



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: October 2, 2018

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only Ordinance 8292 amending Title 9, “Land Use Code” by correcting and clarifying provisions in the recently adopted code changes to the Mixed Use – 3 (MU-3) zoning district.

PRESENTERS

Jane S. Brautigam, City Manager
Jim Robertson, Director of Planning and Sustainability
Charles Ferro, Development Review Manager for Planning
Thomas A. Carr, City Attorney
David Gehr, Chief Deputy City Attorney
Karl Guiler, Senior Planner/Code Amendment Specialist

EXECUTIVE SUMMARY

The proposed code change within **Attachment A** amends a recently adopted ordinance related to the MU-3 zoning district, which requires ground floor non-residential uses. The attached Ordinance 8292 would clarify the required minimum depth of these uses as it relates to exempting parking on the site. City Council passed the MU-3 code changes on [June 5, 2018](#) on third reading without a minimum depth requirement. Staff is proposing to re-add this requirement to make it clear how much parking may be exempted and to ensure an appropriately sized non-residential space on each site along the corridor.

BACKGROUND

On June 5, 2018, City Council passed [Ordinance 8244](#), which made residential uses in the MU-3 (Mixed Use – 3) zoning district on East Pearl a conditional use based on a concern that a proliferation of ground-floor residential uses could detrimentally affect the

commercial/retail character of East Pearl and detract from the pedestrian-oriented streetscape of that area. The code change, based on the mixed use, turn of the century, pedestrian-oriented streetscape of East Pearl, added specific standards that required non-residential uses on the ground floor facing Pearl Street and exempted such areas from the parking calculation as an added incentive for such uses. The change also updated the building design requirements to have primary building entries facing a street, at least 60 percent fenestration on the ground floor and required a minimum percentage of lot frontage containing buildings (i.e., 70 percent) to be consistent with the downtown, pedestrian friendly, mixed-use context.

Following approval of the ordinance, staff discovered that a provision that was previously proposed in the ordinance relative to minimum required depth (i.e., 25-feet) of the non-residential space had been removed, creating inconsistency between different subsections of the code. This inconsistency is shown below where there are references to minimum depth, but no required minimum depth is specified:

- (j) *Residential Uses in the MU-3 Zoning District: Any new dwelling unit that is constructed in the MU-3 zoning district shall be constructed and used in a manner that meets the following standards:*
 - (1) *For properties that front onto Pearl Street or streets that intersect with Pearl, the first floor above the finished grade at the street level shall be constructed to permit a portion of the first floor to be used for dining and entertainment use, personal service use or retail sales use that is permitted in the MU-3 zoning district;*
 - (2) *Building entries for uses above the first floor may be permitted to the extent necessary to provide access.*
 - (3) *Additional parking will not be required to be provided for the floor area that is necessary to meet the **minimum depth** of the first floor nonresidential use. All floor area beyond the **minimum depth** shall meet the parking requirements of Section 9-9-6, "Parking Standards," B.R.C. 1981.*
 - (4) *The nonresidential space required by this section shall be used as a nonresidential principal use as permitted by Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, and not be used for any residential principal or accessory uses.*
 - (5) *The first floor frontage requirements for nonresidential uses of this section and the requirements for window location, door location and minimum lot frontage in "Table 7-1: Form And Bulk Standards" may be modified for an individual landmark or a building within a historic district that has received a landmarks alteration certificate as required by Chapter 9-11, "Historic Preservation," B.R.C. 1981.*

Planning Board had originally recommended to City Council to remove the minimum depth requirement to allow more flexibility for potentially smaller, more affordable retail spaces, especially in multi-tenant buildings. To address this concern the minimum depth provision was removed on second reading of Ordinance 8244. However, the depth requirement was removed without clarifying the parking/floor area requirement above, which has created an inconsistency in the code that requires correction.

There is only one MU-3 zoned area in the city along east Pearl Street as shown in the map below:

