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MEMORANDUM
September 18, 2008

TO: Mayor and Common Council

FROM: Legal Department

SUBJECT: Ordinance 746 and Resolution 2410 (Design Review Standards and Procedures Amendments)

Following the second reading of Ordinance 746, the Council directed staff (1) to make changes to Part III (Application, Appeals, and Maintenance and Enforcement) and (2) to review the concerns raised during the Public Hearing.

Pursuant to the Council's direction, the following changes were made to Part III:

- 1) All design review applications will now be reviewed by the Community Development Director or designee.
- 2) The Design Review Board is authorized to grant exemptions from the Regulations and Development Requirements in certain circumstances.
- 3) All appeals of design review decisions will go directly to the Town Council.
- 4) The maximum time allowed for an appeal to be heard has been reduced from 60 days down to 30 days.

Attached is both a redline/strikeout version (showing the changes) and a clean version of Part III

In response to the concerns raised at the Public Hearing, a list summarizing Mr. Garner's comments and a short staff statement on each has been prepared. See attached.

If you have any questions, please feel free to call or stop by our office.

SEP 18 2008 G12

PART III
(Redline/Strikeout)

A. Application Procedure

1. Applications for Design Review consideration of any project shall be made on the forms provided by the Community Development Department.
2. All applicants shall arrange a pre-application conference with the Community Development Director or his/her designee prior to the submittal of a Design Review Application Packet.
3. ~~a. The Design Review Board shall review~~ All Design Review applications ~~except minor changes:~~
 - ~~b. Minor changes shall be reviewed by the Community Development Director or his/her designee.~~
 - ~~c. Minor changes shall mean any of the following:~~
 - ~~i. All resurfacing of existing vertical structures~~
 - ~~ii. All signs that are otherwise in compliance with this Code~~
 - ~~iii. A building or vertical structure that (1) is an addition or accessory structure to an existing building and does not exceed the lesser of 25% of the existing building floor area or five thousand (5,000) square feet and (2) is complimentary with surrounding properties as well as the existing building.~~
 - ~~iv. An addition or accessory structure that does not substantially or detrimentally alter the appearance of the site as seen from off-site.~~
 - ~~v. Additions or expansions of a site, where no vertical structure is involved.~~
4. All Design Review applications shall be approved or denied within fifteen (15) calendar days from the date of a complete submittal, unless the applicant requests an extension.
5. A design review application shall not be approved unless the applicant demonstrates the following:
 - a. Consistency with the Purpose & Intent, Vision & Goals, and Design Principles of the Design Review Overlay District; and
 - b. Compliance with the Regulations and Development Requirements ~~Standards~~ set forth in 15-02-014, PART IV.
6. ~~a. The Design Review Board or Community Development Director,~~ on a case by case basis, may make exceptions to the development standards set forth in 15-02-014, PART IV (1) because of special circumstances applicable to the project, including but not limited to, the project size and layout, site topography, location, and surroundings, or (2) any other exception so long as the intent and purposes of this section are upheld.

- b. The Community Development Director or his/her designee may make exceptions to the development standards set forth in 15-02-014, PART IV to eliminate or mitigate legal nonconforming buildings, signs or other structures or features of the site.
7. Design Review approval, unless otherwise specified in approval conditions, shall be valid for a period not to exceed 18 months from date of approval.

B. Appeals

1. Any applicant aggrieved by a Design Review decision may appeal that decision, provided the applicant submits an appeal in writing to the Community Development Department within 15 days of the date of the decision. The applicant shall specify in the written appeal any alleged errors in the decision and shall have the burden of demonstrating why the decision was in error.
 - a. ~~An appeal of a decision by the Community Development Director shall be heard by the Design Review Board as soon as is reasonably practicable following receipt of the appeal by the Community Development Department and in accordance with Arizona's Open Meeting Laws.~~
 - ~~b. An appeal of a decision by the Design Review decision Board shall be heard by the Town Council as soon as is reasonably practical following receipt of the appeal by the Community Development Department and in accordance with Arizona's Open Meeting Laws.~~
 - be. In no case shall the date for an appeal hearing exceed 30 60 calendar days from the date the appeal is received by the Community Development Department, unless specifically requested by the applicant.

C. Maintenance and Enforcement

1. Prior to issuance of a building permit or grading permit the Building Official shall determine that all requirements of the Design Review have been met.
2. The Community Development Director or Director's designee shall insure that all matters are undertaken according to conditions of the approved plans. Noncompliance with the approved plans shall be grounds for stopping work on the project or for denial of a Certificate of Occupancy.
3. Failure to maintain compliance with the requirements of section 15-02-014 shall be subject to enforcement action in accordance with Section 15-10.

