

ORDINANCE NO. 2797-10

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE," ARTICLE III, "ZONING," TO ADOPT NEW ZONING REGULATIONS IN SECTION 58-89, AND SECTION 58-90, AMENDING THE PROCESS AND PROCEDURES, STANDARDS AND CRITERIA FOR APPROVAL OF CHANGES TO THE ZONING REGULATIONS TEXT AND OFFICIAL ZONING MAP AND FOR CONDITIONAL USES; PROVIDING AN ADDITIONAL DEFINITION IN SECTION 58-95; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Winter Park has recommended approval of this Ordinance at its February 2, 2010 meeting; and

WHEREAS, the City Commission of the City of Winter Park held duly noticed public hearings on the proposed change set forth hereunder and considered findings and advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and after complete deliberation, hereby finds the requested change consistent with the City of Winter Park's Comprehensive Plan; and

WHEREAS, the City Commission hereby find that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended by repealing and adopting "Zoning" Sections as follows, to read as attached as Exhibit "A" to this ordinance:

Sec. 58-89. Zoning changes and amendments, public notice requirements and procedures for zoning amendments and conditional uses.

Sec. 58-90. Conditional uses.

SECTION 2. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by adding to Section 58-95 "Definitions," a new definition of "Three story buildings within the central business district" to read as follows:

Three story buildings within the central business district (CBD) means any buildings within the central business district geographical area, as depicted in the CBD Map D-2 within this definitions section, that either 1) contain three stories or 2) are less than three stories but greater than thirty-five (35) feet in height.

SECTION 3. Severability. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 4. Conflicts. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 5. Codification. It is the intention of the City Commission of the City of Winter Park, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

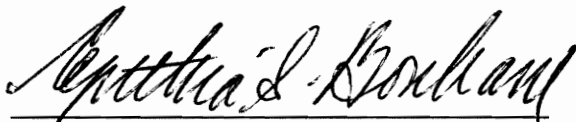
SECTION 6. Effective Date. This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 22nd day of April 2010.



Mayor Kenneth W. Bradley

ATTEST:



City Clerk Cynthia S. Bonham

EXHIBIT "A"

Sec. 58-89. Zoning changes and amendments, public notice requirements and procedures for zoning amendments and conditional uses.

- (1) Applications for zoning changes and amendments. The regulations, restrictions, and district boundaries set out in this article may from time to time be amended, supplemented, changed or repealed. The procedure shall be as follows:
 - (a) A zoning text or map amendment may be proposed by the city commission or the planning and zoning commission. A zoning map amendment may be proposed by any individual, corporation, partnership or other entity having a bona-fide interest in such property either by ownership or by standing under a contract to purchase such land. All zoning text or map amendments must be made by ordinance.
 - (b) Applications shall be submitted on a standard application form accompanied by all pertinent information which may be required for proper consideration of the matter, along with payment of fees and charges as established by the city commission.
 - (c) Applicants shall include prospective plans indicating the desired development scenario proposed as a result of an approval per the plan submission requirements established for conditional uses. Applicants shall also indicate if the proposed development includes a request for Community Redevelopment Area (CRA) funds, including the amount requested and the purpose of such funding.

- (2) Standards for Review of Zoning Amendments. All proposed zoning text or map amendments shall be submitted to the planning and zoning commission for study and recommendation. The commission shall study such proposals to determine:
 - a. The need and justification for the change;
 - b. When pertaining to the rezoning of land, the effect of the change, if any, on the particular property and the surrounding properties;
 - c. When pertaining to the rezoning of land, the amount of undeveloped land in the general area and in the city having the same classification as that requested;
 - d. That the proposed amendment is consistent with the applicable goals, policies, and text of the city's comprehensive plan, with appropriate consideration as to whether the proposed change will further, or at least not be contrary to, the purpose of this zoning ordinance and the general planning program;
 - e. That the proposed plan resultant from the zoning change and proposed use as to business type, operating hours, noise, parking and traffic impact will be compatible with the existing and anticipated land use activities in the immediate neighborhood and that such use will be compatible with the character of the surrounding area;
 - f. That adequate public facilities and services necessary to service the development associated with the proposed zoning will be available and in place at the time of impact of the development reliant upon such zoning;
 - g. That the building size, floor area ratio, height and mass are compatible with and consistent with the scale and character of the immediate neighborhood;
 - h. That the traffic generated from the proposed zoning shall not, on a daily or peak hour basis, degrade the level of service on adjacent roads or intersections or raise any traffic safety hazards; and

i. That the proposed zoning does not create, through noise, intensity of activity, traffic, overflow parking, storm water runoff, etc. any conditions that degrade the value of adjacent properties, the peaceful use of adjacent properties, degrade the economy of adjacent businesses or degrade the character of the surrounding neighborhood or negatively impact the future use of adjacent properties.

(3) Requirements for Public Notification and Hearings.

