

ORDINANCE 0-18-11

AN ORDINANCE AMENDING ZONING CODE 3.1 AMENDMENTS REZONING AND 3.2 SPECIAL USE PERMIT. THE ORDINANCE AMENDS ZONING CODE 3.1 AND 3.2 BY ADDING EVALUATION CRITERIA FOR APPLICATIONS

WHEREAS, the City of Bisbee Planning and Zoning Commission held a public hearing on June 21, 2018 to receive public comments on the proposed text amendments; and

WHEREAS, the inclusion of evaluation criteria for both Rezoning and Special Use Permit applications will allow staff to properly analyze these requests; and

WHEREAS, the City of Bisbee Planning and Zoning Commission has forwarded a unanimous recommendation to approve the text amendments; and

WHEREAS, it is in the best interests of the City of Bisbee and its citizens to adopt the amendment to the Zoning Code set forth in Exhibit A and the Amendment to the Zoning Code in Exhibit B.

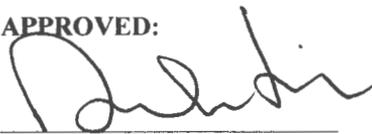
NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, THAT:

Section 1. The amendment to Article 3.1 of the Zoning Code, by adding evaluation criteria for Rezoning applications, as set forth in the attached Exhibit A, incorporated herein by reference, is hereby adopted.

Section 2. The amendment to Article 3.2 of the Zoning Code, by adding evaluation criteria for Special Use Permit applications, as set forth in the attached Exhibit B, incorporated herein by reference, is hereby adopted.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee on this 7th day of August, 2018.

APPROVED:



David Smith, Mayor

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:



Edda Orduno for
Britt Hanson, City Attorney

Exhibit A

AMENDMENT TO ZONING CODE ARTICLE 3.1 BY ADDING EVALUATION CRITERIA TO AMENDMENTS/REZONING APPLICATIONS

3.1 Amendments / Rezoning

The provisions of this Ordinance may from time to time be amended, supplemented, changed, modified or repealed.

3.1.1 Pre-application Meeting

It is required that all potential rezoning applicants meet with planning staff before filing a Rezoning application.

3.1.2 Application and Filing Fee

Requests to amend this Ordinance may be initiated by the Planning Commission, the City Council, or a real property owner in the area included in the proposed amendment. Applications for amendments shall be made in the office of the City Clerk, accompanied by a non-refundable fee per City of Bisbee fee Schedule. The Planning Commission and City Council are exempt from filing fees.

3.1.3 Planning Commission Hearing and Report to the City Council

All Applications for amendment of this Ordinance must first be submitted to the Planning Commission. The Planning Commission shall hold a public hearing in relation to the proposed amendment at which citizens shall have an opportunity to be heard, the Planning staff shall make a report on the Commission's recommendation to the City Council. This report shall be made by forwarding the applications for amendment to the City Council, with the appropriate recommendations, unless the applicant shall request the application be withdrawn.

3.1.4 Notification of Planning and Zoning Commission Public Hearing

Upon receipt in proper form of an application, the Planning and Zoning Commission shall proceed to hold a public hearing on the application. At this hearing all persons shall be given a reasonable opportunity to be heard. At least ten (10) days before the hearing, but not more than twenty-five (25) days, one (1) notice of the hearing shall be published in the official newspaper of the City of Bisbee and one (1) notice of the hearing shall be posted on the subject property. Notice by First class mail shall be sent to each real property owner, as shown on the last assessment of the property, within three hundred (300) feet of the subject property. The applicant shall maintain the posting of the property. Each notice shall state the date, time and place where the public hearing will be held and the nature of the amendment. Time requirements are for calendar days unless otherwise specified.

3.1.5 Re-application

If an applicant is denied by the City Council or the application for amendment is withdrawn after the Planning Commission hearing, the Planning Commission is not required to accept another application for the same amendment within a year of the date of the previous hearing.

3.1.6 Protest Against Application

If a written protest against a proposed amendment is presented at any Council Hearing, the amendment shall not become effective except by a favorable vote of three-fourths of all the members of the Council of the City of Bisbee qualified or able to vote on the amendment which in no event will be less than four votes. A written protest must be submitted by 20% of the owners included in at least one of the following categories:

- A. of the area of the lots included in the proposed change,
- B. of those immediately adjacent in the area within one hundred fifty (150) feet of the subject property,
- C. of those directly opposite the subject property.

3.1.7 Rezoning Application Evaluation Criteria

An analysis of how the project addresses these evaluation factors is necessary for the staff report to the Commission and Council. The Rezoning application must provide sufficient information for staff to make this analysis.

Rezoning Evaluation Factors:

1. **Application.** The Application Concept/Site Plan must provide sufficient information to determine that the proposed size and layout would comply with the applicable uses and standards for the types and intensity of uses permitted in the requested zoning district.

