



DENVER ZONING CODE (DZC) UNLISTED USE DETERMINATION: TEMPORARY TRAILERS EXPANDING PRIMARY CULTURAL USE

EFFECTIVE DATE OF DETERMINATION: DECEMBER 4, 2023

SUMMARY

The Denver Public Library has submitted a request for an unlisted use determination for a use that is not addressed directly in the Denver Zoning Code: In preparation for construction at two library branches, they propose to relocate portions of the primary library use into temporary trailers. The proposal states a need to relocate or expand the primary use into trailers as a necessity for keeping these public-serving uses operational while the building is being prepared for construction.

The specific use proposed involves relocating office functions from inside the two library buildings to temporary trailers while the buildings are prepared for renovations. The relocated office functions are not customer-facing services and would not involve moving books or other resources used by customers into the trailers.

33 East Bayaud Ave.: The Ross-Broadway Branch of the Denver Public Library proposes a trailer that can accommodate desks, a table with chairs, a recliner, and six lockers. The subject property is located in the G-MU-5, UO-3 zone district.

9755 East Girard Ave.: The Hampden Branch of the Denver Public Library proposes a trailer to accommodate 8 desks and chairs, 16 lockers, and a recliner. This property is located in the S-SU-F zone district.

While there are several specific construction-related uses identified in the Denver Zoning Code, none address the pre-construction preparations described in the request. This use, Temporary Trailers for expansion or relocation of a portion of a primary cultural use, is allowed under this determination as a temporary unlisted use in compliance with Section 12.4.6 of the Denver Zoning Code.

UNLISTED USE FOR TEMPORARY TRAILERS - SUMMARY OF STANDARDS

In general, this determination applies to temporary trailers when they are proposed as a relocation or expansion of a primary cultural use into the trailers during preparation for construction. This determination distinguishes the eligible primary use as a 'cultural' one because it is limited to those specific use types under the Cultural/ Special Purpose/ Public Parks & Open Space use category (Denver Zoning Code Section 11.12.3.3). The five specific uses that comprise the use category are cemetery, library, museum, city park, and open space – conservation. There is a clear public benefit to temporarily allowing a trailer to house an expansion of these uses to enable a continuation of service, even while parts of the building are unavailable for use. The intent of this use is to provide an option for these

public-serving primary uses to adapt to changing conditions on-site and to ensure sufficient desk space during the early phases of preparation for construction within an existing building. This temporary use will allow a temporary trailer to be placed on-site only in the 18 months or less leading up to construction; the trailers must be removed prior to the start of construction.

This unlisted temporary use, as generally described, will hereafter be referenced as a “Temporary Trailer use.” A Temporary Trailer use is not specifically listed as a permitted temporary use in the Denver Zoning Code; therefore, the Zoning Administrator must determine if the use is allowed.

APPLICABLE RULES AND REVIEW CRITERIA FOR DETERMINING AN UNLISTED TEMPORARY USE

UNLISTED TEMPORARY USE – DZC, SECTION 11.11.1

Unlisted temporary uses, when permitted in a specific zone district, are governed by the Denver Zoning Code (“DZC”), Section 11.11.1, *Unlisted Temporary Uses*, which authorizes the Zoning Administrator to allow and impose limitations on an unlisted temporary use after review according to the procedures and review criteria in DZC, Section 12.4.6, *Code Interpretations and Determination of Unlisted Uses*.

GENERAL AUTHORITY TO DETERMINE UNLISTED USES

DZC, SECTION 12.4.6

According to DZC, Section 12.4.6.1, the Zoning Administrator may determine whether a specific unlisted use, including unlisted temporary uses, “may be permitted in one or more zone districts, and what type of use review is required.”

The Zoning Administrator is directed to:

1. Review and evaluate the application in light of this Code, the Comprehensive Plan, established administrative practices and past interpretations, the potential for establishing a precedent with the interpretation, and any other relevant policy and regulatory documents;
2. Review and evaluate the application with consideration of the general rules of interpretation specified in this Section 12.4.6.3.F, as applicable; and
3. Consult with the Manager, City Attorney, other agencies and staff, as necessary.

DZC, SECTION 12.4.6.3.D.

In making a use determination, the Zoning Administrator may impose reasonable conditions on such use after consideration of, “at a minimum, the compatibility of the use within the zone districts in which the use may be permitted, the intensity of the use, the amount and configuration of physical space occupied by the use, and the potential for adverse impacts on adjacent properties.” (DZC, Section 12.4.6.3.E.2.) As part of the use determination, the Zoning Administrator must also determine which zoning permit use review procedure will apply, such as Informational Notice (“ZPIN”), Special Exception

Review (“ZPSE”), or administrative review without notice or hearing (“ZP”). Determining the use review procedure “shall be based on consideration of the zoning procedure(s) applicable to similar land uses or subject matter, and/or the degree to which the zoning procedure may inform mitigation of possible adverse impacts” from the subject use (DZC, Section 12.4.6.3.E.3.).