(a) Generally. No recommendation for amendment to this zoning ordinance shall be made by the planning and zoning commission until and unless a public hearing has been held. Before any public hearing is held by the planning and zoning commission under the provisions of this section for zoning map amendment or for review of any conditional use request, notice shall be provided based upon the type and size of the request as detailed below. In cases where requests are not specifically indicated in this section, the planning and community development director shall determine the most appropriate level of public notice. Regardless of the size of the project, when any proposed amendment to the official zoning map or conditional use involves a project that is requesting Community Redevelopment Area (CRA) funds, then a statement to that effect specifying the amount requested and the purpose shall be included in the notice required for the project.

(b) Public Notice Requirements.

(1) For any proposed conditional uses involving drive-in business components, two-story buildings in the O-2 district of less than 10,000 gross square feet above grade, residential projects of three units or less, conditional use for restaurant or liquor licenses, new or used car sales, vehicle repair or service, parking lots or recreational facilities, said notice of the hearing shall be published in a newspaper of general circulation within the city at least fifteen (15) days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all owners of record of property within 500 feet of the property requested for rezoning at least fifteen (15) days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant.

(2) For any amendment to the official zoning map for land of less than one acre and for conditional uses involving church expansions, residential projects of four to twenty-five units, buildings over 10,000 gross square feet and less than 25,000 gross square feet above grade, day care, nursing homes and assisted living complexes said notice of the hearing shall be published in a newspaper of general circulation within the city at least fifteen (15) days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all owners of property of record within 1,500 feet of the property requested for rezoning at least fifteen (15) days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant.

(3) For any proposed amendment to the official zoning map for land of more than one acre and for conditional uses involving residential projects with over twenty-five units, buildings over 25,000 gross square feet above grade and third floor projects in the central business district, said notice of the hearing shall be published in a newspaper of general circulation within the city at least thirty (30) days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all owners of record of property within 1,500 feet of the property, and mailed to all households as determined from the listing of utility billing addresses within the entire city limits at least thirty (30) days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant. Said postings of properties shall remain in place through the public hearing process. The city shall monitor this posting and provide replacements for any postings lost due to weather, vandalism, etc. However, the absence of a posting due to these conditions beyond the control of the city or the applicant shall not constitute a breach of this requirement provided a good faith effort is made to comply.

(4) Any public notice required after the initial advertised public hearing by the planning and zoning commission for a meeting of the planning commission due to tabling, continuance, postponement by the applicant or any other action by the planning commission shall revert to the fifteen (15) day notice requirements as specified in subsection (b) (1) outlined above and the additional notice requirements of subsections (b) and (c) shall not apply to these additional meetings of the planning and zoning commission unless staff is otherwise directed by the planning commission so as to allow for requests to be heard at the next regular or special meeting of the planning and zoning commission.

(5) The initial public notice shall include the expected date, time and place of the public hearing for the expected first reading by the city commission of the ordinance for consideration to amend the official zoning map. If the date, time or place of the city commission first public hearing changes due to tabling, continuance, postponement by the applicant or other action by the planning and zoning commission, then the notice requirements for the city commission public hearings shall be as required for the adoption of ordinances by Chapter 166, Florida Statutes.

(6) Any proposed zoning text amendment proposed by the planning and zoning commission or city commission shall include notice as deemed appropriate by that commission given the nature and character of the amendment.

(4) Planning and Zoning Commission Recommendation. The planning and zoning commission following their public hearing may recommend approval, approval with conditions, preliminary approval, denial or submit such request with no recommendation to the city commission in the case of a tie vote. However, if the planning and zoning commission makes no recommendation following two advertised public hearings from the date of the initial public notice, it shall be considered submitted to the city commission without recommendation on the proposed zoning text or map amendment. This provision

shall not include any public hearing during which the applicant requests that the application be tabled, postponed or continued or any public hearing where the planning commission deems that the plans submitted do not meet the application submission requirements, notice is deemed insufficient or any other procedural deficiency.

(5) Recommendation of Denial/Modification of Amendment by Planning & Zoning Commission or Objection to Amendment. In case of a recommendation of denial by the planning and zoning commission, such amendments shall not become effective except by the favorable vote of four members of the city commission. In cases when the planning and zoning commission recommends approval of a zoning map amendment on a lesser portion of the property than originally requested or imposes conditions upon or limitations upon a recommendation for approval reducing the intensity or density of use of said property, it shall require the favorable vote of four members of the city commission to adopt such zoning map amendment to a greater portion of the property or to increase the density or intensity of use of said property above that recommended by the planning and zoning commission.

(6) Future Applications.

(a) Whenever the city commission has, by amendment, changed the zoning classification of property, the planning and zoning commission shall not consider any petition for the rezoning of any part or all of the same property for a period of one year from the effective date of the amendatory ordinance.

