

# Land Use and Zoning -101

**SE CPAC**

July 25, 2016

# Basic Framework

## **Comprehensive Plan**

- Controls over zoning
- Requires state review of changes
- General language/broad categories
- Many elements, not just land use

## **Zoning**

Districts allow different uses

PUD's-Planned Unit Developments

## **Development regulations**

Landscape, Parking, etc.

## **Building Code**

# Types of Applications

- **Land Use change (transmittal/adoption)**
- **Rezoning**
- **AD-Administrative Deviation**
- **Exception**
- **Waiver of Liquor Distance**
- **Waiver of road frontage/Sign Waiver**
- **Variance**

# Who decides what?

- **City Council** - Land use changes, Rezoning, and sign and road frontage waivers; appeals from Planning Commission final decisions
- **Planning Commission** – Final Decision on exceptions and variances, waivers of liquor distance; recommends on Land Use amendments and Rezoning
- **Zoning Administrator**- Administrative Deviations

# How is a change initiated?

- Most actions initiated by application from the owner or someone on their behalf
- Can be initiated by a Council Member
- Contact information for Agent for owner appears on application form

# Timing

- If Council action required, introduced as a bill and will have minimum 6 weeks, with Public Hearing dates set before Council at outset
- If PC action only, timeframe may be shorter
- Notices mailed to owners within 350 feet at least 14 days prior to public hearing
- Notice published in paper at least 14 days before hearing
- Signs posted within 5 days of filing application

# Quasi Judicial

- Restricting constitutionally protected property rights of owner to use their land as they choose
- Must have notice and due process
- Must be found to be in the public interest based on **competent substantial evidence**
- Criteria in Code for each decision

# Why don't CPAC letters carry more weight?

- Are they based on competent substantial evidence?
- Did the CPAC fully understand the request and have all the evidence before them?
- **Opinion is not evidence** unless it is from an expert in their field of expertise- a real estate agent on property values, and engineer on traffic design



# Code provides criteria

**The waiver for minimum distance requirements from a church or school for a liquor license location may be granted if there exist one or more circumstances which negate the necessity for compliance with the distance requirements, including, but not limited to the following:**

**(1)The commercial activity associated with the alcoholic beverage use is of a lesser intensity than the commercial activity associated with the alcoholic beverage use which previously existed; e.g., there has been a reduction in the number of seats or square footage or the type of license;**

**(2)The alcoholic beverage use is designed to be an integral part of a mixed planned unit development;**

**(3)The alcoholic beverage use is located within a shopping center with an aggregate gross leasable area of 50,000 square feet or more, inclusive of all outparcels and meets the definition of a "bona fide restaurant", as defined in Section 656.805(c);**

**(4)The alcoholic beverage use is not directly visible along the line of measurement defined in Section 656.806 and is physically separated from the church or school, thereby negating the distance requirement as a result of the extra travel time; or**

**(5)There are other existing liquor license locations of a similar nature in the immediate vicinity of the proposed location; provided, however, that no waiver shall be granted pursuant to this criterion if the proposed liquor license location is closer to the church or school than other existing locations**

# Another Example

**d) Street frontage waiver criteria. The waiver for minimum required street frontage may be granted if the Council makes a positive finding based on substantial, competent evidence that the application meets all of the following criteria:**

**(1) There are practical or economic difficulties in carrying out the strict letter of the regulation;**

**(2) The request is not based exclusively upon the desire to reduce the cost of developing the site or to circumvent the requirements of Chapter 654 (Code of Subdivision Regulations);**

**(3) The proposed waiver will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site and will not substantially interfere with or injure the rights of others whose property would be affected by the waiver;**

**(4) There is a valid and effective easement for adequate vehicular access connected to a public street which is maintained by the City or an approved private street; and**

**(5) The proposed waiver will not be detrimental to the public health, safety or welfare, result in additional expense, the creation of nuisances or conflict with any other applicable law.**

# So how can you be effective?

- Raise specific issues that your CM can ask staff to look into or question at the hearing
- Find an expert to address a specific criteria in issue
- Attend the Public hearings with lots of neighbors as early as possible in the process- this will identify issues up front
- Do your homework