

GENERAL INFORMATION

Applicant: City of Bloomington

Location: Citywide

Request: City Code Amendment streamlining land use development approvals through numerous changes to procedures and other zoning requirements, thereby amending Chapters 2, 15, 19, 21, and Appendix A of the City Code.

HISTORY

City Council Action: 11/02/2009 – Approved 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 (<u>Case #PL2024-36</u>)
Planning Commission	06/20/2024	Study item #2 held (<u>Case #PL2024-36</u>)
City Council	07/15/2024	Study item held (<u>Case #PL2024-36</u>)
Planning Commission	09/05/2024	Public hearing scheduled
City Council	09/30/2024	Public hearing anticipated

DEADLINE FOR AGENCY ACTION

Application Date:	07/16/2024
60 Days:	09/14/2024
120 Days:	11/13/2024
Applicable Deadline:	Waived by the applicant

STAFF CONTACT

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PROPOSAL

A project called Admin/Streamlined Development Approvals Study was adopted as part of the 2024 Planning Commission Work Plan. The intent of the project is to lower various barriers to development approval, such as time, fees, and regulatory complexity. Streamlining development approval processes has been found as an effective means to stimulate additional small business formation and housing construction.

Following three study sessions completed with the Planning Commission and City Council between May and July of this year, staff has prepared an ordinance that generally reflects the collective guidance received as part of these discussions. The following list provides a basic summary of the more significant components of the attached ordinance in sequential order:

- **Administrative Code Provisions** (Chapter 2, Article II) – Proposed to be deleted due to proposed changes to variance approval procedures. The Administrative Code provisions include the administrative variance process administered by the Hearing Examiner. This process and associated provisions would no longer be needed if the Planning Commission is granted the authority to approve Variance applications, subject to appeal.
- **Zoning Variance Approval and Procedures** (Chapter 2, § 2.85.04) – Revised to designate the Planning Commission as the City’s official Board of Appeals and Adjustment under State Law. As a result, the Planning Commission would have the authority to approve or deny variances. However, the Planning Commission action would be subject to a three-day appeal period wherein an applicant or member of the public could submit a formal appeal to the City Council. Added procedural language clarifies that a Variance application will be automatically sent to the City Council for final action if the Planning Commission action results in a tie vote or is not consistent with the staff recommendation.
- **Interpretation Appeals** (Chapter 2, § 2.85.05) – Proposed changes would grant the Planning Commission the authority to act on formal appeals to staff interpretation of the City Code, subject to appeal to the City Council.
- **Certificate of Appropriateness Approval Authority** (Chapter 15, § 15.18) – Proposed amendment would grant approval authority of Certificates of Appropriateness to the Planning Commission, subject to appeal. The City Council currently has approval authority over Certificates of Appropriateness, which are required for building and construction projects applicable to Class I and II historic sites and structures.