(b) Whenever the planning and zoning commission has taken action to recommend the denial of a petition for the rezoning of property and that recommendation has been approved by the city commission, or when the planning and zoning commission has recommended granting a petition for the rezoning of property and the city commission has reversed that recommendation and denied the petition, the planning and zoning commission shall not:

(1) Consider any further petition for the same rezoning of any part or all of the same property for a period of one year from date of such action by the city commission;

(2) Consider a petition for any other kind of rezoning on any part or all of the same property of a period of one year from the date of such action by the city commission.

(c) The time limits of this subsection may be waived by the affirmative vote of four members of the city commission, when such action is deemed necessary to prevent injustice or to facilitate the proper development of the city.

(7) Commission Decisions. The decision of the planning and zoning commission and the city commission may be made to affirm or deny the original request of the applicant or it may modify the request to approve a portion of the request or alternative version of the zoning text or map amendment. The planning and zoning commission may recommend and the city commission may impose conditions upon the approval of a zoning amendment. Such conditions may not restrict the range of permitted uses within a zoning district but such conditions may restrict or impose requirements upon the development or use of such land such as limitations on building size, height, setbacks or other site design or building design or use features.

(8) Continuances. Whenever the secretary to the planning and zoning commission has received a written request for a continuation, delay or postponement of a public hearing from an applicant after such public hearing has been duly advertised, the planning and zoning commission may grant the applicant's request. The commission shall reschedule the public hearing to any future scheduled meeting within the following six months; such rescheduling shall meet with the approval of the applicant. The applicant shall pay a second filing fee for rezoning to cover necessary administration and other expenses. If, after the second public hearing has been duly advertised and the applicant again requests a delay, postponement or continuation, or if the applicant does not agree with the rescheduling of the public hearing within the six month period, the planning and zoning commission shall duly act to deny the request of the applicant, and a new request for rezoning of this property will not be accepted for a period of one year from the date of the second scheduled public hearing.

(9) Preliminary Action.

(a) Preliminary action may be recommended by the planning and zoning commission and may be approved by the city commission. Preliminary action is the first step of a two-step approval process. A preliminary action for a zoning map amendment would constitute approval of the first reading of the zoning map amendment ordinance. The final approval requires the resubmission of additional plan documents or other relevant materials as may be deemed necessary to the planning and zoning commission and/or city commission. Following review and acceptance of the supplementary materials, the city commission may, at its discretion provide the final approval by the adoption of the zoning map amendment ordinance at its second reading. The city commission may request a subsequent review and recommendation by to the planning and zoning commission prior to consideration of the second reading of the zoning map amendment ordinance. Preliminary action does not establish a contractual obligation for the city to issue development orders and building permits until the final approval is granted.

(10) Development Agreements.

(a) The approval of zoning map amendments may require the utilization of a development agreement. The development agreement incorporates the plan submissions, written application materials and verbal representations of the applicant as well as including any special conditions and restrictions. A development agreement may be approved by the city commission coincident with the initial final approval of the zoning map amendment or conditional use or may be executed at a later time. Unless specifically specified in the development agreement, development agreements utilized pursuant to zoning map amendments or conditional use approvals do not have to conform to the requirements of Florida Statutes 163.3221, et seq., or Section 58-7 of the Land Development Code. Development agreements shall be prepared by the City of Winter Park pursuant to the terms and conditions outlined by the planning and zoning commission and the city commission or development agreements may be prepared by the applicant subject to review and approval by the city attorney. Applicants shall be required to reimburse the city for actual city staff and city attorney expenses. Development agreements provided as part of the submissions for a final approval shall be reviewed by the planning commission.

(b) In cases where preliminary approvals are granted for amendments to the official zoning map, the effective date of such ordinance may be upon the date of

execution of a development agreement following the subsequent review and approval by the city commission, following recommendation from the planning and zoning commission of the additional plan documents or other relevant materials as may be deemed necessary as exhibits for the development agreement.

(11) Plan Submittals for Commission Review.

(a) Whenever an applicant submits plans as required by this code, only the plans delivered to the planning commission members prior to the public hearing for their review as part of the official agenda packet together with a staff report analysis and other pertinent information shall be the basis for action by the planning and zoning commission. If those plans are substantially modified then such application shall be postponed and re-advertised for a subsequent meeting.

(b) Similarly, when the planning and zoning commission makes a recommendation on an application pursuant to specific plans, and those plans are significantly changed for submission to the city commission public hearing, then the significantly changed plans shall first be reviewed by the planning and zoning commission for recommendation before they are considered by the city commission for approval.

(c) The city commission shall not act on any application containing significantly changed plans but shall refer the significantly changed plans back to the planning and zoning commission, for subsequent review and recommendation unless such changes are in response to specific conditions of approval made by the planning and zoning commission.

(d) Whenever an applicant requests a work session or pre-application meeting before the planning and zoning commission or city commission or both combined commissions, such plans shall be submitted at least two weeks prior to such meeting and the planning staff shall prepare for review by such commissions, a preliminary report outlining the extent of the zoning variances and other issues that such application will entail.

