minor code amendment be included to provide staff with the best tools to support internal coordination and review of development. Staff finds that DRC review is often beneficial for the applicant as well, as it provides a comprehensive list of review comments and requirements as part of a single process with the relevant City staff, as opposed to coordinating with multiple different Departments/Divisions. This minor amendment to the Code would likely occur within the Application Processes – Sec. 21.502.01.

Project #2 – Full Administrative Site Plan Review

Staff is proposing optional amendments to the Final Site and Building Plan (FSBP) application process that streamline their review. As stated in § 21.501.01 of Bloomington City Code, the purpose of FSBP applications is to:

- Ensure that new buildings, building additions and site characteristics comply with city code requirements;
- Ensure that sufficient information is provided by the applicant to determine compliance with city code requirements;
- Establish decision making authority on new development commensurate with the potential for impacts on surrounding uses; and
- Ensure that approved development not yet constructed complies with city code requirements that may have changed since the project’s initial or most recent approval.

FSBP review is not required for single-family detached dwellings and buildings accessory to single-family detached dwellings or two-family dwellings. It is required for all other projects whether Code-compliant. In most cases, the application process for FSBPs includes a public hearing and review and action by Planning Commission. If certain other application types accompany the FSBP, the City Council must act on the FSBP. Finally, there are several project types that only require administrative action from the Planning Manager, which are listed in § 21.501.01(c)(1). Applications that can be approved by the Planning Manager are limited to smaller additions, garages, parking lot and other site characteristic projects, and two-family dwellings to name a few.

As described above, the FSBP application review process requires several steps, one being a public hearing in front of Planning Commission or City Council depending on the proposal. Public hearings offer residents within the vicinity a notice of the proposed project so that they are informed, can reach out to staff if they have questions, and are able to provide testimony at the public hearing. It also provides Planning Commission or City Council the opportunity to glean insights from public comments that in some cases can improve the outcomes of the proposal, so it can be mutually beneficial to residents, the applicant, staff, and decision-makers.

However, public hearings and other meeting requirements for FSBPs also impose costs in various ways on both the applicant and the City that are worth acknowledging, particularly for proposals that fully comply with City Code. For instance, the current FSBP process for non-administrative

applications requires steps that add time and lengthen the consideration of FSBP applications. The public hearing requirement is the main factor in lengthening the process, as a notice 10 days prior to the hearing to both residents within 500 feet of the project site and within the Sun Current is required. Preparing and mailing the notices and sending them to the newspaper of record adds approximately another week to the application process. If an application requires an additional meeting in front of City Council, that typically adds another two to three weeks to the application process. During this time, staff resources are spent analyzing the application, preparing a staff report and necessary exhibits, and working with the applicant to ensure material is submitted correctly and on time. Application fees also escalate with the level of review that is required for public meetings to cover staff time and noticing tasks and materials. Time and fees for various levels of public review are summarized in Table 2 below.

Table 2 – Cost and Time Comparison of Various Levels of FSBP Review

Level of Review	Planning Manager	Planning Commission	City Council
Average Review Time¹	2-3 weeks	5-6 weeks	7-9 weeks
Application Fee	\$130	\$420	\$660

Table Note: 1) Review time does not include building permit review and issuance

A third potential cost imposed by FSBP applications that require a public hearing in front of Planning Commission is the perception of uncertainty, the impact or degree of which varies depending on the applicant or project. The public hearing requirement may serve as a source of concern to some applicants in some cases. Reviews by Planning Commission and City Council do have some limited discretion, allowing those bodies to record and enforce conditions that are tied to the City Code but address unique circumstances of the property or project. However, this perception of discretion consequently also can create a varying level of uncertainty for some applicants whose projects already comply with City Code.

Because of the costs described above, an option to streamline project approval is to allow all Code-compliant projects to go through administrative, or Planning Manager, review of their FSBPs. This option would limit the public hearing process and more discretionary review of FSBP applications to projects that are seeking other approvals, such as variances, conditional use permits, rezonings, and Comprehensive Plan amendments. Applications for those approvals already require public hearings. Also, this option would not reduce the rigor of review compared to existing processes and would still require the FSBPs of Code-compliant projects to be reviewed by all relevant City departments. With this approach, it would relieve those applications from a public hearing and other public meetings, cutting the review time in half reducing application fees, and reducing administrative activities associated with preparing public notices. These savings would be potentially beneficial to both the applicant and the City.