- **Uses Changed from Conditional to Permitted** (Chapters 19 and 21) – The subject ordinance proposes to designate 57 uses that currently Conditional (“C”) as Permitted (“P”), meaning that a conditional use permit would no longer required prior to initiation, operation, or occupancy of these uses. The amendments needed to effectuate these proposed use status changes are distributed throughout the ordinance, as the zoning districts currently located in Chapter 19 of the City Code include lists of uses, whereas the status of uses for zoning districts in Chapter 21 are generally located in the use tables (§ 21.209). To assist in the review of these proposed changes, staff has created an attached exhibit (Exhibit A – Conditional Use Amendments) that lists all of the uses being changed in some form, with all of the relevant zoning districts also listed. The exhibit includes a column of additional staff notes, wherein any proposal or solution that is unique only to a given use is listed.
- **Tents Approval Extensions** (Chapter 19, § 19.63.06) – Proposed change would grant the Planning Commission the authority to approve time extensions for tents to be erected longer than 25 days. The City Council is currently the listed authority empowered to act on such requests.
- **Mural Permit Appeal Process** (Chapter 21, § 21.301.25) – Given the proposed change to designate the Planning Commission as the Board of Adjustment and Appeals, the appeal procedure to a mural permit denial, which is an administrative process, is proposed to be revised to have the Planning Commission act on an appeal. However, the Planning Commission decision may be appealed to the City Council in the rare circumstance where that may be desired by the applicant.
- **Accessory Dwelling Unit (ADU) Approval Process** (Chapter 21, § 21.302.03) – The requirement to obtain administrative Final Site and Building Plan approval for ADUs prior to the issuance of a building permit is proposed to be removed. Removing this requirement would make the review process equivalent to a building permit for a new single-family dwelling.
- **Two-Family Dwelling Approval Process** (Chapter 21, § 21.302.04) – Similar to the proposed change to the ADU approval process (noted immediately above), the Streamline Ordinance proposes to remove the requirement to obtain Final Site and Building Plan approval prior to the issuance of a building permit. This procedural change would align the review and approval process of a two-family dwelling to that of a single-family dwelling.
- **Outdoor Dining Noise Mitigation Plan** (Chapter 21, § 21.302.19) – Downstream of recommending that restaurants with outdoor dining be allowed as a permitted use, staff is recommending adding a requirement for a noise mitigation plan for outdoor dining areas located within 250 feet of residential uses. A noise mitigation plan would detail context-specific strategies to effectively manage noise associated with outdoor dining areas. This proposed language would be added to the use standards for restaurants. It should be noted that under the broader ordinance, restaurants with rooftop seating would remain designated as a conditional use. Rooftop seating has a higher potential for noise-related conflicts than typical, at-grade outdoor dining areas.

- **Sign Variance Approval** (Chapter 21, § 21.304.24) – Similar to regular zoning variances, the Sign Variance section is proposed to be updated to grant the Planning Commission the authority to take action on these applications, subject to appeal to the City Council. Other procedural language was added, similar to the zoning variance section, directing that any Planning Commission action resulting in a tie vote or that is not consistent with the staff recommendation will automatically trigger City Council action on the application.
- **Expansion of Administrative Approval of Final Site and Building Plans and Other Procedural Updates** (Chapter 21, § 21.501.01) – The ordinance proposes to expand the limits of administrative approval for Final Site and Building Plans by the Planning Manager. Under these proposed amendments, projects could be approved administratively if they met the following criteria:
 - New buildings or additions that do not exceed 10,000 square feet; and
 - Revisions to previously approved Final Site and Building Plans, except those that exceed:
 - Building additions that exceed 25% of the existing floor area or exceed 20,000 square feet; or
 - Add five or more new dwelling units.

Additional language is proposed that would grant the Planning Manager, based upon their professional judgment, to require public notice, hearing, and Planning Commission review of Final Site and Building Plans due to potential environmental or land use impacts, even if all the administrative review criteria are met. This language is intended to address unforeseen or unique developments that may not have significant amounts of floor area or dwellings, but still have the potential for larger impacts. The recent Bloomington School District stadium applications are an example of the type of application that would trigger notice and additional review.

Procedures for the review of Final Site and Building Plans are also updated to note that City Council action is automatically triggered when a Planning Commission action for approval or denial is not consistent with the staff recommendation. In addition, any application for Final Site and Building Plans that is associated with another action that requires City Council approval, such as a Rezoning, also requires City Council action. This requirement also relates to the approval of tools and incentives associated with the Housing Opportunity and Preservation Ordinance, which only the City Council has the authority to grant.

- **Final Development Plans Review Procedures and Expansion of Administrative Approval** (Chapter 21, § 21.501.03) – Proposed amendments grant the Planning Commission the authority to approve Major Revisions to Final Development Plans that do not include requests for flexibility from City Code standards as allowed in § 19.38.01(c). If the Planning Commission action resulted in a tie vote or was not consistent with the staff recommendation in terms of approval or denial, the action would automatically be sent to City Council. In addition, few Final Development Plans would still need to be approved by the City Council.

Similar to the proposed changes expanding the administrative approval limits on Final Site and Building Plans, the criteria for administrative approval of Final Development Plans is proposed to expand in like fashion. The criteria between these two application types mirror one another. Any application with new requests for flexibility may not be approved administratively. Only the City Council has the authority to act on a request for Planned Development (PD) flexibility.

