



The District • Downtown Community Improvement District
11 S. Tenth Street • Columbia, Missouri 65201 • (573) 442-6816
discoverthedistrict.com

February 15, 2017

Mayor and City Council
City of Columbia
701 East Broadway
Columbia, MO 65205

Dear Mayor and City Council Members:

The Downtown CID respectfully submits the following feedback on the MD-T portion of the Proposed Integrated Draft of Development Code.

We have reviewed the revised document and the compiled list of amendments and suggest additional changes for the final version of the code. We appreciate the adjustments so far; however we still are concerned that the standards might prove too cumbersome or costly when applied to smaller projects or to incremental improvements to existing buildings. Downtown Columbia has many small, mixed-use, adaptive re-use projects that may struggle to comply with the proposed code requirements.

Our overall goal is to create and support a vibrant, sustainable core that attracts a mix of visitors to our downtown. We ask that you consider our additional feedback, which is intended to promote and protect the small businesses within our downtown.

Thank you in advance for your time and consideration. We are grateful for your time and commitment throughout this review process.

Sincerely,

A handwritten signature in black ink that reads 'Katie Essing'.

Katie Essing
Executive Director
Downtown Community Improvement District

CID BOARD

Kevin Czaicki
Centurylink

Blake Danuser
Binghams

Nickie Davis
Muse

Adam Dushoff
Addison's

Kenny Greene
Monarch Jewelry

Tony Grove
Grove Construction

Steve Guthrie
Landmark Bank

Michael McClung
Dungarees, Resident

Tom Mendenhall
The Lofts at 308 Ninth

David Parmley
The Broadway Hotel

Deb Sheals
Historic Preservation Consulting

Ben Wade
Guitarfinder

Michael Wagner
Central Bank of Boone County

Marti Waigandt
808 Cherry

Andrew Waters
100 North Providence



Recommendations for MD-T Zoning Code from the Downtown CID

February 20, 2017 Public Hearing

Overall Section 29-4.2: Provide an exemption for projects with a buildable area of less than 10,000 Square Feet.

- Small project redevelopment is an important element of our downtown, and we want to ensure that revitalization projects on small lots are encouraged.
- We recommend a small project exemption for lots with a buildable area of less than 10,000 square feet; for expansions not to exceed 75% coverage of a parcel; or for properties on the National Register of Historic Places.

Section 29-4.2(d)(7) Reconsider the Open Area requirement on a small site.

- Edit the Planning and Zoning Amendment 1)(iv.) to allow "ground floor non-residential space that offers services that provide customer seating and open gathering areas" to satisfy open space requirements.

Section 29-4.4(e) Allow a parking exemption for development with 20 or fewer residential units

- We support the Parking Task Force recommendation that allows developments with 20 or fewer residential units to be exempt from the requirement to provide one-quarter (.25) parking space per bedroom within one-quarter (.25) mile of the site.
- This requirement could hinder a redevelopment of a small parcel, if parking options are not available within the distance allowed.
 - For example, the City Parking Garages have previously provided parking options but currently have a lengthy waiting list.
 - A small, landlocked downtown parcel may not have land available in the back of the property to add parking.

Overall Recommendations

- We recommend that the neighborhood protection elements of the proposed development code be separated and returned to Planning and Zoning for additional review and discussion. We feel that the commission did not have enough time to adequately vet the neighborhood issues. In addition, we are concerned that properties on the edges of the MD-T area may be hindered from development allowed elsewhere in the downtown.
 - Example: If a residential area does not allow parking between alleys or drive-thru lanes, an adjacent MD-T property that is required to provide parking on the back of the lot may not be able to redevelop. The MD-T area is intended to develop in density and may be restricted along the boundaries.

- Due to the complexity of the proposed development code, we respectfully ask for time to review amendments proposed by the City Council that may have an impact on the downtown area.
- We recommend creating a review board composed of downtown stakeholders, to review project requests for a minimum of the first two years of the new code adoption.
- Additionally, we request that feedback and recommendations from the review group be incorporated into potential code amendments. This process will allow the new code to be adjusted if unforeseen consequences that may hinder downtown redevelopment occur.