(12) Significant Changes to Buildings or Approved Plans.

(a) Significant changes to buildings or approved plans are defined below. There are two times when plan documents are reviewed following a preliminary approval or following a final approval with respect to a determination of significant change. The first time is following a preliminary approval when plan documents are submitted for final approval as required by this code. The second time is when plan documents are submitted for site development and building permits. In the first situation, the planning staff, based upon the criteria set forth below shall make a staff recommendation indicating the facts and conditions as they understand them to be. The planning and zoning commission shall then, following the required public hearing and based upon the criteria set forth below, make a recommendation either that:

- (1) No significant changes have been made, or
- (2) That significant changes have been made but those changes are acceptable to the planning and zoning commission or
- (3) That significant changes have been made which are not acceptable to the planning and zoning commission in which case the developer must amend such plan documents and re-submit such plans for final approval in order to build the project in conformance with the parameters of the original preliminary approval.

(b) This action by the planning and zoning commission is a recommendation. The city commission shall then, following the required public hearing, make the final decision either that:

- (1) No significant changes have been made, or
- (2) That significant changes have been made but those changes are acceptable to the city commission or
- (3) That significant changes have been made which are not acceptable to the city commission in which case the developer must amend such plan documents and re-submit such plans for final approval in order to build the project in conformance with the original parameters of the preliminary approval.

(c) In the second instance, the planning and development director must insure that the plan documents submitted for site development and building permits are consistent with the plan documents given final approval by the city commission. Any such determination of significant change by the planning and community development director in this instance may be appealed to the city commission following recommendation from the planning and zoning commission. In order to determine whether a significant change shall be deemed to occur, the following criteria shall be used:

- (1) When there is an increase in the height of a building of more than one (1) foot; or
- (2) When there is an increase in the square footage of a proposed building of more than 250 square feet above grade; or
- (3) When there is an increase in the impervious lot coverage of more than 500 square feet; or
- (4) When there is a change in the architectural style of the building; or
- (5) When there is a major shift or relocation of the site and floor plan(s) or the distribution of uses within the building or major shift or relocation in the features of building location, storm water retention, parking area and/or driveways; or
- (6) When additional variances are requested that have not previously been made part of the public record in the review by the planning and zoning commission and/or the city commission; or
- (7) When the planning director or city commission believes a material change has been made in a plan detail that was critical to the consensus or decision made by the board or commission.

(d) The planning and zoning commission and the city commission will allow only the submission of one plan change to be reviewed under this section. For example, a project cannot increase the building height by one foot (which is not a significant change) and then request another determination for another additional foot increase in height and then another request and so on.

(13) Rezoning Discouraged. In furtherance of the policies of the Comprehensive Plan, some types of rezonings are discouraged in certain areas, as set forth in the Future Land Use Element Policies 1-3.8.4, 1-4.1.A.3, 1-4.1.B.14, 1-4.1.C.5, 1-4.1.F.1, 1-4.1.F.6, 1-4.1.H.6, 1-4.1.H.7, 1-4.1.H.8, 1-4.1.I.2, 1-4.1.J.1, 1-4.1.J.3, and 1-4.1.J.11.

Exhibit "A"

Sec. 58-90. Conditional uses.

(1) Applications for conditional uses.

(a) Within this article, various types of land uses, various types of structures, various types of businesses, certain types or sizes of buildings or certain types of licenses or business certificates have been deemed to require a conditional use approval prior to beginning operation or development. These conditional use approval requirements are to insure that such activities and projects are in conformance with the comprehensive plan policies and that they do not result in lack of compatibility and adverse effects with the type and size of buildings and the character of the surrounding area. Aside from the ability to deny such conditional uses or impose conditions upon such conditional use approvals in order to achieve these objectives, the city may also reduce the size, height and intensity of such buildings, structures and uses of land below that normally permitted within the zoning district in order to insure that these objectives are achieved.

(b) The planning and zoning commission may recommend and the city commission may impose conditions upon the approval of a conditional use request. Conditional use applications encompass the entire site or property involved and do not relate only to the component of the plans requiring such conditional use approval. As such conditions may be imposed regarding the manner in which the entire conditional use property is developed and used and the city may impose restrictions otherwise not applicable by other typical land development codes as part of the conditional use approval. Such conditions may also include trial periods or time limits placed upon an approval. Such conditions may also be limited to the time period during which the applicant maintains the business certificate or occupational license for the business requesting such conditional use approval.

(2) Requirements for Public Notice and Hearings. The public notice requirements, procedures and regulations for the review of conditional uses by the planning and zoning commission and the city commission shall be the same as outlined for zoning changes and amendments, except as outlined below.

(3) Approval of Conditional Uses.

(a) A simple majority of the city commission may override any recommendation for denial or modify any conditions of approval in the recommendation of the planning and zoning commission except those involving conditional use approvals for three story buildings within the central business district geographic area as defined in this code, which shall require the affirmative vote of four city commissioners per the policies of the Comprehensive Plan.