REVIEW CRITERIA FOR DETERMINING UNLISTED TEMPORARY USES

Denver Zoning Code, Section 12.4.6.4, specifies the criteria against which the Zoning Administrator must review all requests for determining whether an unlisted temporary use should be allowed. The Zoning Administrator must find that the request satisfies all the relevant review criteria before permitting the unlisted use. If the Zoning Administrator cannot find the proposed use satisfies the review criteria, then the only regulatory path for permitting such use is to amend the text of the zoning code to specifically list and allow the use.

In sum, an unlisted use may only be permitted through the process established in DZC Section 12.4.6 if the determination is: “1. Consistent with the intent of this Code; and 2. Consistent with the intent of the subject Neighborhood Context and zone district(s), and with the intent of any specific Code provision(s) at issue.” (DZC, Section 12.4.6.4.A.)

In addition, the Zoning Administrator must find that the “proposed use has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s)” by assessing all relevant characteristics of the proposed use, including without limitation (DZC, Section 12.4.6.4.B.1.):

“The type, size, and typical massing of buildings and structures associated with the unlisted use;

“Transportation requirements, including the modal split for people and freight, by volume type and characteristics of traffic generation to and from the site;

“Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity;

“The amount and nature of any external effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;

“The type and extent of impacts on adjacent properties created by the proposed use in comparison to impacts from other uses permitted in the zone district.”

ANALYSIS

CONSISTENCY WITH DENVER ZONING CODE’S INTENT – DZC §12.4.6.4.A.1

The overarching purpose of the Denver Zoning Code is to “implement Denver’s Comprehensive Plan and guide orderly development of the City that preserves and promotes the public health, safety, prosperity, and welfare of its inhabitants.” DZC, Section 1.1.1, *Purpose*. To achieve its purpose, the intent of the Denver Zoning Code is to strike a balance between conservation and development, to

achieve design excellence in the built environment, and to guide Denver toward a prosperous and sustainable future (DZC, Section 1.1.2., *Intent*).

In this case, if allowed, a Temporary Trailer, necessitated for relocation or expansion of a cultural use prior to construction, will ensure orderly development and redevelopment in accordance with the City's adopted plans, as well as promote the public health and safety by planning for and avoiding a disruption in public services that many Denver residents and businesses depend upon for knowledge building, personal enrichment, and connection with others. Libraries, museums, city parks and other cultural institutions under the use category provide access to educational opportunities and materials, the internet, recreation, art, and other enriching activities at no or low costs to Denver residents. This determination supports the public welfare by supporting the flexibility and adaptability of these uses over time.

Accordingly, I find that the proposed Temporary Trailer use is consistent with the overall purpose and intent of the Denver Zoning Code.

CONSISTENCY WITH INTENT OF SUBJECT NEIGHBORHOOD CONTEXT AND ZONE DISTRICT – DZC §12.4.6.4.A.2

The Temporary Trailer for expansion of a cultural use in all zone districts will be permitted where a cultural primary use is permitted. Uses in the Cultural/ Special Purpose/ Public Parks & Open Space use category are allowed in all neighborhood contexts. Library is the specific use that is allowed in the broadest range of zone districts, including residential districts. Given that the Temporary Trailer for expansion of a cultural use will be limited to an 18-month duration and will be allowed only as an expansion of an existing *permitted* primary use, it is expected to be consistent with the neighborhood context and zone districts.

COMPARISON TO OTHER PERMITTED CONSTRUCTION-RELATED USES

As described above, the Zoning Administrator must find that the proposed temporary use “has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s)” by assessing all relevant characteristics of the proposed use (DZC, Section 12.4.6.4.B.1).

The proposed Temporary Trailer use is similar in character and impact to other construction-related uses, such as a Temporary Construction Office, which is defined as a temporary land use and is allowed in all zone districts (DZC, Section 11.11.15.1). A Temporary Office – Real Estate Sales is another similar temporary land use that is allowed in all residential and mixed use commercial zone districts (DZC, Section 11.111.16). Both temporary uses utilize a similar structure as what is proposed to be located on a site with the intent to move it after construction is complete (as is the case with a construction office) or when sales or rental of recently constructed or renovated residential units is complete. Each of these temporary uses has a limit on the length of time they may remain on a property, with options to extend that time period for up to 2-3 years. The proposed Temporary Trailer use will be similar in how it looks on the site, will have a similar impact in terms of trip generation and noise, and is proposed to be allowed for a similar duration.