However, staff acknowledges that there is a tradeoff from removing the public hearing requirement from review of FSBPs for Code-compliant projects. The lack of a public hearing would

consequently remove both the noticing requirement to keep neighbors informed of nearby developments and the opportunity for the neighbors to publicly comment on those projects. While the City does maintain a public development map that lists all significant development applications under review, this resource does not equal the effectiveness of direct mailers to adjacent properties.

To assist in the consideration of this amendment and provide examples of Code-compliant projects that were subject to existing FSBP application requirements, staff prepared a list of those projects, which is available in Exhibit 1. These are real-world, recent examples of development that have gone through Final Site and Building Plan review. If full administrative site plan review was supported, the scale of development that could go through administrative review could be quite large if no other applications that require public hearings are submitted as part of the broader application. Staff completed a review of peer cities related to this topic. The results of this review are explained in Table 3 under Project #3 below. That table shows that full administrative site plan review, while not common, is not unheard of among communities in the metropolitan region. Of the eleven cities surveyed, nine required site plan review and, of those cities, three kept that review to the staff level.

Given the scale of development that sometimes is reviewed as Final Site and Building Plans only in Bloomington, Staff recommends maintaining Planning Commission review and the public hearing requirement for larger projects. However, the authority of the Planning Manager to administratively approve FSBP should be expanded if more streamlined development is the City's goal. Finally, staff does recognize the value of full administrative site plan review and is able to execute such procedures with the same thoroughness and accuracy that is deployed in reviewing projects that are not eligible for administrative review today. Staff is seeking direction from the Planning Commission and City Council on the best course of action, and staff will proceed in that direction.

Project #3 – Expand Staff Approval Authority

As mentioned previously, the Planning Manager is currently allowed to approve the FSBP for a limited list of project types. Per § 21.501.01(c)(1), those project types include the following:

- Two-family dwellings;
- Accessory buildings (except for single-family and two-family dwellings);
- Garages (except for single-family and two-family dwellings);
- Parking lots or other site characteristic modifications such as building façade changes;
- New buildings or building additions to unplatted properties that do not exceed 1,000 square feet; and
- Revisions to previously approved final site and building plans except those that involve:
 - Building additions that exceed 5% of the existing floor area for the building or that exceed 10,000 square feet;
 - An increase in the number of dwelling units;

- Deviations to city code requirements; or
- Modifications to any condition of approval adopted by the Planning Commission or City Council. If a revision requires modification to a condition of approval previously adopted by the City Council, the revision must be reviewed by the City Council.

Staff is proposing to remove the FSBP application requirement for two-family dwellings (discussed below in Project #4). In addition, there are other recommended changes that would expand the opportunities for Planning Manager approval authority of FSBPs for Code-compliant proposals. For instance, the gross area of new buildings that have their FSBPs considered by the Planning Manager could be raised from 1,000 square feet to 10,000 square feet. Under this option, building expansions qualifying for Planning Manager review could be raised from 5% to 25% of the existing floor area so long as they do not exceed 20,000 square feet (currently 10,000 square feet). Right now, the FSBP of any proposals featuring the addition of at least one dwelling unit to a multi-unit building is not eligible for Planning Manager review. To expand Planning Manager approval authority, staff proposes that the number of additional dwelling units be raised to 5 when part of a Minor Revision to already approved FSBP. This situation often occurs at existing multi-family residential buildings when splitting one larger unit into two or converting community space to dwellings. Staff would appreciate the Planning Commission’s feedback on these proposed changes.

Review of Peer Cities

In crafting the optional amendments proposed for the FSBP application process, staff also examined the code and application processes of eleven other suburban communities in the Twin Cities metropolitan region. The cities were chosen based on population size according to the 2020 US Census or their proximity to Bloomington. This research reveals how Bloomington compares to its peers and provides some insight into where the City could improve reviews through streamlining reforms without compromising their quality. Table 3 shows the results of that peer city research.

