

CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE: March 13, 2006

SUBJECT: Chapter 17.22 Amendment CBD

SUBMITTING DEPT: City Manager and Community Development

PREPARED BY: Gary Tomsic, City Manager & Terry Galvin, Community Development Director

AGENDA LOCATION: Comments/Communications Consent Committee Reports
Unfinished Business New Business Public Hearing Standing Committees

ATTACHMENTS: Ordinance 06-2632

ANALYSIS/SUMMARY:

Proposed Amendment to Chapter 17.22 to provide a regulatory pathway for
“out of the box” innovative development in the Central Business District
Supplemental submission to City Council

Proposed Amendment

The proposed amendment to BMC 17.22.050 Conditional uses in the Central Business District adds the following:

17.22.050 Conditional uses in the Central Business District.

- A. Major development projects.
- B. Major development projects in the CB-Market district that do not comply with the development regulations contained in this chapter but are consistent with the Comprehensive Plan’s vision and substantially contribute to public amenities as determined by the City Council. *(new language)*
- C. Public-use buildings and related facilities.
- D. Construction proposals for heights up to 10 feet *(new Language)* greater than the allowed height.
- E. Building projections into city right-of-way beyond those allowed by the IBC.

Interpretation of Amendment

There are several areas that deserve mention in a discussion of the intent and potential implementation of the proposed amendment:

1. A project must be declared a “Major Development Project” as indicated in Chapter 17.64 of the BMC. Any project may be designated a “Major Development Project” by the City Council.
2. A project must be located in the CB-Market district which is the core commercial district between the CB-Transition and CB-Wharf districts. The proposed conditional use under this amendment will not apply to other sub-districts within the Central Business district.
3. This proposed conditional use provision applies to major development projects that may not comply with any of the development regulations in Title 17, BMC. This would include design guidelines.
4. Approval of such a project would require substantial compliance with the City’s vision for its downtown. The proponent must clearly demonstrate that, despite relief from the standard regulations, the project will substantially contribute to the general vision of the Central Business district.
5. The expectation will be that the developer will contribute to the provision of public amenities. This might include parking, parks, landscaping, open spaces etc. These to be determined by the City Council.

The clear intent of this amendment is to allow for development projects that result in “mutual gain”. In that light, the proposed amendment is very unique to the manner in which local governments typically relate with investors/developers in the community. The objective is to help the City decision makers move from a regulatory position, to one that is more entrepreneurial. In other words, the intent is to get City decision makers to view projects as though they were the investors. The collateral is to get investor/developers to see the project from a City decision maker’s point of view also.

In short, the amendment’s intent is to accomplish mutual benefit/gain for all parties involved by:

1. Getting all involved to address the project in the context of the community’s vision and goals. How can this project happen in a way that supports the community?

2. Getting everyone to acknowledge the concerns of the other side. The City needs to understand bottom line financial issues related to doing a project. The investor's need to understand the needs of the community.
3. Achieving a shared commitment. Each party offers contingent commitments (i.e. conditions) to minimize impacts if they do occur and promise to compensate knowable but unintended impacts. These are the conditions that allow the projects to move forward with what has been agreed too by both parties.
4. Accepting responsibility, admitting mistakes and sharing power.
5. Acting in a trustworthy manner and building long term relationships

In summary, the amendment allows the City the opportunity to review and work with projects that may not fit the regulations in place at the time. Suppose, for example, an investor comes to the City with an interesting project that would create jobs, offer needed services and generally support much of the community's vision. But, the project does not comply with one or more regulations in the CBD. Without, this conditional use amendment, the project would not be reviewed and the City would never know if there may have been a way for the project to occur. The loss of the project impacts both the community and the investor.

It is important to remember that the City continues to retain the final work on how a project is approved.

The Downside of the Proposed Amendment

The City Council is aware that the informal presentation of the conditional use amendment concept to the City's Planning Commission was met with serious concern. Though the Planning Commission was not asked to make a recommendation, it appears that based on their brief review, they would have not recommended that the City Council approve the proposed amendment.