PART III
(Clean Copy)

A. Application Procedure

1. Applications for Design Review consideration of any project shall be made on the forms provided by the Community Development Department.
2. All applicants shall arrange a pre-application conference with the Community Development Director or his/her designee prior to the submittal of a Design Review Application Packet.
3. All Design Review applications shall be reviewed by the Community Development Director or his/her designee.
4. All Design Review applications shall be approved or denied within fifteen (15) calendar days from the date of a complete submittal, unless the applicant requests an extension.
5. A design review application shall not be approved unless the applicant demonstrates the following:
 - a. Consistency with the Purpose & Intent, Vision & Goals, and Design Principles of the Design Review Overlay District; and
 - b. Compliance with the Regulations and Development Requirements ~~Standards~~ set forth in 15-02-014, PART IV.
6.
 - a. The Design Review Board on a case by case basis, may make exceptions to the development standards set forth in 15-02-014, PART IV (1) because of special circumstances applicable to the project, including but not limited to, the project size and layout, site topography, location, and surroundings, or (2) any other exception so long as the intent and purposes of this section are upheld.
 - b. The Community Development Director or his/her designee may make exceptions to the development standards set forth in 15-02-014, PART IV to eliminate or mitigate legal nonconforming buildings, signs or other structures or features of the site.
7. Design Review approval, unless otherwise specified in approval conditions, shall be valid for a period not to exceed 18 months from date of approval.

B. Appeals

1. Any applicant aggrieved by a Design Review decision may appeal that decision, provided the applicant submits an appeal in writing to the Community Development Department within 15 days of the date of the decision. The applicant shall specify in the written appeal any alleged errors in the decision and shall have the burden of demonstrating why the decision was in error.
 - a. An appeal of a Design Review decision shall be heard by the Town Council as soon as is reasonably practical following receipt of the appeal by the Community Development Department and in accordance with Arizona's Open Meeting Laws.
 - c. In no case shall the date for an appeal hearing exceed 30 calendar days from the date the appeal is received by the Community Development Department, unless specifically requested by the applicant.

C. Maintenance and Enforcement

1. Prior to issuance of a building permit or grading permit the Building Official shall determine that all requirements of the Design Review have been met.
2. The Community Development Director or Director's designee shall insure that all matters are undertaken according to conditions of the approved plans. Noncompliance with the approved plans shall be grounds for stopping work on the project or for denial of a Certificate of Occupancy.
3. Failure to maintain compliance with the requirements of section 15-02-014 shall be subject to enforcement action in accordance with Section 15-10.

Jim Garner's Comment and Staff Comment thereto

Resolution 2410, Exhibit A

Part II

A(1) - 'all property'¹ is within design review. Although all property within the Town is covered by the overlay district, the Ordinance makes exception for one, two, three family housing. Additionally, industrial zoning districts do not have any requirements. Staff believes it is better to bring everything within design review and then exempt the specific areas desired.

A(3)(B) - 'same materials and colors.' This does not require the identical brands or makes. It only requires that if siding was used, siding can be replaced without approval. As far as color goes, all paint stores can match a color when given a paint chip.

A(3)(B) - 'previously in compliance.' If a structure was in compliance with the regulations (if any) at the time of construction, the structure was 'previously in compliance.'

Part III

A(1) - 'on forms provided by Community Development.' At first reading, sample forms were provided to the Council. Staff believes that the application forms are administrative in nature and should be created and modified as needed by staff.

A(2) - 'no time limit on the pre-application conference.' Staff has found that an informal pre-application conference saves time. It assures that the formal submittal is complete and can be processed quickly.

A(3)(c)(iii and iv) - 'complimentary and detrimentally are subjective.' The amendments to Part III remove this issue.

B(1)(a) - 'concerned that no specific time for an appeal to be heard by DRB.' The amendments to Part III remove this issue.

B(1)(c) - '60 day time frame for appeal to be heard.' Given the amendments to Part III, this number has been changed to 30 days.

Part IV

A(2)(a) - 'stucco infill panels framed with other approved materials.' The use of stucco was one of the most hotly contested issues at the DRB. Some members wanted an absolute prohibition. The DRB came to this language as a compromise. Stucco would be allowed in limited amounts if it was surrounded or framed with other approved materials.

¹ The language or issue of Mr. Garner's concern is in quotes.

A(3)(d) - 'prohibition on light colored roofs.' The DRB believes that because the colors of the building will generally be muted, the roofs should be muted as well.

A(5)(d) - 'internally lit signs.' The mayor addressed this concern at the meeting.

A(8)(a) - 'full cutoff fixtures.' Full cutoff fixtures is a term of art, i.e., fixtures designed to keep light from trespassing across property lines. For example, see - www.starrynightlights.com/Outdoor_Lighting/Outdoor_Lighting_Guidelines/Outdoor_Lighting_Guidelines_4.html

B - 'all multi family covered by subsection A.' All multifamily housing greater than 3 family will be covered by subsection A until the DRB suggests separate regulations for multifamily. Two and three family housing is specifically excluded from the overlay district in Part II.

D - 'referring to the existing GVRA regulations.' As an interim step, the substantive GVRA regulations have not been changed or even renumbered. The DRB will suggest changes in the future after consultation with GVRA Committee.

Resolution 2410, Exhibit B

15-02-013

F(3)(f)(7)(a) 'undesired street environment.' This is the current language. As mentioned above, the DRB has not yet addressed the GVRA standards. Future amendments will attempt to clarify such provisions.

F(3)(f)(8)(I) 'signs should not compete with each other.' This is the current language. As mentioned above, the DRB has not yet addressed the GVRA standards. Future amendments will attempt to resolve such apparently contradictory provisions.