SpencerFane®

THOMAS W. JERRY
DIRECT DIAL: 314.333.3940
tjerry@spencerfane.com

File No. 5009284.0039

February 16, 2017

**VIA FEDERAL EXPRESS &
ADVANCE COPY VIA EMAIL**

The Honorable Brian Treece, Mayor
City of Columbia, Missouri
701 E. Broadway
Columbia, MO 65201

Re: New Proposed Unified Development Code - Irrational As applied to Certain Shopping Centers

Dear Mayor Treece,

This firm represents a number of landowners who operate shopping centers in various areas of the City of Columbia, Missouri. The purpose of this letter is to notify you of the practical issues and potential constitutional violations presented by the currently proposed draft of the Unified Development Code for the City of Columbia (the "UDC") that is to be presented to the City Council for approval. Among other concerns, we believe that the application of the UDC, particularly as applied to certain existing shopping centers in Columbia would result in regulatory takings in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 26, of the Missouri Constitution.

There are numerous shopping centers that have been in operation for decades in their respective Columbia locations. These centers feature national, regional and local retail operations of various sizes. With their centralized locations and easy access from major highways, Columbia shopping centers have been, and continue to be, popular shopping destinations for residents of Columbia and nearby towns.

Currently, a number of well-established shopping centers are classified as Zoning District C-1, "Intermediate Business District" (collectively, the "*Affected Shopping Centers*"). According to the latest draft of the UDC, these Affected Shopping Centers will be reclassified as District M-N, "Mixed Use – Neighborhood". That change in zoning classification would involve the imposition of new standards and restrictions, some of which will be extremely problematic for the current property owners and the ongoing vitality of the Affected Shopping Centers.

Two provisions of the proposed UDC will cause major harm to the Affected Shopping Centers (hereinafter the "*Provisions*"). First is Section 29-3.3(aa)(1), which reads:

SL 2227135.3



A retail use in the M-N and M-BP districts may not exceed a gross floor area of 15,000 sq. ft., except a grocery store may not exceed 45,000 sq. ft. A single structure may contain more than these amounts of gross floor area, as long as no use within the structure exceeds the applicable size listed above.

There are numerous examples of Affected Shopping Centers that contain retail spaces greatly exceeding 15,000 sq. ft. in gross floor area. By way of example, Best Buy currently operates in a 45,000 sq. ft. space, and Hobby Lobby operates in a 63,024 sq. ft. in Stadium Plaza Shopping Center, which is located at 201 N. Stadium Boulevard. Those spaces would not conform to requirements of the proposed UDC. A limitation of 15,000 square feet is arbitrary, capricious and unreasonable and does not reflect the realities of modern retail needs and prototypes. In general, retail shopping centers are "anchored" by one or more national retailers, which typically use more than 15,000 sq. ft. in gross floor area. Smaller retailers lease space in the shopping center in order to be in close proximity to the anchor tenants. The practical result of application of the proposed UDC is that property owners will be: (i) prohibited from making the highest and best use of their existing properties in the event of a future vacancy; (ii) precluded from leasing space to large anchor tenants, and (iii) forced to undertake expensive construction projects in order to subdivide stores into two or more small stores (*i.e.*, less than 15,000 sq. ft. in gross floor area). As a result, the Affected Properties, which have been a part of the community for many years, will be placed at an unfair competitive disadvantage with respect to neighboring and nearby shopping centers that are zoned "M-C, Mixed Use – Corridor", as these centers are not subject to a restrictive square foot limitation.

Another harmful provision in the proposed UDC that is Section 29-4.3(f)(1)(iii), which reads:

In the M-N zone district, on-site parking for non-residential uses shall not be located closer to the primary street frontage of the lot than the front façade of the principal structure, except for one double-loaded row of parking, which may be located between the front building façade and the front lot line, if it is not located in a required front yard area. The option to include one (1) double-loaded row of parking in this location is not available on properties where the applicant has selected to use the "pedestrian" dimensional standards shown in Sections 29-2.2(b)(2) (M-N District) and 29-4.1 (Dimensional Standards).