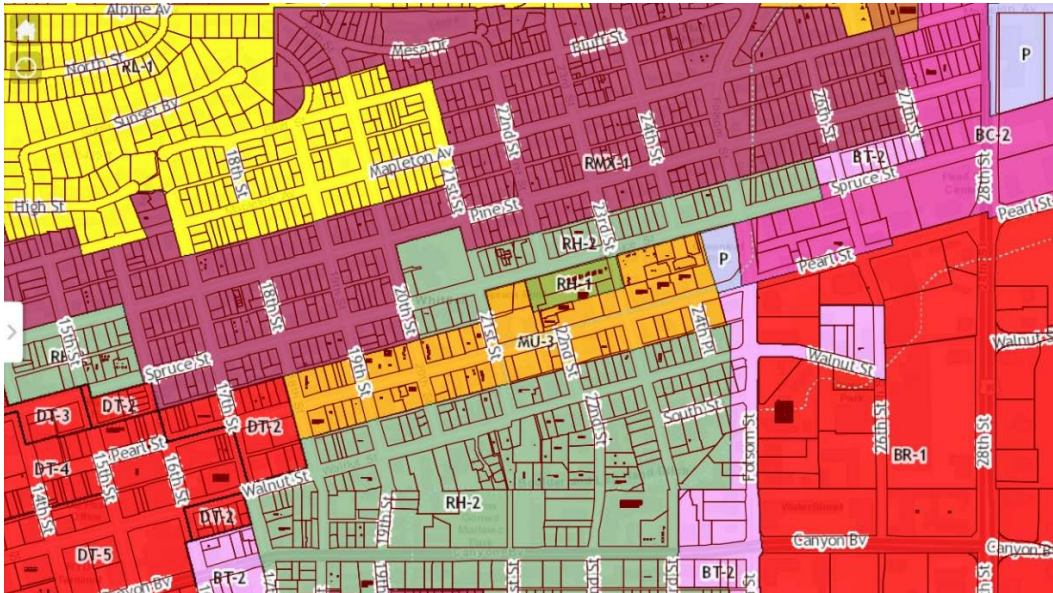


Figure 1- Location of the Mixed Use - 3 (MU-3) zoning district along east Pearl Street.

Planning Board considered the proposed ordinance found in **Attachment A** on Sept. 6, 2018, agreed that a minimum depth requirement should be re-added and recommended that City Council approve the draft ordinance in **Attachment A**.

STAFF RECOMMENDATION

Suggested Motion Language:

Motion to introduce on first reading and order published by title only Ordinance 8292 amending Title 9, "Land Use Code" by correcting and clarifying provisions in the recently adopted code changes to the Mixed Use – 3 (MU-3) zoning district.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The intent of the ordinance in **Attachment A** is to address a trend and to refine the zoning in the area to support the long-term diversity of land uses on East Pearl to promote a diverse and sustainable economy.
- Environmental – Any potential environmental impacts will be similar to the impacts of the existing development patterns.
- Social – Refinement of the zoning in the MU-3 area would promote a diverse mix of uses on East Pearl would support a more diverse demographic mix of community members spending time on the Pearl Street corridor.

OTHER IMPACTS

- Fiscal – This project is being completed using existing resources.
- Staff time – This project is being completed using existing staff resources.

BOARD AND COMMISSION FEEDBACK

Planning Board discussed the proposed change on Sept. 6th and found the proposed change reasonable. One board member expressed a concern that there may be more retail vacancies due to the ground floor non-residential requirement. The board found that an owner's suggestion to reduce the minimum required depth from 25 feet to 20 feet was reasonable and voted unanimously (6-0) that City Council approve the change (the motion is shown below) with a 20-foot depth as reflected in **Attachment A**.

On a motion by **L. Payton** seconded by **B. Bowen** the Planning Board voted 6-0 (**H. Zuckerman** absent) to recommend approval of the draft ordinance language presented to the board related to the MU-3 code changes with the minimum depth of 20 feet.

PUBLIC FEEDBACK

Planning staff sent out a notice in the Planning newsletter as well as letters to property owners informing them about the proposed change. In response, some owners have expressed opposition to the proposed requirements (already adopted by council) based largely on parking concerns of exempting space from the parking requirements and others have offered amendments to the restrictions for consideration. Planning Board took a suggestion from one property owner to reduce the minimum required depth of the non-residential space from 25-feet to 20 feet. This change is reflected in the draft ordinance in **Attachment A**. Written comments from the public on the MU-3 code change are found in **Attachment B**.

ANALYSIS

While Planning Board had originally recommended to allow more flexibility in the minimum amount of retail required to allow for potentially smaller, more affordable retail spaces, staff finds that a minimum depth provision should be re-added to correct the error discussed above. Re-adding the minimum depth would assist in avoiding situations where developers may work around the provision by creating small retail spaces of insufficient depth, working against the goal of having a legitimate ground floor mercantile environment along East Pearl. It would also remove any ambiguity about the amount of space that can be exempted from the parking calculation.