2. **Compliance with Site Development Standards.** Each parcel must meet the site development standards of the proposed zoning district including minimum lot size, setbacks, lot coverage, driveway width, parking and ADA-access requirements. The rezoning Concept/Site Plan should show how these standards would be met.

3. **Adjacent Districts Remain Capable of Development.** Adjacent parcels should be able to meet minimum lot size and development standards of the remaining zoning district.

4. **Limitation on Creation of Nonconforming Uses.** The subject property should contain no structures or uses that would not be permitted or would not meet development standards of the new district.

5. **Compatibility With Existing Development.** The proposed rezoning district should be compatible with existing development in the vicinity.

6. **Rezonings To More Intense Districts.** The proposed new district should:

- Be buffered by an intermediate district of sufficient size to provide a reasonable transition of intensity from the existing area;
- Be a reasonable extension of a similar density district within the area; and
- Provide a transition between an existing less intense district and a more intensive district or an arterial street; or
- Provide adequate protection to the adjacent less intense development in the form of enhanced screening, landscaping, setbacks, large lot size, building orientation or other design measures.

7. **Adequate Services and Infrastructure.** The following factors are used to determine if there are adequate services and infrastructure to serve an intensification of zoning:

(a) For a rezoning to a more intensive district, the applicant has provided adequate information to evaluate the impacts of the rezoning on roads, other infrastructure, and public facilities. The applicant must demonstrate that there are adequate provisions to address the impacts identified.

(b) If the site accesses on a road where existing demonstrable traffic problems created by incremental development have already been identified, such as a high number of accidents, substandard road design or surface, or the road is near or over capacity, the applicant has proposed a method to address these problems.

(c) The proposed development meets or will meet the applicable requirements for street, sewer, or water improvements.

(d) The site has access to streets that are adequately designed and constructed to handle the volume and nature of traffic typically generated by the use.

8. **Traffic Circulation Criteria.**

(a) Any rezoning shall be consistent with preservation of the functions of surrounding streets.

(b) If the rezoning is to C, CM or M, the development shall not result in the use of any residential street for through traffic to and from the proposed district.

9. Development Along Major Streets. The rezoning size [the size of the land area to be rezoned] limits the number of access points on major thoroughfares or arterial streets, and collectors through the use of frontage roads, shared access, no access easements or other safe methods designed to minimize road cuts that create unsafe traffic conflicts, hazardous traffic congestion and obstruct the functioning of arterials.

10. Infill. This factor is designed to encourage infill in areas where commercial and industrial development already exists, thereby discouraging sprawl and locating new non-residential developments where adequate infrastructure may already exist and where they are most likely to be compatible with existing uses.

11. Unique Topographic Features. A rezoning to a more intensive zoning district shall not take place if there are areas of unstable soils, steep slopes, severe washes, floodplains, etc. which are not appropriate for intense development. Rezoning encompassing such areas will be discouraged unless the developer carefully plans development around these areas, such that they are appropriately protected.

12. Water Conservation. Uses proposed with the rezoning shall show compliance with the water conservation regulations of Article 12 in the City Zoning Code.

13. Public Input. If there is a major public opposition to a proposed rezoning, this may indicate that the technical evaluation regarding compatibility of the proposed district does not concur with the view of local residents and a recommendation of denial may be appropriate. If public concerns have been raised, it is fair to ask if the applicant has made a reasonable effort to address these concerns.

14. Hazardous Materials. Adequate data has been submitted to determine that impacts from uses that may involve hazardous or dangerous materials are adequately mitigated.

15. Compliance with General Plan or other Applicable Area Plans. The rezoning conforms to land use designations and policies set forth in the City's General Plan or any other adopted Area or Master Plan.

Exhibit B

AMENDMENT TO ARTICLE 3.2 BY ADDING EVALUATION CRITERIA TO SPECIAL USE PERMIT APPLICATIONS

3.2 Special Use Permit

3.2.1 Issuance

Special Use Permits, which may be revocable, conditional or valid, for a time period, are a privilege, not a right, and may be granted only after review and recommendation by the Planning and Zoning Commission to the City Council, and only after the City Council has found in writing that the granting of the Special Use Permit will not be materially detrimental to the public health, safety, or welfare.

1. In arriving at such a determination, the factors which will be considered shall include the following:

- A. Damage or nuisance arising from noise, smoke, odor, dust, traffic, vibration, illumination or parking.
- B. Hazards to persons and property from possible explosion, contamination, fire or flood.
- C. Whether infrastructure impacts are minimized; and
- D. Whether the proposed use is reasonably compatible with the types of use permitted in the surrounding area.

The burden of proof for satisfying the aforementioned requirements shall rest with the applicant. Uses incidental to the approved zoning and primary use do not require a Special Use Permit. Uses permitted as a matter of right in each zoning district are indicated in Appendix 1, Bisbee Zoning Matrix.