Table 3 – Peer City Comparison of Site Plan Application Requirements and Review Processes

City	Site Plan Application Required?	Approval Process		
		Administrative (Yes/No) * Staff person(s) ** Conditions	PC * Responsibilities	CC * Responsibilities
<i>Blaine</i>	Yes	Yes * Zoning Administrator	--	--
<i>Brooklyn Park</i>	Yes	Yes * City Manager ** Projects must meet certain criteria	Yes * Recommendation to CC	Yes * Approval
<i>Burnsville</i>	No	--	--	--

City	Site Plan Application Required?	Approval Process		
		Administrative (Yes/No) * Staff person(s) ** Conditions	PC * Responsibilities	CC * Responsibilities
<i>Eagan</i>	No	--	--	--
<i>Edina</i>	Yes	Yes * City Planner ** Minor modifications only	Yes * Recommendation to CC	Yes * Approval
<i>Eden Prairie</i>	Yes	Yes * City Planner ** Minor improvements to an approved site plan	Yes * Recommendation to CC	Yes * Approval
<i>Lakeville</i>	Yes	Yes * Zoning Administrator	--	--
<i>Maple Grove</i>	Yes	Yes * Director of Community Development	--	--
<i>Plymouth</i>	Yes	Yes * Zoning Administrator ** Minor projects	Yes * Recommendation to CC	Yes * Approval
<i>Richfield</i>	Yes	No	Yes * Recommendation to CC	Yes * Approval
<i>Woodbury</i>	Yes	Yes * Zoning Administrator ** Minor structural additions	Yes * Recommendation to CC	Yes * Approval

Staff made several observations when examining the data from this research:

- Most cities (6 in total: Brooklyn Park, Edina, Eden Prairie, Plymouth, Richfield, and Woodbury) require the site plans of code-compliant projects to go through a public hearing and be reviewed by both Planning Commission and City Council
- Of those 6 cities mentioned previously, 5 (Brooklyn Park, Edina, Eden Prairie, Plymouth, and Woodbury) allow the site plan of certain projects to be reviewed administratively, which generally matches Bloomington’s current process.

- 3 cities (Blaine, Lakeville, and Maple Grove) have full administrative review of code-compliant site plans.
- 2 cities (Burnsville and Eagan) do not require site plan applications for code-compliant projects, which means they go straight to building permit review.

Staff is anecdotally aware of other communities that allow for administrative site plan review. One such example is Roseville. If a project does not require a conditional use permit, rezoning, or other zoning entitlement that requires a public hearing, then larger development projects can be approved administratively in these cities. It should be noted that the majority of development applications for larger scale development in Bloomington typically include another zoning approval that requires a hearing, but this is not always the case.

If full administrative site plan review is not supported, staff recommends expanding that approval authority of the Planning Manager so smaller-scale development can be approved in a more streamlined fashion.

Project #4 – Remove FSBP Requirement for ADUs and Two-Family Dwellings

Per § 21.501.01(b), the following proposals do not require an FSBP application:

- Single-family detached dwellings and their accessory buildings and site characteristics, including garages
- Accessory buildings and site characteristics, including garages, for two-family dwellings

Staff believes that the list of projects exempted from the FSBP application requirement should be expanded to include two-family dwellings and accessory dwelling units (ADUs). Aside from the FSBP application requirement, the review for these project types is similar to single-family detached dwelling in terms of process and complexity. Removing another procedural hurdle for two-family dwellings and ADUs would streamline their review process and relieve City resources of extraneous review steps. Establishing consistent review procedures for these development types is warranted in staff's view, as these uses have been deemed consistent with and appropriate for the Low Density Residential land use category in the City's Comprehensive Plan. Should this recommendation be supported, staff would prepare procedural amendments to exempt ADUs and Two-Family Dwellings from the FSBP requirement as part of a subsequent ordinance.

Project #5 – Conditional Uses Review

One of the ways to streamline development approvals is to redesignate some uses that are currently designated as Conditional ("C") as Permitted ("P"). Within the Zoning Code, all uses are defined within the Definitions section (Sec. 19.03). The designations of use allowances respective to the City's zoning districts are mostly found in the Zoning Code Use Tables (Sec. 21.209). Permitted uses typically do not have to seek a zoning approval, unless there is a site or building change or expansion associated with the new use. If occupying an existing space or building, permitted uses typi

cally advance straight to building permit submittal, review, and approval or issuance (when Code-compliant), saving the applicant both time and fees/money needed to establish their use or business. If a proposed permitted use were not Code-compliant, such as not meeting off-street parking or other use-based standards, the City would not approve or issue the building permit. If Final Site and Building Plans, a Variance, or other zoning application is required for the project to proceed, the applicant would need to secure those approvals and meet all conditions of approval prior to building permit issuance or occupancy.

To provide more background and context about conditional uses and the Conditional Use Permit (CUP) process, City Code Section 21.501.04 provides helpful information about the associated purpose and procedures. Depending on the perspective, there are both strengths and weaknesses of the CUP process as it relates to development activity. Table 4 lists some of these strengths and weaknesses from staff’s perspective, but it is important to note that this list is not exhaustive.