Staff had suggested 25 feet as it would be consistent with the existing code requirement for retail "wraps" on parking garages in [Section 9-6-9\(b\)\(4\)\(A\), B.R.C. 1981](#), which has been effectively and successfully implemented at the city parking facility at 15th and Pearl just blocks away from the MU-3 zoning district. Planning Board agreed with a property owner's suggestion that the 25-foot requirement be reduced to 20-feet based on encouraging smaller scale non-residential uses along East Pearl. The change would also reduce the amount of excepted area from the parking calculation which was an expressed concern from a neighbor.

The proposed code language in Ordinance 8292 (as follows) includes this change to 20-feet, but otherwise matches that which was previously proposed to Planning Board and City Council:

- (j) Residential Uses in the MU-3 Zoning District: Any new dwelling unit that is constructed in the MU-3 zoning district shall be constructed and used in a manner that meets the following standards:
- (1) For properties that front onto Pearl Street ~~or streets that intersect with Pearl~~, the first floor above the finished grade at the street level shall be constructed to permit a portion of the first floor as specified in subsection (j)(2) to be used for dining and entertainment use, personal service use or retail sales use that is permitted in the MU-3 zoning district.
 - (2) The nonresidential spaces shall have a minimum depth of 20 feet measured from the front of the building along the Pearl Street frontage to the inside wall opposite of the street frontage. Building entries for uses above the first floor may be permitted to the extent necessary to provide access.
 - (3) Additional parking will not be required to be provided for the floor area that is necessary to meet the required minimum depth of the first floor nonresidential use. All floor area beyond the required minimum depth shall meet the parking requirements of Section 9-9-6, "Parking Standards," B.R.C. 1981.
 - (4) The nonresidential space required by this section shall be used as a nonresidential principal use as permitted by Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, and not be used for any residential principal or accessory uses.
 - (5) The first floor frontage requirements for nonresidential uses of this section and the requirements for window location, door location and minimum lot frontage in "Table 7-1: Form And Bulk Standards" may be modified for an individual landmark or a building within a historic district that has received a landmarks alteration certificate as required by Chapter 9-11, "Historic Preservation," B.R.C. 1981.

As reflected in the crossed out text above, staff is also proposing a change to the prior ordinance that would only apply the ground floor requirements for non-residential to the Pearl Street frontage rather than along adjoining streets. Staff proposing this as the concern has largely been focused to the pedestrian-oriented mixed-use streetscape of Pearl and also since allowing residential in the back portions of sites would be more conducive to creating a more appropriate transition from the commercial character of Pearl Street to the residential character of the blocks north and south of Pearl Street. These changes are found within **Attachment A**.

ATTACHMENTS

A: Ordinance 8292

B: Public comment

ORDINANCE 8292

AN ORDINANCE AMENDING, TITLE 9, "LAND USE CODE," B.R.C. 1981, BY CORRECTING AND CLARIFYING RECENTLY ADOPTED USE STANDARDS FOR THE MIXED-USE 3 (MU-3) ZONING DISTRICT AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 9-6-3, "Specific Use Standards – Residential Uses," B.R.C. 1981, is amended as follows:

9-6-3. - Specific Use Standards - Residential Uses.

...

(j) Residential Uses in the MU-3 Zoning District: Any new dwelling unit that is constructed in the MU-3 zoning district shall be constructed and used in a manner that meets the following standards:

- (1) For properties that front onto Pearl Street ~~or streets that intersect with Pearl~~, the first floor above the finished grade at the street level shall be constructed to permit a portion of the first floor as specified in subsection (j)(2) to be used for dining and entertainment use, personal service use or retail sales use that is permitted in the MU-3 zoning district.
- (2) The nonresidential spaces shall have a minimum depth of 20 feet measured from the front of the building along the Pearl Street frontage to the inside wall opposite of the street frontage. Building entries for uses above the first floor may be permitted to the extent necessary to provide access.
- (3) Additional parking will not be required to be provided for the floor area that is necessary to meet the required minimum depth of the first floor nonresidential use. All floor area beyond the required minimum depth shall meet the parking requirements of Section 9-9-6, "Parking Standards," B.R.C. 1981.
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- (5) The first floor frontage requirements for nonresidential uses of this section and the requirements for window location, door location and minimum lot frontage in "Table 7-1: Form And Bulk Standards" may be modified for an individual landmark or a building within a historic district that has received a landmarks alteration certificate as required by Chapter 9-11, "Historic Preservation," B.R.C. 1981.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of

the residents of the city, and covers matters of local concern.