(b) In order to streamline the development plan approval process, the city commission in the approval of conditional uses may also grant limited exceptions from the terms of this article. Those exceptions shall be limited to the size and height of accessory structures such as walls, fences and signs and shall also be limited to site and building design features involving the number of parking spaces, the location of storm water retention facilities, building setbacks, building lot coverage and building height, but for building

height, said exception shall be limited to no more than five (5) feet above the height limits of this article.

(4) Expiration and Re-establishment of Conditional Uses

(a) Conditional uses involving the use of land or buildings for a particular type of business or business activity determined to be a conditional use, such as, but not limited to, motor vehicle sales, live amplified musical entertainment, day care, alcoholic beverage licenses etc. shall expire either one year from the date of the approval by the city commission if such use or business type has not yet been commenced or such conditional use shall expire ninety (90) days from the time the business ceases to operate from the property or building. This shall apply if the business is closed for ninety (90) consecutive days regardless of whether a business certificate continues to exist. Conditional uses involving approvals for the construction of buildings over 10,000 square feet or for three stories within the central business district geographical area shall expire after one year from the date of a preliminary approval by the city commission if a final development plan approval is not granted or such conditional uses shall expire after two years from the approval by the city commission from the date of the final development plan approval by the city commission unless a complete and sufficient building permit application and construction plans are submitted or construction is underway or as may otherwise be specifically set forth in the conditional use approval or in the accompanying development agreement. Pursuant to such submittal of building permit application and construction plans, construction must commence no later than six (6) months from the date the building permit is issued. For phased projects without timetables specified in the conditional use approval or in the accompanying development agreement, all phases must be under construction within five years from the date construction commences on the first phase.

(b) The city commission may extend conditional uses or re-establish conditional use approvals that have expired at the discretion of the city commission. The advertisement and notification requirements shall not apply to the re-establishment of expired conditional uses except that for conditional uses approvals involving buildings over 10,000 square feet or involving three story buildings within the central business district geographic area as defined in this code, the advertisement and notification requirements shall apply the same as for the initial approval of the conditional use in order for the city commission to extend or re-establish such conditional use approvals that have expired. For projects requiring city-wide notice, the city commission may, at their discretion, consent to the alternative use of a quarter page display advertisement in a newspaper of general circulation.

(5) Conditional Use Approval Process

(a) For conditional uses approvals involving buildings over 10,000 square feet or for three story buildings within the central business district geographic area as defined in this code, there is a two step process established involving a preliminary approval and then a final development plan approval. Preliminary approvals may be recommended by the planning and zoning commission and may be approved by the city commission or at the discretion of the applicant, the applicant may apply and request a final development plan approval in one step by both the planning and zoning commission and the city commission, if all relevant issues are addressed and complete submissions are approved. A preliminary approval is the first step of a two-step approval process. The

second step is the final development plan approval which requires the resubmission of additional plan documents or other relevant materials as may be deemed necessary to the planning and zoning commission for recommendation and for action by the city commission. The city commission may, at its choosing, delegate the subsequent review and final development plan approval authority to the planning and zoning commission such as providing for a final development plan approval subject to the planning and zoning commission's review and approval of a landscape plan, lighting plan, etc. The initial preliminary approval does not establish a contractual obligation for the city to issue development orders and building permits until the final approval is granted.

(b) For conditional uses approvals not involving buildings over 10,000 square feet or not involving three story buildings within the central business district geographic area as defined in this code, the process combines the preliminary approval and a final development plan approval in one step. However, the city commission, at its choosing, may delegate the subsequent review and final approval authority to the planning and zoning commission such as providing for a final development plan approval subject to the planning and zoning commission's review and approval of a landscape plan, lighting plan, etc.

(6) Development Agreements.

(a) The approval of conditional uses may require the utilization of a development agreement. The development agreement incorporates the plan submissions, written application materials and verbal representations of the applicant as well as including any special conditions and restrictions imposed by the city commission, upon which the approval may be based. A development agreement may be approved by the city commission coincident with the final approval of the conditional use or may be executed at a later time. Unless specified in the development agreement, development agreements utilized pursuant to conditional use approvals do not have to conform to the requirements of Florida Statutes 163.3221, et seq., or Section 58-7 of the Land Development Code. Development agreements shall be prepared by the City of Winter Park pursuant to the terms and conditions outlined by the planning and zoning commission and the city commission or development agreements may be prepared by the applicant subject to review and approval by the city attorney. Applicants shall be required to reimburse the city for actual city staff and city attorney expenses. Development agreements provided as part of the submissions for a final approval shall be reviewed and approved by the planning commission.

(b) In cases where approvals are granted for conditional uses, the effective date of such conditional use approval may be upon the date of execution of a development agreement following the subsequent review and approval by the city commission, following recommendation from the planning and zoning commission of the additional plan documents or other relevant materials as may be deemed necessary as exhibits for the development agreement.