Table 4 – CUP Strengths and Weaknesses

Strengths	Weaknesses
<p>Greater Discretion: Grants the City greater decision-making discretion, including adding site or use-specific conditions of approval. Attaching conditions of approval that are not directly tied to requirements in City Code is not typically allowed for the approval of a permitted use, as the City has less discretion in these instances.</p>	<p>Uncertainty: The approval process for a permitted use is more certain or has a higher level of confidence than processes that require a CUP. The extent to which how much the CUP process reduces certainty is subject and varies depending on the jurisdiction and applicant/investor perspective.</p>
<p>Public Notice and Public Hearing Process: State Statute requires a public hearing to be held as part of the consideration of a CUP. City of Bloomington requires that all property owners within 500 feet be notified at least 10 days before the hearing date. The notice and opportunity to provide testimony is a strength from the perspective of informing the public or nearby stakeholders and providing them an opportunity to provide testimony or share local knowledge. However, it should also be noted that this aspect of the process can be a source of uncertainty or lower confidence on the part of the applicant.</p>	<p>Time: As shown in Table 5 below, a CUP approval process typically takes between 8 to 12 weeks in duration (including the time typically required to obtain a building permit). By contrast, a building permit can typically be issued for a permitted use in 2-3 weeks (assuming all the necessary documents and plans are provided). As such, a CUP process can add somewhere between 5-9 weeks of additional time.</p>

Strengths	Weaknesses
<p>Correction of Violation through Suspension or Revocation: If there is an active CUP associated with a use or business that violates that City Code, State Law, or conditions attached to approval, the City can suspend or revoke the CUP. CUP suspension or revocation is extremely rare, as the City can remediate or correct violations without taking this more significant step in the vast majority of cases. If violations occurred at a use that was not subject to a CUP, suspension or revocation would not be an available tool to remediate the violation.</p>	<p>Cost: Application fees for a CUP range from \$220 to \$880 depending on if Planning Commission or City Council has approval authority for a conditional use. In addition to these fees, preparation of the application itself sometimes requires additional or more complex plans and documents to be prepared than would otherwise be required for a permitted use. Preparation of the plans and documents specific to a CUP application can add cost.</p>

It is also important to acknowledge the timelines and costs associated with approval processes for permitted vs. conditional uses according to the Bloomington City Code. Table 5 provides a timeline and cost comparison of the three approval processes associated with permitted vs. conditional uses.

Table 5 – Timelines and Costs of Permitted vs. Conditional Uses

Application Type	Development Application Fee	Typical Approval Timelines (includes building permit review)
Permitted Use (Building Permit Review Only)	-	2-3 Weeks
Conditional Use (CUP) Approved by Planning Commission	\$220	8-10 Weeks
Conditional Use (CUP) Approved by City Council	\$880	10-12 Weeks

Table Note: Typical approval timelines do not include Preliminary Development Review Committee (DRC) review, which can occur as part of all three application types (required for CUPs whereas more discretionary for a building permit process)

By designating more uses as permitted versus conditional, the barriers to development or use establishment would be lowered for those uses. Permitted uses can be approved faster and with less costs associated with the process. Finally, there is greater applicant or market confidence in a use that is permitted versus a use that is conditional. This factor does not speak to the time or money it costs to obtain approval, but rather to the decision of whether or not to proceed at all.

As part of this review, staff has evaluated all 112 uses that are currently designated as conditional in the Bloomington Zoning Code. All of these uses are identified in Exhibit 2 – Review of Conditional Uses. To determine whether or not a use should be designated as permitted or conditional, staff considers three main factors:

- 1) **Use Standards** – Does the City Code have use-specific standards that reduce or mitigate potential occurrences or characteristics of nuisance or conflict associated with a use. Use-specific standards in the Zoning Code are mostly located in Article III, Division B: Use Standards of the Zoning Code. If there are use-based standards, that makes a use a better candidate to be designated permitted than if no use standards existed.
- 2) **Potential for Nuisance or Impacts** – There are multiple use characteristics that historically could have impacts on surrounding properties and uses. These characteristics are often referred to as “nuisance”. In staff’s perspective, these nuisances include noise, dust, emissions or pollutants, odor, light or glare, truck or industrial traffic, hazardous materials or processes, and other operational characteristics that drive conflict between uses. If a use has a higher potential for nuisance characteristics, that would be a factor in designating such a use as conditional as opposed to permitted. The CUP process does allow for taking locational characteristics of the surrounding area into account more so than permitted uses. It should also be noted that some use-based standards prohibit certain uses within certain distances or proximity to sensitive uses, such as residential uses. Licensing provisions can sometimes include these locational requirements as well.
- 3) **Use Complexity** – If a broader use has a wide mix of many different sub-uses or operational characteristics, it may present unique operational characteristics that warrant further scrutiny or discretion. An example of a more complex use is a University or a School. These uses often have many different sub-uses and a wide mix of programming and services within a single use category.