The key difference between the Temporary Trailer for expansion of a cultural use and the temporary construction-related offices described above is the timing in the construction process. The two listed uses are allowed during and after construction, while the Temporary Trailer is exclusively proposed for a limited duration before construction. Further, users of the Temporary Trailer will be staff of the cultural use itself, rather than a contractor, project manager, or other third party.

Daily vehicle and pedestrian traffic generated from the employees of the cultural institution using the Temporary Trailer are likely to be the same as those generated by the same people when they conducted their work inside the primary building slated for construction activity. The expansion of the primary use into a temporary trailer therefore will not generate new vehicle or pedestrian trips to the subject property. In terms of other external effects, any potential adverse impacts from a permitted Temporary Trailer use are primarily controlled through application of specific use limitations provided at the end of this document. These limitations state that the trailer must comply with the same setbacks applicable to the primary structure and must be removed within 18 months of when it is first established on a site with an option to extend that time for a total of 2 years.

Compared to other similar permitted temporary construction-related uses, the proposed Temporary Trailer use is similar in function, character, and duration, and is likely to have little to no potential for adverse impacts on its neighbors from daily operations.

CONCLUSION

Based on the analysis described above, I find that the potential for adverse impacts is minimal from a Temporary Trailer use for expansion of a specific primary use under the use category Cultural/ Special Purpose/ Public Parks & Open Space. This holds true particularly when compared to other permanent and temporary uses permitted in the zone districts where this use category is allowed.

FINAL USE DETERMINATION AND DECISION

Based on the above analysis and according to the review criteria for unlisted use determinations in DZC, Section 12.4.6, I find that the proposed Temporary Trailer use:

1. Is consistent with the intent of the Denver Zoning Code;
2. Is consistent with the intent of the neighborhood contexts and zone districts of the Denver Zoning Code; and
3. Is substantially similar in character and impact to other permitted primary and temporary uses.

I also find that the type and extent of impacts on adjacent properties by a proposed Temporary Trailer use are likely no different from than other permitted permanent and construction-related temporary uses that could accompany primary uses categorized as Cultural/ Special Purpose/ Public Parks & Open Space.

As part of the unlisted use determination, the Zoning Administrator must also determine the applicable zoning permit use review procedure to apply to the unlisted use. I determine that a Zoning Permit ("ZP") review will be required for all requests to establish a Temporary Trailer use, according to the review process stated in DZC, Section 12.4.1, *Zoning Permit Review*.

In conclusion, my final decision is to **APPROVE** the proposed Temporary Trailer use as an “unlisted temporary use,” according to the following **USE DEFINITION, APPLICABILITY LIMITS, and USE & PERMIT LIMITATIONS**:

1. **DEFINITION OF UNLISTED TEMPORARY USE:** The use at issue shall be referred to as “Temporary Trailer use,” which shall mean:
 - a. A structure designed and constructed for expansion of a portion(s) of the primary use in preparation for construction. An example is when occupied space in a permanent structure must be reserved for construction activities or reorganization of the space prior to construction. The materials, furnishings, and equipment moved into the trailer must be necessary for the operation of the primary use; for example, the Temporary Trailer use may function as an office or other extension of the primary use.
2. **APPLICABILITY OF UNLISTED USE DETERMINATION:** This use determination and final decision shall apply to allow the Temporary Trailer use in all zone districts established under the Denver Zoning Code.
3. **USE & PERMIT LIMITATIONS:** Applications for a zoning permit for Temporary Trailer use shall comply with the following limitations:
 - a. The temporary use may only be permitted as an expansion of a specific primary use type under the use category Cultural/ Special Purpose/ Public Parks & Open Space (Denver Zoning Code Section 11.12.3.3).
 - b. The temporary use shall be completely enclosed within a structure.
 - c. The temporary use shall not displace required parking, as calculated for the primary use under the current Denver Zoning Code regulations.
 - d. The structure containing the Temporary Trailer use shall comply with the same required setbacks applicable to the primary structure.
 - e. No more than one trailer shall be placed on a zone lot for this use at one time.
 - f. A Temporary Trailer shall not exceed one story in height.
 - g. A Temporary Trailer may be located on the same zone lot for no more than 18 calendar months with the issuance of a zoning permit. Subsequent extensions may be approved for a total of no more than 2 years.
 - h. A zoning permit issued for a Temporary Trailer use shall expire upon the 60th day after the city’s approval of a building permit for construction or at the “start of construction,” as the latter term is defined in the Division 13.3 of the Denver Zoning Code, whichever occurs first.
 - i. A Temporary Trailer shall be removed from the subject property on or before the expiration date of the zoning permit.

APPEAL

This final use determination may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this written decision, according to DZC, Section 12.4.8, *Appeal of Administrative Decision*.

A handwritten signature in black ink that reads "Tina R. Axelrad" followed by a horizontal line.

Tina Axelrad
Zoning Administrator

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