

Project: Advancing Equity in Rezoning
Subject: Small Working Group Topic #1 – Review Criteria
Meeting Dates: January 16, 2024, 2:30pm - 4:00pm
January 18, 2024, 11:00am - 12:30pm
Meeting Location: Webb 4.1.3 / Virtual Meeting

Meeting Notes

Meeting Objectives:

- Review background and history of rezoning review criteria and detail issues identified.
- Discuss AEIR team's evaluation of existing criteria and proposed approach for changes.

Welcome, Introductions and Agenda Review

- Meeting participants introduced themselves by sharing their name and organization.

CPD Presentation

- Brandon Shaver presented the meeting agenda, project background, and a refresher on previous AEIR strategies.
- Rob Haigh presented an overview of the existing rezoning criteria, staff evaluation and proposed changes.

Proposed changes:

1. Remove "Uniformity with District Regulations and Restrictions"
2. Remove "Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements"
3. Combine "Consistency with Adopted Plans" with "Public Health, Safety and General Welfare"

Task Force Clarifying Questions & General Statements

- General question: Are we just changing the wording or actual criteria?
 - Answer: updating the criteria to address identified issues, but have not yet drafted the language
- Appreciate the point brought up around some of these criteria have been used in the past to promote inequality.
- Having fewer criteria will certainly be clearer and less confusing, and will make it clearer and more approachable for those who want to comment on the streamlined review criteria.
- We need to keep the proposed rezoning separate from any specific development proposal (which could change over time). Evaluate what a proposed zone district allows versus adopted plan guidance.
- How revised were the criteria in 2010 Denver Zoning Code? Would like to see analysis of what was kept/changed vs Former Chapter 59.
 - Follow-up: project team distributed comparison table prior to January 24th Planning Board and City Council joint session
- Community need: conflict around specific uses, previously found not applicable for affordable housing development
 - Can conflict with broader policy goals, cases of rezoning industrial areas, policy goal of preserving manufacturing areas valued over community need for affordable housing
- Future efforts like citywide ADU rezoning and legislative rezonings after plan adoption will free up time for better evaluations of individual rezoning proposals.

Discussion & Mentimeter Activity

Proposed Change 1: Remove “Uniformity with District Regulations and Restrictions”

- Mentimeter Activity: 5-point scale question (strongly disagree [0] to strongly agree [5]): “This would make the review criteria easier to understand and/or less ambiguous”
 - Average score: 4/5 (agree) (Note: Due to extended discussion at the 1/18 session, the mentimeter activity only took place at the 1/16 Small Working Group session).

Comments/Questions/Discussion:

- Uniformity of District Regulations and Restrictions criteria is unnecessary — it’s inherent to the structure of zoning with defined zone districts
- What is the city’s current policy regarding waivers and conditions?
 - Answer: they don’t conflict with this criterion (zone district with waiver is still consistent with uniform application of regulations and restrictions). Additionally, these instances are rare and CPD’s policy is to use waivers as a bridge to a future text amendment and not to use conditions.
- Redundant to entire process, CPD wouldn’t let a proposal move forward if it wasn’t consistent. Can think of one instance when applicant went rogue and moved forward with proposal and City Council denied application based on this criterion.
- During public hearings, Planning Board and City Council do not see the full text of the criterion in staff reports and presentations, just the “B. Uniformity of District Regulations and Restrictions” title
 - Should consider showing the full text for the public as well.

Proposed Change 2: Remove “Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements”

- Mentimeter Activity: 5-point scale question (strongly disagree [0] to strongly agree [5]): “This would make the review criteria easier to understand and/or less ambiguous”
 - Average score: 2.8/5 (slight agreement) (Note: Due to extended discussion at the 1/18 session, the mentimeter activity only took place at the 1/16 Small Working Group session).

Comments/Questions/Discussion:

- There were a few cases at Planning Board that were questionable on this criterion based on the way the zone district purpose was written (example: specifically, auto traffic [CC zone districts]). One example was the purpose and intent statement said, “served by arterial roads” and the property was not— the case was still approved despite this inconsistency. What would we lose or how would we achieve the same end another way without this criterion? Less of a problem with context as those are clearly mapped, but rather with the purpose and especially specific intent statements.
- Consistency with neighborhood context description, zone district purpose and intent are fine to remove or fine to keep. It is a reasonable check that we’re using the zone districts as intended.
- One thing we don’t hear about in neighborhood context discussions is neighborhoods that don’t have sidewalks, so there’s often inconsistency with intent statements that include walkability. Nobody is tracking injuries/fatalities of pedestrians with disabilities.
- There are areas in the city where the neighborhood context designation shifts or is inconsistent with surroundings or Blueprint Denver recommendations. There could be pushback where people see a criterion being taken away.
- Agree with removal on basis of adopted plans covering it, but the current criterion is more specific and relying solely on adopted plans may miss something.

Proposal 3: Combine “Consistency with Adopted Plans” and “Public Health, Safety and General Welfare”

- Mentimeter Activity: 5-point scale question (strongly disagree [0] to strongly agree [5]): “This would make the review criteria easier to understand and/or less ambiguous”
 - Average score: 1.8/5 (slight disagreement) (Note: Due to extended discussion at the 1/18 session, the mentimeter activity only took place at the 1/16 Small Working Group session).