Again, the Affected Shopping Centers would not conform to requirements of the proposed UDC. As applied to the Affected Shopping Centers, this requirement is arbitrary, capricious and unreasonable and does not reflect the realities of modern retail needs and prototypes. Currently, most Affected Shopping Centers are designed with the parking areas in front of the front façade of the buildings to provide easy access to parking for visitors, the vast majority of whom arrive in their personal automobiles.

We understand the Affected Shopping Centers would likely enjoy some protection under Section 29-6.5 of the UDC (the "Grandfather Clause") as lawful Nonconforming Uses/Structures. However, in the event any Affected Shopping Center loses such protection (as contemplated under the UDC), the owner would be required to undertake substantial and expensive demolition and reconstruction in order to bring the Affected Shopping Center into compliance. This precarious situation will have an impact on the financeability and marketability of the Affected Shopping Center. These concerns are compounded by ambiguity in the applicability of the Grandfather Clause.

The U.S. Constitution and Missouri Constitution prohibit local government from enacting regulations that severely interfere with a property owner's vested rights by limiting use of private property. The final sentence of the Fifth Amendment of the U.S. Constitution plainly states "private property [shall not] be taken for public use, without just compensation." The provisions of the Fifth Amendment (the "*Takings Clause*") are applicable to state and local governments through the Fourteenth Amendment. Likewise, Article I, Section 10 of the Missouri Constitution provides that "no person shall be deprived of life, liberty or property without due process of law" and Article I, Section 26 requires that "private property shall not be taken for public use without just compensation."

Even in the absence of a physical taking, a regulation that substantially restricts a property owner's rights is considered a taking. The following factors are relevant to a determination of a taking: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation interferes with the property owner's distinct investment-backed expectations; and (3) the character of the governmental action. Here, the economic impact of the Provisions on the Affected Shopping Centers and their owners is significant and has the potential to render the ongoing operation of those centers economically unfeasible. Owners of those centers would be forced to spend substantial sums to modify their centers in order to comply with the Provisions while at the same time they will be prohibited from leasing space to one or more large anchors. Without anchor tenants, the Affected Properties may not be able to command the rents necessary to pay for the required modifications. Owners have invested millions of dollars and countless hours in successfully developing and operating the Affected Shopping Centers with the reasonable expectation of a return on those investments by leasing of space to available retail tenants. The enactment of the Provisions will directly interfere with this investment-backed expectation.

Moreover, the Provisions could affect the ability of the owners of the Affected Shopping Centers to honor the terms of existing lease agreements. For example, in the event of a casualty, many leases require the owner/landlord to restore the premises to its original condition. The imposition of the proposed UCD could frustrate these obligations and expose the owners to damages.

Designating these large Affected Shopping Centers as "Neighborhood District" is unreasonable, arbitrary and capricious. The Affected Shopping Centers are not now, nor have they ever been, "pedestrian-oriented shopping areas with walkable connection to surrounding neighborhoods" or "small auto-oriented shopping centers convenient to lower density residential areas". The Affected Shopping Centers are large community centers ranging from around 100,000 sq. ft. up to over 170,000 sq. ft. They are located on busy highways and arterial roads, which provide safe and convenient access to customers, many of whom travel 10-30 miles. Contrary to the comment¹ on the district's flexibility and ability to accommodate a mix of uses, the new M-N zoning district is not flexible enough to accommodate the Affected Shopping Centers as they are currently configured.

Please note that the City would be exposed to substantial legal fees in enforcing the Provisions as the owners and tenants of the Affected Shopping Centers pursue legal and/or equitable remedies to protect and preserve the economic viability of their private property. Potential causes of action could include, without limitation, suits for regulatory taking/inverse condemnation, declaratory judgment, and/or damages.

¹ Columbia Unified Development Ordinance Draft, Public Hearing Draft, September 2016 (pg. 69).



I would be happy to speak with you further on these issues in an attempt to resolve perceived inadequacies in the proposed UDC. In the meantime, we request that consideration of the proposed UDC be tabled until appropriate revisions are made to address the problems outlined in this letter.

Very truly yours,

Thomas W. Jerry

TWJ/

cc: Council Member Michael Trapp
Council Member Clyde Ruffin
Council Member Karl Skala
Council Member Ian Thomas
Council Member Laura Nauser
Council Member Betsy Peters