(7) Plan Submittals for Commission Review.

(a) Whenever an applicant submits plans as required by this section, only the plans submitted to the planning commission members prior to the public hearing for their review together with a staff report analysis and other pertinent information shall be the basis for action by the planning and zoning commission. If those plans are substantially

modified then such application shall be postponed and re-advertised for a subsequent meeting. Similarly, when the planning and zoning commission makes a recommendation on an application pursuant to specific plans, and those plans are substantially modified, then the modified plans shall first be reviewed by the planning and zoning commission before they are considered by the city commission for approval. The city commission shall not act on any application containing modified plans but shall refer the modified plans back to the planning and zoning commission, for subsequent review and recommendation unless such changes are in response to specific conditions of approval made by the planning and zoning commission.

(8) Significant Changes to Buildings or Approved Plans.

(a) Significant changes to buildings or approved plans are defined below. There are two times when plan documents are reviewed following a preliminary approval or following a final development plan approval with respect to a determination of significant change. The first time is following a preliminary approval when plan documents are submitted for final development plan approval as required by this code. The second time is when plan documents are submitted for site development and building permits. In the first situation, the planning staff, based upon the criteria set forth below shall make a staff recommendation indicating the facts and conditions as they understand them to be. The planning and zoning commission shall then, following the required public hearing and based upon the criteria set forth below, make a recommendation either that:

- a. No significant changes have been made, or
- b. That significant changes have been made but those changes are acceptable to the planning and zoning commission, or
- c. That significant changes have been made which are not acceptable to the planning and zoning commission in which case the developer must amend such plan documents and re-submit such plans for final approval in order to build the project in conformance with the parameters of the original preliminary approval.

This action by the planning and zoning commission is a recommendation. The city commission shall then, following the required public hearing, make the final decision that either:

- a. No significant changes have been made, or
- b. That significant changes have been made but those changes are acceptable to the city commission, or
- c. That significant changes have been made which are not acceptable to the city commission in which case the developer must amend such plan documents and re-submit such plans for final approval in order to build the project in conformance with the original parameters of the preliminary approval. In the second instance, the planning and development director must insure that the plan documents submitted for site development and building permits are consistent with the plan documents given final approval by the city commission. Any such determination of significant change by the planning and community development director in this instance may be appealed to the city commission following recommendation from the planning and zoning commission. In order to determine whether a significant change shall be deemed to occur, the following criteria shall be used:

- (1) When there is an increase in the height of a building of more than one (1) foot; or
- (2) When there is an increase in the square footage of a proposed building of more than two hundred fifty (250) square feet above grade; or

- (3) When there is an increase in the impervious lot coverage of more than five hundred (500) square feet; or
- (4) When there is a change in the architectural style of the building; or
- (5) When there is a major shift or relocation of the site and floor plan(s) or the distribution of uses within the building or major shift or relocation in the features of building location, storm water retention, parking area and/or driveways; or
- (6) When additional variances are requested that have not previously been made part of the public record in the review by the planning and zoning commission and/or the city commission; or
- (7) When the planning director believes a material change has been made in a plan detail that was critical to the consensus or decision made by the board or commission.

(b) Decisions regarding significant changes may only occur one time. For example, a project cannot increase the building height by one foot (which is not a significant change) and then request another determination for another additional foot increase in height and another request and so on.

(9) Conditional Use Submittal Requirements.

(a) For conditional use approvals involving buildings over 10,000 square feet or for three story buildings within the central business district geographic area as defined in this code, the applicant for approval of a conditional use shall submit to the city plans and all supplemental materials required to accompany such plans. All site and development plans shall contain the following data and information:

(1) *Plan sheet format.* The maximum sheet size for plans shall not exceed 24 inches by 36 inches. Provide one copy at that size. In addition, the applicant shall provide twelve copies of each site or development plan sheet reduced to no larger than 11 inches by 17 inches. Applicants shall also provide a copy of the application submittals in electronic format.

(2) *General information.*

- a. The identification of each sheet;
- b. Legend, including:
 1. Name of development;
 2. Legal description;
 3. Acreage;
 4. Scale;
 5. North arrow;
 6. Existing zoning and other special districts;
 7. Preparation/revision date;
 8. 100-year flood plain elevation.

(3) Application, application fee, name, address and phone number of:

- a. Owner;
- b. Owner's authorized agent;
- c. Engineer;
- d. Surveyor;
- e. Others involved in application.

(4) Vicinity map;

(5) Existing conditions survey showing existing streets structures and topographic contours on the subject property and adjacent to and within fifty (50) feet of site and also including:

- a. Name;
- b. Location;
- c. Right-of-way width;
- d. Driveway approaches;
- e. Medians and median cuts;
- f. Existing on-site trees of nine inch caliper or greater.