- **Conditional and Interim Use Permit Review Authority** (Chapter 21, § 21.501.04 and § 21.501.05) – The Streamline Ordinance would grant the Planning Commission the authority to take action on all Conditional and Interim Use Permits, subject to appeal to the City Council. Currently there are 22 conditional uses and two interim uses that require City Council approval. The ordinance would remove this extra procedural complexity. However, similar to procedural amendments to other application types, if the Planning Commission action resulted in a tie vote or was not consistent with the staff recommendation, the application would automatically be sent to the City Council for final action.

Related to general standards for conditional use permits (§ 21.501.04(i)), the ordinance proposes to strike two uses that are elsewhere proposed to be eliminated from the use table – tennis courts accessory to single-family dwellings and groupings of two-family dwellings. This amendment is more of a cleanup action.

- **Application Processes Changes** (Chapter 21, § 21.502.01) – There are a number of amendments needed to the application processes table in the Zoning Code to effectuate all of the procedural amendments proposed elsewhere in the Streamline Ordinance.
- **Reasonable Accommodation Process** (Chapter 21, new section proposed as § 21.507.03) – A process is proposed to be created to allow for the public to request a reasonable accommodation to Zoning regulations. If approved, a reasonable accommodation request would in effect create an exception to a regulation within the Zoning Code. The request would need to be consistent with the intent of the Americans with Disabilities Act (ADA) or Fair Housing Act of 1988, which in this case would be utilized to ensure reasonable access to housing. Requests of a similar nature that have previously been submitted to the City have been processed as Zoning Variances, which is not the best tool to address requests of this nature. These requests would be processed administratively by the Planning Manager in consultation with the City Attorney and City ADA Coordinator.
- **Fee Schedule Changes** (Appendix A) – Due to all of the procedural changes proposed as part of the Streamline Ordinance, there are a number of amendments to that City’s Fee Schedule, located in Appendix A of the City Code, that are necessary for consistency purposes. These proposed changes are as follows:
 - **Planned Development Applications** – A new fee would be established for major revisions to final development plans without requested flexibility, a new application type that could be acted upon by the Planning Commission.
 - **CUP and IUP Fees** – Fees for Conditional Use Permit and Interim Use Permit applications were amended to reflect the proposed procedural changes for these applications. These changes relate to Planning Commission being granted the

authority to approve all applications subject to appeal, except when bundled with an associated application type that must be approved by the City Council, such as a Rezoning.

- **Variance Application Fees** – The fees for Variances were adjusted to strike the administrative variance process and affirm that there is a fee required for an applicant appealing the decision of the Planning Commission.
- **ADU Approval Fee** – A separate fee was previously created in the Fee Schedule for the review of Final Site and Building Plans for Accessory Dwelling Units (ADUs). With the proposed removal of the requirement for ADUs to obtain Final Site and Building Plan approval, this fee is no longer needed and is proposed to be removed as a result.

This list is intended to provide a summary of the attached Streamline Ordinance. Analysis of greater depth is provided for provisions or decision points that are more complex in a subsequent section of the staff report.

BACKGROUND

The Planning Commission conducted two study items on 05/23/2024 and 06/20/2024 for the project to review the initial staff recommendations and provide directional guidance. The City Council also completed a study item on 07/15/2024. The meeting videos are available by clicking the link on the dates listed above. The meeting minutes from these discussions are also attached for reference.

After conducting two study items, the Planning Commission generally supported all of the staff recommendations presented. However, while reviewing the list of 57 uses staff recommended to be designated as permitted as opposed to conditional, the Planning Commission did direct that 12 of these uses be removed from consideration. The uses that were recommended by the Planning Commission to not be included in the Streamline Ordinance are highlighted on Exhibit A.

