

Craig, Sondra

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Council Members,

This is a follow up to issues raised at the J&A meeting about the City's TND ordinance and the documents posted on Legistar 7/31/24.

A reading of the current City TND ordinance states "A document identified as 'A model ordinance for Traditional Neighborhood Development' dated December 2000, ... shall serve as a non-exclusive guidebook to assist in further defining the various aspects of this form of urban design, along with such other sources of guidance the Plan Commission and local governing body may choose to consult."

The City's Ordinance contains no actual restrictions/allowances as the Model Ordinance acts as only a guidebook to be used in conjunction by other, unnamed "sources of guidance". Without knowing what the City Planning Commission is using in determining what is and isn't applicable for TND, the public and the petitioner is left in the dark. Even assuming the other sources for guidance are known, there is no mention of which source is controlling. What happens when the other sources of guidance and the Model Ordinance conflict? Again, it would seem it is left up to the Planning Commission's judgment as to what rule would apply.

If this is the case, then there really is no governing ordinance that outlines what can and can't be done in TND. It would be up to whatever the Planning Commission says can go in the TND. The TND zoning would be an empty vessel. Another way to consider: "What does the City's ordinance apply to? And what does the City's ordinance actually restrict? And how do I know if the property owner is violating the zoning ordinance." The answer is, it can't be determined from the verbiage of the City's current ordinance or even the Model Ordinance. You have to ask the Planning Commission for their opinion. The City's ordinances listed before and after the TND are very specific as to what can and can't be done in those zones. The TND has no such specificity; only vague "guidance". For example; if the petitioner doesn't specifically state in their petition that they will not use the building for a 24 hour mental health counseling service, what prevents them from operating the building as a 24 hour mental health counseling service? The Model Ordinance? Other "sources of guidance"? The Planning Commission?

Another reading of the City's ordinance is that the Model Ordinance does govern the interpretation of its TND ordinance. If that is the case, then this property should not be zoned TND. The Model Ordinance is meant to apply to large, mixed-use developments. The Model Ordinance uses 15 acres and 10 acres as sample sizes for TND zoning projects. Under the Principles and Objectives section of the Model Ordinance it says that TND means a compact, mixed use neighborhood. Later, the Model Ordinance defines mixed use as nonresidential land uses that are mixed with residential land uses. The current petition is not for mixed use as there is no residential, civic or open spaced land uses included in the petition. This is strictly a petition to rezone a commercial enterprise from one type of zoning to another. The Model Ordinance Language itself (1.2) states that the purpose of the TND is to provide a mixture of land uses. Again, the petition is asking for only one type of land use: commercial. In section 1.3, and 4.1(2) the Model Ordinance says TND applies to infill development of 10 acres or more and that businesses should not exceed 6000 square feet. The lot in question is certainly smaller than 10 acres while the building's square footage is bigger than the Model Ordinance's recommended size. In the past, the Planning Commission has used TND for lots less than 2 acres and does not mention square footage for businesses. But those are arbitrary determinants with no basis in the TND ordinance. Again, it just seems to be what the Planning Commission decided was allowable.

In short, the City's TND ordinance does not appear to provide any solid rules as to what is or is not allowed in TND as it only references guidelines that the Planning Commission may follow unless the Commission finds something they think is better in the "other sources of guidance". Or, in the alternative, the Model Ordinance governs and TND isn't appropriate for this single use lot. In either event, we ask that the petition be tabled until there is clarity as to if TND is applicable to the property; what restrictions come with that designation; and how they would be enforced.

We would ask the CM's to read Eau Claire's TND ordinance as an example of one that clearly states what can and can't be done in TND.

Regardless of what happens with the current petition, the TND ordinance should be reviewed and made more clear, for the benefit of future petitioners, the City, and the surrounding neighborhoods.

Thank you for your consideration.

Andrew and Michelle Elliott