(6) Proposed development plan.

a. Proposed buildings and structures, individually identified by number, symbol or other appropriate system, including the following information:

1. Location;
2. Proposed use for each building or portion thereof;
3. Dimensions and height;
4. Gross floor area, in square feet by building, use and total;
5. Preliminary architectural elevations;
6. Proposed fences or walls.

b. Required yards, setbacks, buffers and distances; indicate location and dimensions of all required yards, setbacks and buffers. Also indicate distance between buildings.

c. Proposed on-site vehicular circulation system, and parking areas; include location, dimensions, and typical construction specifications of:

1. Driveways, approaches and curb cuts;
2. Vehicular access points, access ways, and common vehicular access points;
3. Off-street parking spaces and comparison of numbers provided with applicable code requirements;
4. Other vehicular use areas;
5. Sidewalks and other pedestrian use areas;
6. Waste removal receptacles.

d. Landscaping plan; which may be conceptual for preliminary approval but for final approval shall include the location and specifications for plantings for parking lot landscaping, buffers, open spaces, recreation areas, and other landscaped areas and landscape. Indicate provisions and method made for the continued maintenance of landscaped areas, open spaces, and recreational areas.

e. Existing tree protection; identify existing trees from tree survey to be removed and/or protected and explain or illustrate method to preserve such trees or compensate for their removal both during and after construction. Applicants should meet on-site with city staff to develop such tree protection and tree compensation plan.

f. Drainage plan; for preliminary approval the conceptual design approach and method of code compliance and for final approvals show all existing and proposed grades, proposed guttering on buildings and storm water management details, including swales, berms, piping or other methods used to achieve compliance.

- g. Street graphics and outdoor lighting; include the locations and sizes of all signs and the intensity and nature of all proposed lighting (required only for final approval).
- h. Flood plain; provide contours and elevation of 100-year flood, when applicable.

(7) For projects meeting the requirements for city-wide public notice, applicants shall also submit at the time of application fully rendered digital 3-D digital architectural perspective images and elevations that show all sides of the proposed building(s), parking areas, parking structures and any other site improvement. Additionally, all adjacent buildings and site improvements within one hundred (100) feet of the proposed site should be included within the digital 3-D images for review of the context with the immediately surrounding properties.

(8) Exceptions. Any applicant may request that some of the required information described in the preceding subsections be omitted from the conditional use application, for good cause, contingent upon the approval of the planning director.

(b) For conditional use approvals not involving buildings over 10,000 square feet or not involving three story buildings within the central business district geographic area as defined in this code the planning director shall determine the applicable submittal requirements from the list provided in the previous subsection.

(10) Standards for Consideration of Conditional Use Requests. The decision of the planning and zoning commission shall consider the following applicable standards as a basis for its recommendations to the city commission. Before any proposed conditional use may be approved or approved with conditions, by the city commission, they shall conclude that the following applicable standards are satisfied. All actions to approve conditional uses by the planning and zoning commission and the city commission shall presume as a matter of fact that the following applicable standards have been met by the applicant regardless of whether they are specifically enumerated in writing or in discussion as part of the motion for approval.

- (a) That the proposed plan is consistent with all applicable goals, objectives, policies and standards in the city comprehensive plan;
- (b) That the proposed plan meets or exceeds all other applicable minimum standards and requirements as set forth in this section and this article;
- (c) That the proposed site plan and proposed use, business type, operating hours, noise, parking and traffic impact will be compatible with existing and anticipated land use activities in the immediate neighborhood and that such application will be compatible with the character of the surrounding area;
- (d) That adequate facilities and services necessary to service the development associated with the proposed site plan will be available and in place at the time of impact of the development or phase thereof;
- (e) That the building size, floor area ratio, height and mass are compatible with the zoning code requirements and consistent with the scale and character of the immediate neighborhood.
- (f) That the proposed site is properly landscaped and irrigated in and around buildings, along sidewalks, and buffering neighboring land. The topographical and natural features of the site shall be given priority consideration, thus assuring the retention of the trees. The developer, furthermore, shall make provisions for the continued maintenance of landscaped areas, open spaces, and recreational areas. Other screening and buffering may also be required when necessary to protect the integrity of the surrounding area;

- (g) That traffic generated from the proposed uses shall not, on a daily or peak hour basis, degrade the level of service on adjacent roads or intersections or raise any traffic safety hazards. That driveway and curb cut access directs traffic onto more heavily traveled roadways and away from residential neighborhoods;
- (h) That the site plan provides onsite parking to meet the code required and expected demands of the proposed use;
- (i) That adequate provisions have been made for light, air, access, and privacy in the arrangement of buildings, one to another and to neighbors;
- (j) That the architectural design and aesthetic features of the building plans are compatible with the surrounding area;
- (k) That adequate light shall be provided in all parking areas and interior streets. This shall include the replacement of light poles with appropriate illumination appropriately spaced;
- (l) That the proposed use does not create through noise, intensity of activity, traffic, overflow, parking, storm water runoff etc. any conditions that degrade the value of adjacent properties, the peaceful use of adjacent properties, degrade the economy of adjacent businesses or negatively impacts the existing character or future use of the surrounding neighborhood or adjacent properties.