Comments/Questions/Discussion:

- Most difficult question, but the concept of “doing what our community asks for” is captured in our plans, so plan consistency is the most important thing. Public Health, Safety and General Welfare (PHSGW) is a criterion linked to our plans, outside of some special circumstances. Wouldn’t want to remove PHSGW altogether but good idea to have them linked.
- City Council recently voted against a rezoning proposal based on PHSGW criterion (North Federal Boulevard rezoning that would allow drive-thru building forms and use). Can’t expect to know specific project outcome of every given rezoning, but sometimes plan consistency and PHSGW seem separate.
- Can foresee situations where we have a use consistent with area plan but there is a separate and distinct public health concern. Plans may not cover all concerns for PHSGW.
- How do we combine PHSGW with consistency with plans without making it seem less important than the plan?
- Plans can say one thing, but reality may shift (example: plans calling for more transit but actual transit services are decreasing). May need this criterion to consider and evaluate on-the-ground conditions and changes.
- This phrase has been used to exclude others based on perceptions of increased crime and other non-existent or not realized fears of some.
- This issue has existed since Village of Euclid v. Ambler Realty Co (supposed relationship between apartments and crime) and may be baked into the very idea of zoning. Need to do whatever we can in the criteria to let us not fall into that again.
 - PHSGW can mean something specific to a zoning professional but has malleable meaning to many in the public.
 - Is there a way to think about different language here, to hone the language for the criterion to address the legitimate concerns, but keep out emotional baggage of redlining era? Infrastructure issues, having another fast-food restaurant where healthy food is needed, all fit in big bucket of PHSGW but may need to separate it out. Maybe the bucket is too big-- Is there a way to think about criteria language that doesn’t evoke redlining issues?
- Good to move on from self-defeating “can only change if there’s been change” criteria. Maybe the one thing we’re salvaging is if there’s been a change in the community need since the time of new adopted plan.
- My favorite part of AEIR is that individual rezonings should be rare because instead we’re getting a diverse range of feedback to shape plans and then legislatively rezone based on that. Some amount of individual rezoning will be necessary and everything we’re talking about here should be as rare as possible—will take consequences of our fear-based arguments using PHSGW criterion.
- Would be good to see us move on from painful history of how this language has been used and brainstorm something better. Could better define, like infrastructure improvements, pedestrian safety, or other specific items. How do we move forward with really good, “think out of the box” language?
- Need to make sure we remain focused on evaluating rezoning proposals and not specific projects. In the drive-thru example, is council sending a message to CPD that too many zone districts allow drive-thrus? They are trying to communicate something important, but don’t have a great tool to do it outside of denying rezonings. Is there a way to open up the communication channels between City Council and CPD to discuss zoning issues outside of individual cases?
- Good with combining Plan Consistency with Health/Safety/General Welfare. It reinforces that they are connected concepts, not separate concepts, without totally removing the topic.
- What’s the local history for this criterion? Did it come from Former Chapter 59?
 - Answer: from state grant of power to city charter to 2010 Denver Zoning Code
- Makes sense to have this subsumed back into charter and plans. If this change happens, CPD should think about how it’s communicated to the public so that we don’t give the impression that something is being taken away.
- The proposition that plans consider Health/Safety/General Welfare and make recommendations based on that, and therefore rezonings that conform to plans don’t pose Health/Safety/General Welfare issues, may

be illogical. Plans may not have considered Health/Safety/General Welfare fully, or a specific proposal might pose an impact not considered.

- Would like for us to consider changing/updating this language to add accessibility. Technology being added into built environment has implications that aren't being considered in terms of certain groups. Maybe also consider "well-being" instead of "welfare," more positive and respectful. Consider use of "inhabitants" instead of "citizens," more inclusive as well. Would Suncor be allowed to have it's zoning with this criterion? (clarified that Suncor is not in City and County of Denver)
- Agree that if we remove this criterion it will be like taking something away from the public—Pandora's box situation. Example of rezoning replacing holistic medicine facility with apartments - City Council used this criterion to deny the application as it was in conflict with Public Health component. Don't know if merging PHSGW with plan consistency is the correct approach but understand the thought behind it. This has been hijacked in the past to emphasize potential impacts on traffic, property values, crime, to oppose homeless and migrant facilities based on perception of increased crime. Has been weaponized, how do we address that? Zoning has a function in creating a healthy built environment.
- Two sides to this coin, can be weaponized but also provides flexibility where we see a use that has environmental impacts or losing something that has positive impacts—offers opportunity to reach a better result. Biggest problem here is ambiguity. Maybe a better definition would help. Has value even if history is raw.
- Would be okay with removing as a criterion as it's expressed everywhere else. Clarifying what it means might be a good goal. For example: could there be a statement in the zoning code that general welfare includes equity and does not mean that no one will be inconvenienced.
- If it's implicit in the zoning code, city charter, and adopted plans, maybe it's good to make more explicit and defined.

Closing Statements

- Rob previewed upcoming Small Working Group sessions on Legislative/City-led rezonings and remaining review criteria evaluation and proposals for justifying circumstances, incorporation of equity and public input.

Attendees:

Task Force Members:

CM Amanda Sandoval, CM Flor Alvidrez, Bruce O'Donnell, Caitlin Quander, Claudia Folska, Joel Noble, Lindsay Miller, Londell Jackson, Lou Raders, Maggie Lea, Melissa Horn, Steve Harley

Project Team:

Brandon Shaver, Andrew Webb, Rob Haigh, Joe Green, Fritz Clauson