The City Council discussed this proposal on July 15, 2024. Following the staff presentation and discussion, the Council generally supported all of the recommended actions. They did provide guidance for two changes to the Planning Commission recommendation as follows:

- **Final Site and Building Plans Review** – While also expressing support for a more limited expansion of administrative approvals of Final Site and Building Plans as recommended by the Planning Commission, the City Council directed staff to consider amendments that would allow for full administrative review and approval regardless of project scale. The City Council also emphasized that this procedural change should be paired with public notification on par with existing processes to inform the public, respond to questions, and receive their feedback. Staff explored this guidance further and attempted to draft these procedural changes. However, after analyzing the potential process further, staff found that the potential time-saving benefits of this change to be negligible or detrimental to the goals

of streamlining development due to the increased notification requirements as directed by the City Council. As such, the Streamline Ordinance currently reflects the approach of expanding the Planning Manager's authority to a level that staff is confident can be done so comfortably under the current process for administrative Final Site and Building Plans, which does not include formal notification to surrounding property owners. Additional analysis of the decision point made by staff is found in the Analysis section of the staff report.

- **Conditional Use Amendments** – Instead of adhering to the 45 uses recommended by the Planning Commission to be changed from Conditional to Permitted on some level, the City Council directed that the ordinance to include all 57 uses as originally recommended by staff. When suggesting this direction, the City Council noted that these uses could be removed from the ordinance prior to adoption if they later determined it appropriate.

From staff's perspective, the City Council was seeking to keep multiple options open from the standpoint of advancing the goals of the Streamlined Development Project.

ANALYSIS

Project Goals

As part of the study items that were presented to the Planning Commission and City Council, staff presented information about the goals of the project and the importance and benefits of lowering barriers to development approval. Streamlining regulatory processes can offer benefits from the standpoint of local business formation and the creation of housing. To evaluate potential ways to amend the City Code for the purposes of streamlining development, staff developed four main criteria:

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

Staff is submitting this information again as part of this report to help summarize how the Streamline Ordinance was developed to lower barriers to development approval. It is also important to reiterate that the integrity, thoroughness, and accuracy of internal staff review of administrative applications, building permits, and other types of reviews must be maintained at a high standard for streamlining to be effective while protecting public health, safety, and welfare.

Ordinance Analysis

Staff provided a summary of the ordinance in the Proposal section of the staff report. The following analysis is intended to provide additional information about components of the ordinance that required greater study or staff consideration. Analysis is provided by topic in the following list:

- **Final Site and Building Plans Review Process – What is Best: Expanding Planning Manager Authority or Full Administrative Site Plan Review?** As explained during the study items with Planning Commission and City Council, there are two main approaches to zoning or development approval processes created to perform site plan review: 1) Establishing limits of staff or administrative approval, or 2) Full administrative site plan review. The Bloomington Zoning Code currently utilizes the first approach. Staff (the Planning Manager) has the authority to approve Final Site and Building Plans applications that do not exceed certain limits established in Code, typically measured in square footage of buildings or new dwellings. The second approach is to grant staff the authority to administratively review and approve site plans for all new development regardless of size or scale. In both scenarios, if there is another application type associated with the site plan review that requires City Council action, such as a Rezoning application, then the full application must be acted upon by the authority empowered to approve all the components of the application.

Another critical dynamic to understand as part of the decision of how to structure the review and approval process for site plan review is how much public notice should be provided for these applications. As part of the City Council discussion to allow full administrative site plan review, some members also stated that public notification is an important part of the process. Following this guidance, staff attempted to design a process that allowed full administrative site plan review while also providing the public with a mailed notice a minimum of ten days prior to the earliest date that the Planning Manager could act on the application. To test how long such a process would take to execute, Planning staff worked through multiple development application test scenarios with a calendar and informed by typical notification timelines. What staff found was that such a process would likely take somewhere between 3.5 to 5 weeks to properly execute. While that timeframe would provide a very modest time savings for some applications currently processed by the Planning Commission, it would greatly increase the time required to process other types of applications that are currently processed administratively. There are many more applications that would require more time to process than less time. In addition, the application fee for administrative Final Site and Building Plans would need to increase in order to accommodate the costs associated with preparing and distributing a mailed notice to all surrounding properties. As such, requiring notice on a level similar to a typical development application greatly reduced the benefits from a streamlining development perspective in staff's judgment.