The primary concern is that the amendment may offer too much flexibility and too little accountability for developer projects in the market district of the CDB. There is concern that the amendment will negate all of the other regulations currently in place.

There is also concern that the conditional use process will not be fairly and reasonably applied. If a condition is allowed for one project, what is to prevent it from being allowed on all projects? How do you say yes to one project and no to another? There could be legal problems with the arbitrary and capricious application of the conditional use provisions.

There is also concern that by negotiating each project separately, The City's downtown will lose the design theme and continuity required in the design guidelines. We will have hodge-podge of development and building types and styles.

It can be argued that rather than having wide open opportunities for a variety of conditions we should review our regulations and make the needed adjustments. For example, if four story building heights are what are needed to make projects work, then the City should change its regulations.

This approach can be unworkable because the City cannot anticipate every possible exception that a project might have to the regulations. Every project is different in some way.

RECOMMENDATION: Waive 2nd Reading: (Include conditions of approval if applicable) Staff recommends that City Council approve the proposal

FISCAL ANALYSIS:

REVIEWED BY:

City Manager _____ Finance Dir. _____ City Clerk _____

COUNCIL ACTION:

Approved Denied Tabled/Deferred Assigned to: _____

COUNCIL ACTION: _____

ORDINANCE NO. 06-2632
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BLAINE, WASHINGTON, AMENDING SECTION 17.22.050,
BLAINE MUNICIPAL CODE,

WHEREAS, on January 23, 2006, the City Manager advised City Council that some property owners in the downtown Central Business district were organizing to voice their development concerns; and,

WHEREAS, the City Manager requested that the City Council consider an amendment to Chapter 17.22 that would allow more flexible development alternatives to be presented to the City for review.; and,

WHEREAS, the City Council directed staff to initiate this action and further directed the City Manager to bring staff recommendations directly to the Council; and,

WHEREAS, on January 23, 2006, February 27, 2006, and March 13, 2006, the City held work sessions to review the City Manager's preliminary proposal and further explore options; and,

WHEREAS, on February 27, 2006, after posting legal notice, the City Council conducted a public hearing on the proposed amendment to BMC 17.22.050 Conditional uses and heard all testimony before them; and,

WHEREAS, On March 13, 2006, the City Council carefully reviewed the recommendations of staff and considered all public testimony and related information; and,

WHEREAS, on March 13, 2006, during a public meeting, the City Council voted to approve the proposed amendment;

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLAINE as follows:

Section 1: The following Findings of Fact are hereby adopted:

1. Blaine's downtown Central Business (CB) district has experienced significant changes in property ownership in the last two years.
2. The economy and cost of development in Whatcom County is undergoing significant changes.
3. Based upon contact with property owners in the downtown area and particularly along Peace Portal Drive, the City Manager advised the City Council that a significant proportion of property owners believe that the current regulations are too restrictive and inhibit investment in the downtown area.
4. Greater flexibility in the CB – Market zoning district will help stimulate investment in the downtown area.

Section 2: BMC 17.22.050 is hereby amended as follows:

17.22.050 Conditional uses in the Central Business District.

- A. Major development projects.

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- B. Development projects in the CB-Market district that do not comply with the development regulations contained in this chapter but are consistent with the Comprehensive Plan's vision and **Goals**, and substantially contribute to public amenities as determined by the City Council.
 - C. Public-use buildings and related facilities.
 - D. Construction proposals for up to 10 feet of additional height pursuant to 17.22.80.B .
 - E. Building projections into city right-of-way beyond those allowed by the IBC.

Section 2: If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON on the _____ day of _____, 2006.

CITY OF BLAINE, WASHINGTON

MIKE MEYERS
Mayor

ATTEST/AUTHENTICATE:

APPROVED AS TO FORM:

SHERRI SANCHEZ
City Clerk

JONATHAN SITKIN
City Attorney