Section 3. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 2nd day of October 2018.

Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED, this 16th day of October
2018.

Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk

From: Francine Taylor <taylor.francine@gmail.com>
Sent: Thursday, September 06, 2018 3:29 PM
To: boulderplanningboard <boulderplanningboard@bouldercolorado.gov>
Subject: proposed changes to mixed use zoning districts

Planning Board-

My husband and I just received a letter indicating that this matter is coming up this evening. We own a residence on 18th St, between Pearl and Spruce.

I have looked at the on line information, and spoken with Karl Guiler. I understand that the after speaking with Mr. Guiler that the net effect of this change would be to exclude retail space from the computation of required parking spaces.

In the past recent years, every time a zoning issue comes up- a variance is given. And the variance always results in more density, waiving set back, height or parking requirements. This merely pushes parking to the surrounding areas. We don't expect the area to be all residential; we would be happy for the current mixed use zoning to be followed, but the policies have been pressuring the residential component by favoring businesses and density through variances.

Although we have a neighborhood parking permit, there are many days when neither we nor our guests can park within blocks, because the spaces are taken by shoppers.

It seems that the norm is for zoning variances to be given, and the exception is for existing zoning to be followed. Please consider Not issuing variances, except in truly exceptional circumstances, not merely for the convenience of retailers.

Francine Taylor

Sent from [Mail](#) for Windows 10

From: Paul Baryames <pbaryames@gmail.com>
Sent: Monday, September 24, 2018 1:43 PM
To: Guiler, Karl <GuilerK@bouldercolorado.gov>
Subject: MU-3

Karl,

I represent my sisters and brothers who own 1813-1815 Pearl St. We are in the new zoning change that you are proposing. I'm not a developer and I do not follow codes and frankly get most frustrated at what I see the City doing as far as code changes, directional changes by the City etc. BUT, I am open-minded and willing to listen as long as the listening aspect goes both ways.

I presume that this issue is based on the number of properties along Pearl that are being converted to 1st-floor housing. I see the idea of the zoning but the question I have is is it really necessary? If you let the market dictate what gets built I would assume that the developers will build what will sell or rent to garner a return on their investment. Maybe the smarter thing to do is offer an incentive to a property owner to keep the first floor as retail. Offer a lower property tax value on that space to allow a developer to at least think about retail. I believe what the City is conjuring up here is typical. "We the City will DICTATE what goes there". That is not a free market system. I see that right now in the planning department on another project we have going. It does not sit well with me. I have never had a planner like yourself or City Council Member contact me for my opinion. How do you all have any idea what is in EVERYBODY'S best interests? I am very curious. Personally, I

think you are mostly out of touch and hence you bring forth changes like you are proposing. Just throw the iron fist at um and that will quiet them down.

I look at the Pearl Street Mall and am unimpressed with the end results there. National retail, no real focus, lots of tourists walk it but if you really look there is a lot of tenant turnover on the Mall and it's kinda trending downhill. Here is a 4 block area City controlled and it's mediocre in my opinion. The most recent move to eliminate I believe Banks because they close is very strange and will do zero in improving what is happening down there. The reason that area is struggling, in my opinion, is that the property taxes are too heavy for a good retailer to survive. Hence they come in for their 5 years or 10-year stay on a national basis and then they leave.

The way I look at it. If some retail is eliminated from Pearl St. it might strengthen the remaining retail. Does Boulder need 15 blocks (9th to Folsom) to be retail on the first floor? And with all the parking hula ba lu (the City has a very strange parking environment there). Maybe more housing with rear off-street parking would be of a bigger benefit.

Have you all discussed and really thought the effects of this? I'm just concerned as usual as to the City "think" of the area. Who is the City Council Member associated with this change? I would love to speak to that person.

To a developer, you have probably had many discussions about this. How about talking to just a property owner and get our opinion. I believe that is important as well. We have a very long-term view on our Boulder properties. We think there are many better ways to accomplish the end result you are looking for without added zoning requirements. I would ask that the City take a step back and a longer better look at this area before you all create something that may not be the right fix.

I just wanted to add that I have lived in Boulder since 1978, I used to own The Aristocrat Steakhouse on the corner of Broadway and Spruce and saw firsthand (and early as we sold our lease to the Gap which oh....stayed 10 years and left). I have owned property in Boulder since 1981. So I'm not some newbie, I have seen it and lived it in this town. I try to think things through before I speak. I also try to look at all of the angles.

I'm available anytime.

Paul Baryames
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