3.2.2 Application and Filing Fee

Application for a Special Use Permit shall be made in writing to the Planning Commission with a non-refundable fee per the City of Bisbee Fee Schedule, the application shall also be accompanied by a site plan, drawn to scale.

3.2.3 Public Hearing

Upon receipt in proper form of an application, the Planning Commission shall set a date for a public hearing for the next scheduled Planning and Zoning Commission meeting within forty-five (45) days from the date of the application. At least ten (10) days before the hearing, but not more than twenty-five (25) days, one (1) notice of the hearing shall be published in the official newspaper of the City of Bisbee and one (1) notice of the hearing shall be posted on the subject property. Notice by first class mail shall be sent to each real property owner as shown on the last assessment of the property, within three hundred (300) feet of the subject property. The date, time and place of the public hearing and the nature of the use permit requested shall be included in the notice. The applicant shall maintain the posting of the property. If a public hearing is not held within forty-five (45) days from the date of the application, the application shall be forwarded to the City Council with the recommendation of approval. Time requirements are for calendar days unless otherwise specified.

3.2.4 Action Of The City Planning Commission

Upon completion of the public hearing on the Special Use Permit, the Planning Commission shall transmit a copy of its findings and recommendations to the applicant and to the City Council. The report order of filing shall become a permanent record of the Planning Commission and the City Clerk.

3.2.5 Action Of City Council

The City Clerk shall schedule a public hearing before the City Council at which citizens shall have an opportunity to be heard. At least ten (10) days before the City Council hearing but not more than twenty-five (25) days, one (1) notice of the hearing shall be published in the official newspaper of the City of Bisbee and one (1) notice of the hearing shall be posted on the subject property. Notice by first class mail shall be sent to each real property owner as shown on the last assessment of the property, within three hundred (300) feet of the subject property. The date, time and place of the City Council hearing and the nature of the use permit requested shall be included in the notice.

3.2.6 Decision

The Council may grant a Special Use Permit stipulating those conditions it feels necessary to carry out the provisions and intent of this Ordinance. A copy of the Special Use Permit shall be posted at all times on the premises. The Special Use Permit will be granted to the applicant but will run with the property unless for a specific time period.

3.2.7 Violation

The violation of any condition imposed by a Special Use Permit shall constitute a violation of this Ordinance and render any such permit null and void. Amendment or addition to any Special Use Permit is subject to the same procedures as those which apply to a new applicant. Violations may be appealed to the Hearing Officer.

3.2.8 Special Use Permit Application Evaluation Criteria

An analysis of how the project addresses these evaluation factors is necessary for the staff report to the Planning Commission and City Council. The Special Use Permit application must provide sufficient information for staff to make this analysis.

Special Use Permit Evaluation Factors:

1. Compliance with Zoning District Purpose Section. The Special Use Permit request shall comply with one or more of the purposes stated in the Purpose section of the applicable Zoning District and is compatible with existing development.

2. Compliance with Site Development Standards. Each parcel must meet the site development standards for the proposed Special Use including minimum lot size, setbacks, lot coverage, driveway width, parking and ADA-access requirements. The Concept/Site Plan should show how these standards would be met.

3. Off-site Impacts. Adequate measures have been taken to mitigate off-site impacts by providing adequate protection to the adjacent less intense development in the form of enhanced screening, landscaping, setbacks, large lot size, building orientation or other design measures.

4. Adequate Services and Infrastructure. The following factors are used to determine if there are adequate services and infrastructure to serve the proposed Special Use:

a. The applicant has provided adequate information to evaluate the impacts of the Special Use on roads, other infrastructure, and public facilities. The applicant must demonstrate that there are adequate provisions to address the impacts identified.

b. If the site accesses on some road where existing traffic problems created by incremental development have already been identified, such as a high number of accidents, substandard road design or surface, or the road is near or over capacity, the applicant has proposed a method to address these problems.

c. The proposed use meets or will meet the applicable requirements for street, sewer, or water improvements.

d. The site has access to streets that are adequately designed and constructed to handle the volume and nature of traffic typically generated by the use.

5. Public Input. If there is a major public opposition to a proposed Special Use Permit, this may indicate that the technical evaluation regarding compatibility of the proposed use does not concur with the view of local residents and a recommendation of denial may be appropriate. If public concerns have been raised, it is fair to ask if the applicant has made a reasonable effort to address these concerns.

6. Hazardous Materials. Adequate data has been submitted to determine that impacts from uses that may involve hazardous or dangerous materials are adequately mitigated.

7. Compliance with Duly Adopted Plans. The Special Use request is consistent with the intent, goals, policies, and/or land use designations in the City General Plan or any other adopted Master Development Plans or Planning Area designations.