Given that adding time to the approvals process runs contrary to City Council and Planning Commission overall guidance, staff is advancing the Planning Commission recommendation of expanding the limits of administrative approval. As part of the City

Council discussion of this proposal, members of the Council also indicated that they were also supportive of this direction. Given the desire for notification for larger development projects, it is staff's belief that expanding the limits of authority under the current structure represents the best compromise of offering administrative approval for smaller and some medium-sized projects while maintaining a public notice and hearing process for larger developments. It should also be noted that many Final Site and Building Plan applications for medium and larger developments also include other required approvals (Conditional Use Permit, Rezoning, Plat, etc.) that necessitate action by the Planning Commission or City Council. As such, many of these applications will require Planning Commission or City Council action regardless of whether full administrative site plan review is allowed or not. To summarize, the revised procedures in the Streamline Ordinance offers the best balance between administrative approvals and public notification when appropriate. Finally, it should be noted that site plan approval procedures can be revisited in two- or three-years' time to evaluate how the amended procedures are performing.

- **Granting the Planning Manager the Authority to Require Planning Commission Review and Action** – Related to the recommended expansion of administrative approval limits for Final Site and Building Plans and Minor Revisions to Final Development Plans, staff felt it prudent to add language stating that the Planning Manager has the authority to require Planning Commission review and public notice and a hearing for projects that could be processed by staff but that have the potential for more significant environmental or land use impacts. The reason this language is proposed is to address unique developments that do not track well with the traditional metrics of building floor area or number of dwellings. Two examples of these development types could be an electrical substation or an outdoor sports facility that allows larger assembly. Neither of these examples have large amounts of building floor area or dwellings. However, they both could be considered impactful to the surrounding area. As such, staff thinks it is prudent to have the ability to require a public notice, hearing, and Planning Commission review and action in such cases.
- **Removing Restaurant with Outdoor Dining as a Conditional Use due to Noise Mitigation** – As part of the Streamline Ordinance, staff is recommending adopting a requirement for a noise mitigation plan for outdoor dining areas that exceed 16 seats and are located within 250 feet of a site that is zoned and used residentially. This recommended change is to grant staff the tools to more effectively manage noise generated from at-grade outdoor dining areas located near residential uses. It is staff's contention that effective noise mitigation should provide confidence that restaurants with outdoor dining can be designated as a permitted use. Restaurants with rooftop dining or drive thrus would remain a conditional use, as they have greater potential for impacts to surrounding properties. As part of a noise mitigation plan, a restaurant use could specify when or where outdoor amplified music through speakers is allowed or where noise barriers can be added to shield sensitive uses nearby. These are just two examples of potential solutions. In addition to this requirement, sites must still comply with noise source requirements in City Code (§ 10.29.02). Staff believes that lowering barriers for restaurants with outdoor dining is important for supporting small businesses and creating more vibrancy. Additional café or

other patio seating can make Bloomington's neighborhood commercial areas more dynamic and inviting.

Racial Equity Impact Analysis

Staff completed a Rapid Racial Equity Impact Analysis for this ordinance. It is attached for consideration. Overall, staff finds that the Streamline Ordinance offers many beneficial policy and procedure changes that have the potential to produce positive outcomes from an equity standpoint.

OUTREACH

Outreach and notification completed as part of this project includes the following actions to date:

- **Newspaper Notice** (10-day notice – 08/22/2024 Sun Current) – The notice was published in the Sun Current
- **Public Hearing Notice Online** – The Sun Current hosts online public hearing notices on their website. In addition, a notice of public hearing for the City Council meeting will be added to the webpage that lists all ordinances under consideration for future public hearing dates. The Streamline Ordinance will be added to this page if scheduled for a public hearing at the City Council.
- **E-Subscribe Group Notification** – The E-Subscribe users for both the Planning Commission list (2,382 subscribers) and Zoning Ordinance Update list (1,941 subscribers) were notified about this project.
- **Let's Talk Bloomington Page** – Throughout the entirety of the project, staff has maintained an online engagement page on Let's Talk Bloomington to provide resources, timelines, and other substantive updates to the public. The engagement report from the page is attached for consideration.

RECOMMENDATION

Staff recommends approval of the ordinance through the following motion:

I move to recommend adoption of the Streamlined Development Ordinance, thereby amending Chapters 2, 15, 19, 21, and Appendix A of the City Code.