There are other miscellaneous factors that can inform whether or not a use should be permitted or conditional, but the three factors above are most commonly considered when determining the right use designation.

Staff has evaluated all 112 uses that are designated as conditional in the Zoning Code. Exhibit 2 identifies whether or not use standards exist for each use, the zoning district(s) in which the use is designated as conditional, the potential for nuisance (from staff’s perspective), and a staff recommendation for each use. Of the 112 uses evaluated, staff is recommending that 57 of these uses be redesignated or changed to permitted on some level. In addition to the basic staff recommendation, staff has also included some notes that provide further explanation or actions associated with each use.

The number of uses evaluated makes it impractical to present analysis on each one individually. As part of the staff presentation, staff will request feedback and questions on the recommendations in Exhibit 2. If there are questions or alternative recommendations for an individual use, staff can address those questions and receive feedback and direction. Should the Planning Commission and City Council support staff’s recommendation about a given conditional use, then that use would be proposed as permitted as part of a subsequent ordinance to be considered as part of a future public hearing process.

Project #6 – Planning Commission Approval of All CUPs/IUPs

The majority of Conditional Use Permits (CUPs) and some Interim Use Permits (IUPs) may be approved by the Planning Commission, subject to a three-business-day appeal period. However, there are specific conditional and interim uses that require City Council approval. There are 22 conditional uses and two interim uses that must be approved by the Council, as shown in Exhibit 3 – Conditional and Interim Uses Approved by Council. The reasons for some uses being designated as necessitating City Council approval are that these uses may be more complex, require more scrutiny, or have historically required greater City attention and analysis. According to the City’s Application Processes, CUPs or IUPs that require Council approval are still reviewed by the Planning Commission, where the public hearing is held. The process for the Council to approve a CUP or IUP typically takes two to three weeks longer. In addition, the application fees for Council-approved applications are higher - \$880 for CUPs and \$420 for IUPs. Granting more authority to the Planning Commission to approve CUPs and IUPs does streamline development for these affected uses.

Staff recommends that the Planning Commission (PC) be granted more authority for the approval of CUPs and IUPs. This recommendation is based on two key factors:

- **PC Actions Subject to Appeal** – CUPs and IUPs currently approved by the Planning Commission are subject to a three-business-day appeal period (see Sec. 21.501.04(d)(2) and 21.501.05(d)(2)). As such, uses or proposed development that may require greater scrutiny or the consideration of the City Council can always be appealed. The appeal can be submitted by any party, including the public, applicant, or on behalf of the City Council. Given the availability of this appeal pathway, there is still opportunity for the City Council to make a final decision in appropriate cases, so long as the appeal is submitted in a timely fashion.
- **Increase of Use-Based Standards** – Since the list of uses that must be approved by the City Council was created, there has been an increase in the adoption of use-based standards that effectively mitigate or reduce conflicts between uses or nuisance characteristics of certain uses. Examples of use-based standards include separation from residential uses, noise limitations, traffic and loading considerations, and operational requirements just to name a few. The adoption of these standards makes the review of CUPs by the Planning Commission more comprehensive and ensures that potential conflicts or nuisances should be lessened or mitigated.

There are two options for granting the Planning Commission more authority over the approval of these application types:

- 1) **Option #1: Grant Planning Commission Approval Authority over All CUP/IUPs Subject to Appeal** (Staff Recommended) – In staff’s judgment, all of the conditional and interim uses required to be approved by the City Council could be acted upon by the Planning Commission given the available appeal procedures and the increase in use-based

standards. The appeal process is available for any use or proposed development that warrants further scrutiny and City Council action.

- 2) **Option #2: Shift Uses that Have Less Nuisance Characteristics or Stronger Standards to Planning Commission Approval** – If there are some conditional or interim uses that warrant action by the City Council in every location and circumstance, these uses can remain on the list where Council approval is required. For the uses whose approval are more routine, present less nuisance characteristics, and/or are subject to stricter standards, staff recommends that these uses can be approved by the Planning Commission, subject to the three-business-day appeal process.