(11) Additional Standards and Submittal Requirements for Conditional Use Requests. In addition to the general standards for conditional uses, certain conditional uses require other, more specific information and a determination that criteria and standards are achieved. These are as follows:

(1) *Drive-in business.*

a. The city, as an existing urbanized area, does not lend itself to the establishment of new transportation corridors or to the expansion of existing streets. As a result, the city must strive to maintain the most effective and efficient movement of traffic on the existing road network. Since the drive-in components of any business can increase traffic congestion, create safety hazards and adversely impact adjacent neighborhoods or existing streets when they are improperly designed or located, the city has determined that in order to protect the safety and convenience of its citizens, drive-in components of any business shall be conditional uses to be disapproved, approved or approved with conditions. In addition to the site plan and building plan submittals previously outlined, all applications for drive-ins shall contain the following information if required by the city planning staff:

- i. Applicants shall submit a traffic data and impact analysis, including the average daily traffic on adjacent streets and the peak-hour(s) traffic on adjacent streets. This data shall also include daily and peak-hour traffic generation to and from the site, as well as the distribution of trips to the various entrances and exits. The peak hour analysis shall be for the peak hour(s) of the business as well as the peak hours of the adjacent roadways. This data shall also include an analysis of internal traffic flow including the nature and adequacy of stacking areas for average and peak periods. Relevant accident history data shall also be considered.
- ii. Applicants shall submit projections of the number of customers and the location of other similar businesses within this area of the city.

b. In order for the city to undertake its own analysis of these applications, all the above data shall be submitted no less than thirty (30) days prior to the planning and zoning commission meeting date. This shall allow sufficient time to conduct traffic counts,

turning movement studies, and to determine the adequacy of data submitted, as well as to question conclusions and findings by requesting supplementary information to back up previous submissions.

c. It is the intention of the city to permit drive-in businesses only when they impose no substantial adverse traffic impacts on adjacent streets and are consistent with existing character of the area. It is not the intention to permit drive-ins for a parcel which is not suited by location or configuration for such use. Thus, no permit shall be issued unless the city commission shall first determine that:

- i. It is generally necessary or appropriate for the general welfare and public interest;
- ii. That the proposed use is consistent with the character of the surrounding neighborhood and that the property values are reasonably safeguarded;
- iii. That the size of the property is enough to accommodate the use during peak periods without substantial adverse effect on adjacent streets;
- iv. That no significant deterioration of traffic flow and/or turning movements will result on adjacent streets from this use;
- v. That no undue traffic safety or traffic hazards will be created.

(2) *Alcoholic beverages licenses and restaurant, bar, tavern, cocktail lounge conditional uses.* The city has established that restaurants, bars, taverns, and cocktail lounges are conditional uses in commercial zoning districts close to residential properties due to the potential for negative off-site impacts that these establishments and their patrons may have on nearby residents. The enactment of this conditional use requirement has established that all existing and proposed establishments of this type are conditional uses. Renovations, changes in decor, floor plan, menu and changes to operating hours to anytime before 11:00 pm are not deemed to be significant changes which require amendment of conditional use. Changes which result in the addition of the building area, seating or live amplified musical entertainment are deemed to be significant changes which require amendment/approval of a conditional use. In addition to the customary standards associated with condition uses, the following standards or criteria shall also be met in approving these conditional uses: The proposed use is compatible with the adjacent residential areas and will not create any nuisances related to overflow parking on residential streets, noise which is disturbing to the residential occupants, or loitering of patrons within residential areas.

(3) *Alcoholic beverage - City Class 3 (State 4COP) licenses.* Commercial establishments which serve beer, wine and all other alcoholic beverages which require a City Class 3 (State 4COP) liquor license may be permitted in the C-1, C-2 and C-3 and I-1 industrial zoning districts of the city. Establishments which desire a city class 3 (State 4COP) alcoholic beverage license for sales of all types of alcoholic beverages by the drink for consumption on the licensed premises, and which are located within seven hundred fifty (750) feet of any location for which a City class 3 (State 4COP) license has already been issued and is in force, or which are located within one thousand (1,000) feet of any established school or church, must first obtain a conditional use permit in accordance with this section. The distances required in this section shall be measured by following the shortest route of ordinary pedestrian travel along a public right-of-way from the proposed main entrance of the applicant to the main entrance of any church or class 3 vendor, and in the case of a school, to the nearest point of the school grounds in use as part of the school facilities. The city may as a condition of approval of a City Class 3 liquor license require the establishment to also function as a restaurant with food

service and established minimum levels of food service notwithstanding the absence of such requirements by the State alcoholic beverage license.