Reducing the number of CUPs and IUPs that have to be reviewed and approved by the City Council is another way to streamline development. It should also be noted that if any of the uses on the City Council approval list are recommended to no longer be designated as a conditional use, then these uses would also be removed from the list of conditional uses that require City Council approval.

Project #7 – Planning Commission Approval of FDPs w/No Flexibility

Currently all Preliminary Development Plan (PDP) and Final Development Plan (FDP) applications must be acted upon by the City Council, with the exception for revisions to previously approved Final Development Plans that are considered minor according to Sec. 21.501.03(d) of the City Code. Minor Revisions to Final Development Plans can be approved administratively by the Planning Manager. The procedural structure of this approval process sometimes results in Final Development Plan applications that are considered “Major Revisions” having to be approved by the City Council even if no flexibility to standards is being sought.

When a Final Development Plan application does not include any requests for flexibility and is Code-compliant, the application is equivalent to or no different than a typical Final Site and Building Plan application, which the Planning Commission currently has the authority to approve subject to appeal. The structure of this approval process could be improved by granting the Planning Manager or Planning Commission the authority to approve Final Development Plan applications that do not include any new requests for flexibility in standards. Should the Planning Commission and City Council approve of this approach, staff would prepare procedural amendments in the form of an ordinance to allow for Major Revisions to Final Development Plans without flexibility to be approved by the Planning Commission, subject to a three-business-day appeal period (similar to Final Site and Building Plans).

Project #8 – Planning Commission as the Board of Adjustment – Variance Approval Authority

Boards of Adjustment and Appeals have the authority under State Statute (§§ 462.354, 462.357, and 462.359) to approve variances and hear appeals. The City Council currently serves as the Board of Adjustment for Bloomington (see Sec. 2.85.04, 21.304.24, and 22.07). Statute allows for the governing body to serve as the Board of Adjustment and Appeals, or it can appoint the Planning Commission to serve in this role. It should also be noted that if the Planning Commission is designated as the Board of Adjustment, there is a procedural allowance under Statute to appeal decisions by

the Board of Adjustment to the City Council. In other words, the City Council could still serve as the final decision maker if an appeal to the Planning Commission’s decision was received within a certain timeline.

The current procedures for the review of zoning variances in most cases is that the initial review and public hearing is held by the Planning Commission or Hearing Examiner (see Sec. 2.09 and 2.10 of the City Code for explanation of Hearing Examiner). The recommendation of the Planning Commission or Hearing Examiner is then presented to the City Council, typically on the Consent Business agenda, for final action. The City Council typically does not remove recommendations for variances from the Consent Business agenda, but it does occur from time to time. By requiring that every Variance application be acted upon by the City Council in its duties as the Board of Adjustment, an additional two to three weeks of time is required to complete the process. Designating the Planning Commission as the Board of Adjustment and Appeals would help streamline review and action on Variance applications. If the Planning Commission and City Council were supportive of this procedural change, staff would recommend that a pathway for appeals to the City Council still be retained, making the City Council the decision maker for more complex or difficult Variance applications.

While it is more common for the City Council to serve as the Board of Appeals and Adjustment in Minnesota, there are cities that appoint the Planning Commission to serve in this role. There are also cities that appoint a separate body or board of appeals, including Minneapolis and St. Paul. Table 6 provides an overview of which body, City Council or Planning Commission, serves as the Board of Adjustment amongst Bloomington’s peer communities.

Table 6 – Variance Approval Authority: CC or PC

Cities	Blaine	Brooklyn Park	Burnsville	Eagan	Edina	Eden Prairie	Lakeville	Maple Grove	Plymouth	Richfield	Woodbury
Variance Approval Authority: City Council (CC) or Planning Commission (PC)	CC	CC	CC	CC	PC ¹	PC ²	CC	CC	CC	CC	CC

Table Notes:

- 1) Planning Commission decision may be appealed to the City Council by applicant or petitioner within 10 days of the decision.
- 2) Planning Commission decision may be appealed to the City Council by applicant or petitioner within 15 days of the decision.

Amongst the peer communities studied, Edina and Eden Prairie appoint their Planning Commission to serve as the Board of Adjustment. Both jurisdictions allow the decision of the Board to be

appealed to the City Council for final action. The appeal period is 10 days in Edina and 15 days in Eden Prairie. It should be noted that the longer the appeal period provided, the less time savings and streamlining of approval offered. Bloomington utilizes a three-business-day appeal period for multiple development applications, which staff finds to be effective. One of the ancillary benefits of granting the Planning Commission the authority to approve variances subject to appeal is that removes the review of more routine or less complex variances, unless appealed, from the Council's responsibility or agenda, resulting in greater capacity to focus on other matters.

If the Planning Commission and City Council are comfortable with this proposed procedural change, staff recommends that the Planning Commission be designated as the Board of Adjustment and be granted the authority to approve variances, subject to a three-day appeal period. Offering an appeal pathway that requires City Council action can address more complex variance applications. Should this procedural change be made, staff would recommend striking the Administrative Code and Hearing Examiner approval process for variances, as retaining this process would offer little benefit if the Planning Commission can approve variances. All of these changes would be incorporated into the subsequent ordinance staff will prepare that would be considered through a public hearing process.

Project #9 – Tent Extension Approval Authority

A less common, and perhaps lower impact, intervention to streamline a singular form of land use application relates to the City's tent and canopy provisions (Sec. 19.63.06). Tents and canopies larger than 400 square feet require a permit to be issued prior to installation. A tent permit may be approved administratively, but is limited to a duration of 25 days per year per site. An applicant can seek a time extension, which must be reviewed and approved by the City Council and requires a public hearing. Staff recommends shifting this authority to the Planning Commission, subject to a three-day appeal process, similar to conditional use permits. If this procedural change is supported, amendments to Sections 19.63.06 and 21.502.01 would be prepared in a subsequent ordinance.

Project #10 – Certificate of Appropriateness Approval Authority

Staff sometimes encounter proposals that involve alterations to historically significant structures or sites. According to § 15.18, the process for reviewing these proposals requires that, before any action is taken by the owner of a property of historical significance, architectural quality, or community development impact, that property owner must receive a certificate of appropriateness approved by City Council. A public hearing is required to be held at the City Council meeting.

To streamline review of certificate of appropriateness applications, staff is posing an option for the Planning Commission's consideration that transfers the responsibility to approve or deny applications from the City Council to the Planning Commission. This amendment to § 15.18 would not alter any other review procedures. It would still maintain the public hearing requirement for applications and require that staff review and make recommendations under the direction of the issuing authority, which is the City Manager or their designee. The Planning Commission action could be structured as subject to a three-business-day appeal process, similar to other development

applications approvals completed by the Planning Commission. In staff's judgement, the Planning Commission is capable of reviewing these proposals and acting according to the required findings of the City Code.

Project #11 – Reasonable Accommodation Process

The American with Disabilities Act (ADA) and Fair Housing Amendments Act of 1988 specify that people with disabilities seeking services or housing must be provided reasonable accommodations to ensure fair and equal access. To ensure compliance with these requirements, some cities include processes in their city codes to allow residents to seek a waiver to applicable city regulations that might preclude fair and equal access. Minnesota cities that have adopted a reasonable accommodation waiver process include Minnetonka and West. St. Paul to name two which staff have familiarity.

Absent a reasonable accommodation process, applicants would need to seek a Variance to obtain an exception to a zoning requirement or regulation. It should be noted that Variance approvals run with the land and would transfer from property owner to owner unless a sunset condition is attached. Reasonable accommodation approvals are granted only to the party who has demonstrated compliance with the required process. Finally, it should be noted that the Bloomington Housing and Redevelopment Authority (HRA) already utilizes the reasonable accommodation process to ensure compliance with Fair Housing policies. There is an existing precedent of utilization of reasonable accommodation measures. As a less time intensive and less costly alternative to the variance process, staff recommends the adoption of a reasonable accommodation process in the administrative or zoning provisions of the City Code depending on what is determined to be the best approach.

Other Projects Evaluated but Not Recommended

Staff evaluated six other projects that could have the potential to streamline development in modest ways. After evaluation, it was determined that these projects either had too modest of impact or did not represent best practice. These projects included:

- Conformance Triggers Related to Significant Redevelopment and Change of Use;
- Minor Setback Relief;
- Dual Public Hearing Requirements;
- Type II Home Businesses; and
- Platting Application Review Procedures
- Easement Vacation Approval Authority

Should there be any questions about these topics, staff can address those questions as part of the Study Item discussion.

If there are any other suggestions for ways to lower barriers and streamline development in procedural or other manners consistent with this study, staff welcomes suggestions from the City Council.

Public Engagement

For the subject study, staff has selected an engagement approach of “Inform” according to the IAP2 Spectrum of Public Participation. As noted in the Background section of the staff report, staff is confident that this effort is well supported by previously adopted plans and projects that included significant engagement with the public. In addition, the detailed nature of the topics included in the subject study, including development review procedures and approaches to zoning policy, can sometimes be somewhat confusing or inaccessible to some audiences. That being said, staff has maintained a [Let’s Talk Bloomington project page](#) for the streamlined development study. Staff will continue to post information to this page throughout the process and welcomes questions and other forms of engagement.

PLANNING COMMISSION REVIEW

The Planning Commission reviewed the subject project at study sessions on [05/23/2024](#) and [06/20/2024](#). As part of these discussions, the Planning Commission provided the following guidance and recommendations (reported in the order in which they were discussed):

- **Final Site and Building Plan Review** (sub-projects #2 and #3) – The Planning Commission favored retaining a public hearing process and Planning Commission approval authority over Final Site and Building Plan approvals for larger projects. As such, they were supportive of the recommendation in sub-project #3 to expand Planning Manager authority to approve:
 - New buildings up to 10,000 square feet in floor area; and
 - Revisions to previously approved Final Site and Building Plans as follows (all criteria must be met):
 - Add up to 20,000 square feet of new floor area;
 - Expand the of existing building floor area by up to 25%; and
 - Add up to five new dwelling units to a residential building.
- **Conditional Uses Review** (sub-project #5) – The Planning Commission supported the staff recommendations as shown in Exhibit #2 attached to the staff report, except for the following amendments:
 - **Keep as Conditional** – Major commercial golf facility (use #38), major vehicle repair (use #48), pawn shop (use #61), convenience facility with fuel sales (use #72), convenience facility with fuel sales in existence prior to February 6, 2023 (use #73), service and/or fuel station (use #74), service and/or fuel station in existence

prior to February 6, 2023 (use #75), truck or trailer rental (use #79), truck or trailer rental in existence prior to February 6, 2023 (use #80), vehicle rental facility (less than 35 vehicles) (use #83), retail sales of heavy equipment (use #85), and self-storage facilities (use #93); and

- **Seek Guidance from City Council** – Cemetery (use #25), restaurant with outdoor or rooftop seating or both (use #55), and city licensed congregate living facility serving 5 or more persons (use #5).

Exhibit 2 – Review of Conditional Uses has been updated to reflect the Planning Commission recommendations. Following the Planning Commission recommendation would result in 45 of the existing 112 conditional uses in the Bloomington Zoning Code being designated as permitted on some level.

- **Removing Final Site and Building Plan Requirement for ADUs and Two-Family Dwellings** (sub-project #4) – The Planning Commission supported the staff recommendation to remove the administrative zoning approval requirement (Final Site and Building Plans) for accessory dwelling units (ADUs) and two-family dwellings. Removing this requirement would align the review process for these two development types with the existing process for new single-family dwellings, which is effective in staff’s judgment. To be eligible for this process, the project must be fully Code-compliant.
- **Granting the Planning Commission Additional Approval Authority** (subject to appeal) (sub-projects #6, #7, #8, #9, and #10) – The members were supportive of designating the Planning Commission as the approval authority, subject to appeal, of the following application types:
 - All Conditional and Interim Use Permits (sub-project #6) – currently there are 22 conditional uses and 2 interim uses that require Council approval;
 - Final Development Plans that do not include flexibility requests (sub-project #7);
 - Variance applications, with Planning Commission being designated as the Board of Adjustment (sub-project #8);
 - Tent extensions; and
 - Certificates of Appropriateness, related to historic sites and structures.

Granting the Planning Commission more authority to approve applications is a concrete way to shorten the timelines associated with development approval. In addition, having the appeal process available and in place ensures that parties who do not agree with the decision have the ability to shift the approval authority to the City Council when appropriate.

- **Reasonable Accommodation Process** (sub-project #11) – The Planning Commission supported the staff recommendation to adopt a specific process within City Code to address instances where reasonable accommodation to City regulations is sought.

The full details of the 05/23/24 and 06/20/24 Planning Commission discussions can be found in the attached meeting minutes. Staff will present the Planning Commission's recommendations related to all sub-projects as part of the presentation on 07/15/2024.

RECOMMENDATION

No formal motion or recommendation is required at this time. Staff is seeking feedback and direction from the City Council on the preparation of an ordinance to expand administrative and streamlined development approvals.